

Clause embodied in Report No. 6 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on June 24, 25 and 26, 2003.

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**Proposed Settlement of the Legal Dispute between the  
City of Toronto, City of Toronto Economic Development  
Corporation (TEDCO) and the Toronto Port Authority (TPA)**

*(City Council on June 24, 25 and 26, 2003, amended this Clause by adding thereto the following:*

*“It is further recommended that the decision for further future development, other than that for airport purposes, of the lands of the Island Airport, be submitted to City Council for debate, in order that Council can control the plan for the lands.”)*

**The Policy and Finance Committee recommends:**

- (I) the adoption of the joint report (May 28, 2003) from the Chief Administrative Officer, the Commissioner of Urban Development Services and the Chief Financial Officer and Treasurer wherein it is recommended that Council:**
  - (1) approve the Minutes of Settlement between the City, TEDCO and the TPA, substantially in the form attached to this report as Appendix “A”;**
  - (2) approve the Structured Settlement Agreement between the City, TEDCO and the TPA, substantially in the form attached to this report as Appendix “B”;**
  - (3) approve the Ground Lease between TEDCO and the TPA, substantially in the form attached to this report as Appendix “C”;**
  - (4) authorize staff to work with TPA representatives to finalize and execute the releases required and to take out an order dismissing both the action and the Third Party Claim, without costs;**
  - (5) increase the 2003 Approved Capital Budget by \$1.457 Million gross and zero net, to fund the 2001 and 2002 outstanding capital budget for the Toronto Port Authority;**
  - (6) increase the 2003 Approved Capital Budget by \$3.0 Million, to be debt-financed, to fund the 2003 capital subsidy to the Toronto Port Authority; and**

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- (7) authorize the appropriate City officials to take the necessary steps to give effect thereto;
- (II) the adoption of the joint report (June 9, 2003) from the City Solicitor and the Commissioner of Urban Development Services wherein it is recommended that subject to Council approval of the recommended settlement between the City, TEDCO and the Toronto Port Authority (TPA):
- (1) a part lot control exemption by-law, substantially in accordance with Attachment 1 to this Report, pursuant to section 50(7) of the *Planning Act*, be enacted for the following lands (the “lease lands”):
- (a) 535 Commissioners Street;
  - (b) Part of Rear 595 Commissioners Street;
  - (c) Part of 12 and 12A Leslie Street;
  - (d) Part of 600 Unwin Avenue; and
  - (e) Part of 150 Cherry Street;
- (2) a part lot control exemption by-law, substantially in accordance with Attachment 2 to this Report, pursuant to section 50(7) of the *Planning Act*, be enacted for the following lands (the “transfer lands”):
- (a) Part of 150 Cherry Street;
  - (b) Part of 206 Unwin Avenue;
  - (c) 220 Unwin Avenue;
  - (d) Part of 240 Unwin Avenue;
  - (e) Part of 400 Unwin Avenue;
  - (f) Part of 440R Unwin Avenue;
  - (g) 95R Queens Quay East; and
  - (h) 333R Lakeshore Boulevard East;
- (3) both by-laws shall expire on December 31, 2003;
- (4) the City Solicitor be authorised to introduce the necessary Bills in Council to give effect to Recommendations Nos. (1), (2) and (3);

- (5) the City of Toronto Economic Development Corporation be authorised to include the City-owned portion of 130 Cherry Street, being Part 3 on Plan 64R-14512, in the lands to be leased to the Toronto Port Authority under a long term lease agreement; and**
  - (6) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto; and**
- (III) the adoption of the report (June 10, 2003) from the City Solicitor and wherein it is recommended that Council:**
- (1) approve the releases substantially in the form attached to this report,**
  - (2) authorize the appropriate City officials to take the necessary steps to give effect thereto.**

The Policy and Finance Committee reports, for the information of Council, having:

- (i) referred the following motion to the Chief Administrative Officer, the Commissioner of Urban Development Services and the Chief Financial Officer and Treasurer for report thereon to the meeting of Council scheduled to be held on June 24, 2003:

Moved by Councillor Bussin:

- (1) “Therefore be it resolved that:
  - (a) the Minutes of Settlement and the Tripartite Amending Agreement be revised in satisfaction of the condition for approval stipulated by Council last November 2002, as follows:

“Minutes of Settlement:

Add the heading and paragraph:

‘Jobs for Toronto Unionized Workers in the Aircraft Industry:

14A. The TPA shall enter into a binding agreement with the City that ensures that all aircraft acquired to operate to or from the Island Airport, shall be newly manufactured by unionized workers in Toronto, except for those occasions when TPA can demonstrate that the price of acquiring such aircraft is not competitive to the price of such newly manufactured aircraft elsewhere.’”

- (2) That the Tripartite Amending Agreement be amended as follows:

Delete paragraph (1)(i) (3) and insert the following in lieu thereof:

“The Lessee acknowledges that the Lessor’s (The City of Toronto) approval for construction of the Bridge is conditional upon the Lessee ensuring the manufacture and acquisition of new aircraft by unionized workers located in Toronto except in the limited instances in which the price of such new aircraft is not competitive with such new aircraft manufactured elsewhere. Section 14 of the Tripartite Agreement is hereby amended by adding to the prohibition of jet-powered aircraft in subparagraph (d) the following:

‘In addition the Lessee (TPA) shall not permit turbo prop or similarly powered aircraft to operate to or from the Island Airport in relation to the enhancement of TCOR, except turbo prop aircraft that are newly manufactured in Toronto by unionized workers, unless TPA satisfied City Council that the price of acquiring such aircraft is not competitive to the price of acquiring such aircraft new manufactured elsewhere.’”

And add the following paragraph:

“3A. Within 10 days of the date of this Agreement, the TPA, its partners and sub-tenants shall provide City Council with documented proof in the form of unconditional and duly accepted purchase orders for the immediate manufacture and acquisition of manufactured in Toronto turbo prop aircraft suitable for use at the Island Airport, at least twelve (12) months prior to projected commencement of Bridge construction, failing which this Agreement shall immediately become null and void.”

- (3) The Cost of Settlement to the City:

Therefore be it resolved that unless Council decides to reopen its approval of the principle terms of the lawsuit, by a 2/3 majority of Councillors;

And therefore be it further resolved that the Minutes of Settlement and Ground Lease be amended by deleting paragraphs 3.3 and 3.4 of the Ground Lease and by amending the definition of “Payment Term” in paragraph 1.1(y) as follows:

“Payment Term” means the period commencing January 1, 2003, and ending December 31, 2022.

- (4) Therefore be it resolved that Clause 10 embodied in Appendix A (June 2002) of the draft Minutes of Settlement be deleted and the following (prepared in accordance with paragraph 9 of the draft Minutes of Settlement approved by City Council in November 2002) be inserted in lieu thereof:

“10. TPA, unconditionally, shall use its best efforts to support the City’s Secondary Plan, as amended from time to time, and any TEDCO-related or sponsored development of the Port Lands.”

(5) Therefore be it resolved that:

Paragraph 13 of the draft Minutes of Settlement be deleted and the following inserted in lieu thereof:

“13. The City shall deduct and set off against all payments otherwise due by City pursuant to paragraphs 1 to 4 herein, all monies claimed by the City in respect of payments in lieu of realty taxes (PILS). Upon resolution of the exact amount owing by TPA, any overpayment shall be returned to TPA.”

And that paragraph 5.1 (b) of the Ground Lease is amended likewise.

(6) Therefore be it resolved that Paragraph 12 of the draft Minutes of Settlement be deleted and the exception for harbour user fees in subparagraph (vi) of the Release from TPA (Appendix A to supplementary staff report) be deleted;” and

(ii) referred the submission (June 16, 2003) from Mr. Graham Mudge to the Chief Financial Officer and Treasurer for report thereon to the aforementioned meeting of Council.

**The Policy and Finance Committee submits the following joint report (May 28, 2003) from the Chief Administrative Officer, the Commissioner of Urban Development Services and the Chief Financial Officer and Treasurer, entitled “Proposed Settlement of the Legal Dispute between the City of Toronto, City of Toronto Economic Development Corporation and the Toronto Port Authority”:**

Purpose:

To obtain Council approval of documents finalizing the settlement of litigation by the Toronto Port Authority (TPA) against the City of Toronto, the Toronto Economic Development Corporation (TEDCO) and certain individuals.

Financial Implications and Impact Statement:

The net present value to the City and TEDCO of the financial settlement with the TPA is \$48.6 million over ten years commencing in 2003.

The financial settlement is comprised of \$4.0 million to address prior years subsidy issues and to be paid in equal instalments over four years and annual capital and operating payments of \$6.0 million for six years commencing 2003 and \$4.7 million for four years commencing 2008. In addition, the TPA is to receive \$1.457 million to address health and safety and state of good repair issues in its 2001 and 2002 capital program, which was previously approved by Council in November 2002.

In addition to the financial settlement, a number of lease arrangements, spanning up to forty-nine years, have been provided by TEDCO. The estimated maximum net present value of these provisions is \$5.85 million.

It is estimated that over the term of the settlement, the City and TEDCO will achieve financial savings compared to a continuation of the status quo situation.

Payments by the City and TEDCO to the TPA as a result of this settlement are for harbour-related purposes and are not to offset any capital or operating costs associated with the Toronto City Centre Airport (TCCA), including construction of a fixed link. This is confirmed in clauses included in the attached Structured Settlement Agreement and in the Minutes of Settlement. In addition, the amended Tripartite Agreement governing the TCCA, which is the subject of a separate report, includes both a clause requiring a financial guarantee and a Memorandum of Understanding that are legally binding on the TPA and that minimize risk to the City to the extent possible for a municipality as a result of TCCA or related activities.

#### Recommendations:

It is recommended that Council:

- (1) approve the Minutes of Settlement between the City, TEDCO and the TPA, substantially in the form attached to this report as Appendix "A";
- (2) approve the Structured Settlement Agreement between the City, TEDCO and the TPA, substantially in the form attached to this report as Appendix "B";
- (3) approve the Ground Lease between TEDCO and the TPA, substantially in the form attached to this report as Appendix "C";
- (4) authorize staff to work with TPA representatives to finalize and execute the releases required and to take out an order dismissing both the action and the Third Party Claim, without costs;
- (5) increase the 2003 Approved Capital Budget by \$1.457 Million gross and zero net, to fund the 2001 and 2002 outstanding capital budget for the Toronto Port Authority;
- (6) increase the 2003 Approved Capital Budget by \$3.0 Million, to be debt-financed, to fund the 2003 capital subsidy to the Toronto Port Authority; and
- (7) authorize the appropriate City officials to take the necessary steps to give effect thereto.

#### Executive Summary:

The settlement between the City, TEDCO and the TPA is consistent with Council's framework for settling the legal dispute as outlined in the draft Minutes of Settlement approved in November 2002. The financial settlement, with a net present value of \$48.6 million, is consistent with what Council approved. In addition, the City and TEDCO have maintained their

land holdings and the proposed Ground Lease to be provided to the TPA is for land not required for Waterfront Revitalization in the foreseeable future.

The Settlement provides significant benefits to all parties. It ensures the TPA of access to the land and revenue streams necessary to stabilize and enhance its core business and to become self-sufficient, a requirement of the *Canada Marine Act*. The phasing of payments over ten years, combined with the provision of land leases and rental arrangements, allows the TPA to incrementally develop its organizational capacity and eliminate its reliance on municipal support.

The settlement also enables the City and TEDCO to cap their financial support of the TPA at ten years and TEDCO's Ground Lease rental concessions to a maximum of 49 years; allows all parties to avoid the risks and costs of litigation; and, most importantly, permits Waterfront Revitalization to begin immediately.

While Council approved the level of the City's Capital Subsidy to the TPA for 2001 and 2002 (\$1.457 million) at its meeting in November 2002, budget approval for 2001, 2002 and 2003 was not considered due to the ongoing litigation. In accordance with Minutes of Settlement and the releases to be executed by the Toronto Port Authority in favour of all the defendants in the litigation action, payment for the 2001, 2002 and 2003 capital budget subsidy can now be made. Recommendations included in this report related to the capital budget are intended to authorize the steps necessary to expedite these payments.

Approval of the recommended Minutes of Settlement is required from Her Majesty the Queen in right of Canada as a third party participant in the legal dispute, represented in these negotiations by staff of the Minister of Transport. It has consistently been the preference of Transport Canada officials that the City, TEDCO and TPA achieve a settlement with minimal Federal involvement. As a result, Federal officials did not participate in settlement discussions. As a party to the litigation, however, the Federal government must sign some of the settlement documents. As a result, once the form of these documents was agreed to by the other parties, they were sent to Transport Canada. Feedback from staff of Transport Canada and the Federal Department of Justice has been incorporated into the Minutes of Settlement recommended as part of this report. As of the date of this report, however, the Minister had not completed his review of matters related to the settlement and has not yet indicated his acceptance of the settlement documents. City staff have requested that the Minister communicate his acceptance of these settlement documents on or before June 20, 2003, prior to the date of the next meeting of Council.

#### Background:

##### The TPA's Claim:

City Council was advised of the TPA's Statement of Claim in earlier reports. The claim has subsequently been amended. In its Amended Statement of Claim the TPA seeks relief from the City and TEDCO relating to approximately 612 acres of land in the Port Lands which were transferred by the former Toronto Harbour Commission to the City and TEDCO. It is the TPA's position that the transfer of these lands to the City or TEDCO is null and void. As a result, the TPA is seeking a return of the lands or, alternatively, financial damages for the alleged wrongful appropriation of the property allegedly valued at approximately \$1.0 billion. Also included in its

claim are similar allegations related to the transfer of approximately 39 acres of land, the Railway Lands, to the City and/or TEDCO.

The TPA has also advanced claims relating to various agreements between it, the City, and TEDCO, including the 1994 Subsidy Agreement. The City and the Toronto Harbour Commission (THC), now the TPA, entered into this agreement as part of the consideration for the land transfers. It requires the City to provide an operating and capital subsidy to the THC, provided that the THC submits annual operating and capital budgets to the City for approval. In addition, the THC was not to seek a capital payment for the first five calendar years commencing in 1995. The capital budget during these years was to be funded from existing reserves.

The operating subsidy paid to the THC in 1995 and subsequent years was \$2.775 million. The TPA's capital requests in 2000 of \$3.838 million was fully funded, with \$1.55 million coming from the City, \$1.425 from the Airport Capital Assistance Program managed by Transport Canada and \$0.853 from TPA reserves. The Capital request for 2001 and 2002 combined was \$6.168 million. Of this total, only \$3.3 million was funded, with the City paying \$1.4 and the remaining \$1.9 million coming from the Federal Capital Assistance Program. In 2001 and 2002, the City's emphasis for capital budgeting was on the state of good repair and health and safety issues. As a result, City council only approved capital projects in those categories for a total amount of \$1.457 million, which payment had not yet been made.

In addition to its Claims that the lands were improperly transferred, the TPA alleges that the City has failed to live up to its obligations under the Subsidy Agreement by significantly underfunding it.

#### Council Direction:

At its meeting on November 26, 27 and 28, 2002, Council approved, with amendment, Clause Number 2 of a report from the Chief Administrative Officer to a joint meeting of the Planning and Transportation and the Economic Development and Parks Committees which reaffirmed Council's support of construction of a fixed link to the TCCA, subject to a number of conditions. Among these conditions is resolution of the legal dispute that exists between the City, TEDCO, various individuals and the TPA.

At the same meeting, Council approved a confidential report from the City Solicitor and the Commissioner of Urban Development Services, entitled "Toronto Port Authority Litigation", which recommended a settlement framework for the legal dispute that was based on terms contained in Draft Minutes of Settlement attached to the staff report. Council instructed staff to negotiate and conclude all necessary agreements and documents to give effect to the proposed settlement and requested that the Chief Administrative Officer report through Policy and Finance for approval of any substantive changes to the Minutes as a result of these negotiations. Substantive changes were to include financial arrangements, terms and level of subsidies, lands, and the City of Toronto's future liabilities.

Council also requested that all final lease documents between the TPA and TEDCO as part of the settlement be presented for final approval, along with any required federal government consent

to the terms. Finally, staff were instructed to report back on unresolved issues with the TPA related to Harbour User Fees and Payments in Lieu of Taxes.

This report addresses the above conditions and presents final Minutes of Settlement, a Structured Settlement Agreement between the City, TEDCO and the TPA and a Ground Lease for Council's approval. These represent the legal documents required to conclude the legal dispute. The Structured Settlement Agreement replaces previous agreements between the three organizations, including the Subsidy Agreement.

Discussion:

The Proposed Settlement:

The following settlement terms between the City, TEDCO and the TPA are consistent with Council's Framework for Settling the on-going legal dispute and are unchanged from the draft Minutes of Settlement which Council approved in November 2002. (The division of payment responsibilities between the City and TEDCO has not yet been determined but is the subject of ongoing discussions between the City Treasurer and TEDCO staff.):

- (1) the City/TEDCO will pay \$4.0 million over four years commencing in 2003 to address prior years' funding issues;
- (2) the City will pay in 2003 \$1.457 million to the TPA to address health and safety requirements outlined in its 2001 and 2002 capital budget request;
- (3) City/TEDCO will pay an operating payment of \$3M a year, less gross rent from lands leased to the TPA, for ten years, and \$0 thereafter;
- (4) the City will pay a capital payment of \$3M per year from 2003 to 2008, then \$1.7M for 2009 to 2012, and \$0 thereafter;
- (5) refurbishment of the Cherry Street Bridge and Outer Harbour Armouring (erosion control) estimated to require an investment of \$18.5 million, will appropriately be paid through the Toronto Waterfront Revitalization Corporation (TWRC), in which the City is a one third partner, if and when the TWRC decides to proceed with such initiatives;
- (6) approximately 26.8 acres of TEDCO-owned lands at the east end of the Ship Channel and adjacent to the current TPA marine terminals will be leased to the TPA for \$1/year for 20 years (the "Leased Lands"); and
- (7) selected parcels of TEDCO-owned land on the south side of the ship channel, totalling 25.6 acres, will be maintained for port uses for the duration of the leases or a period of no more than 10 years. These will be known as the "Port Related Lands".

During deliberation on the draft Minutes, Council directed staff to clarify and negotiate resolution of these items with the TPA. These items included the development of terms for the extension of ground leases, a protocol for managing the "Port Related Lands" and a mechanism

for securing funds through the Waterfront Revitalization Project. The following details how these items have been clarified within the settlement.

(1) Lease Extension Terms:

The payment of rent on the “Leased Lands” by the TPA to TEDCO will be phased in it at 50 percent of fair market value (FMV) for the first 15 years of lease extensions, beyond the initial 20-years where these lands are provided at \$1/year, and at 75 percent of FMV for all subsequent years to a maximum of 49 years.

Extensions will be granted on the following terms:

- (a) 10 years on properties occupied by port users for 16 of 20 years in the initial 20 year lease;
- (b) a subsequent 10 year extension on properties occupied by port users for 8 of 10 years in the first extension period; and
- (c) a final 9-year extension on properties occupied by port users for 8 of 10 years in the second extension period.

This ensures that lands leased to the TPA are used for traditional port activities and managed by the TPA in a manner that generates revenue for both it and TEDCO. It is consistent with Council’s Framework for Settlement in that the City and TEDCO maintain their land holdings.

(2) Protocol for “Port Related Lands”:

TEDCO and the TPA have agreed that beyond the initial period of up to ten years when these lands will remain under TEDCO management but be reserved for port users, TEDCO will choose a tenant who is a port-user over a non-port-user when the financial terms and business case for TEDCO are equal or better. This commitment will remain in effect until 2033 or until the land is required for revitalization purposes.

(3) The TPA Works Yard:

TEDCO representatives have agreed to provide a rebate to the TPA on the net rent on its works yard site for 2009 and 2010, if any and if the TPA continues to be operating out of this location at this time. It is possible, however, that the Works Yard will be relocated prior to 2009 to allow for the renaturalization of the Mouth of the Don River, a priority project of Waterfront Revitalization. Under such circumstances, the costs of relocation will need to be addressed by the TWRC.

(4) A Mechanism for Securing Funding from the TWRC:

In a letter dated April 11, 2003, the Chairman of the TWRC confirmed that the Corporation’s business strategy as presented to the three government partners includes a

request for funds to deal with the Cherry Street Bridge and shoreline improvements in the port area. The Chairman went on to confirm that the Plan is at various stages of review between the three governments and subject to annual budget processes.

As part of the proposed settlement, City representatives have agreed to provide the City's one third share of costs associated with the rehabilitation of the Cherry Street Bridge and other shore work from within the \$500 million that it has committed to the TWRC, subject to the other two-thirds of the resources required being made available by the TWRC. The total cost of these initiatives as estimated by the TPA is \$18.5 million.

Both Provincial and Federal representatives involved in Waterfront Revitalization have communicated their support in principle of these two initiatives, subject to a formal request being received from the TWRC and their respective budget approval processes.

Given the City's commitment to the Waterfront Project and the financial model supporting the project, this provision in the settlement does not increase the City's settlement costs.

The Minutes of Settlement and Structured Settlement Agreement have been revised to reflect all of the above agreements and clarifications. They were approved by the Toronto Port Authority and TEDCO Boards of Directors at meetings on May 4, 2003. The TPA has had subsequent meetings in May and the TEDCO Board will be reconvening on June 17, 2003 to review certain additions to the Minutes of Settlement requested by the Federal Government.

#### Benefits of the Settlement:

The Settlement offers significant benefits to the City, TEDCO and the TPA. It provides the TPA with access to the land and revenue streams necessary to stabilize and enhance its business and to become self-sufficient, a requirement of the *Canada Marine Act*. It also enables the City and TEDCO to cap their financial support of the TPA at ten years, allows all parties to avoid the risks and costs of litigation; and, most importantly, permits Waterfront Revitalization to proceed immediately. Each of these benefits is discussed in detail below.

At present, the City is obligated to provide the TPA with annual operating and capital subsidies for an indefinite number of years. The Settlement enables both organizations to limit their financial support to ten years. The phasing of these payments, combined with the provision of land leases and rental arrangements, allows the TPA to incrementally develop its organizational capacity and eliminate its reliance on municipal support. In addition, the annual operating payment provided under the settlement (\$3.0 million per annum less gross rental revenues from the "Leased Land") is comparable to the current operating payment of \$2.77 million per annum. Under the settlement, however, payments end in ten years. Under the status quo a payment of at least \$2.77 million per annum would continue for an indefinite period.

The capital payment to the TPA has fluctuated annually based on its needs and Council's fiscal pressures and capital priorities. The settlement provides the TPA with guaranteed capital

resources for ten years. This will permit it to undertake required infrastructure improvements in its port operations.

From the perspective of all parties, settlement of the dispute avoids the delays, risks and costs associated with litigation. Staff of City Legal Services project that the discovery phase of litigation alone would cost each of the City/TEDCO and the TPA in the area of \$1.0 million. An additional \$2.0 million in costs could be incurred by the City and TEDCO if the case were to go to trial.

More significantly, however, settlement of the dispute enables revitalization of Toronto's waterfront to proceed immediately and allows the City and all of its partners to benefit from the economic, social and cultural benefits that a project of this magnitude will generate.

Finally, as noted earlier, for the TPA, the proposed settlement provides the infrastructure and financial stability necessary to retain existing port users, attract new users and explore other appropriate business opportunities to ensure long-term financial viability and independence. A significant issue for the TPA throughout settlement discussions has been the need to clarify what is required for the Port of Toronto and the TPA to be viable. It is the position of the TPA that sufficient land is needed to house its port users, accommodate modest growth, and generate rental and port user income. A combination of the TPA's current land holdings, the "leased land" resulting from the settlement and the "Port Users Protocol" addresses these requirements. While the lease term for some of the land may extend to 49 years, the land is located at the east end of the Ship Channel in an area intended for industrial purposes as per the City's Central Waterfront Secondary Plan. As a result, it will not impede Waterfront Revitalization.

Research undertaken for the City and TEDCO as part of the Secondary Planning process indicate that opportunities do exist for the TPA. While overall cargo volumes in Toronto's port have declined, core cargoes such as salt, cement and sugar, have remained resilient. The research concluded that a modest annual growth rate of one to two percentage points on existing cargoes is feasible and could result in an additional 2.1 million tonnes of port traffic by 2010. In addition, research concluded that opportunities to attract container feeder traffic might also exist.

#### Financial Impact:

The value of the financial settlement with the TPA is unchanged from that presented to Council in November 2002. Paid over ten-years, commencing in 2003, it has a net present value of \$48.6 million, assuming a discount rate of 5%. (As noted earlier, the \$48.6 million does not include the \$1.457 million for the 2001 and 2002 capital requirements.)

At its November meeting, Council directed staff to further clarify Ground Lease extension terms and their financial impact. The staff of TEDCO have undertaken this analysis. Costs of lease arrangements fall into two categories:

(1) The opportunity cost to TEDCO of not collecting market rent on the “Leased Lands”:

Net rents from the “leased lands” are deducted from the operating payment to be paid to the TPA by TEDCO for the first ten years of the lease. As a result, there is no cost to TEDCO from this land being made available to the TPA for \$1/year.

In year eleven through twenty when an operating payment is no longer paid, the cost of lease arrangements to TEDCO equates to the net present value of rental income generated from these lands from 2013 to 2022, assuming that the TPA is successful in leasing the land. The estimated net present value of this concession is \$3.8 million, assuming a 7 percent discount rate, which takes into account the time frame of the concession.

For all subsequent years during which the lease may be extended, the value of arrangements equates to the net present value of the difference between the rent paid by the TPA to TEDCO and fair market value (FMV). This has been projected to have a net present value of \$1.76 million, again assuming a 7 percent discount rate which takes into account the number of years over which the extension spans.

It should be noted, however, that all 26.8 acres of land might not qualify for lease extensions according to the criteria applied to this process as outlined earlier in this report. The above value, therefore, represents the maximum cost of this provision and assumes that all of the “Leased Land” will be extended.

(2) The net present value of rental payments on the TPA Work Yard in 2009 and 2010:

If in fact the Works Yard continues to be in its current location during these years, the estimated value of this provision is \$253,702, using a 5 percent discount rate as this agreement, if realized, occurs within the first ten years to which the Settlement applies.

The following chart compares the City/TEDCO’s costs associated with the settlement to those of a status quo situation underwhich the City/TEDCO would be required to continue to subsidize the TPA indefinitely. This comparison is based on forty-nine (49) years, the maximum time overwhich the TPA may have access to land at below market rates.

Comparison of Costs to the City/TEDCO  
Status Quo Scenario vs. Settlement Scenario

	Estimated Status Quo Costs re TPA over 49 years.	Settlement Cost over 49 years
Capital Payments	\$21.3million***	\$20.6 million
Operating Payments	\$43.8 million**, ***	\$24.3 million
2001/2 State of Good Repair	0	\$ 1.5 million (not discounted)
\$4.0M (Prior years payment)	0	\$ 3.7 million
Works Yard Concession*	0	\$ 0.25 million
Lease Arrangements	0	\$ 5.6 million***
Total NPV of Settlement	\$65.1 million	\$55.95 million

Except where noted, all numbers discounted at 5 percent

\* Expenditure not likely to be required due to earlier relocation of the Works Yard

\*\* Annual Subsidy Inflated by 3 percent every five years

\*\*\*Discounted by 7 percent

A discount rate of 5 percent has been applied to those calculations which span a maximum of 10 years, i.e. the settlement provisions for capital, operating and prior years' payments. This represents the City's "opportunity cost" of money – the rate of return, which the City could receive if the money was invested rather than expended for these purposes. For all other calculations, a discount rate of 7 percent has been applied to reflect the longer time frame of the expenditure stream, i.e. 49 years.

The above chart clearly illustrates the financial benefits to the City and TEDCO as a result of this settlement. Over the forty-nine years in question, estimated savings to the City could be in the order of \$10.0 million. In addition, in a status quo scenario, subsidy of the TPA by the City and TEDCO could continue beyond 49 years.

Other Outstanding Issues:

Payments-in-lieu-of-Taxes (PILS):

With respect to the issue of payment-in-lieu of taxes (PILs), there is a general acknowledgement on the part of the Municipal Property Assessment Corporation that the assessment values for TPA properties (as returned on the assessment rolls for taxation years 1999 to present) need to be reviewed and may be high. Staff from Finance and Legal Services have had discussions with representatives from MPAC, the TPA and the Federal Government to work towards determining a fair assessment for TPA properties. Once this analysis is completed, the PILs will be recalculated based on the revised assessed values. The Minutes of Settlement attached to this report confirm the TPA's intention to pay PILS following the determination of the values.

Harbour User Fees:

Staff of Urban Development Services, Economic Development, Culture and Tourism, and Legal Services met with representatives of the TPA to discuss issues related to Harbour User Fees,

which the TPA began levying against the City in the year 2000 following enactment of the Canada Marine Act. Staff recognized the TPA's authority to charge user fees and indicated the City's willingness to pay them subject to resolution of a number of issues. Of specific concern are the following:

- (1) the dramatic difference in the fees charges to the City relative to other harbour users;
- (2) the lack of connection between fees charged by the TPA and services received by the City;
- (3) the lack of notice provided by the TPA to the City re its intent to charge fees, a requirement under section 51 of the *Canada Marine Act*; and
- (4) billing inaccuracies in terms of the number of lake crossings on which fees have been based.

The majority of harbour users pay an annual fee that is equivalent to \$10 per passenger capacity of the ship. Under this scenario, the City would be charged \$37,700.00 per annum. The City, however, is charged \$7.50 to \$10.00 per harbour crossing depending on the vessel in question. In addition, many of the services for which harbour user fees are intended are not provided to the City. Specifically, the City monitors, maintains and installs its own navigational markers, undertakes its own ice-breaking services and handles clean-ups in the harbour.

These issues were communicated to the TPA in writing by the Commissioner of Urban Development Services in March 2003. At present, the TPA has purported to charge the City approximately \$400,000 per annum in user fees. It has been agreed, however, that staff of the two organizations will continue to discuss the above issue with a view to resolving them in the coming months. If a resolution cannot be reached, a formal mechanism exists whereby the City can formally appeal its user fees before the Canadian Transportation Agency.

#### Conclusion:

The proposed settlement between the City, TEDCO and the TPA as outlined in this report is within Council's Framework for Settlement, approved in November 2002. It offers a number of benefits to the City and TEDCO in that financial support of the TPA is capped at ten years, waterfront revitalization is permitted to proceed in a timely manner and the municipality has maintained its land holdings. The legal documents necessary to implement this settlement are attached to this report for Council's approval. Outstanding issues related to PILs and Harbour User Fees are the subject of separate resolution processes and ongoing discussions between the City and TPA representatives.

#### Contact:

Elaine C. Baxter-Trahair, Waterfront Project Director  
(416) 397-4083; ebaxter@city.toronto.on.ca

List of Attachments:

- Appendix "A" – Minutes of Settlement
- Appendix "B" – Structured Settlement Agreement
- Appendix "C" – Ground Lease
- Appendix "D" – Draft Minutes of Settlement, November 2002

\_\_\_\_\_

Appendix "A"

Court File Nos. 01-CV-215214CM and 01-CV-215214CM A2

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N :

TORONTO PORT AUTHORITY

Plaintiff

- and -

CITY OF TORONTO, CITY OF TORONTO ECONOMIC DEVELOPMENT  
CORPORATION, JUNE ROWLANDS, BETTY DISERO, MICHAEL WALKER,  
MARTIN SILVA, STEVAN ELLIS, JOHN ADAMS, HERB PIRK,  
ARTHUR L. STEVENSON, VIRGINIA WEST and NICK KRISTOFFY

Defendants

- and -

ATTORNEY GENERAL OF CANADA

Third Party

MINUTES OF SETTLEMENT

WHEREAS the Toronto Port Authority, City of Toronto, City of Toronto Economic Development Corporation and Attorney General of Canada (hereinafter collectively referred to as the "Parties") acknowledge and agree that the revitalization of Toronto's waterfront ("Waterfront Revitalization") is a priority of the three levels of government and is supported by the Parties to this agreement.

AND WHEREAS the Parties hereto acknowledge and agree that Toronto should have an active port function managed by the Toronto Port Authority (“TPA”) under its legislated mandate.

The Parties agree to settle all matters which are the subject of the action and third party claim on the following terms:

**PAYMENT ISSUES:**

1. The City of Toronto (the “City”) will make a payment to the TPA in the sum of Four Million Dollars (\$4,000,000.00) to settle all outstanding operating and capital payment issues between the parties for the years 1995 through to, and including 2002. The payment shall be made in four equal installments of One Million Dollars (\$1,000,000.00) annually, beginning on or before July 15, 2003.
2. The City will also process and pay the total sum of One Million Four Hundred and Fifty Seven Thousand Dollars (\$1,457,000.00) for the Toronto Port Authority’s outstanding 2001 and 2002 capital budget requests on or before July 15, 2003.
3. The City and the Toronto Economic Development Corporation (“TEDCO”) will be jointly and severally liable to pay and will pay the TPA an operating payment of Three Million Dollars (\$3,000,000.00) per year, for the ten (10)-year period commencing January 1, 2003 and ending December 31, 2012. Beginning January 1, 2013 and thereafter, no operating payment shall be paid to the TPA by the City or TEDCO. The operating payment that is payable in each year is to be reduced by the gross revenues (as more particularly set out in the Ground Lease) received from the Leased Lands (as defined in paragraph 7).
4. The City will make annual payments to the TPA in each year of the ten-year period commencing January 1, 2003 and ending December 31, 2012. For the six-year period beginning January 1, 2003 and ending December 31, 2008, the capital payment will be Three Million Dollars (\$3,000,000.00) per year. For the four-year period commencing January 1, 2009 and ending December 31, 2012, the capital payment will be One Million Seven Hundred Thousand Dollars (\$1,700,000.00). Beginning January 1, 2013 no capital payment shall be payable to the TPA by the City or TEDCO. The TPA agrees and undertakes to use the capital payment for capital expenses (other than those relating to the Toronto City Centre Airport). It is agreed that what constitutes capital expenses will be determined in accordance with generally accepted accounting principles.
5. The TPA currently operates its Works Yard out of the property known municipally as 62 Villiers Street pursuant to a lease and renewal agreement with TEDCO dated August 4, 1994 and May 6, 2002, respectively (the “Works Yard Lease”). TEDCO agrees, contemporaneously with receipt of the rent, to provide a rebate of net rent paid by the TPA to TEDCO for the Works Yard for that portion for the years 2009 and 2010, if any, that the TPA is still operating out of this same location. In all other respects, TEDCO and the TPA confirm that the Works Yard Lease remains in full force and effect.

The TPA and TEDCO are a party to a lease and renewal lease in respect of the dockwall (as more particularly described in the lease) dated August 4, 1994 and August 4, 1999 respectively (the "Dredging Lease"). TEDCO and the TPA confirm that the Dredging Lease remains in full force and effect.

6. The City, TEDCO and the TPA agree that neither the City of Toronto nor TEDCO shall be responsible for any other financial contribution to the TPA other than as expressly set out herein, incurred in the normal course of business or specifically contracted for in the future. This includes, but is not limited to, any payments to be made by the City and/or TEDCO under an agreement entitled "THC Subsidy Agreement (II)" dated as of October 31, 1994 between the Toronto Harbour Commissioners and the Corporation of the City of Toronto, the agreement of purchase and sale dated July 18, 1994, between TEDCO and the Toronto Harbour Commissioners, any tonnage guarantees, and potential future expenditures relating to moving the TPA's Works Yard or Atlas Crane, potential capital expenditures relating to the Cherry Street bridge, Derrick Crane, Outer Harbour Armouring or mobile crane. The foregoing sentence does not alter TEDCO's rights or obligations with respect to relocation of the Works Yard in the Works Yard Lease. The Parties agree that any issues relating to moving the TPA's Works Yard or Atlas Crane, if required for Waterfront Revitalization, should be addressed in the context of the Waterfront Revitalization project. The Parties further agree that the issues relating to capital expenditures for the Cherry Street bridge and Outer Harbour armouring will be addressed in the context of Waterfront Revitalization and that the City has approached the relevant governments and has received a positive response from the Toronto Waterfront Revitalization Corporation ("TWRC"). The City hereby commits to making its one-third (1/3) contribution to these capital expenditures, estimated at \$18.5 million through the TWRC at the time that the TWRC funds the remaining two-thirds (2/3) either from its own funds or from other sources.

LAND ISSUES:

7. TEDCO and the TPA will enter into a lease agreement in the form attached as Schedule "B" (the "Ground Lease") for the following lands (the "Leased Lands") shown in orange on the map attached as Schedule "A".

Property/Tenant	Address
Innocon Inc.	535 Commissioners St.
Vacant	Part of Rear 595 Commissioners St.
Eastern Marine Systems Inc.	Part only of 12 Leslie Street (less open space)
Vacant	600 Unwin (part rear and other small parts)
C&C Marine Services	150/52 Cherry Street (part)
Avonhill Services Inc.	130 Cherry Street

8. TEDCO agrees that the following parcels of land on the south side of the Ship Channel and certain lands around the Keating Channel (the "Port-Related Lands", coloured yellow on Schedule "A"), will be available to be used for port related purposes for the lesser of

the current lease terms on these lands (i.e. excluding any extensions or options) or for a maximum of ten (10) years.

Property/Tenant	Address
Essroc Canada	312 Cherry Street
Sifto Salt	206 Unwin (rear only)
Cargill Salt Ltd.	220 Unwin (rear only)
Canadian Salt Co.	240 Unwin (Part 1 East)

9. TEDCO will use its best efforts to negotiate with the TPA a lease in respect of an interim (at least ten (10)-year term) marine terminal on the Port-Related Lands. TEDCO and the TPA have agreed that the negotiations for the interim marine terminal must be completed within eighteen (18) months.
10. To the extent consistent with its statutory mandate, and the existence of an active port function, the TPA covenants and agrees that it will use its reasonable commercial efforts to support the City's Secondary Plan and all City, Toronto Waterfront Revitalization Corporation and/or TEDCO-related or sponsored development in the Port Lands.
11. The City will use all reasonable efforts to ensure that representatives of the TPA participate in discussions about business relocation issues related to port-users in the context of Waterfront Revitalization.

#### HARBOUR USER FEES AND PILS:

12. The City agrees to pay harbour user fees relating to the City's operation of the ferries. The TPA and the City agree to use their best efforts to resolve the issues expeditiously between them regarding harbour user fees. The City covenants to pay such harbour user fees to the TPA as and when due; provided however that, if and to the extent that the City disputes the amount of the harbour user fees relating to the City's operation of the ferries, then until such time as the exact amount has been agreed to between the City and the TPA, the City may postpone remittance of any amount in dispute (but shall remit all harbour user fees not in dispute).
13. Similarly, the TPA agrees to make payments in lieu of realty taxes ("PILs") in respect of the lands the TPA owns or leases. The TPA and the City agree to use their best efforts to resolve the issues expeditiously between them regarding PILs in accordance with the provisions contained in the *Payments in Lieu of Taxes Act*, R.S. 1985, c. M-13, as amended, and its related regulations. The TPA covenants to pay such PILs to the City as and when due; provided however that, if and to the extent that the TPA disputes the amount of the PILs relating to any particular property or properties, then until such time as the exact amount has been agreed to between the City and the TPA for a property in dispute, or determined in the manner prescribed for making such determination, the TPA may postpone remittance of any amount in dispute (but shall remit all PILs not in dispute). Any obligation to pay realty taxes or PILs with respect to the Leased Lands shall be governed by the Ground Lease.

AGREEMENTS AND DOCUMENTATION FOR SETTLEMENT:

14. The TPA, TEDCO and the City will enter into a new agreement, known as the Structured Settlement Agreement in the form attached hereto as Schedule “C” setting out the settlement provisions herein, which will also amend as necessary or replace and supercede all other agreements between the TPA, TEDCO and the City relating to the land transfers and the subsidy obligations in order to give full effect to the terms of this settlement.
15. The TPA shall transfer to TEDCO or the City, as the City may direct, the lands described in Schedule “D”. Such transfer shall be made for nominal consideration and the transferee shall take the lands on an “as is” “where is” basis with no representations or warranties whatsoever. Her Majesty the Queen in Right of Canada agrees to use reasonable best efforts to complete all necessary matters that may be required in accordance with applicable laws to complete the transfers of the lands described in Schedule “D”.
16. The TPA, TEDCO and the City agree to enter into all necessary agreements and documents, and perform all such further acts and assurances as may be reasonably required to complete and give effect to the terms of this settlement including, but not limited to, the Structured Settlement Agreement and the Ground Lease.
17. The Parties shall exchange releases in a form satisfactory to the Parties, acting reasonably, in respect of the matters that were raised in the action and the third party claim, exempting only the continuing obligations arising pursuant to the settlement between the Parties. The releases shall also release the individual defendants. The Parties will agree to provide their consent and instruct their solicitors to take out an Order dismissing both the action and the third party claim, without costs.
18. The settlement provided for in these Minutes of Settlement is conditional on City Council approving the amendments to a tripartite agreement dated June 30, 1983, as amended by agreement dated July 19, 1995 set out in the agreement (the “Tripartite Amending Agreement”) in the form attached hereto as Schedule “E”. The settlement is also conditional on the City approving on or before July 7, 2003 all those conditions, which must be satisfied pursuant to the Tripartite Amending Agreement before the commencement of construction of the fixed link. The July 7, 2003 date is premised on the TPA providing to the City (i) the emergency services protocol; (ii) the transit strategy; (iii) the storm water management plan and (iv) the urban design plan, by June 2, 2003; and providing additional details and information reasonably required by City staff in a timely fashion. In the event any of the four (4) original submissions is provided after June 2, 2003, the July 7, 2003 approval date will be extended by an equal number of days. The City will advise the TPA of any additional information reasonably required by the City or amendments desired by the City to the submissions within 10 business days after receipt of such submissions (or if the submissions have already been received, 5 business days after the date hereof). The TPA will respond to the City’s requests within 5 business days. The City shall cause its staff to be available to discuss the submissions with the TPA on a regular basis to the intent that the City and the TPA will continue to work together to achieve the approvals within the time frames listed above.

19. The TPA is entering into these Minutes of Settlement on its own behalf and not on behalf of Her Majesty the Queen in Right of Canada.
20. Nothing in this agreement fetters the discretion of any servant of Her Majesty the Queen in Right of Canada in the exercise of any statutory duties.

DATED: May \_\_\_\_\_, 2003

TORONTO PORT AUTHORITY

Per: \_\_\_\_\_

Per: \_\_\_\_\_

ATTORNEY GENERAL OF CANADA

Per: \_\_\_\_\_

Per: \_\_\_\_\_

CITY OF TORONTO

Per: \_\_\_\_\_

Per: \_\_\_\_\_

CITY OF TORONTO ECONOMIC  
DEVELOPMENT CORPORATION

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Insert Table/Map No. 1  
orange lands

Appendix "B"  
Structured Settlement Agreement

THIS AGREEMENT made this ■ day of May, 2003

B E T W E E N:

CITY OF TORONTO

(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

TORONTO PORT AUTHORITY

(hereinafter referred to as the "TPA")

OF THE SECOND PART

- and -

CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION

(hereinafter referred to as "TEDCO")

OF THE THIRD PART

Recitals:

1. The TPA is a corporation constituted pursuant to the provisions of the *Canada Marine Act* for certain purposes and with certain powers related to the operation of the port of the City of Toronto, and is the successor to The Toronto Harbour Commissioners.
2. The TPA initiated legal proceedings against the City, TEDCO and others relating to lands formerly held by The Toronto Harbour Commissioners, predecessor to the TPA, which were conveyed to the City and TEDCO in a series of conveyances.
3. The City, TEDCO, the TPA and the Attorney General of Canada entered into minutes of settlement of even date herewith (the "Minutes of Settlement") resolving the legal proceedings, and the parties hereto are entering into this Structured Settlement Agreement (the "Agreement") pursuant to the Minutes of Settlement.
4. The Parties acknowledge and agree that they support the revitalization of Toronto's waterfront ("Waterfront Revitalization"), which is a priority of the three levels of government.

5. The Parties hereto acknowledge and agree that Toronto should have an active port function managed by the TPA under its legislated mandate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree with one another as follows:

Article 1.  
Payments

1.1 Operating Payment:

- (a) Subject to subsection (b) below, the City and TEDCO will be jointly and severally liable to pay and will pay the TPA an operating payment of Three Million Dollars (\$3,000,000.00) per year (the "Operating Payment"), for a period of ten (10) years commencing January 1, 2003 to and including December 31, 2012 (the "Payment Term"). The Operating Payment shall be paid to the TPA by the City in equal monthly instalments of Two Hundred and Fifty Thousand Dollars (\$250,000.00), on the 1st day of each and every month of the Payment Term, the first such payment to be made July 15, 2003. Contemporaneously with the first such payment the City shall deliver to the TPA the instalments in respect of the months from January 2003 to June 2003 (both inclusive). In the event that the City pays to the TPA any operating or subsidy payments in 2003 prior to the execution of this Agreement, the TPA acknowledges and agrees that any such payments shall be deemed to be instalments towards payment of the 2003 Operating Payment.
- (b) In any year of the Payment Term, the Operating Payment shall be reduced by the Yearly Gross Revenues (as more particularly set out in the Ground Lease).

1.2 Capital Payment:

- (a) The City will pay the TPA:
- (i) a capital payment of Three Million Dollars (\$3,000,000.00) per year, for the six (6) year period commencing January 1, 2003 and ending December 31, 2008; and,
- (ii) beginning January 1, 2009, a capital payment of One Million and Seven-Hundred Thousand Dollars (\$ 1,700,000.00) for the four (4) year period ending December 2012;

(which payments are collectively, the "Capital Payment"). Thereafter no further Capital Payments shall be paid or payable.

- (b) The Capital Payment shall be paid in semi-annual instalments on the 1st day of January and the 1st day of July in each and every year of the Payment Term, up to

and including July 1, 2012. Both instalments of the Capital Payment for the year 2003 shall be made on July 15, 2003.

- (c) The TPA agrees and undertakes to use the Capital Payment for capital expenditures only, as determined in accordance with generally accepted accounting principles.
- (d) Notwithstanding the foregoing, the TPA covenants and agrees that it shall not use the Capital Payment or any portion thereof to pay for any costs relating to construction of either the proposed fixed link to the Toronto City Centre Airport or any future new airport terminal.

### 1.3 Payments Related to Prior Years:

- (a) The City will pay the sum of Four Million Dollars (\$4,000,000.00) to the TPA in respect of all outstanding operating and capital payment requests for the years from 1995 to and including 2002, in four (4) equal instalments of One Million dollars (\$1,000,000.00) annually, beginning on the 15th day of July, 2003 and ending on the 15th day of July, 2006.
- (b) The City will also pay to the TPA the sum of One Million Four Hundred Fifty-Seven Thousand Dollars (\$1,457,000.00) in respect of the TPA's outstanding 2001 and 2002 capital budget requests, such payment to be made on or before July 15, 2003.
- (c) The TPA hereby agrees that it hereby withdraws any claim it might have with respect to all outstanding capital requests made to the City for the years 2001 and 2002.

### 1.4 Financial Support to End:

The City, TEDCO and the TPA agree that neither the City of Toronto nor TEDCO shall be responsible for any other financial contribution to the TPA other than as expressly set out herein, incurred in the normal course of business or specifically contracted for in the future. This includes, but is not limited to, any payments to be made by the City and/or TEDCO under an agreement entitled "THC Subsidy Agreement (II)" dated as of October 31, 1994 between the Toronto Harbour Commissioners and the Corporation of the City of Toronto, the agreement of purchase and sale dated July 18, 1994, between TEDCO and the Toronto Harbour Commissioners, any tonnage guarantees, and potential future expenditures relating to moving the TPA's Works Yard or Atlas Crane, potential capital expenditures relating to the Cherry Street bridge, Derrick Crane, Outer Harbour Armouring or mobile crane. The foregoing sentence does not alter TEDCO's rights or obligations with respect to relocation of the Works Yard in the Works Yard Lease. The Parties agree that any issues relating to moving the TPA's Works Yard or Atlas Crane, if required for Waterfront Revitalization, should be addressed in the context of the Waterfront Revitalization project. The Parties further agree that the issues relating to capital expenditures for the Cherry Street bridge and Outer Harbour armouring will be

addressed in the context of Waterfront Revitalization and that the City has approached the relevant governments and has received a positive response from the Toronto Waterfront Revitalization Corporation (“TWRC”). The City hereby commits to making its one-third (1/3) contribution to these capital expenditures, estimated at \$18.5 million through the TWRC at the time that the TWRC funds the remaining two-thirds (2/3) either from its own funds or from other sources.

#### 1.5 Other Payments:

- (a) The City agrees to pay harbour user fees relating to the City’s operation of the ferries. The TPA and the City agree to use their best efforts to resolve the issues expeditiously between them regarding harbour user fees. The City covenants to pay such harbour user fees to the TPA as and when due; provided however that, if and to the extent that the City disputes the amount of the harbour user fees relating to the City’s operation of the ferries, then until such time as the exact amount has been agreed to between the City and the TPA, the City may postpone remittance of any amount in dispute (but shall remit all harbour user fees not in dispute).
- (b) Similarly, the TPA agrees to make payments in lieu of realty taxes (“PILs”) in respect of the lands the TPA owns or leases. The TPA and the City agree to use their best efforts to resolve the issues expeditiously between them regarding PILs in accordance with the provisions contained in the *Payments in Lieu of Taxes Act*, R.S. 1985, c. M-13, as amended, and its related regulations. The TPA covenants to pay such PILs to the City as and when due; provided however that, if and to the extent that the TPA disputes the amount of the PILs relating to any particular property or properties, then until such time as the exact amount has been agreed to between the City and the TPA for a property in dispute, or determined in the manner prescribed for making such determination, the TPA may postpone remittance of any amount in dispute (but shall remit all PILs not in dispute). Any obligation to pay realty taxes or PILs with respect to the Leased Lands shall be governed by the Ground Lease.

#### 1.6 Payments Past Due:

If the City or TEDCO fails to pay to the TPA when the same is due and payable any Operating Payment or Capital Payment or any other amount payable by the City or TEDCO under this Structured Settlement Agreement, then such unpaid amounts bear interest from the date thereof to the date of payment at a rate per annum which is 2 percentage points in excess of the minimum lending rate to prime commercial borrowers current at such time charged by any Canadian chartered bank designated by the TPA from time to time.

Article 2.  
Real Estate Matters

2.1 Leased Lands”

As part of the settlement referred to in the third recital to this Agreement, TEDCO and the TPA have entered into a lease in respect of certain lands described therein and referred to as the “Leased Lands” in the form attached to the Minutes of Settlement as Schedule B (the “Ground Lease”).

The TPA covenants and agrees that, from and after the commencement date of the Lease, it shall manage the Leased Lands as a prudent landlord would do.

The TPA covenants and agrees that it shall use the Leased Lands in accordance with, any only for the purposes set out in, the Ground Lease. Provided, however, that if there is a dispute between the City and TEDCO as to whether or not a use is permitted under the Lease, TEDCO’s determination shall prevail.

2.2 Revitalization or Redevelopment of the Port Lands:

- (a) To the extent consistent with its statutory mandate, and the existence of an active port function, the TPA covenants and agrees that it will use reasonable commercial efforts to support the City’s Secondary Plan and all City, Toronto Waterfront Revitalization Corporation and/or TEDCO-related or sponsored development in the Port Lands.
- (b) The TPA acknowledges that the City, the provincial and federal governments are currently engaged in formulating initiatives for the revitalization of the waterfront, which initiatives will affect, and be affected by, the TPA’s operations. The City will use all reasonable efforts to ensure that the TPA participates in discussions about business relocation issues related to port users in the context of Waterfront Revitalization.

Article 3.  
Yearly Gross Revenues and Operating Payment

3.1 Yearly Gross Revenues:

For the purposes of this Agreement, “Yearly Gross Revenues” has the meaning set out in the Ground Lease.

3.2 Yearly Gross Revenues to Reduce Operating Payment:

The TPA acknowledges and agrees that in each year of the Payment Term, the amount of the Operating Payment payable to the TPA pursuant to section 1.1 above shall be reduced by the Yearly Gross Revenues, as more particularly set out in the Ground Lease.

Article 4.  
1994 Purchase and Sale Agreement

4.1 1994 Agreement of Purchase and Sale:

The Parties hereto acknowledge and agree that this Agreement arises in the context of certain land transactions set out in an Agreement of Purchase and Sale dated July 18, 1994 between TEDCO and the TPA (the "1994 Purchase and Sale Agreement") and related agreements between and among the Parties, pursuant to a Restructuring Plan (as that term is defined in the 1994 Purchase and Sale Agreement). The 1994 Purchase and Sale Agreement provides for the conveyance of certain lands, which lands were supplemented by additional lands described in Report No. 23 (Clause 61) of the Executive Committee, amended and adopted by City Council at its meeting held on October 11, 1994 and with the approval of TEDCO and The Toronto Harbour Commissioners (collectively, the "Lands"), and whereas the majority of the matters provided for in the 1994 Purchase and Sale Agreement have been completed, there remain a number of matters outstanding. The purpose of this Article 4 is to identify those matters contained in the 1994 Purchase and Sale Agreement which continue to have application to the relationship between TEDCO, the City and the TPA, and to include and restate those provisions in this Agreement. Therefore, upon execution of this Agreement, the 1994 Purchase and Sale Agreement will be of no further force or effect.

4.2 Conveyances to be Completed:

The TPA shall transfer to TEDCO or the City, as the City may direct, the lands described in Schedule "A". Such transfer shall be made for nominal consideration and the transferee shall take the lands on an "as is" "where is" basis with no representations or warranties whatsoever. Such transfer shall occur within a reasonable period of time after execution of this agreement and in any event by December 15, 2003.

4.3 Access to Dockwalls for Dredging:

Upon reasonable notice to TEDCO, and subject to any rights in favour of third parties, TEDCO covenants and agrees to permit TPA to make use of any portion of TEDCO's dockwall which may be required by the TPA, acting reasonably, in order for the TPA to carry out dredging operations provided that the TPA shall be responsible for any damage to the dockwall or other property or any injury or death of persons which may be caused by or arise as a result of the dredging operations of the TPA.

The Parties acknowledge that the foregoing paragraph does not apply to that portion of the dockwall that is the subject of a lease between the parties dated August 4, 1994 and renewed by a document entitled Renewal Lease dated August 4, 1999.

4.4 Berthing of Ships in Port of Toronto:

TEDCO and the City each acknowledges that the TPA will continue to have the need to permit ships to berth in the Port of Toronto for the winter season or at other times for lay

up reasons (e.g. slow down in industry, repairs, etc.). TEDCO and the TPA covenant and agree as follows with respect to the berthing of ships in the Port of Toronto:

- (a) TEDCO, acting reasonably, shall provide to the TPA a list of dockwall locations for the berthing of ships including the priority in which such dockwall locations should be utilized, which list may be amended from time to time by TEDCO providing a new list of dockwall locations to the TPA;
- (b) the TPA shall, in allocating berthing locations to ships, allocate such locations in the order of priority established by the list referred to in section 4.4(a);
- (c) TEDCO shall provide water and electric services at cost to any ships berthing along the dockwall adjacent to the Lands and the TPA shall collect any charges therefor from the party receiving the service and the TPA shall pay all such charges to TEDCO within thirty (30) days of receipt of any invoice therefor from TEDCO; and
- (d) TEDCO shall provide such rights of access as may be required by the TPA, acting reasonably, for ingress and egress for persons and vehicles requiring access to berthed ships.

#### 4.5 Rail Lines, Spurs and Switching Yards:

The Parties acknowledge that all existing rail lines, spurs and switching yards on the Lands are included in the transfer of the Lands to TEDCO. TEDCO covenants and agrees to maintain the rail lines which are necessary to provide rail service to the Marine Terminal Lands (as described on Schedule "B") and the Leased Lands for as long as the TPA requires rail service to such lands and to provide such rail service to the said TPA lands. The TPA agrees to enter into a cost-sharing agreement with TEDCO providing for the payment by the TPA to TEDCO of the reasonable costs to TEDCO of providing such rail service to the TPA. In the event that the Parties are unable to settle the terms of the cost-sharing agreement on or before December 31, 2005, the settlement of such agreement shall be submitted to arbitration pursuant to the provisions of Schedule "C" hereto. TEDCO further agrees that the existing rail lines on the Lands which are reasonably necessary to service the Marine Terminal Lands and the Leased Lands shall not be discontinued, without the agreement of the TPA. TEDCO may, acting reasonably, relocate at its sole cost any portion or portions of the said existing rail lines, provided that such relocation does not render rail lines necessary to service the Marine Terminal Lands or the Leased Lands unusable or have a significant and material adverse affect on the use of the Marine Terminal Lands.

#### 4.6 Access to Atlas Crane:

- (a) TEDCO and the TPA acknowledge that the Atlas Crane (heavy lift) is located on that part of the lands municipally known as 242 Cherry Street, Toronto.

- (b) TEDCO agrees that the TPA shall, at no cost to the TPA save and except as provided in section 4.6(e) hereof, have access to the Atlas Crane for persons, vehicles and equipment as is reasonably required by the TPA for the purpose of using the Atlas Crane. Such access shall continue until the earlier of: such time as the Atlas Crane is relocated or replaced in accordance with the terms of this section or until December 31, 2005 (the "Term") provided that TEDCO agrees that after the expiry of the Term, the TPA's access to the Atlas Crane will continue with such access being terminable by TEDCO on 24 months notice. For greater certainty, the termination notice may not be given before December 31, 2005.
- (c) Should TEDCO wish to remove or make the Atlas Crane inaccessible to the TPA before December 31, 2005, TEDCO agrees to provide alternate crane services, as reasonably required by the TPA but having at least a 300 ton capacity, at no cost to the TPA for the balance of the Term then remaining. Such replacement crane services may be by way of purchase or lease of mobile crane if adequate for the TPA's needs and provided same is accessible to the TPA or by relocation of the Atlas Crane to the TPA's Marine Terminal. In the event that, during the Term, the TPA moves the Atlas Crane to a site owned by the TPA, the rights of access granted to the TPA in this paragraph shall cease and be void and of no further force or effect. In the event that the TPA has not relocated the Atlas Crane to land owned by the TPA by December 31, 2005, the Atlas Crane shall thereupon become the property of TEDCO absolutely and the TPA shall have no further rights or claims in respect thereof.
- (d) During the Term and any access period thereafter, any and all costs with respect to the maintaining, repairing, and insuring the Atlas Crane and associated facilities shall be undertaken by the TPA at its sole cost.
- (e) TEDCO will also use reasonable commercial efforts (without the expenditure of monies) to cause the existing rail service to be available to the Atlas Crane for the period of access referred to herein.
- (f) The TPA acknowledges and agrees that nothing in this agreement conveys any property rights or personality rights in favour of the TPA in the Atlas Crane or the lands or rail at 242 Cherry Street after the Term.

Article 5.  
Additional Provisions

5.1 Audited Financial Statements:

For the first ten (10) years of the Payment Term, the TPA shall in each year provide within six (6) months of its fiscal year end, an annual audited financial statement to the City, to the attention of the Chief Financial Officer and Treasurer. The form and content of the audited financial statements shall be in accordance with generally accepted accounting principles.

## 5.2 Environmental Indemnity:

The City and TEDCO acknowledge that due diligence investigations were conducted on the environmental condition of the Lands. TEDCO covenants and agrees to fully indemnify and save harmless the TPA, its directors, officers and employees from all manner of claims, demands, actions, suits, judgements, proceedings and expenses (collectively, the "Claims") which may be incurred or suffered by the TPA, its directors, officers or employees, whether as a result of actions taken by the Ministry of the Environment, any other governmental authority having jurisdiction or any other person, by reason of or in connection with the environmental condition of that portion of the Lands conveyed to TEDCO as set out in Schedule "A" to the THC Subsidy Agreement (II), unless such Claims arise from the negligent or deliberate acts or omissions of the TPA, its directors, officers, employees, contractors or agents occurring after April 22, 1994, or arise from such persons' acts or omissions concerning the Leased Lands occurring during the term of the Ground Lease. TEDCO's indemnity is subject to the provisions of the Works Yard Lease and Dredging Lease. The City covenants and agrees to fully indemnify and save harmless the TPA, its directors, officers and employees from all manner of claims, demands, actions, suits, judgements, proceedings and expenses (collectively, the "Claims") which may be incurred or suffered by the TPA, its directors, officers and employees whether as a result of actions taken by the Ministry of the Environment, any other governmental authority having jurisdiction or any other person, by reason of or in connection with the environmental condition of that portion of the Lands that were conveyed or are to be conveyed as set out herein to the City and/or TEDCO listed in Schedules "B" and "C" to the THC Subsidy Agreement (II), unless such Claims arise from the negligent or deliberate acts or omissions of the TPA, its directors, officers, employees, contractors or agents occurring after September 30, 1994 or arise from acts or omissions concerning the Leased Lands occurring during the term of the Ground Lease.

## 5.3 Tripartite Agreement:

The City, the TPA and Her Majesty the Queen in Canada represented by the Minister of Transport are parties to an agreement (the "Tripartite Agreement") relating to the operation of the airport (the "TCCA") located on the Toronto Islands. The Tripartite Agreement, which is being amended in conjunction with the resolution of the matters addressed in this Agreement to enable construction of the fixed link, addresses obligations for funding of TCCA operations. The TPA and the City each acknowledges and agrees that nothing contained in this Agreement is intended in any way to alter the operation or intent of the Tripartite Agreement in its current form or as amended. Without limiting the generality of the foregoing, the TPA and the City each acknowledges and agrees that any payments to be paid by the City and/or TEDCO pursuant to this Agreement are not related to the operation of the TCCA, and nothing in this Agreement shall be construed so as to deem the payments made by the City hereunder payment in respect of the TCCA or to impose on the City any obligation, now or in the future, to make any payment under this Agreement relating to the TCCA. Furthermore, in the event that, contrary to the provisions of the Tripartite Agreement as amended, the City incurs any costs related to the construction of TCCA infrastructure including the fixed link ("Airport Costs") at any time during the period that the City is

obliged to make Payments to the TPA pursuant to this Agreement, the City may set off any Airport Costs incurred by it against the Payments to be made to the TPA pursuant to this Agreement. Prior to incurring any Airport Costs, the City will give notice to the TPA (other than in the event of an emergency) with an opportunity to cure.

Article 6.  
General

6.1 THC Subsidy Agreement (II):

This Agreement replaces and supercedes an agreement entitled "THC Subsidy Agreement (II)" dated as of October 31, 1994 between Toronto Harbour Commissioners and The Corporation of the City of Toronto. Upon execution of this Agreement the THC Subsidy Agreement (II) shall terminate and neither party shall have any further obligations or rights thereunder.

6.2 Assignability:

Neither party shall assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations hereunder.

6.3 Notices:

Any notice or document given under this Agreement shall be in writing and any such notice shall be served either by personal delivery to the City, TEDCO or the TPA, or by fax or registered mail, postage prepaid, to the following address:

(a) if to the City:

City of Toronto  
City Hall  
100 Queen Street West  
Toronto, Ontario M5H 2N2  
Attention: City Clerk  
Fax No.: (416) 392-6990

(b) if to TPA:

Toronto Port Authority  
60 Harbour Street  
Toronto, Ontario M5J 1B7  
Attention: President  
Fax No.: (416) 863-4830

(c) if to TEDCO:

Toronto Economic Development Corporation  
55 John Street, 7th Floor  
Toronto, Ontario M5V 3C6  
Attention: President  
Fax No.: (416) 214-4660

Any notice given in accordance with this section shall be deemed to have been given on the day of delivery and shall be deemed if sent by fax, to be received on the day of transmission, in each case if delivered or faxed before 5 p.m. Toronto time, failing which on the next business day, or if by registered mail to be received three (3) business days after posting in Canada. Either party may at any time give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the address set out above. "Business Day" means Saturday, Sunday or other statutory holiday in the Province of Ontario.

6.4 Enurement:

This Agreement and everything herein contained shall enure to the benefit of, and be binding upon, the Parties hereto and their successors.

IN WITNESS WHEREOF the Parties hereto have affixed their respective corporate seals attested to by the hands of their proper signing officers in that behalf duly authorized.

CITY OF TORONTO

Per: \_\_\_\_\_

Per: \_\_\_\_\_

TORONTO PORT AUTHORITY

Per: \_\_\_\_\_

Per: \_\_\_\_\_

CITY OF TORONTO ECONOMIC  
DEVELOPMENT CORPORATION

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Schedule A  
Lands to be Transferred by TPA  
Lands to be Transferred by the TPA

Wherever reference is made in this schedule to “MS” “TIS” or “CIS” Sites, such references are for the internal use of the City of Toronto and City of Toronto Economic Development Corporation only and shall not be deemed to be part of the legal description of a site.

1. Mooring Basin, West of Bathurst Street: (to the City)

Part of Blocks A and B on Registered Plan D-1397 and Part of Water Lot patented to The Toronto Harbour Commissioners on January 29, 1904 (Instrument No. 24339F) and June 5, 1934 (Instrument No. 17942 WF) and part of Water Lot DT-163 lying in front thereof, designated as Parts 6 to 14 inclusive on Plan 63R-3424, Part 1 on Plan 63R-3582, together with a 999 year lease of the mooring spaces associated with the use of the lands as one or more yacht clubs.

(MS Sites 14, 15 and 16)

2. Parking Garage: (to the City) (539 Queens Quay West)

Parcel F-1, Section A-D-1397, being Part of Block E on Registered Plan D-1397 designated as Parts 2, 3, 4, 5, 6 and 9 on Plan 66R-15757.

(MS Site 17)

3. York Street Slip: (Remainder) (Water Lot): (to the City)

All of Block 13 on Registered Plan 616-E, which includes that part of Parcel 13-3, Section A-616-E designated as Parts 2, 6, 7, 8, 9, 10 and 41 on Plan 66R-14293.

4. Ferry Docks and 145 Queens Quay West: (to the City)

Part Parcel 13-3, Section A-616-E, being Part of Blocks 13, 14, 15 and 16 on Registered Plan 616-E designated as Parts 11, 12, 13, 17, 18 and 19, 23 to 33 inclusive, and 35 to 39 inclusive, 42 to 71 inclusive and 82 to 85 inclusive on Plan 66R-14293.

(#3 and #4 together correspond to MS Sites 7, 8, 9, 10, 11, 18 and 20)

5. Yonge Street Slip: (to the City)

The westerly 200 feet of Block 18 on Registered Plan 694-E.

(MS Site 19)

6. Yonge Street to Jarvis Street (part of Dockwall, Redpath Sugar): (to TEDCO)

Part of Blocks 19 and 20 on Registered Plan 694-E designated as Part 2 on Plan 63R-3268.

(TIS Site 23)

7. North Side of Keating Channel: (Dockwall, Victory Mills Site): (to TEDCO)

Part of the Marsh Lands granted to the City of Toronto, by the Province of Ontario by Letters Patent, dated May 18, 1880 and by the Dominion Government, by Letters Patent, dated October 10, 1903 designated as Parts 4, 6, 7 and 8 on Plan 64R-14584.

(TIS Sites 24 and 25)

8. Port of Toronto Lands:

(a) Ship Channel: (To TEDCO or the City as per Deed)

Parts 9, 16, 21, 30 and 34, Plan 64R-14718, which are portions of the dockwalls on the south side of the Ship Channel.

(TIS: #2 7, 10 and CIS: #12 and 17)

(b) Dockwall, South Side of Ship Channel:

(i) Part of Lot 63 and Part of Reserve of Park Development on Registered Plan 520-E and Part of Blocks G, H, J and K on Registered Plan 675-E designated as Parts 1, 2, 3, 4, 5, 7 and 8 on Plan 64R-14758. (Dockwalls on Circulating Channel and Ship Channel adjacent to Hydro lands) (To TEDCO) (TIS: #17, 18 and 19)

(ii) Part of Blocks C, D, E, F, G, T and W on Registered Plan 675-E designated as Parts 4, 8, 15, 20, 29, 33, 36, 37, 40, 41 and 42 on Plan 64R-14718. (Dockwalls east of Cherry Street) (To TEDCO or City as per Deed – CIS: #3,12,17 and 18 and TIS: #7,10,15 and 16)

(iii) Part of Block B on Registered Plan 675-E designated as Part 1 on Plan 64R-14512. (Dockwall west of Cherry Street) (To TEDCO) (Part of TIS 2)

(iv) Lands at south end of Leslie Street. (To City) (MS 5 and 6)

9. Parliament Street Realignment:

To the extent that the TPA has any interest in lands in the area bounded by Queen's Quay East, Small Street, Lake Shore Blvd. East and Parliament Street, those lands. (Land swap among City, TEDCO and TPA)

As more particularly described, and all other lands and premises provided for (if any), in the following documents:

(a) Ground Leases dated March 15, 1995 between The Toronto Harbour Commissioners and the City, short forms of which were registered as Instrument Nos. CA333153, C936749 and CA337068, as amended by CA535306;

- (b) Management Agreement dated January 1st, 1995, between The Toronto Harbour Commissioners and the City; and
  - (c) Ground Lease dated March 15, 1995 between The Toronto Harbour Commissioners and TEDCO, short form of which was registered as Instrument No. CA330371 as amended by CA365431.
10. Together with all property rights including without limitation water rights appurtenant to the properties described above.
11. The parties acknowledge that in the event either the City of Toronto or the City of Toronto Economic Development Corporation was entitled to receive any additional water rights or water-based properties (collectively the "Remaining Rights") associated with the transfer of the Lands as the term is defined in the Structured Settlement Agreement, which Remaining Rights have not been conveyed to date, the within schedule shall be deemed to include any of such Remaining Rights. In the event that the City and/or TEDCO have not provided written notice with respect to any claim for the Remaining Rights by September 1, 2004, this section shall become null and void and of no further force or effect.

Schedule B  
Marine Terminal Lands

Marine Terminal, 80 Cherry Street, Toronto:

Lots A and V, parts of Lots B, U and part of Unwin Avenue, Plan 675E and Lots 1 to 13, both inclusive, part of Lot 14 and part of Blocks HG, U, RD, CB and Park Reserve and Government Reserve, Plan 520E, designated as Parts 1 and 2 on a draft plan prepared by Rabideau and Czerwinski as Job No. RC-3650-3, dated June 4, 1999.

Schedule C  
Arbitration Provisions

- 1.01 All matters to be determined by arbitration, pursuant to the terms of this Agreement, shall be submitted to arbitration in the following manner.
- 1.02 The party requiring a dispute or any other matter to be arbitrated shall give the other party written notice of its intention to do so, subject to any time limits provided for in this Agreement, and shall in such notice appoint a single arbitrator.
- 1.03 Within 15 days of receipt of such notice the other party shall, in writing, either accept the single arbitrator or shall appoint a second arbitrator.
- 1.04 If the other party fails to appoint a second arbitrator within such 15-day period, the first appointed arbitrator shall be the only arbitrator and shall proceed with the arbitration.

- 1.05 If two arbitrators have been appointed, they shall within 15 days of appointment of the second of them, appoint a third arbitrator to act with them and be chair of the arbitration (the "Chair").
- 1.06 If the two arbitrators appointed by the parties shall be unable to agree on the appointment of the Chair within the 15-day period contemplated in paragraph 1.05 above, the Chair shall be appointed by a Judge of the Ontario Superior Court on application of either party.
- 1.07 The Chair, or the single arbitrator in the case where a single arbitrator has been appointed, shall fix a time and place in the City of Toronto for the purpose of hearing evidence and representations of the parties and shall preside over the arbitration and determine all questions of procedure not herein provided for in accordance with the *Arbitrations Act, 1991 (Ontario)* within 20 days of the Chair's appointment or the single arbitrator being deemed the sole arbitrator pursuant to provision 1.04 hereof.
- 1.08 After hearing all evidence and representations that each party may submit, the single arbitrator or the majority of the arbitrators shall make an award and reduce the same to writing and deliver one copy thereof to each party within 10 days after the hearing.
- 1.09 The award of the single arbitrator or of a majority of the arbitrators shall be final and binding upon the parties and determinative of the matter submitted to arbitration. There shall be no right of appeal from the arbitration award.
- 1.10 The cost of arbitration shall be paid as specified in the award unless otherwise agreed by the parties.
- 1.11 A Judgment may be entered upon the award pursuant to such arbitration in a Court of competent jurisdiction and enforced as an Order of that Court.

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Appendix "C" - Schedule "B"

Ground Lease

THIS LEASE made this • day of May, 2003.

B E T W E E N :

CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION

(the "Landlord")

OF THE FIRST PART

A N D

TORONTO PORT AUTHORITY

(the "Tenant")

OF THE SECOND PART

Article 1.00 – DEMISE:

1.1 Definitions:

The Parties agree that when used in this Lease or in any Schedule attached to this Lease, the following words or expressions have the meanings hereinafter set forth:

- (a) “Additional Rent” means all sums of money or charges required to be paid by the Tenant under this Lease (except Ground Rent) including without limitation, the Yearly Gross Revenues, whether or not such monies or charges are designated “Additional Rent” or whether or not the same are payable to the Landlord or otherwise and which, in the case of payments to be made to other Persons, could, if unpaid, result in the Landlord being liable therefore or a lien or other encumbrance being created over the Leased Premises in whole or in part.
- (b) “Annual Operating Payment” means the sum of \$3,000,000.00 payable annually by the City and the Landlord jointly (subject to the Landlord’s right to set off as provided for in this Lease) to the Tenant in each year of the Payment Term, as part of the Total Operating Payment and as more particularly described in section 10.4.
- (c) “Audit” means an investigation of the soil and groundwater in, on, under and at the Leased Premises by the Consultant for the purpose of identifying the nature, extent and cause of any Pre-Existing Contamination and the nature, extent and cause of Tenant’s Contamination, as the case may be, and whether Remediation is required to comply with applicable Environmental Laws, which investigation shall be the subject matter of a written report from the Consultant addressed to the Landlord and Tenant.
- (d) “Authority” means any applicable federal, provincial, regional or municipal government, ministry, department, board, agency or other authority having jurisdiction over the Leased Premises and/or the owners, tenants and occupants thereof (including, without limitation, suppliers of public utilities), and “Authorities” means every applicable Authority.
- (e) “Buildings” means the building or buildings now or hereafter located on the Lands, including any expansions, alterations or additions of or to such buildings.
- (f) “City” means the City of Toronto.
- (g) “Commencement Audit” means the Audit to be carried out as provided for in section 6.6(b).
- (h) “Commencement Date” means January 1, 2003.
- (i) “Contamination” means contamination by a Hazardous Substance of the soil and/or groundwater of:

- (i) the Leased Premises; and/or
- (ii) other properties and/or bodies of water that has migrated from the Leased Premises to such properties or water, as the case may be;

in each case, beyond levels permitted by applicable Environmental Laws.

- (j) “Consultant” means a person or firm independent of the Landlord and Tenant with the knowledge and expertise required for the conduct of an Audit and the implementation of Remediation, as mutually agreed to by the Landlord and the Tenant acting reasonably.
- (k) “Damage” has the meaning ascribed thereto in section 7.4.
- (l) “Dockwalls” means the dockwalls, wharves and berms now or in the future forming part of the Leased Premises and includes any additions, substitutions, alterations or replacements thereto.
- (m) “Environmental Laws” means all Laws regulating or imposing liability concerning any environmental matter which may pertain to the use, occupancy or ownership of the Leased Premises or any part thereof or the conduct of any business or activity in, on, under or at the Leased Premises or any part thereof, or any Hazardous Substance which may at any time be in, on, under, at or emanating from the Leased Premises or any part thereof.
- (n) “Fair Market Rent” means the annual minimum rent, which, in the Landlord’s opinion acting reasonably, could reasonably be obtained by the Landlord for the Relevant Premises for a ten (10) year term from a willing tenant or willing tenants dealing at arms-length with a landlord in the market as of the date on which the applicable Extension Term is to commence, having regard to all relevant circumstances, including, without limitation:
  - (i) the size and location of the Relevant Premises;
  - (ii) the facilities offered;
  - (iii) the terms of the intended lease thereof;
  - (iv) the condition of the Relevant Premises;
  - (v) the value, if any, of the Improvements thereto, if any;
  - (vi) that the use of the Relevant Premises is restricted to the Permitted Use; and
  - (vii) having regard to rentals then being obtained for comparable improved premises on comparable lands zoned industrial in the locality;
- (o) “Ground Rent” means the annual rent payable by the Tenant to the Landlord pursuant to and in the manner set out in section 4.2 hereof.
- (p) “Hazardous Substance” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste or material, flammable or explosive substance, radioactive material, or any other waste, substance or

material whatsoever covered by or regulated under any applicable Environmental Laws.

- (q) “Improvements” means all Dockwalls, fixed improvements, structures, equipment, machinery and other installations, other than the Buildings, located on or under any portion of the Lands at any time throughout the Term and includes any additions, substitutions, alterations or replacements but specifically excluding therefrom, the Rail Lines.
- (r) “Interim Audit” means an Audit of the Leased Premises or any part(s) thereof, from time to time, pursuant to section 6.6(b) hereof.
- (s) “Landlord” means the party of the first part and its successors and assigns; every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease for the benefit of Landlord shall extend to and benefit all of Landlord’s, officers, directors, servants, agents, employees, and others for whom any of them is in law responsible.
- (t) “Lands” means the lands legally described in Schedule A and approximately as shown cross-hatched on Schedule B.
- (u) “Laws” means all statutes, regulations, by-laws, ordinances, orders, policies, guidelines and directives of an Authority having the force of law that apply to the Leased Premises and/or the owners, tenants and occupants thereof.
- (v) “Leased Premises” means the Lands, the Buildings and the Improvements.
- (w) “Marine/Waterways Port Charges” means the fees and charges duly imposed by the Tenant in the normal course of business in its capacity as manager of the Port of Toronto pursuant to the Canada Marine Act, 1998, which relate solely to marine use of the Leased Premises or any part thereof rather than the use or occupancy of the Leased Premises. For the purposes of clarity and without limiting the foregoing, examples of such charges are as follows: cargo rates, tonnage guarantees and harbour dues.
- (x) “Mortgagee” means any mortgagee or chargee (including any trustee for bondholders) from time to time of the Landlord’s interest in the Leased Premises.
- (y) “Payment Term” means the period commencing January 1, 2003 and ending December 31, 2012.
- (z) “Permitted Use” means uses solely related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, including processing work incidental to the handling or shipping of goods through the port, and warehousing and distribution of goods and services.

- (aa) “Person” if the context allows, includes any person, firm, partnership or corporation, or any group of persons, firms, partnerships or corporations, or any combination thereof.
- (bb) “PIL” means a payment in lieu of Taxes in accordance with the provisions of the *Payment in Lieu of Taxes Act*, (Canada).
- (cc) “Pre-Existing Contamination” means Contamination, if any, of the Leased Premises or that emanated from the Leased Premises to other property, in each case prior to the effective date of the Commencement Audit, including Contamination that existed prior to such date that emanated from the Leased Premises after such date.
- (dd) “Pre-Existing Leases” means those leases, subleases, licences and/or occupancy agreements for the Leased Premises or portions thereof created prior to the Commencement Date and which are listed in Schedule C hereto.
- (ee) “Pre-Existing Tax Arrears” means all arrears of Taxes, if any, for the Leased Premises as at the Commencement Date.
- (ff) “Pre-Existing Tenants” means the tenants, licencees and/or occupants and their successors and assigns under the Pre-Existing Leases.
- (gg) “Rail Lines” means any and all rail lines, rail sidings, spurs and switching yards on the Leased Premises and any additions, substitutions, alterations or replacements thereto.
- (hh) “Relevant Premises” has the meaning ascribed to it in section 3.3(a) hereof.
- (ii) “Remediation” means the removal and clean up (including investigations and monitoring deemed necessary by the Consultant) of Tenant’s Contamination in, on, under or at the Leased Premises, and from neighbouring properties and/or bodies of water if and as required by applicable Environmental Laws.
- (jj) “Rent” means all Ground Rent and Additional Rent payable pursuant to this Lease.
- (kk) “Rental Year” means a consecutive period of 12 calendar months, the first Rental Year commencing on the Commencement Date and the last Rental Year of the Term ending on the expiration or earlier termination of this Lease, as the case may be.
- (ll) “Sales Taxes” means all business transfer, multi-stage sales, sales, use, consumption, value-added or other similar taxes imposed by any taxing authority upon the Landlord, the Tenant, or in respect of this Lease, or the payments made by the Tenant hereunder or the goods and services provided by the Landlord

hereunder including, the rental of the Leased Premises and the provision of administrative services, if any, to the Tenant hereunder.

- (mm) “Structured Settlement Agreement” means the agreement dated as of the date hereof between the City, the Landlord and the Tenant.
- (nn) “Subleases” means any and all leases, licences, third party user agreements, easement/right-of-way agreements and occupancy agreements for all or any part of the Leased Premises arising from and after the Commencement Date as well as the Pre-Existing Leases.
- (oo) “Sub-tenants” means the sub-tenants, licencees and occupants and their successors and assigns under the Subleases.
- (pp) “Taxes” means all real property taxes, rates, duties and assessments (including local improvement taxes), impost charges or levies, whether general or special, that are levied, rated, charged or assessed against the Leased Premises and each part thereof from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property taxes, whether of the foregoing character or not and whether in existence at the Commencement Date or not, and any such real property taxes levied or assessed against the Landlord on account of its ownership of the Leased Premises or its interest therein.
- (qq) “Tenant” means the party of the Second Part and its successors and permitted assigns; every indemnity, exclusion or release of liability and waiver of subrogation contained in this Lease for the benefit of Tenant shall extend to and benefit all of Tenant’s, officers, directors, servants, agents, employees, and others for whom any of them is in law responsible.
- (rr) “Tenant’s Contamination” means any and all Contamination (other than Pre-Existing Contamination), if any, and the increase in Contamination, if any, of the Leased Premises or that originated from the Leased Premises to neighbouring properties or bodies of water caused or contributed to or permitted by the Tenant or any of its servants, agents, employees, contractors or persons, for whom it is responsible at law, that occurs from the effective date of the Commencement Audit up to and including the effective date of the Termination Audit, except to the extent caused or contributed to or permitted by the Landlord or any of its servants, agents, employees, contractors or persons for whom it is at law responsible.
- (ss) “Term” means the term of the Ground Lease as described in section 3.2 as same may be extended in accordance with this Lease.
- (tt) “Termination Audit” means the Audit of the Leased Premises pursuant to section 6.6(b) of this Lease.

- (uu) “Total Operating Payment” means the sum of \$30,000,000.00 payable (subject to the Landlord’s right to setoff provided for in this Lease) by the City and the Landlord jointly to the Tenant over the Payment Term, as more particularly described in section 10.4 of this Lease.
- (vv) “Transfer” means an assignment of this Lease in whole or in part, a sublease, licence or parting with or sharing possession of all or any part of the Leased Premises, a sale, conveyance or other disposition of this Lease, including a mortgage, charge or debenture thereof, a sale, transfer (including by bequest or inheritance) of the majority of the issued shares in the capital stock or any transfer, issuance or division of any shares of the corporation or of any affiliate of the corporation sufficient to transfer control to others than the then present shareholders of the corporation, any amalgamation, and any disposition by inheritance or operation of law; a party making a Transfer is referred to as a “Transferor” and a party receiving a Transfer is referred to as a “Transferee”.
- (ww) “Yearly Gross Revenues” means the aggregate gross receipts and revenues generated by or from the Leased Premises or the use thereof during the Payment Term from all sources whatsoever, including, without limitation all rents, fees, revenues and payments whether pursuant to any Subleases or otherwise, provided that such aggregate gross receipts and revenues shall be net of:
  - (i) Taxes which are payable and have been paid by the Tenant to the Landlord or as the Landlord may otherwise in writing direct;
  - (ii) Payments by a Sub-tenant to the Tenant to reimburse the Tenant for bona-fide costs incurred by it in remedying a default by the Subtenant under a Sublease; and
  - (iii) all Marine/Waterways Port Charges.

For greater certainty, payments by a Sub-tenant to the Tenant to reimburse the Tenant for bona-fide costs incurred by it at the Sub-tenant’s request but for which the Subtenant would be free to contract for with other persons and is not obligated to pay to the Tenant are not part of Gross Yearly Revenues.

## Article 2.00 - INTENT AND INTERPRETATION:

### 2.1 Obligations as Covenants:

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

## 2.2 Headings and Article Numbers:

The headings, article numbers and Index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles of this Lease nor in any way affect this Lease.

## 2.3 Extended Meanings:

The words “hereof”, “herein”, “hereunder” and similar expressions used in any Article of this Lease relate to the whole of this Lease and not to that Article only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to the Landlord or the Tenant is deemed a proper reference, even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as through in each case fully expressed.

## 2.4 Partial Invalidity:

If for any reason whatsoever any term, covenant or condition of this Lease or the application thereof to any Person or circumstance is, to any extent, held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of the Lease and to be severable and divisible therefrom and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of the Lease or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any Person and circumstances, other than those as to which it has been held or rendered invalid, unenforceable or illegal.

Neither party is obliged to enforce any term, covenant or condition of this Lease against any Person if, or to the extent by so doing, such party is caused to be in breach of any laws, rules, regulations or enactments from time to time in force and nothing in this Lease entitles the Landlord to stipulate the price or price range at which any article or service is to be supplied, offered or advertised by the Tenant.

## 2.5 Entire Agreement:

This Lease and the schedules and riders, if any, attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Landlord and the Tenant concerning the Leased Premises, or otherwise between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the

Landlord or the Tenant unless in writing and signed by two duly authorized representatives of each of the Landlord and the Tenant.

2.6 Governing Law :

This Lease shall be construed in accordance with and governed by the Laws of the Province of Ontario and the Courts of Ontario shall have jurisdiction to determine any matter arising hereunder save for those governed by Article 14.00.

2.7 Time of the Essence:

Time is of the essence of this Lease and of every part thereof.

Article 3.00 - GRANT, TERM AND ACCEPTANCE OF LEASED PREMISES:

3.1 Grant of Leased Premises:

In consideration of the rents, covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord leases the Leased Premises to the Tenant and the Tenant leases the Leased Premises from the Landlord.

3.2 Commencement and Ending Date Of Term:

The Tenant shall have and hold the Leased Premises for and during a period of twenty (20) years (the "Term"), commencing on the Commencement Date and ending on 11:59 p.m. on the date preceding the 20th anniversary of the Commencement Date, unless sooner terminated pursuant to this Lease. Provided that if the Term is extended in accordance with section 3.3 or section 3.4 of this Lease, the Term and all Extension Terms shall not exceed, in the aggregate, forty-nine (49) years.

3.3 Conditional Extension Terms:

(a) In the event that:

- (i) the Tenant has sub-let part of the Leased Premises (the "Relevant Premises") in accordance with section 10.2 hereof, for a Permitted Use to a bona fide, "arms-length" (as that term is defined in the *Income Tax Act, Canada*) third party Subtenant who is a port user and such Relevant Premises have been used and occupied for a period of no less than eighty percent (80 percent) of the initial twenty (20) year term (which, for the purposes of determining whether this condition has been satisfied, shall be deemed to have commenced on the date that the Tenant takes possession of the Leased Premises); and
- (ii) the Tenant is not in default beyond any applicable grace period at the date of the delivery of the notice to extend; and

- (iii) the Tenant is the Toronto Port Authority or its successor or permitted assigns; and
- (iv) the Tenant delivers notice of its desire to extend to the Landlord at least twelve (12) months and not more than twenty-four (24) months prior to the expiry of the Term which notice certifies, in reasonable detail, the information in section 3.3(a)(i) – (iii) above;

then, the Lease will be extended for a term of ten (10) years (“First Extension Term”) with respect only to the Relevant Premises, on the same terms and conditions save and except there shall not be any Annual Operating Payment, Total Operating Payment, further extension or renewal (save and except for the Second Extension Term and Final Extension Term) or any other tenant inducement, and the Ground Rent for the Relevant Premises for the First Extension Term shall be the Fair Market Rent as provided for in Section 3.3(d) hereof;

(b) provided that:

- (i) the Tenant has sub-let part of the Leased Premises (the “Relevant Premises”) in accordance with section 10.2 hereof, for a Permitted Use to a bona fide, “arms-length” (as that term is defined in the Income Tax Act, Canada) third party Subtenant who is a port user, and such Relevant Premises have been used and occupied for a period of no less than eighty percent (80 percent) of the First Extension Term; and
- (ii) the Tenant is not in default beyond any applicable grace period at the date of the delivery of the notice to extend; and
- (iii) the Tenant is the Toronto Port Authority or its successor or permitted assigns; and
- (iv) the Tenant delivers notice of its desire to extend to the Landlord at least twelve (12) months and not more than twenty-four (24) months prior to the expiry of the First Extension Term which notice certifies, in reasonable detail the information in Section 3.3(b)(i) – (iii) above;

then, the Lease will be extended for a further term of ten (10) years (the “Second Extension Term”) with respect only to the Relevant Premises, on the same terms and conditions as in the First Extension Term save and except that there shall not be any further extension or renewal (save and except for the Final Extension Term) and the Ground Rent for the Relevant Premises shall be the Fair Market Rent provided for in section 3.3(d) hereof;

(c) provided that:

- (i) the Tenant has sub-let part of the Leased Premises (the “Relevant Premises”) in accordance with section 10.2 hereof, for a Permitted Use to

a bona fide, “arms-length” (as that term is defined in the Income Tax Act, Canada) third party Subtenant who is a port user, and such Relevant Premises have been used and occupied for a period of no less than eighty percent (80 percent) of the Second Extension Term; and;

- (ii) the Tenant is not in default beyond any applicable grace period at the date of the delivery of the notice to extend; and
- (iii) the Tenant is the Toronto Port Authority or its successor or permitted assigns; and
- (iv) the Tenant delivers notice of its desire to extend to the Landlord at least twelve (12) months and not more than twenty-four (24) months prior to the expiry of the Second Extension Term which notice certifies, in reasonable detail the information in Section 3.3(c)(i) – (iii) above;

then, the Lease will be extended for a final term of nine (9) years (the “Final Extension Term”) with respect only to the Relevant Premises, on the same terms and conditions as in the Second Extension Term save and except that there shall not be any further extension or renewal and the Ground Rent for the Relevant Premises shall be the Fair Market Rent provided for in Section 3.3(d) hereof;

- (d) In the event of an extension of the Lease pursuant to sections 3.3(a), (b) or (c) hereof, the Ground Rent for the then applicable Extension Term shall be as follows:
  - (i) fifty percent (50 percent) of the Fair Market Rent for the Relevant Premises for each year subsequent to the expiry of the initial 20-year Term to a maximum of fifteen (15) years; and
  - (ii) seventy-five percent (75 percent) of the Fair Market Rent for the Relevant Premises for the balance, if any, of any remaining Extension Term;

In the event the parties have not agreed on the Fair Market Rent for the applicable Extension Term at least 6 months prior to the expiry of the Term (or the then applicable Extension Term as the case may be), then such Fair Market Rent shall be determined by arbitration under Article 14.00 hereof.

Pending determination of the Fair Market Rent for the applicable Extension Term by agreement or arbitration, Fair Market Rent, shall be the amount which is the average of the Tenant’s proposed Fair Market Rent and the Landlord’s proposed Fair Market Rent with adjustments to be retroactive to the commencement date of the applicable Extension Term.

### 3.4 Good Faith Extension Discussions :

In the event that any of the conditions of the First Extension Term, Second Extension Term or Final Extension Term as the case may be, are not satisfied and thus the applicable Extension Term is not triggered, then, in the event that either party still desires to extend the Lease, it shall deliver written notice of such desire to the other party, at least twelve (12) months and not more than twenty-four (24) months prior to the expiry of the Term (or the applicable Extension Term) and thereafter the parties shall forthwith enter into good faith discussions regarding an extension of the Lease. In such case, if the parties have not agreed on and executed an amendment to this Lease confirming the extension of the Lease on or before the date being six (6) months prior to the expiry of the Term, the Term and the lease shall expire on the date provided for in section 0 above (or the expiry date of the then current Extension Term if extended previously pursuant to section 3.3 or 3.4 hereof).

### 3.5 Tenant Acknowledgement “As is” “Where is”:

The Tenant acknowledges and agrees that:

- (a) it accepts the Leased Premises in an “as is” “where is” condition, including, without limitation the state of title thereto and the encumbrances thereon, but save and except for Pre-Existing Contamination and Pre-Existing Tax Arrears;
- (b) the Landlord has no liability for or obligation with respect to any Pre-Existing Leases or Tenant’s Contamination. Regardless of how it is caused, the Tenant has sole responsibility for Tenant’s Contamination and, the Landlord has, vis-a-vis its relationship with the Tenant, responsibility for Pre-Existing Contamination provided however for the purposes of this lease, the Landlord and Tenant agree that with respect to:
  - (i) Pre-Existing Contamination detected pursuant to the Commencement Audit which poses a risk to health and safety where Remediation is required by an Authority the parties shall forthwith carry out, and share on a 50/50 basis, the costs and expense of the remediation of such Pre-Existing Contamination;
  - (ii) Pre-Existing Contamination for which Remediation is required by an Authority as a result of the Tenant’s use of the Leased Premises or the re-development thereof in whole or in part by the Tenant or its Subtenant, the Tenant will forthwith carry out at its sole cost and expense the remediation of such Pre-Existing Contamination;
  - (iii) Tenant’s Contamination that is detected and where Remediation is required by an Authority, the Tenant will forthwith carry out at its sole cost and expense the remediation of the Tenant’s Contamination and any Pre-Existing Contamination to the extent required by an Authority;

- (c) there are no representations and warranties of any nature and kind relating in any way to the Leased Premises or any part thereof, including, without limitation, concerning soil conditions, zoning or utility and other services of or relating to the Leased Premises.

### 3.6 Rail Lines:

The Tenant acknowledges and agrees that the Rail Lines do not form part of the Leased Premises, and that the Landlord and others have the right to and may carry out repair, maintenance replacement, relocation or removal in whole or in part of such Rail Lines and that such acts do not and will not constitute any interference with the Tenant's use and enjoyment of the Leased Premises and that the Leased Premises are subject to any and all rights and obligations in favour of or required to be performed by the Landlord and/or third parties and the Tenant shall not in any way interfere, hinder, obstruct, or object to, in any way, such rights and obligations. Provided however, that the Landlord will use commercially reasonable efforts to provide the Tenant with reasonable notice of such repair, maintenance replacement, relocation or removal (other than in the case of an emergency for which no notice need be given) and will use commercially reasonable efforts to minimize any interference by it with the Tenant's use, in common with all others entitled thereto, of the Rail Lines.

### Article 4.00 – Rent:

#### 4.1 Covenant to Pay:

The Tenant agrees to pay Ground Rent and Additional Rent as herein provided without setoff, abatement or deduction, save as set out in section 13.4.

#### 4.2 Ground Rent:

The Tenant shall pay to the Landlord, at the office of the Landlord or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement, set-off or compensation whatsoever, but subject to the provisions of section 13.4, Ground Rent of \$1.00 per annum, payable in advance on the 1st day of each Rental Year during the Term. The Landlord acknowledges receipt of \$20.00 in full satisfaction of the Ground Rent payable for the first twenty (20) years of the Term.

#### 4.3 Rent Past Due:

If the Tenant fails to pay when the same is due and payable any Ground Rent, Additional Rent or any other amount payable by the Tenant under this Lease, such unpaid amounts, if payable to the Landlord, bear interest from the date thereof to the date of payment at a rate per annum which is 2 percentage points in excess of the minimum lending rate to prime commercial borrowers current at such time charged by any Canadian chartered bank designated by the Landlord from time to time.

#### 4.4 Net Lease:

The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net ground lease to the Landlord, that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof, or the contents thereof, or the business carried on therein unless otherwise provided for in this Lease, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises as if it were the owner. Any charges, costs, expenses or outlays, which are not expressly provided for in this Lease to be for the Landlord's account, shall be the sole responsibility of the Tenant.

#### Article 5.00 – Taxes:

##### 5.1 Taxes:

###### (a) Taxes Payable by Tenant:

The Tenant shall, on the first day of each and every month of the Term, pay to the Landlord as additional Rent, all Taxes that are levied, rated, charged or assessed by any lawful Authorities from time to time against the Leased Premises or any part thereof, whether or not the Taxes are assessed against the Tenant, the Landlord or any other Person occupying any portion of the Leased Premises based on the Landlord's estimate thereof. The Landlord may, acting reasonably, from time to time by written notice to Tenant estimate or re-estimate all or any portion of Taxes for the current or upcoming calendar year or part thereof. The parties shall adjust Taxes within 90 days following the end of each calendar year of the Term. The Tenant acknowledges and agrees that it shall pay the Taxes forthwith to the Landlord in accordance with this Lease irrespective of any contestation by the Tenant of or related to the Taxes or the Tenant's obligation to pay them or any Authorities right or ability to levy, charge or assess them. Provided, however, that such payment shall not affect any exemption from taxation to which the Tenant may be entitled.

###### (b) Payment in Lieu of Taxes:

The Tenant shall pay all PILS in respect of any portion of the Leased Premises where there has been a final determination that such portion of the Leased Premises is exempt from taxation but subject to PILS. The Tenant agrees to pay such PILS to the City as and when due; provided however that, if and to the extent that the Tenant disputes the amount of the PILS relating to any portion of the Leased Premises, then until such time as the exact amount has been agreed to between the City and the Tenant for the portion of the Leased Premises in dispute or determined in the manner prescribed for making such determination, the Tenant may postpone remittance of any amount in dispute (but shall remit all PILS not in dispute).

## 5.2 Other Taxes:

In addition to the Taxes payable by the Tenant pursuant to section 5.1, the Tenant shall pay as Additional Rent to the lawful taxing Authorities and shall discharge when the same become due and payable:

- (a) all taxes, rates, duties, assessments and other charges that are levied, charged or assessed against or in respect of all improvements, equipment and facilities of the Tenant or any Person or in the Leased Premises or any part or parts thereof, or the Landlord on account of its ownership thereof or interest therein; and
- (b) every tax and license fee which is levied, rated, charged or assessed against or in respect of any and every business carried on in the Leased Premises or in respect of the use or occupancy thereof by the Tenant and every Sub-tenant, or against the Landlord on account of its ownership thereof or interest therein;

all of the foregoing being collectively referred to as “Business Taxes” and whether, in any case, any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal, school or other body during the Term. The Tenant acknowledges and agrees that it shall pay the Taxes forthwith to the Landlord in accordance with this Lease irrespective of any contestation by the Tenant of or related to the Taxes or the Tenant’s obligation to pay them or any Authorities right or ability to levy, charge or assess them. Provided, however, that such payment shall not affect any exemption from taxation to which the Tenant may be entitled.

## 5.3 General Provisions Relating to Taxes:

- (a) the Landlord will forward to the Tenant if and when received by the Landlord all notices of assessment, Tax bills and other communications, which pertain to Taxes;
- (b) if the Tenant fails to pay to the Landlord the Taxes when due then the Landlord will have the right, in addition to its other rights and remedies under the Lease and at law, upon fifteen (15) days’ prior written notice, to pay the Taxes to the applicable taxing Authorities and the amount paid by the Landlord on account of Taxes will be immediately repaid by the Tenant to the Landlord as Additional Rent under this Lease or, at the Landlord’s sole option, be set-off against the Total Operating Payment;
- (c) the Tenant will have the right, at its expense, by appropriate proceedings conducted diligently and in good faith to contest or apply for the reduction of the amount, legality or mode of payment of any Taxes in respect of the Leased Premises or any portion thereof provided that the right to pay such Taxes pending full and final determination of such contestation shall continue to apply as in section 5.1 hereof. During the period of any bonafide contestation or application, Tenant shall pay all Taxes charged, assessed or levied, to the Landlord and Business Taxes as provided in this Lease and shall promptly notify the Landlord

in writing as to the status of the contestation or application and copy the Landlord with all correspondence relating thereto; and

- (d) the Tenant shall not be responsible for paying Pre-Existing Tax Arrears, but the Tenant hereby acknowledges the right of the Landlord to pursue, if the Landlord so desires, the collection of all Pre-Existing Tax Arrears from all Sub-tenants in default in the payments thereof and agrees to co-operate with the Landlord in doing so.

#### 5.4 Per Diem Adjustment:

If any Rental Year during the Term is less than twelve (12) calendar months, then the Taxes that the Tenant is required to pay pursuant to section 5.1 shall be subject to a per diem adjustment on the basis of a period of 365 days.

#### 5.5 Utilities:

The Tenant shall be solely responsible for and shall promptly pay to the appropriate utility suppliers all charges for water, gas, electricity, telephone and other utilities used or consumed in, or any other charges levied or assessed on or in respect of, the Leased Premises.

#### 5.6 Sales Taxes Payable By Tenant:

The Tenant shall pay to the Landlord all applicable Sales Taxes on the dates and times provided for payment of Rent.

### Article 6.00 - Use of Leased Premises:

#### 6.1 Use of Leased Premises:

Subject to section 6.3 hereof, the Tenant shall use the Leased Premises primarily to sublease to third party port users for the Permitted Use, and on ancillary basis for use by the Tenant for the Permitted Use, in each case in accordance with all applicable Laws, and for no other purpose whatsoever.

#### 6.2 Compliance with Laws:

The Tenant agrees to promptly observe and comply with all applicable Laws and cause all Sub-tenants to observe and comply with all applicable Laws which pertain to or affect the Leased Premises and/or the Tenant's, Sub-tenant's or any other Person's use or occupancy of the Leased Premises. This obligation extends to and includes, without limitation, the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to any portions of the Leased Premises required by applicable Laws, including compliance with all applicable and legally binding police, fire and sanitary regulations.

Nothing herein prevents the Tenant from challenging the applicability of a Law to the Tenant or the right of an Authority to claim jurisdiction over the Tenant, in each case on no less than thirty (30) days prior written notice to the Landlord, provided however that the Tenant shall comply with such Law and submit to the jurisdiction of such Authority pending the full and final determination of such challenge where its failure to do so, would result in the Landlord being in breach of such Law, give rise to a lien or encumbrance on the Property or which could result in the Landlord suffering a Material liability, Material obligation, Material cost or Material Damage. "Material" shall mean a cost in excess of \$10,000.00. It is understood and agreed that the Tenant fully indemnifies the Landlord for liability in respect of all such costs.

### 6.3 Prohibited Uses:

The Tenant shall not permit the whole or any part of the Leased Premises to be used during the Term for any of the following businesses or activities:

- (a) a retail use;
- (b) sports or recreational facility, including without limitation, arena, skating rink, movie theatre or complex, amusement area;
- (c) residential;
- (d) casino or other gaming type establishment;
- (e) restaurant, delicatessen, nightclub, bar, food establishment, tavern, alcohol serving establishment or other food or beverage establishment;
- (f) snack-bar, commissary, cafeteria or other similar food and/or beverage use other than where such use is carried on by a Sub-tenant as ancillary to a Permitted Use and is carried on by such Sub-tenant to service only the employees of such Sub-tenant on its Relevant Premises and not for consumption off of such Relevant Premises;
- (g) any form of adult-entertainment whatsoever including without limitation, an "adult-entertainment parlour" as defined in By-law 438-68 as amended January, 1998 of the City of Toronto and for the purposes of clarity, the transmission, use, display or advertising of any adult-oriented material irrespective of the form is strictly prohibited;
- (h) an airport; or
- (i) a call centre; or
- (j) an incinerator or other type of waste disposal business used to dispose of third-party materials; or

- (k) a re-cycling facility.

#### 6.4 Nuisances:

The Tenant agrees not to carry on or permit to be carried on in or about the Leased Premises any business or activity which may be deemed to be a nuisance nor will it omit to do or permit to be omitted to be done anything in respect of the Leased Premises, the omission of which shall be deemed to be a nuisance. The Tenant covenants and agrees that its intended use will not breach this covenant. The Landlord shall notify the Tenant should the Landlord receive any complaint from any Person alleging a nuisance by the Tenant, Subtenants or any other Person on or arising from the Leased Premises.

#### 6.5 No Amendment to Laws:

- (a) the Tenant covenants with the Landlord (and the Tenant acknowledges) that it will not make any application or representation to or for any Authority that could prevent or limit the Landlord's right to apply for, from time to time, or obtain any amendment to and/or variation of the provisions of any zoning by-law or other rules, regulations or requirements related to zoning, affecting the Leased Premises or any other lands owned by the Landlord for which the Tenant at Law would have the right to object to, unless the effect of such zoning amendment or variance could have a material adverse effect on the Tenant's rights under this Lease to use the Leased Premises for the Permitted Use without first notifying the Landlord and obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld;
- (b) the Tenant covenants with the Landlord (and the Tenant acknowledges) that it will not make any application to any Authority which could result in an amendment to and/or variation of the provisions of any zoning by-law or other rules, regulations or requirements related to zoning, affecting the Leased Premises where the effect of such zoning amendment or variance could have a material adverse effect on the Landlord's rights to develop any other lands it owns without first notifying the Landlord and obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld; and
- (c) if the Landlord applies for a rezoning of the Leased Premises, it shall use reasonable commercial efforts to include existing uses on the Leased Premises or any proposed uses by the Tenant for the Term, which do not materially adversely effect the intended redevelopment of the Port Area, as determined by the Landlord, acting reasonably.

#### 6.6 Environmental Matters :

- (a) Environmental Covenants:

- (i) Tenant covenants with Landlord that:

- (A) it shall not use or permit or suffer the use of the Leased Premises or any part thereof to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance except in compliance in all material respects with all applicable Environmental Laws. In the event the Tenant fails to so comply with applicable Environmental Laws, the Landlord may, but shall not be obligated to, do such things as are necessary to effect such compliance, and all costs and expenses reasonably incurred by the Landlord in so doing together with an administration charge equal to ten percent (10%) of such costs and expenses, shall be payable forthwith by Tenant to Landlord as Additional Rent and may be set off by the Landlord against the Total Operating Payment as same falls due;
- (B) it shall forthwith notify the Landlord upon receipt of any order, directive, notice or other communication received from any Authority relating to any non-compliance with applicable Environmental Laws, which notice shall be accompanied by a copy of such order, directive, notice or other communication and the Tenant shall keep the Landlord advised in a timely manner of the Tenant's progress in complying with same;
- (C) it will indemnify and save harmless the Landlord and all of its servants, agents, employees, contractors and persons for whom the Landlord is in law responsible, against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever, including without limitation, reasonable costs of professional advisors and consultants and experts in respect of investigation, remedial action and clean-up costs and expenses, arising in any manner whatsoever out of:
- (1) any breach by the Tenant of any provisions of this Lease or any non-compliance by the Tenant with any applicable Environmental Laws;
  - (2) any act or omission of the Tenant or any of its servants, agents, employees, invitees, licensees, Sub-tenants, concessionaires, contractors or persons for whom the Tenant is in law responsible occurring at the Leased Premises during the Term, or any thing in, on, under or at the Leased Premises during the Term, including without limitation, the generating, manufacture, refinement, treatment, transportation, storage, handling, disposal, transfer, production or processing of any Hazardous Substance in, on, under or at the Leased Premises, and any unlawful nuisance arising therefrom;

- (3) any act or omission of the Tenant or any of its servants, agents, employees, invitees, licensees, Sub-tenants, concessionaires, contractors or persons whom the Tenant is in law responsible on or above the Leased Premises;
- (4) the Remediation of Tenant's Contamination; and
- (5) any illness, injury or death of persons, or any loss or damage to property, on or about the Leased Premises,

except to the extent caused or contributed to by the Landlord or any of its servants, agents, employees, contractors or persons for whom it is at law responsible, or except to the extent arising from or related to any Pre-Existing Contamination.

The aforesaid indemnity shall survive the expiration or earlier termination of this Lease for a period of 36 months.

- (ii) except to the extent arising from or related to any Pre-Existing Contamination or caused or contributed to by the Landlord or any of its servants, agents, employees, contractors or persons for whom it is at law responsible, if at any time required by any Authority pursuant to any Environmental Laws, to take all lawfully required remedial action in respect of any Hazardous Substances in, on, under or at the Leased Premises or emanating therefrom, including, without limitation, any repairs or replacements to the Leased Premises or any buildings or other Leasehold Improvements in or on the Leased Premises and the removal, treatment, disposal, restoration and replacement of the soil or any other part of the Leased Premises. The said obligations shall survive the expiration or earlier termination of this Lease for a period of 36 months and the Landlord shall provide;
  - (iii) neither the Tenant nor any of its Sub-tenants, agents, employees, invitees, licensees, sub-tenants, concessionaires, contractors or persons for whom the Tenant is responsible for in law, shall discharge any substance into waters of the Ship Channel, the Harbour, Lake Ontario or any sewer or drain leading thereto, except in compliance with applicable Environmental Laws.
- (b) Environmental Audits:
- (i) within 120 days after the execution of the Lease, the Landlord and Tenant shall commission and have completed the Commencement Audit. The cost of the Commencement Audit shall be borne by the Landlord and the Tenant equally;

- (ii) at any time during the Term if the Landlord reasonably believes that there has been an occurrence of Tenant's Contamination, it shall provide Tenant with written notice, including the reasons and particulars for its belief, and thereafter, the Tenant shall either address the matter and confirm compliance with Environmental Law to the satisfaction of the Landlord, acting reasonably, or cause an Interim Audit to be performed and completed, and the Interim Audit report delivered to the Landlord and Tenant. The cost of the Interim Audit shall be borne by the Tenant where Remediation of Tenant's Contamination is required, and otherwise by the Landlord;
- (iii) within 120 days after the expiry or termination date of the Lease (for whatever reason) the Landlord and the Tenant shall cause (failing which the Landlord may, in its sole discretion cause) the Termination Audit to be performed and completed. The cost of the Termination Audit shall be borne by the Tenant unless the Audit reveals that there is no Tenant's Contamination requiring Remediation, in which case the cost shall be borne by the Landlord and Tenant equally; and
- (iv) if Remediation of the Tenant's Contamination is recommended by the consultant and required to comply with Environmental Laws pursuant to:
  - (A) the Termination Audit;
  - (B) an Interim Audit;
  - (C) the lawful requirements of an Authority; and/or
  - (D) the requirements this Lease.

the Tenant shall forthwith proceed with such Remediation in accordance with Environmental Laws.

#### Article 7.00 - Insurance and Indemnity:

##### 7.1 Tenant's Insurance:

The Tenant shall throughout the Term, at its expense, take out and keep in full force and effect as a prudent owner and landlord of a similar development and in the names of the Tenant, the Landlord and the Landlord's Mortgagees as their respective interests may appear, the following insurance:

- (a) insurance upon the Leased Premises and every part thereof, including the Buildings, the Improvements and all property of every description and kind owned by the Tenant or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and which is located within or upon the Leased Premises in an amount of not less than the full replacement cost thereof, with coverage

against, at least, the peril of fire and all other perils covered by "All Risks" insurance coverage and including earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of an independent insurance advisor acceptable to both parties shall be conclusive;

- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis, with limits for each accident in an amount not less than the replacement cost of the Buildings, the Improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant, its Sub-tenants or any other Person in the Leased Premises, or relating to or serving the Leased Premises;
- (c) rental income insurance in such amount as will reimburse the Tenant for loss of rental income attributable to all perils insured against in sections 7.1(a) and (b) and other perils commonly insured against by prudent landlords. The Tenant's rental insurance policies will be to a value of not less than 100 percent of all revenues payable to the Tenant by the Sub-tenants during the preceding 12-month period and the period of coverage will extend for at least 24 months after the date the peril occurs; and
- (d) comprehensive public liability and property damage insurance, including personal injury liability, contractual liability and owners' and contractors' protective insurance coverage with respect to the Leased Premises, coverage include the activities and operations conducted by the Tenant, its Sub-tenants and any other person on or about the Leased Premises, and by the Tenant and any other Person performing work on behalf of the Tenant or its Sub-tenants and those for whom they are in law responsible.

Such policies shall:

- (i) be written on a comprehensive basis with inclusive limits initially of not less than \$10,000,000.00 for bodily injury to any one or more Persons or property damage and such higher limits as the Landlord, acting reasonably, requires from time to time in order to reflect inflationary tendencies in the insurance industry; and
  - (ii) contain a severability of interests clause and a cross- liability clause.
- (e) sudden and accidental pollution coverage insurance on such terms and in such amounts as the Landlord may require acting reasonably,

any other forms of insurance and such higher limits as the Tenant or the Landlord, acting reasonably, requires from time to time in form, in amounts and for insurance risks against which a prudent owner and landlord would insure.

## 7.2 General Requirements:

- (a) All policies:
  - (i) shall be maintained with an underwriter that a prudent person in the position of owner of the Leased Premises would choose or require to be chosen taken out;
  - (ii) shall not be invalidated as respects the interests of the Landlord by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies; and
  - (iii) shall not contain any co-insurance provision.

All policies shall contain an undertaking by the insurers to notify the Landlord in writing not less than 30 days prior to any material change, cancellation or termination thereof.

- (b) The Tenant agrees that certificates of insurance will be delivered to the Landlord on or before the Commencement Date and on each anniversary date thereof during the Term. Provided however, that the Landlord shall have the right to require the Tenant's to provide certified copies of such policies from time to time and the Tenant agrees to comply with such request with forthwith.
- (b) The Tenant agrees that if the Tenant fails to take out or to keep in force any insurance referred to in section 7.1 or should the insurance not be approved by the Landlord and should the Tenant not commence to diligently rectify (and, thereafter, proceed diligently to rectify) the situation within 48 hours after written notice by the Landlord to the Tenant (stating, if the Landlord does not approve of such insurance, the reasons therefor), the Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord shall be immediately paid by the Tenant to the Landlord as Additional Rent.

## 7.3 Waiver of Subrogation:

- (a) all policies of insurance effected by the Tenant will contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and those for whom the Landlord is in law responsible, together with an acknowledgement by the insurers that a release from liability entered into by the insured before a loss does not affect the right of the insured or the Landlord to recover; and
- (b) the Tenant releases the Landlord and those for whom the Landlord is in law responsible from all liability for loss or damage caused by any of the perils against which the Tenant has insured against or is required to insure against under the provisions of section 7.1.

#### 7.4 Indemnification of Landlord:

Subject to section 3.5(b) and section 6.6(a)(i)(C), and save to the extent resulting from the negligence or wilful act or omission of the Landlord or any of its servants, agents, employees, contractors or persons for whom it is in law responsible, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of all Rent payable by the Tenant pursuant to this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever (collectively the "Damage") arising from or out of the occupancy or use by the Tenant or any other Person of the Leased Premises or any part thereof, or occasioned by any act or omission of the Tenant or by any other Person (other than the Landlord or those for whom it is in law responsible) on the Leased Premises.

If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and legal fees (on a solicitor and his client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease, unless a Court shall decide otherwise.

#### 7.5 Loss or Damage:

The Landlord is not liable for any damage to property, death, injury or any other loss whatsoever arising from or out of any occurrence in or relating to the Leased Premises or damage to property of the Tenant or of others wherever located, save to the extent resulting from: the gross negligence or criminal act or omission of the Landlord or those for whom it is in law responsible.

The intent of this section is that the Tenant and Sub-tenants and those whom the Tenant is in law responsible for (and all other Persons having business with the Tenant) is to look solely to its insurers to satisfy any claim and otherwise releases and holds the Landlord harmless from all damages, losses and other liabilities which may arise on account of death, injury, loss or damage, irrespective of its cause.

#### Article 8.00 - Maintenance, Repairs and Material Alterations:

##### 8.1 Maintenance, Repair and Alterations:

- (a) The Tenant shall at all times during the Term, at its sole cost, keep and maintain the Leased Premises in good order and condition as would a prudent owner of a similar development.
- (b) The Tenant acknowledges and agrees that the Landlord shall not be called upon to make any repairs or replacements to, or to perform any maintenance of any kind or nature whatsoever in respect of the Leased Premises, or any portion(s) thereof.

## 8.2 Material Alterations:

The Tenant shall not make any alterations, replacements, demolition or improvements (the "Changes") of or to the Leased Premises unless:

- (a) written notice of such particulars of such Changes is given to the Landlord prior to commencement of such Changes; and
- (b) such Changes are made in connection with or to facilitate or permit a Permitted Use.

If such Changes will have a material adverse effect on the Landlord or the rights and obligations of the Landlord to its other tenants, sub-tenants, licensees and other permitted users of any parts of the Port Lands in the vicinity of the Leased Premises or pursuant to any agreement to which the Landlord is or may become a party such as by way of example only, any agreement pertaining to the Rail Lines, the Landlord's consent acting reasonably shall be required for such Changes and the Landlord will respond to the Tenant expeditiously and in any event within 60 days after receipt of the Tenant's notice, unless direction or consent is required from the City, in which event the 60 days shall be extended to 90 days. If the Landlord has not provided any written objection to such Changes within the said time frame, it shall be deemed to have consented to same, to the extent such consent was required.

## 8.3 Surrender of Leased Premises:

Subject to the Tenant's access required to comply with section 6.6(a)(ii) or to complete the Termination Audit and Remediation required as a result, if any, at the expiration or earlier termination of the Term, the Tenant shall peaceably surrender and yield up the Leased Premises to the Landlord in the at least the same condition and state of repair, reasonable wear and tear (other than with respect to Tenant's Contamination) excepted, as the Tenant received the Leased Premises on the Commencement Date. The Tenant will peaceably surrender and yield up to the Landlord the Lands and the Buildings and Improvements (and ownership and title to the Buildings and the Improvements shall thereupon vest in the Landlord free and clear of all encumbrances) subject to the right of the Landlord to require the removal of such Buildings and Improvements and all rights of the Tenant under any Sublease (subject to section 10.2 hereof) or any other occupancy agreement shall thereupon terminate.

The Landlord may up to 60 days after the expiration or earlier termination of the Term give written notice requiring the Tenant to demolish and remove any or all buildings, improvements and/or Changes the Landlord did not approve in writing pursuant to section 8.2 and require the Tenant to remove all rubble and other debris and return the Lands to a vacant state as existed prior to the initial construction of such Buildings, Improvements or Changes. The Tenant's obligation to observe and perform this covenant shall survive the expiration of the Term or earlier termination of this Lease.

#### 8.4 Assignment of Rights on Termination:

Upon the surrender of the Leased Premises in accordance with Section 8.3, the Tenant shall assign to the Landlord the benefit and the Landlord shall assume the burden (save and except for any defaults for the Tenant under the Subleases arising prior to the termination or surrender of the Lease which shall remain the Tenant's sole obligation and for which the Tenant will remain liable to and indemnify the Landlord) of all Subleases which have been entered pursuant to this Lease and all easements, rights-of-way and other rights benefiting the Lands or the Tenant's interest therein which have been entered pursuant to this Lease or any other if requested to do by the Landlord. The Tenant, in order to give effect to the foregoing, will execute all assignments and other documents and assurances as may be reasonably required to effect such assignment at its sole cost and expense.

#### 8.5 Tenant to Discharge All Liens:

The Tenant shall at all times throughout the Term promptly pay all its contractors, materialmen, suppliers and workmen and all charges incurred by or on behalf of the Tenant for any work, materials or services which may be done, supplied or performed at any time in respect of the Leased Premises and the Tenant shall do any and all things necessary so as to ensure that no construction or other lien is registered against the Leased Premises or any part thereof or against the Landlord's or the Tenant's interest in the Leased Premises and if any lien is made, filed or registered, the Tenant shall discharge it or cause it to be discharged forthwith at the Tenant's expense. The Tenant shall ensure that its Sub-tenants and all other Persons occupying portions of the Leased Premises comply with the provisions of this Article to the extent relating to work performed or materials supplied by them or on their behalf.

If the Tenant fails to discharge or cause any such lien to be discharged, then, in addition to any other right or remedy of the Landlord, the Landlord may elect to discharge the same by paying the amount required for its discharge into Court or directly to the lien claimant and the amount paid by the Landlord and all costs and expenses, including solicitor's fees (on a solicitor and his client basis) incurred as a result of the registration and discharge of the lien shall be immediately due and payable by the Tenant to the Landlord on demand.

#### 8.6 Landlord's Right of Entry to Inspect:

The Landlord and its agents have the right, but not the obligation, to enter the Leased Premises, or any part thereof from time to time on reasonable notice to the Tenant (other than in the case of an emergency where no such notice is required) to carry out its obligations and rights under the Lease and to confirm compliance by the Tenant with its obligations under the Lease, including, without limitation, the condition of the Leased Premises (including whether any Contamination exists).

#### 8.7 Buildings and Improvements:

The Buildings and the Improvements are and shall become part of the realty forming the Lands and the absolute property of the Landlord now and upon the expiration or termination of this Lease subject to the Landlord's right to require the removal of same in whole or in part as provided for in section 8.3 hereof. The Landlord's absolute right of property in the Buildings and the Improvements shall take priority over any other interest in the Buildings and the Improvements or portions of them which may now or hereafter be created by the Tenant, provided that nothing herein gives the Tenant any right to create such interests.

#### 8.8 Consent to Improvements:

Subject to section 8.10 below in the event of any re-development of lands in the vicinity of the Leased Premises by the Landlord pursuant to which the construction of, inter alia, storm and sanitary sewers, watermains, pavements, sidewalks and local improvements, etc. under the Local Improvement Act, or any other Law, may be required, which would have a material adverse effect on the Tenant's use of the Leased Premises, the Landlord shall give or cause to be given to the Tenant notice of the same, and the Tenant agrees not to object to same unless it notifies the Landlord in writing within 30 days of delivery of the Landlord's notice that there will be a material adverse effect on the Tenant's rights under the Lease as a result of such construction, together with particulars thereof, failing which the Tenant will have waived its rights, if any, to object or oppose said re-development and/or construction and such construction and/or redevelopment shall not be an interference with the Tenant's quiet enjoyment of the Premises and without compensation to the Tenant of any kind and the Tenant will execute such documents as are reasonably required to effect such construction at no cost to the Landlord.

#### 8.9 Easements and Rights-of-Way:

The Tenant agrees to cooperate with the Landlord in respect of easements and/or rights-of-way (each an "Easement") in, under, along and/or upon the Leased Premises. If and whenever it is desirable in the view of the Landlord that it grant any Easement, the Landlord will give notice to the Tenant of the nature of the Easement, the proposed location of the Easement and steps proposed to be taken by the Landlord to minimize any disturbance caused by any construction or any installation in connection with the grant of the Easement without further compensation of any kind to the Tenant. The Tenant shall give bona fide consideration to whether or not such Easement would have a material adverse effect on the Permitted Use of the Leased Premises and shall advise the Landlord in writing within 15 days of any material adverse effect that it perceives acting reasonably would be caused by the Easement. If the Tenant gives written notice to the Landlord of a potential material adverse effect, then, if the Landlord does not dispute same, the Landlord shall not grant any such Easement unless there is determined to be a cure acceptable to the Tenant for such negative impact and the Landlord, acting reasonably, implements the cure contemporaneously with the grant of the Easement or any construction or installation associated therewith. If the Landlord does dispute the Tenant's claim of a material adverse effect, the matter shall be determined by arbitration under Article 14.00 hereof.

The Landlord shall use all reasonable commercial efforts to minimize any disruption or inconvenience to the Tenant or the occupant of the Leased Premises in connection with any Easement. The Landlord shall, at its sole cost and expense, repair restore or minimize any damage or disruption to the Leased Premises, or any part thereof, caused by the grant of any Easement or any construction or installation associated therewith.

The Landlord shall grant an easement for vehicular and pedestrian traffic to the Tenant in a location determined by the Landlord in its discretion acting reasonably, as shall be required to provide access to and from the Leased Premises to a public road for pedestrian and vehicular traffic and presently intended to be:

- (a) to Commissioners Street with respect to that part of the Leased Premises north of the Leslie Street Slip; and
- (b) to Leslie Street with respect to that party of the Leased Premises south of the Leslie Street Slip.

The Landlord shall have the right to relocate one or both of the easements from time to time on no less that 60 days notice to the Tenant provided that alternate easements are granted to the Tenant to public road(s).

#### 8.10 Commercially Reasonable:

Each party, in carrying out its respective rights and obligations under this Lease, and unless the Lease otherwise expressly provides, will use commercially reasonable efforts to minimize any material interference with the others use or enjoyment of the Leased Premises or any part thereof, provided however that this section does not apply to any enforcement by the Landlord of its rights and remedies under the Lease or at law. In carrying out the Tenant's rights and obligations under the Lease, the Tenant shall act in a commercially reasonable manner.

#### Article 9.00-Notice of Damage – Expropriation:

##### 9.1 Notice of Damage:

In the event of any material damage to the Leased Premises by any cause, the Tenant covenants to give notice in writing to the Landlord of such damage forthwith together with particulars thereof upon the same becoming known to the Tenant.

##### 9.2 Expropriation:

If the Leased Premises or any part thereof shall be expropriated (which includes a sale by Landlord to any Authority with the power to expropriate) then each party shall be entitled to apply for compensation resulting from the loss of its interest in this Lease.

## Article 10 - Assignment and Subletting:

### 10.1 Consent Required:

Except to the extent set out in section 10.2, the Tenant will not Transfer the Lease or the Leased Premises in whole or in part without the prior written consent of the Landlord in each instance, which consent may be unreasonably withheld, notwithstanding any statutory provision or provisions to the contrary. The consent by the Landlord to any Transfer, if granted, shall not constitute a waiver of the necessity for consent to any subsequent Transfer. This prohibition against a Transfer is construed so as to include a prohibition against any Transfer by operation of law and any encumbrance, change, mortgages hypothecation of the Lease or the Tenant's interest in all or any part of the Leased Premises.

Any consent by the Landlord shall be at the Tenant's sole cost and expense or subject to the Tenant causing the Transferee to promptly execute an agreement directly with the Landlord agreeing to be bound by all of the terms, covenants and conditions contained in this Lease as if the Transferee had originally executed this Lease as Tenant. Notwithstanding any Transfer, the Tenant shall be jointly and severally liable with the Transferee on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

### 10.2 Sub-Tenants:

- (a) Notwithstanding the provisions of section 10.1, the Tenant shall have the right to enter into Subleases from time to time, without the consent of or notice to the Landlord, provided that the Sublease does not permit the Sub-tenant to remain in occupation of its premises beyond the expiration of the Term and the use for the Sub-tenant is a Permitted Use and the Tenant has delivered a copy of the Sublease to the Landlord within 30 days of execution thereof. The Tenant will not accept from any Sub-tenant any advance rent or other deposits which have the effect of prepaying rent for periods in excess of 3 months without the Landlord's approval which may be unreasonably withheld. Provided further, that if a Sub-tenant requests an option or options to renew or extend which, if exercised, could extend beyond the Term, such options shall not be binding on the Landlord, but the Landlord may, in its sole, absolute and unreviewable discretion, give its written consent to and agree to be bound by such options, on such terms it may require.
- (b) The Landlord acknowledges that so long as:
  - (i) any particular Sub-tenant is not in default under the terms of its Sublease;
  - (ii) the Sublease has been entered into by the Tenant in good faith and at arm's length in compliance with the terms of this Lease;

- (iii) the term of the Sublease does not exceed the Term, or if an Extension Term has been duly and properly triggered pursuant to the Lease, such Extension Term; and
- (iv) the Sub-tenant has attorned to the Landlord as sub-landlord under the Sublease, if requested by the Landlord,

then the Landlord will permit that Sub-tenant to remain in quiet and peaceful possession of its Leased Premises pursuant to the terms of its Sublease that are not in conflict with this Lease, notwithstanding any exercise by the Landlord of its right to terminate this Lease.

### 10.3 Covenant to Maximize Yearly Gross Revenues:

The Tenant covenants and agrees that during the Payment Term, it shall use commercially reasonable efforts to maximize the Yearly Gross Revenues from the Leased Premises, including, without limitation, through the sublease of the Leased Premises to Sub-tenants on commercially reasonable terms (including, without limitation, at Fair Market Rent) as a prudent owner, with the prime objective of maximizing the Yearly Gross Revenues so as to ensure the maximum amounts which the Landlord can apply to reduce the Total Operating Payment as provided for in section 10.4 hereof but with the Landlord's acknowledging that the Tenant may decide to use a portion of the Leased Premises itself for the Permitted Use.

### 10.4 Yearly Gross Revenues To Reduce Operating Payment:

In each year of the Payment Term, the amount of the Total Operating Payment shall be reduced by the Yearly Gross Revenues payable to the Tenant. On or before December 1 and July 1 in each year of the Payment Term, the Tenant shall estimate the Yearly Gross Revenues for the following six (6) month period and shall deliver such estimate to the City and the Landlord. The Landlord and City shall reduce the amount of the Total Operating Payment payable to the Tenant in each month by an amount equal to one-twelfth of such estimated Yearly Gross Revenues. At the end of each year, upon determination of the actual Yearly Gross Revenues for the prior year (as reflected in the audited statement described below), the parties agree to adjust within 60 days thereafter by the Tenant paying to the Landlord any deficiency in the amount of the Yearly Gross Revenues so estimated or the Landlord shall pay to the Tenant the amount by which the Yearly Gross Revenues were overestimated as the case may be.

### 10.5 Reporting of Yearly Gross Revenues:

- (a) The Tenant shall prepare and deliver to the Landlord on an annual basis as of December 31 in respect of each year during the Payment Term, a certificate signed by the Chief Financial Officer of the Tenant certifying in reasonable detail and form:

- (i) the Yearly Gross Revenues and the breakdown thereof for the preceding year including, without limitation, the items to be excluded or deducted there from;
  - (ii) any adjustments required to be made between the parties with respect to the Operating Payment;
- (b) At the request of the Landlord, and at the Landlord's sole cost and expense, in respect of any year or years during the Payment Term, the Tenant shall cause its auditors to deliver to the City a certificate (the "Auditor's Certificate") confirming that:
- (i) such auditor has audited the Yearly Gross Revenues;
  - (ii) the total amount of the Yearly Gross Revenues for the preceding calendar year; and
  - (iii) whether or not there have been any changes in reporting of the Yearly Gross Revenues from the prior periods reported upon, and if so setting forth the changes in reportings.
- (c) If the Auditor's Certificate shows that the Yearly Gross Revenues for the period in question were understated by three percent (3 percent) or more, the Tenant shall pay for the cost of the Auditor's Certificate for such year and shall deliver to the Landlord, at the Tenant's cost and expense, an Auditor's Certificate in respect for the following year. Further, if the Auditor's Certificate shows the Yearly Gross Revenues for a period were understated by seven percent (7 percent) or more, the Landlord has the right to audit the Tenant's Yearly Gross Revenues at the Tenant's cost and expense once during the first five (5) years of the Payment Term and once during the last five (5) years of the Payment Term.

#### 10.6 Assignment by Landlord:

In the event of the sale, lease or disposition by the Landlord of the Leased Premises or any part thereof or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder and to the extent that the purchaser or assignee thereof assumes the covenants and obligations of the Landlord hereunder directly with the Tenant, the Landlord shall thereupon and without further agreement be freed and relieved of all liability with respect to such covenants and obligations.

#### Article 11.00 - Title Matters and Pre-Existing Leases:

##### 11.1 Title to Lands:

The Tenant acknowledges that the Landlord makes no representations or warranties (express or implied) that in any way relate to the state of the Landlord's title to the Leased Premises. The Tenant is solely responsible for satisfying itself as to the state of

the Landlord's title to the Leased Premises and accepts the state of the Landlord's title thereto as of the Commencement Date.

#### 11.2 Status Statement:

Within 20 days after written request therefor by the either party, (the "Requesting Party") (which request shall be made not more than twice yearly) the other party (the "Responding Party") shall deliver, in a form supplied by the Requesting Party, a status statement or a certificate to the Requesting Party or to whom it may direct stating (if such is the case):

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements) or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the Commencement Date;
- (c) the date to which Rent has been paid under this Lease;
- (d) whether or not there is any existing default by the Responding Party, or to the knowledge of the Responding Party, by the Requesting Party under the Lease and if there is any such default, specifying the nature and extent thereof;
  - (i) whether, to the knowledge of the Responding Party there are any set-offs, defences or counterclaims against enforcement of the obligations to be performed by the responding Party under this Lease and the particulars thereof;
  - (ii) the running balance of the Total Operating Payment and the Annual Operating Payment;
  - (iii) whether the Responding Party has received any notices, orders or communications from or with any Authority regarding Environmental Laws and the particulars thereof; and
  - (iv) any other information the Requesting Party may reasonably require.

#### 11.3 Subleases and Pre-Existing Leases:

The Tenant hereby assumes all of the Landlord's obligations under the Pre-Existing Leases and agrees to be bound thereby and further agrees to take all steps and proceedings necessary, acting as a reasonable and prudent owner of the Leased Premises, to cause all Sub-tenants to comply with the terms of their respective Subleases.

#### 11.4 Attornment and Sub-ordination:

On the request of the Landlord or its Mortgagee and, at the Landlord's reasonable expense, the Tenant shall subordinate the Lease in favor of such Mortgagee. If possession of the Leased Premises or any part thereof is taken under any such Mortgage pursuant to any proceedings that are brought for the foreclosure of the interest of the Landlord, the Tenant shall, subject to the provisions of this Section, attorn to the Mortgagee in possession and will recognize such Mortgagee as Landlord under this Lease. Notwithstanding anything contained in this Section to the contrary, any subordination or attornment or the execution of any indenture in respect thereof by the Tenant shall be subject to and conditional upon each such Mortgagee first delivering to the Tenant in writing, and in registerable form, a non-disturbance agreement, wherein, *inter alia*, such Mortgagee shall permit the Tenant to remain in quiet and undisturbed possession of the Leased Premises without interruption or disturbance, provided there is no default under the Lease beyond the applicable curative period, failing which the Tenant shall not be obligated to subordinate or attorn its interest pursuant to this section.

#### Article 12.00 - Additional Tenant Covenants:

##### 12.1 Manage as a Prudent Landlord:

The Tenant covenants and agrees that, from and after the Commencement Date, it shall operate and manage the Leased Premises, as a prudent landlord would do.

##### 12.2 Port Lands Developments:

To the extent consistent with its statutory mandate, and the existence of an active port function, the Tenant covenants and agrees that it will use its reasonable commercial efforts to support the City's Secondary Plan and all City, Toronto Waterfront Revitalization Corporation and/or TEDCO-related or sponsored development in the Port Lands.

The Tenant acknowledges that the City, Landlord and the provincial and federal governments are currently engaged in formulating initiatives for the Waterfront Revitalization, which initiatives will affect, and be affected by, the Tenant's operations. The Landlord agrees to use reasonable efforts to ensure that the representatives of the Tenant participate in discussions about relocating port users in the context of waterfront revitalization, to the extent the Landlord has the legal right and authority to extend such an invitation.

#### Article 13.00 - Default:

##### 13.1 Right to Re-enter:

If and whenever:

- (a) the Tenant fails to pay any Rent or other sums due hereunder on the day or dates appointed for the payment thereof (provided the Landlord first gives 10 days' written notice to the Tenant of any such failure); or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than those terms, covenants or conditions set out in sections 13.1(c) to (f), inclusive, for which no notice is required), provided the Landlord first gives the Tenant 30 days' (or shorter period of time provided in this Lease) written notice of any such failure to perform and the Tenant within the 30 day period fails to commence diligently and, thereafter, to proceed diligently to cure the failure to perform; or
- (c) the Tenant becomes bankrupt or insolvent or takes benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party, including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets; or
- (f) the Tenant effects a Transfer except in a manner permitted by this Lease; or
- (g) re-entry is permitted under any other terms of this Lease;

then, and in every such case the then current instalment of Rent and the whole of the Rent payable during the remainder of the Term shall accelerate and immediately become due and payable. The Landlord, in addition to any other rights or remedies it has pursuant to this Lease or by law, has, subject to the expiry of the additional notice period referred to in section 13.5, the immediate right of re-entry upon the Leased Premises and it may repossess the Leased Premises and enjoy them as of its former estate and may expel all Persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

#### 13/2 Expenses:

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all

expenses incurred therefor, including a solicitor's fee (on a solicitor and his client basis), unless a Court shall otherwise award.

### 13.3 Landlord's Rights:

If the Tenant:

- (a) fails to pay when due any amounts or charges required to be paid pursuant to this Lease, the Landlord, after giving 10 days' prior written notice to the Tenant, may, at its option, pay all or any part of the same;
- (b) is in default in the performance of any of its covenants or obligations hereunder (other than the payment of Rent or other sums required to be paid pursuant to this Lease), the Landlord may from time to time after giving 30 days' prior written notice or, without notice in the case of a real or apprehended emergency, perform or cause to be performed all or part of what the Tenant failed to perform any of such covenants or obligations and, for such purpose, may do such things as may be required, including, without limitation, entering upon the Leased Premises and doing such things upon or in respect of the Leased Premises or any part thereof as the Landlord reasonably considers requisite or necessary.

All expenses incurred and expenditures made pursuant to this section 13.3, plus a sum equal to 15 percent thereof, representing the Landlord's overhead shall be paid by the Tenant as Additional Rent, forthwith upon demand. The Landlord shall have no liability to the Tenant for any loss or damages resulting from any such action or entry by the Landlord upon the Leased Premises under Article 12.00 and same is no a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

### 13.4 Right of Set Off:

The Tenant shall have the right to set off any moneys due hereunder against the Total Operating Payment owing by the Landlord to the Tenant.

### 13.5 Re-Entry:

In the event of a default, after expiry of the applicable curative period without cure, the Landlord may, at its option on the expiry of an additional 15 days notice, but without prejudice to the exercise of any of its other rights under the Lease or at Law including, without limitation, the Landlord's right to recover any arrears of Rent and damages as well and the loss of prospective rent, terminate the Lease whereupon all the Tenant's rights under the Lease shall terminate.

### 13.6 Application of Money:

The Landlord may apply money received from or due to the Tenant against money due and payable under this Lease.

### 13.7 Remedies Generally:

Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive or dependent upon any other remedy, but the Landlord may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

### Article 14.00 – Arbitration:

#### 14.1 Disputes Subject to Arbitration:

If the parties cannot agree upon Fair Market Rent, or a determination of a “material adverse effect” in sections 6.5, 8.2, 8.8 and 8.9 of this Lease then the matter (the “Dispute”) shall be submitted to arbitration pursuant to the provisions of the *Arbitration Act, 1991* (Ontario). If the parties can agree upon a single arbitrator then the Dispute shall be determined by that arbitrator, otherwise, the Landlord and Tenant shall each appoint an arbitrator and the two arbitrators so appointed shall appoint a third arbitrator who shall be the chair of the arbitration panel. Such Dispute shall not be made the subject matter of an action in a court of law or equity by either party unless the Dispute has been first submitted to arbitration and finally determined in accordance with the provisions hereof. Any such action commenced thereafter shall only be for judgment in accordance with the decision of the arbitrator or arbitrators and the costs incidental to such action. In any such action, the decision of the arbitrator or arbitrators shall be conclusively deemed to determine the rights and liabilities as between the parties to the arbitration in respect of any such Dispute. This provision shall constitute a submission to arbitration pursuant to the provisions of the *Arbitration Act, 1991* (Ontario). Interest shall run on the award of the arbitrator from the commencement of the applicable Extension Term.

### Article 15.00 – Miscellaneous:

#### 15.1 Overholding -No Tacit Renewal:

If the Tenant remains in possession of the Leased Premises after the end of the Term with the written consent of the Landlord but without having executed and delivered a new lease, there is no tacit renewal of this Lease and the Term, notwithstanding any statutory provisions or legal presumption to the contrary, and the Tenant shall be deemed to be occupying the Leased Premises as a Tenant from month to month at a monthly Ground Rent payable in advance on the first day of each month equal to the aggregate of the following:

- (a) the monthly Fair Market Rent as determined by the Landlord in respect of the Leased Premises; and

- (b) 1/12th of the amount of Additional Rent payable by the Tenant in the last full 12-month Rental Year of the Term;

and, otherwise, upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of all Additional Rent) so far as these are applicable to a monthly tenancy.

#### 15.2 Successors:

All rights and liabilities herein granted to or imposed upon the Landlord and the Tenant extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and permitted assigns of the Tenant, as the case may be. No rights, however, shall enure to the benefit of any assignee of the Tenant unless, the assignment to that assignee has been approved by the Landlord in writing as provided, in section 10 hereof.

#### 15.3 Waiver:

The waiver by the Landlord of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord is not deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless such waiver is in writing by the Landlord.

All Ground Rent and Additional Rent to be paid by the Tenant to the Landlord hereunder shall be paid without any deduction, abatement, set-off or compensation whatsoever and the Tenant hereby waives the benefit of any statutory or other rights in respect of abatement, set-off or compensation in its favour at the time hereof or at any future time.

#### 15.4 Accord and Satisfaction:

No payment by the Tenant or receipt by the Landlord of a lesser amount than the payment of Ground Rent herein stipulated is deemed to be other than on account of the earliest stipulated Ground Rent nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgement of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

#### 15.5 No Partnership or Agency:

The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business or otherwise or a joint venturer or a member of a joint enterprise with the Tenant nor is the relationship of principal and agent created.

15.6 Force Majeure:

Notwithstanding anything to the contrary contained in this Lease, if the Tenant is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; labour troubles, inability to procure materials or services; power failure; restrictive governmental laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God or other reason, whether or a like nature or not, which is not the fault of the Tenant, then performance of such term, covenant or act is excused for the period of the delay and the Tenant shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. However, the provisions of this Article do not operate to excuse the Tenant from the prompt payment of Ground Rent, Additional Rent or any other payments required by this Lease.

15.7 Notices:

Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person, by facsimile or sent by registered mail postage prepaid and shall be addressed:

- (a) if to the Landlord, at:

Metro Hall  
55 John Street, 7th Floor  
Toronto, Ontario  
M5V 3C6

Attention: President

- (b) if to the Tenant, to the Tenant's head office at:

Toronto Port Authority  
60 Harbour Street  
Toronto, Ontario M5J 2B7

Attention: Harbour Master

Any such notice, demand, request or consent is conclusively deemed to have been given or made on the day upon which such notice, demand, request or consent is delivered or facsimiled, if delivered or facsimiled before 5:00 p.m. Toronto time, failing which on the next Business Day, or, if mailed, then three Business Days following the date of mailing, and the time period referred to in the notice commences to run from the time of delivery or facsimile or three Business Days following the date of mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices hereunder. If the postal service is interrupted or is substantially delayed, any notice, demand, request or other

instrument shall only be delivered in person or by facsimile. "Business Day" means any day other than a Saturday, Sunday or other statutory holiday in the Province of Ontario.

15.8 Compliance with Planning Act:

It is an expressed condition of the within Lease and the Landlord and the Tenant agree that the subdivision control provisions of the Planning Act (Ontario) and amendments thereto must be complied with, if applicable. If Planning Act consent is required, the Landlord shall apply diligently to prosecute any required application for consent forthwith upon the execution of the Lease by both the Landlord and the Tenant and the Landlord shall be responsible for all reasonable costs, expenses, taxes and levies imposed, charged or levied as a result of the application and in order to obtain consent. The Landlord shall keep the Tenant informed from time to time of its progress in obtaining the consent and the Tenant shall cooperate with the Landlord in regard to the application.

15.9 Monetary Amounts:

Except as may be otherwise expressly provided herein, all monetary amounts set out in this Lease are in Canadian currency and are exclusive of any applicable Sales Taxes.

15.10 Contra Proferentum:

The parties acknowledge and agree that both parties have participated in the drafting of this Lease, and any rule of law providing that ambiguities shall be construed against the drafting party shall be of no force or effect.

15.11 Registration:

Unless requested or consented to by Landlord, Tenant shall not register this Lease but may register a short form, caveat or notice thereof at the Tenant's sole cost and expense provided the financial terms hereof are not disclosed and the Landlord approves the form, which approval is not to be unreasonably withheld.

15.12 Quiet Enjoyment:

If the Tenant pays the Rent and other sums herein provided and observes and performs all the terms, covenants and conditions on the Tenant's part to be observed and performed, the Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by the Landlord or any other Person claiming by, through or under the Landlord, subject, nevertheless, to the terms, covenants and conditions of this Lease.

15.13 Tenant Capacity:

The parties acknowledge that the Tenant is executing this Lease in its own capacity and not as an agent of Her Majesty the Queen in right of Canada.

15.14 Schedules:

The following Schedules form part of this Lease:

- Schedule "A" - Legal Description
- Schedule "B" - Plan of Leased Premises
- Schedule "C" - List of Pre-Existing Leases

IN WITNESS WHEREOF the parties hereto have hereunto caused to be affixed their corporate seals duly attested to by the hands of their respective proper signing officers authorized in that behalf the ? day, month and year first above written.

CITY OF TORONTO ECONOMIC  
DEVELOPMENT CORPORATION

Per: \_\_\_\_\_

ASO

Per: \_\_\_\_\_

ASO

We have authority to bind the Corporation  
TORONTO PORT AUTHORITY

Per: \_\_\_\_\_

ASO

Per: \_\_\_\_\_

ASO

We have authority to bind the Corporation

\_\_\_\_\_  
Schedule A  
Legal Description

- (1) 130 and 150 Cherry Street Property
- (2) Leslie Street/Commissioners Street/Unwin Avenue Properties

Schedule B  
Plan of Leased Premises

[insert survey]

Schedule C  
Pre-Existing Leases

Property/Tenant	Address
Innocon Inc.	535 Commissioners St.
Vacant	Part of Rear 595 Commissioners St.
Eastern Marine Systems Inc.	Part only of 12 Leslie Street (less open space)
Vacant	600 Unwin (part rear and other small parts)
C&C Marine Services	150/52 Cherry Street (part)
Avonhill Services Inc.	130 Cherry Street

Schedule "D"

Lands to be Transferred by the TPA

Wherever reference is made in this schedule to "MS" "TIS" or "CIS" Sites , such references are for the internal use of the City of Toronto and City of Toronto Economic Development Corporation only and shall not be deemed to be part of the legal description of a site.

1. Mooring Basin, West of Bathurst Street: (to the City):

Part of Blocks A and B on Registered Plan D-1397 and Part of Water Lot patented to The Toronto Harbour Commissioners on January 29, 1904 (Instrument No. 24339F) and June 5, 1934 (Instrument No. 17942 WF) and part of Water Lot DT-163 lying in front thereof, designated as Parts 6 to 14 inclusive on Plan 63R-3424, Part 1 on Plan 63R-3582, together with a 999 year lease of the mooring spaces associated with the use of the lands as one or more yacht clubs.  
(MS Sites 14, 15 and 16)

2. Parking Garage: (to the City) (539 Queens Quay West):

Parcel F-1, Section A-D-1397, being Part of Block E on Registered Plan D-1397 designated as Parts 2, 3, 4, 5, 6 and 9 on Plan 66R-15757.  
(MS Site 17)

3. York Street Slip: (Remainder) (Water Lot): (to the City):

All of Block 13 on Registered Plan 616-E, which includes that part of Parcel 13-3, Section A-616-E designated as Parts 2, 6, 7, 8, 9, 10 and 41 on Plan 66R-14293.

4. Ferry Docks and 145 Queens Quay West: (to the City):

Part Parcel 13-3, Section A-616-E, being Part of Blocks 13, 14, 15 and 16 on Registered Plan 616-E designated as Parts 11, 12, 13, 17, 18 and 19, 23 to 33 inclusive, and 35 to 39 inclusive, 42 to 71 inclusive and 82 to 85 inclusive on Plan 66R-14293.  
(#3 and #4 together correspond to MS Sites 7, 8, 9, 10, 11, 18 and 20)

5. Yonge Street Slip: (to the City):

The westerly 200 feet of Block 18 on Registered Plan 694-E.  
(MS Site 19)

6. Yonge Street to Jarvis Street (part of Dockwall, Redpath Sugar): (to TEDCO):

Part of Blocks 19 and 20 on Registered Plan 694-E designated as Part 2 on Plan 63R-3268.  
(TIS Site 23)

7. North Side of Keating Channel: (Dockwall, Victory Mills Site): (to TEDCO):

Part of the Marsh Lands granted to the City of Toronto, by the Province of Ontario by Letters Patent, dated May 18, 1880 and by the Dominion Government, by Letters Patent, dated October 10, 1903 designated as Parts 4, 6, 7 and 8 on Plan 64R-14584.  
(TIS Sites 24 and 25)

8. Port of Toronto Lands:

(a) Ship Channel: (To TEDCO or the City as per Deed)

Parts 9, 16, 21, 30 and 34, Plan 64R-14718, which are portions of the dockwalls on the south side of the Ship Channel.  
(TIS: #2 7, 10 and CIS: #12 and 17)

(b) Dockwall, South Side of Ship Channel:

(i) Part of Lot 63 and Part of Reserve of Park Development on Registered Plan 520-E and Part of Blocks G, H, J and K on Registered Plan 675-E designated as Parts 1, 2, 3, 4, 5, 7 and 8 on Plan 64R-14758. (Dockwalls on Circulating Channel and Ship Channel adjacent to Hydro lands) (To TEDCO) (TIS: #17, 18 and 19)

(ii) Part of Blocks C, D, E, F, G, T and W on Registered Plan 675-E designated as Parts 4, 8, 15, 20, 29, 33, 36, 37, 40, 41 and 42 on

Plan 64R-14718. (Dockwalls east of Cherry Street) (To TEDCO or City as per Deed – CIS: #3,12,17 and 18 and TIS: #7,10,15 and 16)

- (iii) Part of Block B on Registered Plan 675-E designated as Part 1 on Plan 64R-14512. (Dockwall west of Cherry Street) (To TEDCO) (Part of TIS 2)
- (iv) Lands at south end of Leslie Street. (To City) (MS 5 and 6)

9. Parliament Street Realignment:

To the extent that the TPA has any interest in lands in the area bounded by Queen's Quay East, Small Street, Lake Shore Blvd. East and Parliament Street, those lands. (Land swap among City, TEDCO and TPA)

As more particularly described, and all other lands and premises provided for (if any), in the following documents:

- (a) Leases dated March 15, 1995 between The Toronto Harbour Commissioners and the City, short forms of which were registered as Instrument Nos. CA333153, C936749 and CA337068, as amended by CA535306;
  - (b) Management Agreement dated January 1st, 1995 between The Toronto Harbour Commissioners and the City; and
  - (c) Ground Lease dated March 15, 1995 between The Toronto Harbour Commissioners and TEDCO, short form of which was registered as Instrument No. CA330371 as amended by CA365431.
10. Together with all property rights including without limitation water rights appurtenant to the properties described above
11. The parties acknowledge that in the event either the City of Toronto or the City of Toronto Economic Development Corporation was entitled to receive any additional water rights or water-based properties (collectively the "Remaining Rights") associated with the transfer of the Lands as the term is defined in the Structured Settlement Agreement, which Remaining Rights have not been conveyed to date, the within schedule shall be deemed to include any of such Remaining Rights. In the event that the City and/or TEDCO have not provided written notice with respect to any claim for the Remaining Rights by September 1, 2004, this section shall become null and void and of no further force or effect.
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Schedule "E"  
Tripartite Amending Agreement

Attached to Separate Staff Report:

"The Toronto City Centre Airport"

Also appearing on the June 12, 2003, Agenda of the Policy and Finance Committee

**The Policy and Finance Committee also submits the following joint report (June 9, 2003) from the City Solicitor and the Commissioner of Urban Development Services, entitled "Exemption from Part Lot Control – for Lands Known Municipally in the Year 2002 as 535 and 595/651 Commissioners Street, 12 and 12A Leslie Street, 206, 220, 240, 400, 440R and 600 Unwin Avenue, 150 Cherry Street, 95R Queens Quay East and 333R Lakeshore Boulevard East":**

Purpose:

To initiate the implementation of a Part Lot Control Exemption By-law for lands known municipally in the year 2002 as 535 and 595/651 Commissioners Street, 12 and 12A Leslie Street, 206, 220, 240, 400, 440R and 600 Unwin Avenue, 150 Cherry Street, 95R Queens Quay East and 333R Lakeshore Boulevard East.

To confirm authority for the City of Toronto Economic Development Corporation to enter into a long term lease with the Toronto Port Authority for the City-owned portion of 130 Cherry Street.

The release of part lot control will permit TEDCO and the TPA to enter into a Lease Agreement with an entitlement to renewal for a period of twenty-one years or more for the lease lands. It will also permit the transfer of the transfer lands from the TPA to TEDCO.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

Subject to Council approval of the recommended settlement between the City, TEDCO and the Toronto Port Authority (TPA), it is recommended that:

- (1) a part lot control exemption by-law, substantially in accordance with Attachment 1 to this Report, pursuant to section 50(7) of the *Planning Act*, be enacted for the following lands (the "lease lands"):
  - (a) 535 Commissioners Street;
  - (b) Part of Rear 595 Commissioners Street;
  - (c) Part of 12 and 12A Leslie Street;

- (d) Part of 600 Unwin Avenue; and
  - (e) Part of 150 Cherry Street;
- (2) a part lot control exemption by-law, substantially in accordance with Attachment 2 to this Report, pursuant to section 50(7) of the *Planning Act*, be enacted for the following lands (the “transfer lands”):
- (a) Part of 150 Cherry Street;
  - (b) Part of 206 Unwin Avenue;
  - (c) 220 Unwin Avenue;
  - (d) Part of 240 Unwin Avenue;
  - (e) Part of 400 Unwin Avenue;
  - (f) Part of 440R Unwin Avenue;
  - (g) 95R Queens Quay East; and
  - (h) 333R Lakeshore Boulevard East;
- (3) both by-laws shall expire on December 31, 2003;
- (4) the City Solicitor be authorised to introduce the necessary Bills in Council to give effect to Recommendations 1, 2 and 3;
- (5) the City of Toronto Economic Development Corporation be authorised to include the City-owned portion of 130 Cherry Street, being Part 3 on Plan 64R-14512, in the lands to be leased to the Toronto Port Authority under a long term lease agreement; and
- (6) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

This is a supplementary Report to the Settlement Report dated May 28, 2003, on the Legal dispute between the City of Toronto, TEDCO and the TPA.

As part of the proposed settlement of all matters which are the subject of an action brought against the City of Toronto (the “City”), the City of Toronto Economic Development Corporation (“TEDCO”) and certain named individuals, by the Toronto Port Authority (the “TPA”), it is proposed that TEDCO and the TPA will enter into a long-term lease agreement for the lease lands.

It is further proposed as part of the settlement that the TPA would transfer ownership of certain lands to TEDCO for nominal consideration.

Subsection 50(5) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, states that where land is within a registered plan of subdivision no person shall convey a part of any lot or block of the land by way of transfer. It further states that no person shall enter into any agreement that has the effect of granting the use of or right in a part of any lot or block of the land directly or by entitlement to renewal for a period of twenty-one years or more.

Subsection 50(7) of the *Planning Act*, provides that Council may by by-law designate that subsection 50(5) does not apply to certain lands described in the by-law. Subsection 50 (7.3) of the *Planning Act* stipulates that the by-law expires at the expiration of the time period specified in the by-law.

While conducting our review of the properties to which the part lot control exemption should apply, it was discovered that one piece of land proposed to be included in the ground lease to the TPA is owned by the City (not TEDCO). At the time of the transfer of lands from the former Toronto Harbour Commissioners in 1995, this parcel, being that portion of 130 Cherry Street designated as Part 3 on Plan 64R-14512, was conveyed to the City. The parcel was immediately placed under TEDCO's management, pursuant to a Management Agreement under which TEDCO took responsibility for operating all of the Municipal Industrial Sites. Under the terms of the Management Agreement, which expires in 2015, TEDCO has the authority to grant a lease of this parcel on the City's behalf. The Management Agreement does not, however, specifically prohibit or permit TEDCO entering into agreements affecting the lands it manages for terms going beyond the term of the Management Agreement, which would be the case for the proposed lease to the TPA. Since the City owns the parcel, it does not require an exemption from part lot control. Staff felt it necessary, however, to bring to Council's attention the fact that one piece of the leased lands is owned by the City, not TEDCO, and to obtain specific authority for TEDCO to lease it to the TPA on the City's behalf.

As set out in the Minutes of Settlement, the TPA is required to transfer to the City or TEDCO certain lands described in Schedule "D" to the Minutes. These are lands that were to be transferred by the TPA under the 1994 Agreement of Purchase and Sale and Subsidy Agreement. The transfers of the lands in Schedule "D" were never completed as certain consents and approvals, such as Orders-in-Council for dock wall properties had not been obtained. At the time it was agreed between TEDCO, the City and the former Toronto Harbour Commissioners that, where a property could not be transferred by Deed, it would be placed either under a long-term lease or a management agreement. The Minutes include a requirement for the TPA to complete these transfers.

#### Comments:

The release of part lot control will permit TEDCO and the TPA to enter into a Lease Agreement with an entitlement to renewal for a period of twenty-one years or more for the lease lands. It will also permit the transfer of the transfer lands from the TPA to TEDCO.

#### Conclusion:

The proposed Part Lot Control Exemption By-law will facilitate the implementation of the proposed settlement and raises no planning issues because the subject lands remain industrial as is currently the case. This report recommends technical adjustments to facilitate the transfer of lands from the TPA to the City and TEDCO. Confirmation that TEDCO has the authority to include the City-owned portion of 130 Cherry Street in the long-term lease is also necessary for implementation of the proposed settlement with the TPA.

Contact:

Kelly Matsumoto, Solicitor, Planning and Administrative Tribunal Law, Tel: (416) 392-8042,  
Fax: (416) 397-4420; e-mail: kmatsum@toronto.ca

List of Attachments:

Attachment 1: Draft By-law  
Attachment 2: Draft By-law

Attachment "1"  
Draft By-law

Authority: Policy and Finance Committee Report No. \_\_\_\_, Clause No. \_\_\_\_, as adopted by  
City of Toronto Council on June 24, 25 and 26, 2003.

Enacted by Council:

CITY OF TORONTO

Bill No.

BY-LAW No. 2003

To exempt parts of lands municipally known in the year 2002 as  
150 Cherry Street, 535 and 595/651 Commissioners Street,  
12 and 12A Leslie Street, and 600 Unwin Avenue from part lot control.

WHEREAS authority is given to Council by subsection 50(7) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended to pass this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Subsection 50(5) of the *Planning Act* does not apply to the lands described in the attached  
Schedule "A".
2. This By-law expires on December 31, 2003.

ENACTED AND PASSED this .

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Mayor

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City Clerk

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Schedule "A"

Legal Description:

Attachment "2"  
Draft By-law

Authority: Policy and Finance Committee Report No. \_\_, Clause No. \_\_\_\_, as adopted by City of Toronto Council on June 24, 25 and 26, 2003.

Enacted by Council:

CITY OF TORONTO

Bill No.

BY-LAW No. 2003

To exempt parts of lands municipally known in the year 2002 as 206, 220, 240, 400 and 440R Unwin Avenue, 95R Queens Quay East and 333R Lakeshore Boulevard East from part lot control.

WHEREAS authority is given to Council by subsection 50(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended to pass this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Subsection 50(5) of the *Planning Act* does not apply to the lands described in the attached Schedule "A".
2. This By-law expires on December 31, 2003.

ENACTED AND PASSED this .

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Mayor

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City Clerk

**The Policy and Finance Committee also submits the following report (June 10, 2003) from the City Solicitor, entitled "Releases Relating to Proposed Settlement of the Legal Dispute between the City of Toronto, City of Toronto Economic Development Corporation and the Toronto Port Authority":**

Purpose:

To obtain Council approval to the releases that are part of the proposed settlement documentation dealing with the litigation between the Toronto Port Authority (TPA), the City of Toronto, the City of Toronto Economic Development Corporation (TEDCO) and certain individuals.

Financial Implications and Impact Statement:

The financial implications of the settlement are set out in the report dated May 28, 2003, from the Chief Administrative Officer, the Commissioner, Urban Development Services and the Chief Financial Officer and Treasurer.

Recommendations:

It is recommended that Council:

- (1) approve the releases substantially in the form attached to this report; and
- (2) authorize the appropriate City officials to take the necessary steps to give effect thereto.

Background:

This report is supplementary to the settlement report dated May 28, 2003, which is Item No. 1 on the Policy and Finance Committee Agenda for its meeting of June 12, 2003. Part of the settlement documentation includes mutual releases to be exchanged between the City, TEDCO and the TPA.

Comments:

As set out in the proposed Minutes of Settlement, the parties are required to exchange releases in respect of the matters raised in the action and third party claim, exempting only the continuing obligations arising from the settlement. The exchange of releases is common for any litigation matter. Attached hereto are the proposed form of releases that have been discussed between the litigation solicitors involved in the litigation. We advise that there is one outstanding issue on the TPA release that is being discussed between the Federal Government and the TPA that does not affect the City or TEDCO.

Appendix "A" is the release to be provided by the Toronto Port Authority to the City, TEDCO and the Federal Government. The release binds the TPA's successors and assigns. Pursuant to that release the TPA is releasing any claims that it has arising from the litigation except for the TPA's claim for unpaid harbour user fees and except for the continuing obligations of the City and TEDCO, as set out in the Minutes of Settlement, including all schedules thereto. The TPA release also specifically includes a release relating to:

- (i) any claims relating to the transfer of the Port Lands to the City and TEDCO;

- (ii) any claims relating to the 1994 Subsidy Agreement or the 1994 Agreement of Purchase and Sale; and
- (iii) any claims that the individual defendants who were former Commissioners of the Toronto Harbour Commission acted with a conflict of interest or in breach of their fiduciary duties.

As set out in the main report dealing with the settlement, the City and the TPA have agreed to continue their discussions with a view to resolving the outstanding issues relating to the harbour user fees.

As set out in the Minutes of Settlement, the City and TEDCO will be granting a release to the Toronto Port Authority and the Attorney General of Canada. In the litigation the City and TEDCO had commenced a Third Party Claim against the Attorney General of Canada relating to the matters raised in the litigation commenced by the TPA. The City and TEDCO will be releasing any claims they have raised in the litigation. The City/TEDCO release specifically includes any alleged claims that the Toronto Harbour Commissioners or the Toronto Port Authority failed to pay surplus profits to the City; any claims relating to the Subsidy Agreement or the 1994 Agreement of Purchase and Sale. The release excludes the continuing obligations of the TPA and the Federal Government under the proposed settlement.

The form of the releases has been approved by the City and TEDCO's outside counsel in the litigation, Mr. Alan Lenczner.

#### Conclusion:

It is recommended that Council approve the releases substantially in the form attached to this report.

#### Contact:

Diana W. Dimmer, Director of Litigation, Legal Services, Tel: (416) 392-7229,  
Fax: (416) 392-1199; e-mail: Ddimmer@toronto.ca

#### List of Attachments:

Appendix "A" – Release from the Toronto Port Authority

Appendix "B" – Release from the City of Toronto and the Toronto Economic Development Corporation

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## Appendix "A"

### Full and Final Release of the Toronto Port Authority

IN CONSIDERATION OF the CITY OF TORONTO (the "City"), the CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION ("TEDCO"), and the ATTORNEY GENERAL OF CANADA executing and fulfilling the terms of settlement as set out in the Minutes of Settlement (including all schedules thereto) dated June 2003, the receipt and sufficiency of which is hereby irrevocably acknowledged, the TORONTO PORT AUTHORITY (the "Releasor"), does for itself, and its respective directors, officers, employees, agents, insurers, successors and assigns hereby release, remise and forever discharge the City, Her Majesty the Queen in Right of Canada (as represented in these proceedings by the Attorney General of Canada), TEDCO, JUNE ROWLANDS, BETTY DISERO, MICHAEL WALKER, MARTIN SILVA, STEVAN ELLIS, JOHN ADAMS, HERBERT PIRK, ARTHUR L. STEVENSON, VIRGINIA WEST and NICK KRISTOFFY (collectively referred to as the "Releasees") and their respective successors, assigns, agents, employees, former employees, officers, directors, councillors and former councillors, insurers and representatives from any and all actions, causes of action, suits, liabilities, costs, duties, obligations, debts, dues, accounts, bonds, covenants, contracts (whether implied or express), claims, demands and complaints whatsoever which the Releasor has had, may now have or may hereafter have against the Releasees, for or by any reason relating to:

- (i) the transfer of approximately 612 acres of land in the City, more particularly described in Schedule "A" (the "Port Lands") to the City and/or TEDCO commencing in 1991;
- (ii) the agreement entitled "THC Subsidy Agreement (II)" dated as of October 31, 1994 between the Toronto Harbour Commissioners and the Corporation of the City of Toronto;
- (iii) the agreement entitled "Agreement of Purchase and Sale" dated July 18, 1994, between the City of Toronto Economic Development Corporation and the Toronto Harbour Commissioners;
- (iv) approximately 39 acres of land in the City, more particularly described in Schedule "B" (the Railway Lands);
- (v) any allegation of conflict of interest and any allegation of breach of fiduciary duty in the case of each individual defendant (except June Rowlands), as a Commissioner of the Toronto Harbour Commissioners, during his/her respective term.
- (vi) in any way arising out of any cause, matter or thing which was raised in or could have been raised in Ontario Superior Court of Justice Court File No. 01-CV-215214CM (the "Action"), or which was raised in or could have been raised in Ontario Superior Court of Justice Court File No. 01-CV-215214CM A2 (the Third Party Action), save and except for the claim by the Toronto Port Authority for unpaid harbour user fees relating to the City's ferry service to the Toronto Islands and for the continuing obligations of the City and TEDCO as set out in the Minutes of Settlement (including all schedules thereto), dated June 2003.

AND FOR THE SAID CONSIDERATION, the Releasor agrees that it will not institute, threaten to institute or continue any proceedings against any person, partnership, corporation or other entity who may claim contribution, indemnity, damages, or other relief whether by copy of third party notice, independent notice, or otherwise against the Releasees under the provisions of any statute or otherwise, with respect to any of the matters which are the subject of this release. In the event such proceedings are commenced, the Releasor agrees that this release may be pleaded as an estoppel and as a complete defence and reply to any such proceedings and may be submitted to the court as the Releasor's consent to an order dismissing such proceedings on a summary basis.

AND FOR THE SAID CONSIDERATION, the Releasor agrees that if it institutes or continues any proceedings against any person, partnership, corporation or other entity concerning the matters which are the subject of this release who claim contribution, indemnity, damages or other relief, whether by copy of third party notice, independent notice or otherwise against the Releasees under the provisions of any statute or otherwise, with respect to any of the matters which are the subject of this release, the Releasor will fully indemnify the Releasees for such claims.

THE RELEASOR represents and warrants that it has not assigned to any person or corporation any of the actions, causes of action, suits, liabilities, debts, costs, proceedings, duties, obligations, dues, accounts, bonds, covenants, contracts (whether implied or express), payments, promises, representations, warranties, guarantees, indemnities, damages, losses or injury of any kind or nature, complaints, claims and demands released above, and with respect to which it agrees not to make any claims or take any proceedings.

THE RELEASOR acknowledges that its Board of Directors has reviewed this release and has received legal advice in connection with the terms and effect of this release and that it understands the terms of this release and voluntarily accepts the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all claims as aforesaid.

THE RELEASOR acknowledges and agrees that if any provision of this release shall be held to be illegal or unenforceable, such holding shall not affect the validity or enforceability of the other provisions of this Agreement.

IT IS FURTHER AGREED AND UNDERSTOOD that the Releasees do not admit any liabilities or obligations whatsoever to the Releasor in respect of the matters raised in the Action, and such liabilities and obligations are, in fact, denied.

IT IS FURTHER AGREED AND UNDERSTOOD that the Releasor will obtain an order on consent dismissing the Action without costs.

IN WITNESS WHEREOF the Releasor has executed this release by the signature of its officers duly authorized to do so on this                      day of                      2003.

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TORONTO PORT AUTHORITY

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Per:

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Per:

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Appendix "B"

Release of the City of Toronto and the Toronto  
Economic Development Corporation

IN CONSIDERATION OF the TORONTO PORT AUTHORITY and the ATTORNEY GENERAL OF CANADA executing and fulfilling the terms of settlement as set out in the Minutes of Settlement dated June 2003, the receipt and sufficiency of which is hereby irrevocably acknowledged, the CITY OF TORONTO (the "City") and the CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION ("TEDCO") (the "Releasors"), do for themselves, and their respective , directors, officers, employees, agents, insurers, successors and assigns hereby release, remise and forever discharge the TORONTO PORT AUTHORITY and the ATTORNEY GENERAL OF CANADA (the "Releasees") and their successors, assigns, agents, employees, former employees, officers, directors, insurers, and representatives from any and all actions, causes of action, suits, liabilities, costs, duties, obligations, debts, dues, accounts, bonds, covenants, contracts (whether implied or express), claims, demands and complaints whatsoever which the Releasors have had, may now have or may hereafter have against the Releasees, for or by any reason relating to:

- (i) in any way arising out of any cause, matter or thing which was raised in or could have been raised by the Releasors in Ontario Superior Court of Justice Court File Nos. 01-CV-215214CM and 01-CV-215214CM A2 (the "Action" and "Third Party Claim" respectively), including, without limiting the generality of the foregoing, any claim that the Toronto Harbour Commissioners or the Toronto Port Authority failed to pay surplus profits;
- (ii) the agreement entitled "THC Subsidy Agreement (II)" dated as of October 31, 1994 between the Toronto Harbour Commissioners and the Corporation of the City of Toronto; and
- (iii) the agreement entitled "Agreement of Purchase and Sale" dated July 18, 1994, between the City of Toronto Economic Development Corporation and the Toronto Harbour Commissioners;

save and except for the continuing obligations of the Toronto Port Authority and the Attorney General of Canada as set out in the Minutes of Settlement (including all schedules thereto), dated June 2003.



CITY OF TORONTO

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Per:

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Per:

CITY OF TORONTO ECONOMIC  
DEVELOPMENT CORPORATION

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Per:

**The Policy and Finance Committee also submits the following Minutes of the Toronto Island Airport Community Advisory Committee from its meeting of May 6, 2003, submitted by Councillor Olivia Chow:**

Toronto Island Airport Community Advisory Committee

Council co-Chair:

Councillor Olivia Chow

Toronto City Hall, Toronto M5H 2N2, Tel: 416-392-4044, E-mail: [councilor\\_chow@toronto.ca](mailto:councilor_chow@toronto.ca)

Community co-Chair:

Pam Mazza

11 Seneca Avenue Toronto M5J 2A2, Tel: 416-203-0996, E-mail: [mazzas@rogers.com](mailto:mazzas@rogers.com)

Minutes - May 6, 2003, Committee Room 3 - City Hall

Committee members present: Olivia Chow, Councillor; Pam McConnell, Councillor; Boris Broz, Harbourfront Community Association; Jerry Shiner, Garment District Neighbourhood Association; Sylvia Pellman, Bathurst Quay Neighbourhood Association; Cam Miller, St. Lawrence Neighbourhood Association; Pam Mazza, Toronto Island Community Association; Roger Shaw, Ontario Sailing Association; Allan Sparrow, Community AIR; Elizabeth Quance, Niagara Neighbourhood Association.

Regrets: Joe Pantalone, Councillor; Keith Stewart, Toronto Environmental Alliance; Julie Beddoes, Gooderham & Worts Neighbourhood Association; Greg Gatenby, Toronto arts community

Others present: David Miller, Councillor, Debbie Alexander, Bathurst Quay Neighbourhood Association (alternate), Carlo Bonanni, City Planning; Lynda Macdonald, City Planning; Blake Webb, Staff/Councillor McConnell's office; Sarah Phipps, Staff/Councillor Chow's office.

Appended: A; Letter from CAIR to staff regarding the “ City conditions”  
B: Letter to TPA Chair

1. Introductions made.
2. Amendments to Agenda: move to item 4 first.
3. Item 4: Liaison with TPA, NAVCAN, Transport Canada, CEAA/Ministry of the Environment, Responsible EA Authorities, Ministry of Transport, others. There is likely a need to include the First Nations (Mississauga of the First Credit) who have a land claim on all of the Toronto Islands, including the Island Airport. It was suggested that liaison be established with the City’s Transportation function, given the ground transportation issues raised by the bridge and projected traffic problems.

There was extensive discussion that, to date, the opportunity for community input on the Island Airport has been less than satisfactory. The TPA and TCCA were characterized as having done a poor job in liaising with the public. There was agreement on the need to ensure that a proper process to ensure public input is in place, in respect to all matters pertaining to the Toronto Island Airport. This will be the principal objective of TIACAC.

4. Item 7: Lawsuit. Staff reported that the deadline to get the TPA lawsuit settlement item on the agenda for Policy and Finance was May 5, and that the TPA did not meet it. Councillors Chow and McConnell expressed concern that other councillors appeared to be familiar with the lawsuit negotiations but they did not, even though it was their wards that are directly affected.

Staff explained that the lawsuit negotiations were being done by Elaine Baxter-Tahir and the City lawyer Diana Dimmer on behalf of the City, with Lisa Raitt, CEO of the TPA along with a private firm representing the TPA. Staff were unsure whether other Councillor’s were involved. So far the settlement has not been approved by Council. It needs to go to Policy and Finance Committee first, then on to Council.

Roger Shaw asked why the lawsuit settlement was being conducted behind closed doors when, in fact, both parties are public bodies. Pam McConnell noted that the most directly affected local Councillors were also being excluded.

Extensive discussion took place as to why the settlement has been delayed and why it is not being made public. There was agreement that there should also be a reasonable period for public review of the settlement before it is dealt with at Committee.

5. Item 8: Meeting Council Conditions:

It was agreed that all matters pertaining to meeting council conditions in respect to the building of the bridge to Toronto Island and the redevelopment of the airport, and related dramatic expansion in commercial passenger volumes, should be referred to TIACAC prior to going to Committee or Council. Staff noted that some of the conditions are having problems being met. For example, one condition requires streetcar tracks on the

bridge and the TTC is reported to have said this is not possible due to the degree of slope (8 percent).

Councillor McConnell expressed the need that ample notice be given to councillors if conditions are being changed. Councillor Chow wants staff to go through conditions carefully so they can fully report on what conditions the TPA can't meet and conditions where something has been done, but where the terms are unclear.

Staff responded that they cannot respond more thoroughly because they need more information from the TPA, need to have Council's conditions more clearly defined (expanded/details) and have more precise answers from Dillon Consulting, who is a contractor to the TPA. They will pursue this.

The committee agreed that the bottom line is to ensure that the conditions are being fully met and that they are guaranteed in writing.

Councillor McConnell made the point that when a condition cannot be satisfied it would take a 2/3 vote of council to amend the condition, in the first year after the November 28 2002 Council vote.

6. Item 9: TPA Environmental Assessment:

Boris Broz, Chair of the CAIR EA committee, reported that new federal regulations, enacted in 1999, do require a new EA. The TPA has finally acknowledged this and has indicated it intends to bring forward much of the content from the old EA but it is not clear which particular aspects. The old EA material does not address the changes that have occurred since 1998, such as an increase in the population of the area and the reconfiguration of the street pattern. It also does not address the purpose of the bridge, which is to redevelop the entire airport site to allow a dramatic increase in passenger volumes

Staff are monitoring the EA issue but not doing a formal review as it is under Federal jurisdiction. Councillor Chow asked staff to be much clearer about the requirements of the EA so Council can be satisfied that it is appropriately done.

7. Item 10: Current Airport Operation Issues:

There was extensive discussion of problems with the current airport operation, including water pollution and noise pollution.

Staff will check with the city's noise by-law expert, to review the TPA's claims regarding NEF noise contours.

8. Resolutions:

The following resolutions were passed by TIACAC:

Be it resolved that:

- (a) City staff be requested to refer all matters pertaining to the Toronto Island Airport to TICAC, prior to their submission to City Council or its committees, for advice and comment from TICAC;
- (b) City staff be requested to bring forward to TIACAC, timely and up to date reports of any work underway by the Toronto Port Authority, to satisfy City Council's conditions in respect the building of a bridge to Toronto Island Airport and the expansion of commercial air operations from this airport;
- (c) The Community AIR (Airport Impact Review) submission of April 9 2003, to the city's CAO and senior staff, appended to these minutes, be adopted as the basis for reviewing and assessing the meeting of City Council's conditions, regarding the bridge and related airport expansion, and that City staff be so notified (see Attachment A); and
- (d) TIACAC express concern that the public and most members of City Council have not been made aware of the Toronto Port Authority lawsuit terms, and request that such terms be made available to TIACAC, at the earliest possible moment and in sufficient time for review by TIACAC at its regularly scheduled meeting of 3 June 2003.

The Committee further reports that it requested the Co-Chairs to write an immediate letter to the Chairman and to the CEO of the Toronto Port Authority, inviting them to submit any matters to TIACAC, for its 3 June 2003 meeting, that they might wish to bring forward to the City's Policy and Finance Committee meeting of 12 June 2003. The letter was hand delivered to the Toronto Port Authority head office on 4 May 2003 and a copy is attached (see Attachment B).

The Committee further reports that it asked City planning staff to report to the 3 June meeting of TIACAC on the status of each of the conditions imposed by Council at its 29 November 2002 meeting in respect to the bridge and airport expansion and to provide any related submissions to the City, provided by the Toronto Port Authority, its contractors or agents.

9. Next Meeting: June 3 at 7:30 PM at Toronto City Hall:

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Attachment A - Council conditions re Island Airport

Date: April 9 2003

To: Shirley Hoy, Paula Dill, Paul Bedford, Elaine Baxter-Trahir

Dear Shirley, Paula, Paul and Elaine,

This letter is further to the issue of ensuring community input into the satisfying of conditions, imposed by council, related to the “conditional approval” of a bridge to the Island Airport, the redevelopment of the airport site and the expansion of commercial passenger services.

We understand that the Councillors with the most directly affected constituencies, Councillors Chow, McConnell and Pantalone, have discussed with their constituents the most effective way to ensure the required community input into all matters dealing with the Toronto Island Airport. As a result, we understand that a new Toronto Island Airport Community Advisory Committee (TIACAC) is in the process of being established, co-chaired by Councillor Chow and a community person (to be determined), with representatives from key communities, as well as Councillor McConnell and Councillor Pantalone. You should shortly expect to hear from the co-chairs regarding the committee composition and how it intends to operate.

This creation of TIACAC now allows for more effective community input into the process of the TPA “satisfying” council’s conditions re this project, all of which impact directly on adjacent communities. As well, this committee is positioned to provide input into “precedent” needs, related to: public input into certain aspects of the settlement of the TPA lawsuit; the requirement for a proper environmental assessment; and approval under the *Navigable Waterways Protection Act*.

Many of the council conditions have significant implications and need to be addressed separately, with one or more public meetings at the inception of each review and a subsequent public meeting to present draft recommendations for community comment before they go forward to the appropriate city committee (for most conditions, to Planning and Transportation Committee). The committee, in turn, would then follow normal procedure and schedule public deputations before debating the matter and making its recommendations to council. We understand the lawsuit terms are going forward separately to the Policy and Finance Committee and will be made public and open for deputations, when that occurs.

There appear to be about two dozen conditions which must be met before this matter is brought forward to committee and to Council. There is no rationale for short circuiting this process. We now have confirmation that a new Environmental Assessment is required for the bridge and airport expansion project. This has been confirmed by the Canadian Environmental Assessment Agency. The TPA previously had told the city that they met all EA requirements but this assertion was clearly wrong. One of the consequences of the new EA requirement is that the entire process of approvals most likely will be dealt with by a new council, sometime during its 2004 - 2006 term, after a final sign-off on the EA requirement and after any appeals and judicial reviews are completed in respect to that process.

### Specific Conditions:

What follows are Community AIR's preliminary views as to what needs to be addressed before various conditions can be considered satisfied. We will submit these to the TIACAC, where we expect other community participants will have additional matters which they wish addressed. The conditions follow the same numbering scheme as the clause as amended by Council, on November 29 2002:

- (1) (i)(a) TPA retains a qualified traffic consultant to monitor all traffic-related factors:

The community wishes to take part in discussions on the nature of the consultant to be hired, their funding, reporting relationships and authority, as well as in defining traffic-related matters, environmental factors, mitigation measures and related report formats, as well as measures open to the community to correct environmental and traffic related problems as they are identified.

These must be agreed upon, before this condition can be considered satisfied. It is important to ensure representatives of the boating community are involved early in the discussions of any protocol involving the operation of the lift bridge. Computer simulations almost certainly will be required.

- (1)(i)(e) TPA establish noise abatement procedures:

Currently there are no meaningful noise abatement procedures in place. Some of those which need to be developed include flight path changes, restrictions on classes of planes and engines, restrictions on engine revving during maintenance, elimination of training and sight seeing flights, relocation of the medevac helicopter service to a more strategic site, blast shields, sound proofing programs for adjacent buildings, etc. An underlying problem is the lack of effective baseline noise measurements. The nature of these must be determined and a comprehensive set of baseline measures must be taken. The community must be involved in developing such procedures and recommending an effective abatement program, including penalty and compliance requirements, before this condition can be considered satisfied. This is a very significant condition and must be done properly before council gives formal approval for expanded commercial air operations.

- (1)(ii)(a) TPA guarantee no cost to the city and provide a performance bond:

The community wants to be involved in determining the nature of the performance bond or other instrument to ensure that it has real teeth and protects taxpayer interests, before this condition can be considered satisfied. Given the inappropriate intertwining of the lawsuit payout by the city to the TPA it appears that city taxpayers will be paying for every aspect of the project. This will likely set up predictable and severe default scenarios, which require assessment.

- (1)(ii)(b) TPA provide a MOU shielding the city from cash flow shortfalls:

The community wants to review the terms and conditions of the MOU to shield the city from shortfalls in the financing of the airport's infrastructure improvements, before this condition can be considered satisfied. To make such an assessment requires a fresh review of the TPA airport business plan, given the dramatic collapse of aspects of the air transportation system in the last few months and the perceived inadequacy of the original TPA business plan. To date neither the city nor the community have conducted a proper business plan evaluation.

- (1)(ii)(c) TPA develop a comprehensive protocol for Emergency Medical Services:

The community has very grave concerns that a proper emergency protocol for the proposed expansion can be developed, in respect to either emergency marine services or land based services, given both land and water-based congestion problems, caused by the operation of the lift bridge. We want to be involved in a public process to ensure a protocol is developed that meets the needs of area residents and the boating community, as well as the needs of the expanded airport. The traffic and bridge management issues will require realistic computer simulations. As well, there is a need to explore more carefully the obligations of the TPA and Transport Canada to meet recognized emergency response requirements on site and at their own expense.

- (1)(ii)(d) TPA provide a transit strategy to encourage half of all trips by public transit:

A public process of consultation must be established to review any proposed changes to waterfront transit routes to try to achieve the goal of half the trips to the expanded airport being made by public transit. There are serious concerns that this goal cannot be met, causing traffic havoc in waterfront communities and degrading existing transit services. If the goal cannot be met, it will trigger a need for traffic capacity studies, enhanced traffic management solutions and a whole new parking strategy and related environmental assessments

- (1)(ii)(e) A community advisory committee be established:

Previous efforts to establish a community advisory committee have been unsatisfactory. Community leaders must be involved in setting the terms of reference of the committee and its method of operation, before this condition can be satisfied. This issue has been resolved with the imminent creation of the Toronto Island Airport Community Advisory Committee (TICAC), as described above. It will provide a vehicle for intensive community input into assessing the TPA's attempts to meet city conditions.

- (1)(ii)(g) TPA design the bridge to include a streetcar track:

As noted earlier, in respect of condition 1)ii)d), any change to local transit systems, including the addition of streetcar tracks down lower Bathurst street to cross the bridge, must be subject to public discussion and review before this condition can be satisfied.

- (1)(ii)(h) TPA limit car parking facilities to 450 spaces on the airport lands:

It is unclear what level of parking is required or tolerable or how the TPA intends to configure parking for up to 450 cars on the airport site and what the impact will be on the adjacent neighbourhood. This must be subject to a full public review, which includes participation by adjacent residents and community associations, before this condition can be satisfied.

- (2) Approval of recommendation 1) be conditional on settlement of the TPA lawsuit:

It is important that the proposed settlement terms receive intense public scrutiny because of the impact of the lawsuit settlement on the airport expansion proposal and on waterfront residents and users and the boating community. It is a perversion of public process to link two separate issues. There is a need to review in detail the impact of the land giveaway on the redevelopment of the Port lands and the impact of the airport expansion in dampening existing real estate values and the redevelopment value of the entire waterfront. Only after such an analysis is completed can the virtues of the settlement be assessed.

- (3) TPA to fund landscape improvements:

Community residents must be involved in the design of streetscape and parks improvements along Bathurst Quay and funding guarantees must be secured from the TPA before this condition can be satisfied.

- (4) TPA confirm acceptance of the conditions:

Conditions to be accepted must be fully fully spelled out, as described in this memo, with all of their implications carefully reviewed and with full public participation in their development. Otherwise, we expect that few of the conditions will be defined in a meaningful, measurable and enforceable way, allowing the TPA to effectively bypass their intent.

- (5) City Solicitor report on on changes to the Tripartite Agreement:

Public review and input is required of the language of any proposed amendment to the Tripartite Agreement, before such wording is submitted for Council approval to determine its full impact on the community, including environmental and health impacts, property value impacts, nuisance impacts and the resulting potential liabilities to the city.

(6) Taxi service by an open taxi stand:

The community expects that the majority of vehicular trips to and from the airport will be by taxi. The neighbourhood will be clogged with taxis, especially during the 15-minute periods when the lift bridge is up. Community consultation is required, as part of a master traffic plan, before this condition can be satisfied. A taxi management system will be essential.

(7) TPA construct a terminal building to allow direct streetcar access:

The proposed streetcar “loop” has not been defined but it will likely be very tight and noisy, disturbing area residents. The design of any such loop should take into account community input, before this condition can be satisfied. There has been no definitive terminal design provided by the TPA and this condition cannot be validated until such a terminal design is forthcoming.

Note: The Council resolution went on to describe several other conditions... “It is further recommended”, using a different numbering system which is shown below:

(2)(a)(i) TPA agrees that planes to be used to be new and built in Toronto:

The terms of the binding agreement re planes to be purchased to be built in Toronto will be subject to intense public scrutiny to ensure there are no loopholes. There must be proper notice and an appropriate venue for the public to comment on any such agreement before it is submitted to Council. Aircraft leasing, buy back, financing and sales agreements are notoriously fickle and easy to sign on the one hand and cancel on the other. The only sure guarantee is by a penalty system and performance bond.

(2)(a)(ii) TPA complete a storm water management plan:

There must be an opportunity for public review and comment on the storm water management system. There is a strong community concern that the current airport is seriously polluting Toronto Bay and Lake Ontario and this will only worsen with an expanded airport. This will also necessitate an environmental review.

(2)(b)(i) TPA design an improved pedestrian environment:

The detailed urban design plan for pedestrian areas, waterfront trail, viewing areas and public art must have strong community involvement before this condition can be satisfied. The funding level must be established and guaranteed funds provided.

(2)(c) Reports every 3 years on traffic, transit and environmental factors:

The format of the periodic reports on traffic, transit and environmental issues, involving 4 city departments and the process for funding and carrying out such studies, as well as remedial actions which might be taken must all be discussed with the affected communities and an agreed upon process forwarded to Council, before this condition can be satisfied. The benchmarks to be reviewed must be developed, in detail and ahead of time, before this condition can be satisfied.

As Community AIR has attempted to illustrate above, over a dozen of council's conditions will require significant input from the public at the beginning, not just the end of the process, before Council can consider whether or not they have been met. It is likely that a number of conditions cannot be met but that has yet to be determined.

We do not believe city staff should be carrying out any work to advance the satisfying of these conditions until such time as the conditions precedent are resolved: the settlement of litigation with the TPA is resolved as something separate from the airport issue; approval of the bridge under the Navigable Waterways Protection Act; and certification that a proper Environmental Assessment has been fully approved. We reiterate, this last requirement is very contentious in terms of its scope, level of detail and nature of community participation. All we know is that a new EA is required and the community will be calling for a detailed and comprehensive review. City resources should not be spent on the airport issue until such time as the TPA has satisfied its unfulfilled EA requirements.

Nor should any significant work be initiated by the city until the need is met for public involvement at the outset of any work program. This will be accomplished most effectively by submitting any proposed resolutions of council's conditions or any other airport related matters to the TIACAC.

In closing, I would reiterate that these are Community AIR's preliminary comments on the process to be followed and issues to be addressed. We fully expect other community interests to emerge through the TIACAC, if and when the TPA undertakes the process of attempting to meet council's conditions.

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Attachment B - TIACAC Invitation to TPA to attend 3 June TIACAC meeting

(Communication dated May 7, 2003, addressed to  
Mr. Henry Pankratz, Chairman, Toronto Port Authority,  
from Councillor Olivia Chow, Council Co-Chair and  
Pam Mazza, Community Co-Chair, TIACAC)

This is to inform you that a new Toronto Island Airport Community Advisory Committee (TIACAC) has been established and held its inaugural meeting on May 6 at Toronto City Hall.

The committee was established at the request of City Council, as part of a package of recommendations, passed at its November 29 2002 meeting.

TIACAC consists of representatives of about a dozen concerned community-based organizations and has a City Council co-Chair, Councillor Olivia Chow, and a Community co-Chair, Pam Mazza. Two other Councillors, whose wards are directly affected by the airport, Joe Pantalone and Pam McConnell, are also members of the committee.

The purpose of the committee is to ensure proper and adequate public input into all City Council decisions involving the Toronto Island Airport. Community representatives have met with the City's CAO, Shirley Hoy, and other City officials, prior to the inaugural meeting of TIACAC, and have received firm assurance that staff are committed to obtaining community input before presenting Island Airport related matters to Council or its committees.

There is now in place an open forum that will ensure any matter, involving the Island airport, will be subject to public scrutiny and discussion. All matters pertaining to the Toronto Island Airport will be referred to TIACAC by city staff for TIACAC to ensure full public input, prior to their submission to City Council or any of its committees.

There are currently several matters that the committee is anticipating it will deal with, when you are prepared to bring them forward. These include: the terms of settlement of the TPA lawsuit against the City, which is intertwined with the airport and its future; the resolution of the dozen or more other Council conditions re the bridge and airport expansion which have not been resolved and which require community input; the nature and scope of the new Environmental Assessment and how public participation will be achieved; the outstanding requirement for approvals under the Navigable Waterways Protection Act; and a variety of other matters.

You and other TPA representatives are cordially invited to attend the next regular meeting of TIACAC on Tuesday 3 June 2003 at 7:30 PM in Committee Room # 3 at Toronto City Hall, to provide an update on Island Airport issues and to provide details on any of these matters that need to be brought forward for public review, as part of this new and more open process, before they proceed to committee or Council. In particular, if there are matters you wish to bring before the 12 June Policy & Finance Committee, TIACAC will be happy to review them, to ensure that they receive proper public scrutiny and assessment.

TIACAC is expressly designed to overcome the strong criticisms leveled at City Council and the TPA, that the public has been kept in the dark and has had no say in decisions, involving the Island Airport. On behalf of community members, politicians and staff involved in TIACAC, we look forward to working with the TPA to ensure that the public interest is paramount in any future matters involving the Island Airport.

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The Policy and Finance Committee also had before it the following material and communications, copies of which are also on file in the office of the City Clerk, City Hall:

- Appendix D entitled, "Draft Minutes of Settlement, November 2002" referred to in the joint report dated May 28, 2003, from the Chief Administrative Officer, the Commissioner of Urban Development Services and the Chief Financial Officer and Treasurer;
- (June 9, 2003) from Mr. Robert J. Deluce, President and CEO, Regional Airlines Holdings Inc.
- (June 2, 2003) from Mr. Patrick Flynn, Commodore, Toronto Hydroplane and Sailing Club;
- (June 2, 2003) from Mr. Patrick Conner;
- (June 2, 2003) from Ms. Susan Stock, Toronto;
- (June 3, 2003) from Mr. Ken Rodmell and Ms. Jane Rodmell;
- (June 4, 2003) from Mr. Peter Ashby, MD;
- (June 4, 2003) from Mr. Dennis Bryant, Bryant Renovations and Fine Carpentry;
- (June 3, 2003) from Mr. Ira R. Rabinovitch;
- (June 4, 2003) from Mr. Josh Wiwcharyk and Ms. Niki Walker;
- (May 27, 2003) from Ms. Jennifer Scott;
- (June 6, 2003) from Mr. Ed Tasca;
- (June 6, 2003) from Ms. Susan Stock;
- (June 6, 2003) from Ms. Renee Knight, Y.I.A. Consulting, Personal and Business Consulting, Stress Management;
- (June 6, 2003) from Ms. Alanna McDonagh;
- (June 6, 2003) from Mr. Ira R. Rabinovitch;
- (June 9, 2003) from Ms. Brenda Ferris;
- (June 9, 2003) from Ms. Karen James;
- (June 10, 2003) from Mr. Gene Trendyle;

- (Undated) from Mr. Mitchell Gold, Vice-President, North American Affairs;
- (June 11, 2003) from Mr. Roger Shaw, Vice President, Ontario Sailing Association;
- (Undated) from Mr. John G. Spragge;
- (June 11, 2003) from Ms. Krystyn Tully, Executive Director, Lake Ontario Waterkeeper;
- (June 11, 2003) from F. J. St. Pierre;
- (June 11, 2003) from Mr. Tibor Major;
- (June 11, 2003) from Mr. Pierre Beaudoin;
- (June 12 and 16, 2003) from Mr. Peter Holt;
- (November 5, 2003) from Mr. Mr. Paul Richard Erato addressed to Heritage Toronto;
- (June 16, 2003) from Mr. Max Moore;
- (June 12, 2003) from Ms. Janet Pelley;
- (Undated) from Mr. F. J. St. Pierre;
- (May 1, 2003) from the President, CAW Local 112;
- (June 11, 2003) from Mr. Hamish Wilson;
- (June 9, 2003) from Ms. Helen Kenney and Mr. Cliff Mahood.
- (June 12, 2003) from Ms. Elizabeth Quance.
- (June 12, 2003) from Mr. Rosario Marchese, MPP Trinity-Spadina; and
- (June 13, 2003) from Katheleen H.

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Ms. Elaine Baxter-Trahair, Waterfront Project Director, Urban Development Services made a presentation to the Policy and Finance Committee in connection with the foregoing matter and filed a copy of her presentation material in regard thereto.

Ms. Lisa Raitt, Chief Executive Officer and Harbour Master, Toronto Port Authority also made a presentation to the Policy and Finance Committee in connection with the foregoing matter.

The following persons appeared before the Policy and Finance Committee in connection with the foregoing matter:

- Ms. Jane Jacobs;
- Mr. Allan Sparrow, Community Air, and filed a submission in regard thereto;
- Ms. Gale Zoe Garnett;
- Mr. Bill Freeman;
- Mr. Stephen Seaborn, President, Gooderham & Worts Neighbourhood Association and filed a copy of his submission in regard thereto;
- Mr. Boris Broz;
- Mr. Cameron Miller, Vice President, External, St. Lawrence Neighbourhood Association;
- Ms. Maya Toman;
- Ms. Janice Zemdegs;
- Ms. Sylvia Pellman, President, Bathurst Quay Neighbourhood Association;
- Mr. Marc Brien;
- Mr. John Stephenson;
- Ms. Pam Mazza representing the Toronto Island Airport Community Advisory Committee;
- Ms. Penelope Tyndale on behalf of Little Trinity Church;
- Ms. Terri Tenberg and gave a video presentation in regard thereto;
- Ms. Julie Beddoes;
- Ms. Susan Costigane;
- Mr. Max Moore and filed a submission in regard thereto;
- Mr. Barry Lipton, Co-Chair, Toronto Island Community Association;
- Mr. Robert Hollis;
- Mr. Bob Kotyk and filed a submission in regard thereto;

- Mr. Al Will, Executive Director, Ontario Sailing Association;
- Mr. Michael Page;
- Mr. John McClusky;
- Mr. Lester Brown;
- Mr. Paul Farrelly;
- Mr. Mitchell Gold;
- Mr. Richard Reinert, PhD;
- Mr. Gerald Englar and filed a submission in regard thereto;
- Mr. Hamish Wilson;
- Ms. Elizabeth Quance, Niagara Neighbourhood Association;
- Ms. Joan Doiron, and filed a submission in regard thereto;
- Mr. Keith Stewart, Toronto Environmental Alliance, and filed a submission in regard thereto;
- Ms. Diana Midwinter; and filed a submission in regard thereto;
- Mr. Peter Holt and filed a submission in regard thereto;
- Mr. Gerry Shiner;
- Mr. Graham Mudge, and filed a written submission in regard thereto;
- Mr. David Smiley and filed a submission in regard thereto;
- Ms. Janet Hebbes and filed a submission in regard thereto; and
- Ms. Marlene F. Simmons.

The following Members of Council also appeared before the Policy and Finance Committee in connection with the foregoing matter:

- Councillor Olivia Chow, Trinity-Spadina;
- Councillor David Miller, Parkdale-High Park; and
- Councillor Denzil Minnan-Wong, Don Valley East.

*(City Council at its meeting on June 24, 25 and 26, 2003, had before it, during consideration of the foregoing Clause, the following joint report (June 23, 2003) from the Commissioner of Urban Development Services, the Chief Financial Officer and Treasurer, and the City Solicitor:*

*Purpose:*

*The purpose of this report is to comment on issues arising from the June 12 & 16, 2003 Policy and Finance Committee, including motions submitted by Councillor Bussin and a submission from Mr. Graham Mudge.*

*Financial Implications and Impact Statement:*

*The financial implications of the proposed settlement of the litigation are set out in the joint report from the Chief Administrative Officer, the Commissioner of Urban Development Services and the Chief Financial Officer and Treasurer.*

*Recommendations:*

*It is recommended that this report be received for information.*

*Background:*

*At its meeting of June 12 and its special meeting of June 16, 2003, the Policy and Finance Committee recommended the adoption of the joint report pertaining to the proposed settlement between the City, TEDCO and the Toronto Port Authority ("TPA"). In addition, the Policy and Finance Committee recommended the adoption of the joint report dealing with the Tripartite Amending Agreement relating to the TCCA.*

*The Policy and Finance Committee referred motions from Councillor Bussin to staff for a report to the meeting of Council on June 24, 2003. In addition, the Committee referred the submission of Mr. Graham Mudge to the Chief Financial Officer and Treasurer for a report to Council on June 24, 2003.*

*At its meeting in November 2002, City Council approved a framework for settlement with the TPA. At that time, Council was presented with draft Minutes of Settlement and staff were instructed to negotiate and agree, with the parties to the dispute, all of the legal documents necessary to conclude the settlement of the litigation. These documents included*

- (i) Final Minutes of Settlement;*
- (ii) the Structured Settlement Agreement;*
- (iii) the Ground Lease;*
- (iv) releases to be exchanged between the parties.*

*Subsequent to the City Council meeting, City staff, TEDCO staff and its legal advisors have worked on negotiating and preparing the legal documents necessary to conclude the settlement with the TPA. All of these documents are included in the reports to City Council. They have been approved by the TPA Board and TEDCO's Board. In addition, the documents contain*

*comments received from the Federal Government. However, the Federal Government has not yet communicated the Minister's acceptance of the settlement documents.*

*The recommended settlement documents are consistent with the framework for settlement approved by City Council in November 2002. Any substantive changes to these documents are problematic in that there is a risk that the TPA or the Federal Government will not agree to the changes and the litigation would continue.*

*Comments:*

*Set out below are comments with respect to Councillor Bussin's motions organized on the basis of subject matter.*

*Two-Third Majority Issue*

*It appears that Councillor Bussin is suggesting that in order to approve the settlement documents it is necessary for Council to "reopen its approval of the principal terms of the lawsuit, by a 2/3 majority of councillors". This is not required. As set out above, at its November 2002 meeting City Council approved the framework for a settlement with the TPA. It was always contemplated that City staff would be reporting back on the final settlement terms and the final settlement documentation. There was a specific direction from City Council that City staff report back on the final lease documents. At the time this matter was before Council in November, the parties still needed to negotiate the legal agreements, including the Ground Lease. Accordingly, there was no concluded settlement arising from the November 2002 Council meeting that requires a reopening.*

*Ground Lease*

*The terms of the Ground Lease are consistent with the framework for settlement approved by City Council in November. Subsequent to the Council meeting in November, the parties have conducted lengthy negotiations to complete the legal documentation, including the Ground Lease. The Ground Lease that is before Council contains options for the renewal of the lease beyond 20 years. This is consistent with the draft Minutes of Settlement that were before City Council in November as the draft Minutes contained a provision that "options for renewal of leases will be discussed in good faith by TEDCO". In summary, the provisions in the Ground Lease dealing with the options granted to the TPA to extend the Ground Lease are:*

- (a) essential business elements of the business terms of the settlement, approved by the Boards of both TEDCO and the TPA;*
- (b) consistent with, and the result of, the draft Minutes of Settlement attached to the November report which stated that TEDCO would enter into good faith discussions with the TPA concerning options to renew;*
- (c) the subject of considerable negotiation; and*

- (d) *consistent with the stated principle in the Minutes of Settlement “that Toronto should have an active port function managed by the Toronto Port Authority”. If they are deleted or amended in any way, there is a risk that the TPA and the Federal Government will not agree to the settlement package and the litigation would continue.*

#### *Planes Purchased in Toronto*

*City staff have included a provision in the Tripartite Amending Agreement that deals with the issue of the TPA using reasonable commercial efforts to enter into agreements with its proposed partners stipulating that airplanes to be purchased will be built in Toronto by unionized workers, as long as the prices are competitive. This language has been agreed to by the TPA. A change to the language is problematic. The wording has been carefully drafted so that it is not viewed as being contrary to public policy or in restraint of trade. Any change to the wording, having regard to the legal complexities involved, may create a risk that the TPA will not agree to the settlement package and the litigation would continue, and also may result in a provision that would be unenforceable as being contrary to public policy.*

*The information we have at this time is that Regco and Bombardier have signed a letter of intent for the purchase of 10 Q400 turboprop aircraft, with an option for an additional 15 aircraft. Regco has given Bombardier a deposit to secure a delivery position for the airplanes. The parties are in the final stages of negotiating a purchase agreement. Regco has advised that it is committed to the Q400 as it believes it is the best aircraft to operate out of the TCCA.*

#### *Payments in Lieu of Taxes*

*As set out in the Minutes of Settlement and the Structured Settlement Agreement, the TPA has agreed to make payments in lieu of realty taxes (“PILS”) in respect of the lands the TPA owns or leases. The TPA disputes the amount of the PILS which the City calculated, based on information provided to it by the Municipal Property Assessment Corporation (“MPAC”). The TPA and the City have had meetings to discuss the issues relating to the PILS. It is clear that certain information provided by MPAC which was used to calculate the PILS is not accurate. Both the City and the TPA are working diligently on trying to resolve the outstanding issues. The settlement documents contain the TPA’s covenant to pay the PILS once there is an agreement on the proper amount for the PILS. Once again, if there is a substantive change to these provisions there is risk that the TPA will not agree to the settlement package and the litigation would continue.*

#### *Harbour User Fees*

*Similarly, the settlement documents reflect that the parties will use their best efforts to resolve the issues expeditiously between them regarding harbour user fees. The TPA is legally entitled to charge fees. The City disputes the amount of the charge imposed and takes the position that it is discriminatory. There is a mechanism for resolving disputes by making application to the Canadian Transportation Agency. In the event the City and the TPA cannot agree on this issue, it is anticipated that the City will bring an application to the Canadian Transportation Agency.*

*It is important to clarify that the City has not paid any cash to the TPA for Harbour User Fees and will not do so until this issue has been resolved. Once again, if there is a substantive change to these provisions there is risk that the TPA will not agree to the settlement package and the litigation would continue.*

### *Response to Mudge Analysis*

*Mr. Mudge's submission alleges that the May 28, 2003 staff report on the proposed settlement deliberately underestimates the costs to the City of the proposed settlement. According to Mr. Mudge's report, this underestimation of the costs is the result of a failure to present the "real dollar" costs of the payments to the TPA, an understatement of the opportunity costs of leasing land to the TPA, and a misinterpretation of the cost implications of the Cherry St. bridge. His report also raises issues with respect to the City's debt financing of the TPA subsidies and TEDCO's sharing of environmental remediation costs with the TPA.*

*The following is the staff response to Mr. Mudge's claims.*

### *The "Real Dollar" Costs of the Settlement*

*Mr. Mudge alleges that the staff report "attempts to minimize the real costs to Toronto taxpayers by measuring costs in net present value terms and not real dollars, and then fragmenting the total costs into smaller components".*

*There are two components to the staff response to this allegation:*

- 1. In evaluating the proposed settlement, it is important to focus on the savings resulting from the settlement (relative to the City's existing subsidy obligations) rather than on the absolute sum of the settlement payments.*
- 2. The net present value is, in fact, a more "real" representation of the value of the settlement payments than the nominal sum of these payments.*

*Mr. Mudge appears to take the position that Council should focus on the absolute size of the settlement in assessing whether the settlement is reasonable. However, it is critical to remember that the City does have binding legal obligations to provide ongoing capital and operating subsidies to the TPA as a result of the 1994 Subsidy Agreement. This agreement was entered into as part of the consideration for the land transfers between the TPA (then the THC) and TEDCO.*

*Therefore, the critical issue is not the absolute magnitude of the settlement amount, but rather the comparison of the settlement amount with the amount the City would be obligated to provide under the existing agreement. However, in order to carry out this comparison, the different timing of the payments must somehow be taken into account. This is conventionally done by applying a discount rate to the future payments to account for the fact that a dollar paid tomorrow is worth less than a dollar paid today. This allows for an apples-to-apples comparison between the two sets of cash flows.*

*It was this need to compare the two values on a consistent basis that principally led to the report's focus on net present values (NPV). Although Mr. Mudge contends that the nominal sum*

*of the payments should have been used instead, the nominal sum of the payments under the existing subsidy cannot be calculated as the payments extend indefinitely.*

*In carrying out the NPV comparison, City staff did, as Mr. Mudge alleges, take a “conservative approach” towards estimating some of the costs. However, this conservative approach was applied in a way that conservatively presented the costs of the City’s status quo obligations under the existing subsidy agreement.*

*For instance, Mr. Mudge suggests that a 4% discount rate, based on the yield on Government of Canada bonds, rather than a 5% (short-term) or 7% (long-term) discount rate, should have been applied in determining the NPV values. The application of such a low rate would be an inaccurate presentation of the City’s cost of capital as the City’s cost of capital is always higher than the Federal government’s. However, if a 4% long-term discount rate had been applied in the comparison, its use would have actually exaggerated the savings resulting from the proposed settlement. As the payments under the existing subsidy agreement stretch out to infinity, the application of a lower discount rate would actually increase their value more than the value of the proposed settlement payments, which end after ten years.*

*The original NPV analysis in the May 28, 2003 report also represents a conservative calculation of the costs of the existing subsidy payments as the NPV was only calculated over a 49-year period. The payments under the existing subsidy agreement could, in fact, be treated as perpetuities. In addition, the inflation factors used in the original analysis of the existing subsidy cost were low. An inflation rate of only 3% every five years was applied to the existing operating subsidy and no inflation factor at all was applied to the capital subsidy. Even if it is assumed that the subsidies will lag overall CPI inflation (because of fiscal constraints), these assumptions are likely too low to apply over such a long period.*

*The table below recasts the comparison using calculations out to infinity and with an assumed inflation rate of 1.5% annually applied to both the operating and capital subsidies. It should be noted that the payments under the proposed settlement are fixed and are not indexed to inflation.*

<i>Table 1 – Revised Comparison of Present Value Costs</i>		
	<i>Estimated Existing Subsidy Costs (payments extend indefinitely)</i>	<i>Settlement Costs (costs end after 49 years)</i>
<i>Capital Payments</i>	<i>\$26.5 million</i>	<i>\$20.6 million</i>
<i>Operating Payments</i>	<i>\$50.4 million</i>	<i>\$24.3 million</i>
<i>2001/2 State of Good Repair</i>	<i>0</i>	<i>\$1.5 million</i>
<i>\$4.0M (Prior years payment)</i>	<i>0</i>	<i>\$3.7 million</i>
<i>Works Yard Concession</i>	<i>0</i>	<i>\$0.25 million</i>
<i>Lease Arrangements</i>	<i>0</i>	<i>\$5.6 million</i>
	<i>\$76.9 million</i>	<i>\$55.95 million</i>

*As mentioned above, Mr. Mudge contends that the critical issue is, nevertheless, that Council must be informed of the “real dollar” cost of the settlement. However, the way in which this terminology is applied in Mr. Mudge’s report appears to be contrary to that normally applied in any financial analysis. It becomes clear that when Mr. Mudge refers to “real dollar” costs, he is*

*referring to what is conventionally considered the nominal dollar sum of the payments. Usually, the term “real” is applied to figures that have been adjusted to factor out the time value of money, or at least inflation, so they reflect constant dollar costs.*

*If, as Mr. Mudge prefers, the report had referred to a \$60 million dollar settlement amount (the nominal sum of the payments), this would suggest that \$60 million in 2003 dollars was going to be spent by the City in settling the lawsuit. This would wrongly inflate the value of the settlement. The \$48.6 million NPV amount presented in the staff report reflects the amount the City would have to pay if it were to make a lump sum payment in 2003 dollars equal in value to the agreed future settlement payments.*

### *Opportunity Cost of Leased Lands*

*Mr. Mudge suggests that the staff report underestimated the opportunity cost resulting from the proposed leasing of land to the TPA. Based on Mr. Mudge’s own calculations, the opportunity cost is \$30.4 million rather than the \$5.6 million figure used in the report.*

*However, Mr. Mudge’s analysis contains a number of inaccuracies:*

- *the calculation is based on lost revenues on 52.4 acres rather than on the 26.8 acres that are actually proposed to be leased*
- *the figure of \$30.4 million appears to be based on the gross revenues that these lands would earn rather than on the net opportunity cost to the City*
- *the discount rate applied in the net present value calculation reflects the Federal government’s cost of capital rather than the City’s*

*The proposed settlement includes a provision that 25.6 acres of TEDCO-owned land on the south side of the ship channel be reserved for port uses for the duration of the leases or a period of no more than 10 years. However, TEDCO will still receive the revenues from these lands. They are not being leased or transferred to the TPA. The settlement only proposes that 26.8 acres of land be leased to the TPA.*

*On the 26.8 acres that are proposed to be leased, the opportunity cost to the City will not be the full market rents that could be charged on these lands. During the first ten years of the lease, any gross revenues earned on these lands will be deducted from the operating subsidies received by the TPA. Therefore, there is no opportunity cost associated with leasing the lands during this initial 10-year period. It is only during the next ten years (years 11-20) that the opportunity cost equals the present value of the revenue that would be earned by the TPA.*

*After the initial 20-year lease period, the lease on any individual piece of these lands will only be extended if it has been occupied by port users for at least 16 of these 20 years. If the lease is extended, the TPA will have to pay rent to the City at 50% of fair market value. Therefore, the opportunity cost to the City during an initial 10 year extension (years 21-30) will be no more than the present value of 50% of the market rents for this land. A further extension will be granted if the land is used for port-related purposes for at least 8 years during the first lease extension. After 35 years, the TPA will have to increase the rent to the City to 75% of fair market*

*value. At this point the opportunity cost to the City will only be 25% of the present value of the market rents for this land. In total, the leases can only be extended to a maximum of 49 years.*

*It is accurate for Mr. Mudge to suggest that the lands will have a higher value once they have been decontaminated and if they are developed. However, the decontamination will require significant capital investment that will now be deferred. The cost of remediation will depend on the extent of the contamination and the uses to which the land will be put.*

*The City will still own these lands and any future development will increase their market value and thus the rental payments which will benefit the City in terms of realty taxes and TEDCO in terms of higher rental income.*

#### *Cherry Street Lift Bridge and Outer Harbour Armouring*

*Mr. Mudge suggests that the rehabilitation of the Cherry St. Bridge and the outer harbour armouring should be the exclusive responsibility of the TPA and not funded through the TWRC.*

*However, in the absence of settlement with the Port Authority, the City could have some funding responsibility towards these projects. The Cherry St. Bridge provides access along a City street on City property.*

*The principal purpose of the Outer Harbour Armouring is to preserve and promote beach accretion in the area of the Leslie Street Spit. Its principal purpose is not to facilitate ship traffic. The Toronto Waterfront Revitalization Corporation has acknowledged that funds for this initiative have been included in its Business Strategy for Revitalization.*

#### *Capital Subsidies to be Debt Financed*

*Mr. Mudge argues that there will be no return on investment resulting from the TPA capital subsidies to be debt-financed by the City. He suggests that only the TPA will benefit from this capital investment. However, port improvements do have a value to taxpayers as they facilitate the cost-efficient movement of commodities such as cement and salt near the City core. Without these port facilities, the costs of these commodities to City residents and businesses would increase. While this investment might not result in a direct payback to the City through fees, it does have a positive value to the City's economy. In addition, these payments to the TPA can be viewed as consideration for the lands that it transferred to the City and TEDCO.*

#### *The TPA's Environmental Assessment Process*

*A number of issues were raised at the Policy and Finance Committee regarding the TPA's 1999 Environmental Assessment (EA) for the Fixed Link and the possible need for an new EA process. These issues arose as a result of a change in Federal legislation governing assessment processes as they relate to Port Authorities and the conversion of the Toronto Harbour Commission to a Port Authority in 1999.*

*The EA completed by the TPA, then the Harbour Commission, in 1999 was conducted under the direction of Transport Canada, Fisheries and Oceans Canada, Public Works Canada and*

*Government Services Canada. Environment Canada also provided expert advice. As a Harbour Commission, however, the process was not subject to the Canadian Environmental Assessment Act. While Transport Canada, Fisheries and Oceans Canada and Public Works Canada approved the final assessment, this was following the Harbour Commission's conversion to a Port Authority.*

*On July 19, 1999 the Canadian Port Authority Regulation was enacted by the Federal Government requiring that Port Authorities ensure that EAs are completed for capital projects and that, as self regulating bodies, Port Authorities sign off on the satisfactory completion of these EAs. It is this regulation that has caused some to suggest that the TPA must complete its own EA process. The primary issue is whether or not the original assessment was completed prior to the date of the regulation. If not, the EA would have to be signed-off by the TPA. The need for such sign off did not become clear until December 2002.*

*In February 2003, the Canadian Environmental Assessment Agency recommended to the TPA that it undertake a new assessment process but indicated that this process could be based on work undertaken for the earlier report.*

*The TPA launched a second review of the environmental effects of the bridge in spring 2003. This new process takes into account the possibility of increased passenger volumes at the TCCA and potential developments in areas around the TCCA. The Federal departments and agencies involved in the original process continue to participate in this process, which is expected to conclude in August of this year.*

#### *Lands Subject to Litigation*

*As set out in the earlier settlement report, the TPA's lawsuit alleges that the transfer of approximately 612 acres of land to the City and TEDCO was improper and invalid. Many of these lands are in the Port area. Attached hereto as Appendix "A" is a map of the Port Area which identifies lands designated in Schedule "C" to the TPA's Statement of Claim. These are lands the TPA is alleging in the litigation should be returned to it. A significant benefit of the proposed settlement is that the City and TEDCO will retain ownership of these lands which will allow waterfront revitalization to proceed.*

#### *Conclusions:*

*It is recommended that this report be received for information.*

#### *Contact:*

*Elaine Baxter-Trahair  
Waterfront Project Director  
Urban Development Services  
Tel: (416) 397-4083  
Fax: (416) 392-8805  
Ebaxter@toronto.ca*

*Diana W. Dimmer  
Director of Litigation  
Legal Services  
Tel: (416) 392-7229  
Fax: (416) 392-1199  
Ddimmer@toronto.ca*

*List of Attachments:*

*Appendix "A" – Map of Land in Port Area that is subject to litigation)*

Insert Table/Map No. 1  
Waterfront Properties

*(City Council also had before it, during consideration of the foregoing Clause, the following communication (June 23, 2003) submitted by Councillor Sandra Bussin, Beaches-East York:*

*Island Airport Motions*

*Jobs for Toronto Unionized Workers in the Aircraft Industry*

- (1) City Council's approval of the Settlement and the Bridge and Airport Expansion is premised, in part, upon the creation of jobs for Toronto unionized workers in Toronto-based aircraft manufacturing businesses.*
- (2) TPA, its partner and subtenant made submissions to Council as to their willingness and ability to acquire such new aircraft in order to provide work for unionized workers in Toronto, with the intent of inducing Council to approve the Bridge and Airport Expansion.*
- (3) In the meantime (since Nov./02) the aircraft manufacturing business has suffered significant economic setbacks, with the result that Council's condition for the protection of unionized workers in the Toronto-based aircraft manufacturing business, is more critical than what it was in Nov./02.*
- (4) It has come to light through a letter from TPA's partner REGCO, that such parties wish to evade the responsibility of acquiring new manufactured aircraft built by unionized workers in Toronto.*
- (5) The Minutes of Settlement and the Tripartite Amending Agreement must be drafted in a manner that satisfied Council's stipulation in protecting the interests of unionized workers in the Toronto-based aircraft manufacturing business.*

*Motion to amend clause (2) of staff report also P6 – F1 All new Aircraft related to the Enhancement of TCCA to be built in Toronto*

*Therefore be it resolved:*

- (a) The Minutes of Settlement and Tripartite Amending Agreement be revised in satisfaction of the condition for approval stipulated by Council last Nov./02, as follows;*

*Minutes of Settlement:*

*Add the new heading and paragraph,*

*“Jobs for Toronto Unionized Workers in the Aircraft Industry”*

*Therefore be it resolved:*

*The Minutes of Settlement and Tripartite Amending Agreement be revised in satisfaction of the condition for approval stipulated by Council last Nov./02, as follows:*

14.a) *The TPA shall enter into a binding agreement with the City that ensures that all aircraft acquired to operate to or from the Island Airport, shall be newly manufactured by unionized workers in Toronto, except for those occasion when TPA can demonstrate that the price of acquiring such aircraft is not competitive to the price of such newly manufactured aircraft elsewhere.*

*Motion by Councillor Bussin:*

*Tripartite Amending Agreement*

*Delete subsubparagraph 1(i) (3) and insert the following in lieu thereof:*

*The Lessee acknowledges that the Lessor (The City of Toronto) approval for construction of the Bridge is conditional upon the Lessee ensuring the manufacture and acquisition of new aircraft by unionized workers located in Toronto except in the limited instance in which the price of such new aircraft is not competitive with such new aircraft manufactured elsewhere. Section 14 of the Tripartite Agreement is hereby amended by adding to the prohibition of jet-powered aircraft in subparagraph (d) the following:*

*In the addition the Lessee (TPA) shall not permit turbo prop or similarly powered aircraft to operate to or from the Island Airport in relation to the enlargement of TCCA, except turbo prop aircraft that are newly manufactured in Toronto by unionized workers, unless TPA satisfies City Council that the price of acquiring such aircraft is not competitive to the price of such aircraft manufactured elsewhere”” and except turbo prop aircraft if any, currently in use with the existing airline now in serving at the Island Airport.*

3.a) *Within ten days of the date of this Agreement, the TPA, its partners and sub tenants shall provide City Council with documented proof in the form of unconditional and duly accepted purchase orders for the immediate manufacture an acquisition of manufactured in Toronto turbo prop aircraft suitable for use at the Island Airport, at least Twelve (12) months prior to projected commencement of Bridge construction, failing which this agreement shall immediately become null and void.*

#### *SETTLEMENT OF TORONTO PORT AUTHORITY LITIGATION*

*As reported by staff on page 4 under the subheading “Council direction” of the staff report, Council approved a confidential report from the City Solicitor recommending the terms of settlement of the legal dispute in accordance with the terms contained in draft minutes of settlement attached to the staff report last November 2002. The instructions from Council to staff were as follows:*

*“To negotiate and conclude all necessary agreements and documents to give effect to the proposed settlement.” At no time was any staff member authorized to negotiate new terms for the settlement. At no time was anyone, either staff or any Councillor member authorized to negotiate any terms of the settlement that modified in any way what Council approved in the draft minutes of settlement in November 2002. The only direction given to staff was to document the business terms of the settlement adopted by Council, with the sole exception that the Chief Administrative*

*Officer was mandated to report through Policy and Finance for approval of any substantive changes to the Minutes of Settlement that arose in the discussions with the Toronto Port Authority in relation to documenting the previously approved business terms of the settlement, and in the latter event, the Chief Administrative Officer was required to provide all kinds of backup documentation and information. The Chief Administrative Officer has clearly stated that she was not submitting any substantive changes in respect of that element of Council's direction to staff. Therefore, as no substantive changes have been submitted to Policy and Finance, the Minutes of Settlement must reflect only what Council previously approved in Nov./02.*

*Having recently heard comments such as those made by Councillor Minnan-Wong to the effect that he was proud of his negotiations after the date of Council's approval last November 2002, to resolve the Settlement, it has become abundantly clear, both by his comments and the documents now presented to Council, that there have been extensive negotiations relating to new business terms resulting in material changes to the business terms of the Settlement approved by Council last November.*

*Such negotiations constitute inappropriate direction without any authority, and are entirely illegal. When I hear comments such as I have heard from Councillor Feldman weeks before Settlement documents were presented to Policy and Finance, to the effect that new business terms have been negotiated in a manner satisfactory to him, it becomes increasingly clear that over the past few months several Councillors to the exclusion of other Councillors have been briefed or partaken in negotiations that were never discussed at Council or before Policy and Finance Committee. This is the worst type of manipulation that undermines the democratic process at City Hall and seriously jeopardizes the legal validity of commercial transactions that are critical to the future of the City. If Council were to adopt the Minutes of Settlement now proposed, there would remain a risk that the validity of the Settlement could be challenged in the Courts by reason of the illegal negotiations. At the very least, it would be incumbent on Council to decide, by way of Motion requiring a 2/3 majority, to reopen each business term revised from the Minutes of Settlement as adopted by Council last November 2002 and failing such 2/3 majority support, to re-open debate on the issue. The business terms of the Settlement must be restored to those terms adopted by Council in November 2002.*

#### SUPREMACY OF CITY PLANNING DOCUMENTS

##### *Appendix D – Draft Minutes of Settlement Nov. /02*

*Paragraph 9 of the Draft Minutes of Settlement, approved in principle by Council last Nov./02, provides that TPA shall unconditionally use its best efforts to support the City's Secondary Plan for the Waterfront.*

*The Tripartite Agreement, to which the TPA is bound, already obligates the TPA to operate the Island Airport in strict compliance with Municipal requirements (see para. 16 & 24 thereof).*

*The introduction of conditions drafted in vague language and based on matters within the sole discretion of TPA, severely undermines the intention of the Nov./02 document to protect the supremacy of City planning documents.*

Motion: Therefore be it Resolved that:

*Appendix A, June 2002*

*Clause 10 of the draft Minutes of Settlement be deleted and the following (prepared in accordance with paragraph 9 of the draft Minutes of Settlement approved by City Council last Nov./02) be inserted in lieu thereof:*

*10.) TPA, unconditionally, shall use its best efforts to support the City's Secondary Plan as amended from time to time, and any TEDCO-related or sponsored development of the Portlands.*

TPA's OBLIGATION TO PAY TO THE CITY REALTY TAXES OR ITS EQUIVALENT

*TPA acknowledges that it must pay to the City payment-in-lieu of Taxes (PILS) which are based upon assessed values for TPA properties.*

*TPA disputes the assessed value of TPA properties.*

*Other property owners in Toronto must pay their realty tax bill, regardless of any pending dispute as to assessed value.*

*TPA is in arrears of PILS on which penalty interest accrues.*

*The City ought to be paid for the PILS owing by TPA pending resolution of the assessment of value of the TPA properties.*

MOTION:

*Therefore Be It Resolved That:*

*Paragraph 13 of the Draft Minutes of Settlement be deleted and the following inserted in lieu thereof:*

*13.) The City shall deduct and set off against all payments otherwise due by City pursuant to paragraphs 1 to 4 herein, all monies claimed by the City in respect of payments in lieu of realty taxes (PILS). Upon resolution of the exact amounts owing by TPA, any overpayment shall be returned to TPA.*

*AND Paragraph 5.1(b) of the Ground Lease is amended likewise.*

SETTLEMENT OF ALL ISSUES RAISED BY TPA

*The lawsuit commenced by TPA against the City, included a claim for harbour user fees, the legitimacy of which and the method of calculation of which are vehemently contested by the City.*

*One of the primary reasons that the City would consider settlement is to avoid further legal expenses and the uncertainty in outcome relating to significant monetary and property issues.*

*The Draft Minutes of Settlement approved in Nov./02 provides in paragraph 14, that all parties, which includes the TPA, shall release the other parties “in respect of the matters that were raised in the action.”*

*TPA is purporting to charge harbour user fees in the amount of \$400,000.00 per year or close to \$20,000,000.00 over the 49-year period contemplated by the present draft of the Minutes of Settlement.*

*If the parties were to leave this issue unresolved, the City would continue to face uncertainty and the risk of incurring significant further legal expense.*

**MOTION:**

*Therefore Be It Resolved that:*

*Paragraph 12 of the draft Minutes of Settlement be deleted*

*And*

*The exception for harbour user fees in subparagraph (vi) of the Release from TPA (Appendix to Supplementary Staff Report) be deleted.*

**THE COST OF SETTLEMENT TO THE CITY**

*The draft Minutes of Settlement approved in principal by Council last Nov./02 – (Appendix D) provides in paragraph 6 that TEDCO lease the Leased Lands for 20 years for port-related uses only.*

*There is no provision for lease extension and there is no subsidy or reduced rent in favour of TPA, and in fact, the net rent collected from the port uses must be deducted from the \$3,000,000 annual operation subsidy payable by the City.*

*The new draft Minutes of Settlement and the accompanying Structured Settlement Agreement and Ground Lease are materially amended without Council’s approval as was required by Council Nov./02.*

*The new draft Minutes of Settlement makes provision for lease extensions for up to 29 further years and includes significant subsidies in favour of TPA for millions of dollars, in excess of the payments authorized by Council Nov./02.*

*As these matters were specifically dealt with by Council in Nov./02, no changes to the principal terms of the Settlement are proper, without a vote in favour by 2/3 of Councillors.*

*Staff estimates of the current value of the unapproved change to the settlement amount to \$5.6 million.*

*Therefore be it Resolved That:*

*Unless Council decides to reopen its approval of the principle terms of settlement of the lawsuit, by a 2/3 majority of Councillors, that the Minutes of Settlement and Ground Lease be amended by deleting paragraphs 3.3 and 3.4 of the Ground Lease and by amending the definition of "Payment Term" in paragraph 1.1 (y) as follows:*

*"Payment Term" means the period commencing January 1, 2003 and ending December 31, 2022.*

### *CASH FUNDING FOR CHERRY STREET BRIDGE*

*The City is committed to contributing its 1/3 share of the initial capitalization required for the TWRC in collaboration with the Federal and Provincial governments.*

*The City, lacking in cash resources, had agreed that its contribution would be in the form of land.*

*The Draft Minutes of Settlement approved by Council Nov. /02, imposed no financial burden on the City or TEDCO's part with respect to contributing cash resources towards the Cherry Street Bridge. (see paragraph 5 of Appendix D being the Nov./02 draft Minutes of Settlement).*

*Without any authority from City Council, the draft Minutes of Settlement now proposed in June/03, purport to require Council to contribute in cash resources 1/3 of \$18.5 million towards the restoration of the Cherry Street Bridge (see para. 6 of Appendix A, being the June/03 draft Minutes of Settlement).*

*This change represents a material change to the business terms adopted by Council Nov./02 and directly conflicted with the stipulation in the Nov./02 draft Minutes directing TPA to take up the matter with other government agencies.*

*Therefore be it Resolved That:*

*Unless Council decides to reopen this issue with a 2/3 majority, the Minutes of Settlement be revised as follows:*

*Delete the last sentence which reads, "The City hereby commits to making its one-third (1/3) contribution to these capital expenditures, estimated at \$18.5 million, through the TWRC, at the time that the TWRC funds the remaining two-thirds (2/3), either from its own funds or from other sources" and insert nothing in lieu thereof.*

*If Council proceeds to a vote for approval of the settlement as now proposed with the revisions to the business terms, without first voting on whether to reopen, then any approval that might be given would be illegal and, arguably, any settlement may be invalid and unenforceable.*

*At the least, any such decision by Council could be open to legal challenge at a later date. (Ironically the TPA lawsuit concerned challenges to the legal validity of documents that were*

*signed & delivered on the authority of board resolutions that were attacked on technical grounds relating to democratic rules.)*

*The Material Changes to the Business Terms are as follows:*

- (1) The City purports to agree to advance \$18.5 million in cash to TWRC to renovate the Cherry St. Bridge.*
- (2) The City purports to agree to extend the terms of the lease of the Leased Lands, an extra 29 years.*
- (3) The City purports to agree to subsidize TPA during the lease extension for 29 years up to 50% of the market rent.*
- (4) The City purports to give up TPA acknowledgement of the supremacy of the City of Toronto Planning documents.*
- (5) The City purports to abandon any meaningful protection for the unionized workers in the Toronto aircraft manufacturing business.*
- (6) The City purports to give preferential treatment to TPA for its obligation to pay the City outstanding taxes or equivalent by delaying payment until the Assessed Value is determined.*
- (7) The City still has outstanding claims against it that TPA is entitled to pursue Re: harbour user fees, notwithstanding that all issues were to have been resolved. The City still faces significant legal expense that it expected to avoid by settling all issues.*

*In Nov./02, Council voted in favour of a settlement of the TPA lawsuit upon the business terms set out in draft Minutes of Settlement (Appendix D), which were reviewed in detail.*

*The next matter on Council's Agenda, the issue of the approval of a bridge over the Western Gap and an expanded Island Airport, proceeded to resolution, on the premise that the litigation was resolved, subject to final documentation of the deal that had been approved.*

*Council did not give authority to the Chief Financial Officer or to any other person to negotiate new business terms for the settlement.*

*Council, at its Nov.02 meeting, addressed the business terms and any reopening of the issues, requires a majority of 2/3 in favour of the reopening. Failing which, the settlement documents ought to follow the Nov.02 Council decision.*

*Any negotiations for new business terms were unauthorized by Council.*

*Some Councillors seemed to be kept well informed of the negotiations, while others were not informed of any aspect of these negotiations and all Councillors were expected to keep the matter confidential in that the matter was addressed in private session.)*

*(City Council also had before it, during consideration of the foregoing Clause, communications received from the following:*

- (1) (June 19, 2003) from Allan Sparrow on behalf of Community AIR;*
- (2) (undated) from Councillor Chow, Council Co-Chair and Pam Mazza, Community Co-Chair, Toronto Island Airport Community Advisory Committee;*
- (3) (June 19, 2003) from F.J. S-Pierre;*
- (4) (June 11, 2003) from Pierre Beaudoin, President and Chief Operating Officer, Bombardier Inc.;*
- (5) (June 18, 2003) two form letters signed by three residents;*
- (6) (June 17, 2003) petition signed by 46 residents of the Toronto's Beach area, submitted by Councillor Bussin, a copy of which is on file in the office of the City Clerk;*
- (7) (June 20, 2003) from Robert J. Deluce, President and Chief Executive Officer, Regional Airlines Holdings Inc.;*
- (8) (June 23, 2003) from Brian Lattanville, Manager, Corporate Accounts/Dispatch Operations, Associated Toronto Taxi-Cab Co-Operative Limited;*
- (9) (undated) from Boris Broz, Southbeach Marina Townhomes; and*
- (10) (undated) from Joel M. Rochon.)*

*(City Council also had before it, during consideration of the foregoing Clause, a copy of a presentation, entitled "Renewing Toronto's Waterfront - Settlement with Toronto Port Authority – TCCA Tripartite Amending Agreement", submitted by the Commissioner of Urban Development Services.)*

*(City Council also had before it, during consideration of the foregoing Clause, a copy of a newspaper article published in the Toronto Star on October 10, 2002, headed "A Strong Island Airport is Good for Toronto", which was circulated at the request of Councillor Frances Nunziata, York South-Weston.)*