

Clause embodied in Report No. 7 of the Economic Development and Parks Committee, as adopted by the Council of the City of Toronto at its meeting held on September 22, 23, 24 and 25, 2003.

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**Lease Agreement Between the City of Toronto and  
the Scarborough Historical Society for the Use  
of the Land and Building Located at  
6282 Kingston Road, Known as the Morrish Store  
(Ward 44 Scarborough East)**

*(City Council on September 22, 23, 24 and 25, 2003, adopted this Clause, without amendment.)*

**The Economic Development and Parks Committee recommends the adoption of the following report (August 19, 2003) from the Commissioner of Economic Development, Culture and Tourism:**

Purpose:

To obtain approval to enter into a Lease Agreement with the Scarborough Historical Society for the use of the land and building located at 6282 Kingston Road, known as the Morrish Store.

Financial Implications and Impact Statement:

The Morrish Store building will require approximately \$275,000.00 in restoration costs to bring the building up to a state of good repair. The Culture Division will be requesting this amount be allotted in the 2004 budget.

The Scarborough Historical Society will contribute an additional \$85,000.00 in cash or work-in-kind to the maintenance and/or restoration of the Premises over the initial Term of the Lease. Operating costs for the entire facility will be fully borne by the Scarborough Historical Society for the duration of the term. There are no operating costs that the City will incur. The Scarborough Historical Society will be responsible for all repair and maintenance costs, with the exception of structural repairs, which will be the responsibility of the City.

The Agreement will be for a 10-year term with a renewal term of 10 years. The Scarborough Historical Society will be paying a nominal License Fee to the City plus any and all utilities. The City will be responsible for the payment of any realty taxes, if applicable.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

### Recommendations:

It is recommended that:

- (1) a Lease Agreement with the Scarborough Historical Society for the use of the lands and building located 6282 Kingston Road, known as the Morrish Store, be approved, in accordance with the terms and conditions set out in Attachment No. 1 and in a form acceptable to the City Solicitor, subject to funds being approved in the 2004 Capital budget for this project; and
- (2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

### Background:

In the year 2001, the Morrish Store located at 6282 Kingston Road, was expropriated by the City for the purpose of preserving a historically designated property. The City took possession of the property on February 16, 2001.

The Morrish General Store is a two-storey structure with a 575-square foot store and attached dwelling built in 1891 by William J. Morrish and operated by his descendants until it closed in 1967. The family members were major retail merchants throughout the first half of the 20th century and continued their general store trade until 1967 when the surviving children retired. The building remained in the family for the next twenty years serving as a home for history related businesses such as Old China Patterns and an antique store with Morrish family members residing upstairs. The building has remained vacant and unheated since 1987 and consequently has deteriorated.

The building is designated under the terms of the Ontario Heritage Act, Scarborough By-law No. 17997, for historical and architectural reasons, being the last remaining 19th century general store in Scarborough, a gateway landmark on the Kingston Road entrance to Toronto and representing a major, historical commercial structure, unique in the community.

The Scarborough Historical Society was founded in 1956 by citizens concerned about the rapidly disappearing heritage of Scarborough and is an incorporated registered non-profit charitable organization with Federal charitable tax status. It currently is self-sustaining and receives only minimal financial support from the Provincial government and does not receive any funding from the City. From its inception the Society began to gather historical materials relating to Scarborough's past and developed a Mission Statement which summarizes the goals of its membership as "to preserve, study and stimulate an interest in the history of Scarborough".

### Comments:

The Morrish Store is a community landmark. The proposed agreement will provide community access to the building and local historical collections, provide an ongoing public service to the community with minimal impact on the City's resources and provide a positive and compatible use for this heritage building. Therefore, for the enrichment of the community and the enrichment of the overall City, it is reasonable to enter into an agreement with the Scarborough Historical Society on the terms and conditions outlined in Attachment 1.

The building will be operated and maintained for the purposes of:

- (1) providing programs and services to the public related to and/or promoting public interest in the field of local history and culture along with related activities; and
- (2) the operation and maintenance of a heritage resource centre for use by citizens.

The terms and conditions negotiated with the Scarborough Historical Society, in principle, and subject to the approval of City Council, are as detailed herein. The term is to be for 10 years, plus a further 10-year term of renewal at a nominal sum. The Scarborough Historical Society shall be responsible, at its sole expense, for all utilities and associated costs, now and in the future, pertaining to the facility. Specifically, the Store and associated lands are to be maintained and repaired at the sole expense of the tenant. All other terms and conditions are to be in a form and content acceptable to the City Solicitor.

Conclusions:

The Morrish Store, located at 6282 Kingston Road, is both a beneficial and essential element to this community. The proposed new agreement is fair and reasonable and staff are in full support of the agreement.

Contact Name:

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Attachment No. 1  
Term Sheet – Morrish Store Lease

1. Definitions

“Commissioner” : the City’s Commissioner of Economic Development, Culture and Tourism, and any successors or designates.

“Premises” : Land and building at 6282 Kingston Road, known as The W.J. Morrish Store, as shown on Appendix A.

“Tenant” : the Scarborough Historical Society.

“Term” : As defined in section 3.

2. Legal Status of Tenant

The Tenant shall continue to operate on a non-profit basis and according to the purposes set out in its Letters Patent for the duration of the Term and any renewal. If the Tenant defaults on these obligations, the Lease shall immediately terminate and the Tenant shall immediately surrender vacant possession of the Premises in accordance with the Lease. The Tenant shall provide the City, on an annual basis, with proof of its status as a non-profit corporation, and shall advise the City immediately if there is any change in the Tenant’s non-profit status.

3. Term

Ten (10) years, unless terminated earlier in accordance with the provisions of the Lease. The Tenant shall have the option, upon six months' written notice to the City, to renew for a further ten (10) year term on the same terms and conditions, provided all of its obligations have been met during the initial term.

4. Rent

In consideration of \$10.00 and other valuable consideration, and of the undertaking of the repair, operation and management of the Premises, the City leases to the Tenant the Premises.

5. Permitted Use of Premises

The Premises shall be operated and maintained for the purposes of:

- (i) providing programs and services to the public related to and/or promoting public interest in the field of local history and culture along with related activities and/or studies;
- (ii) the operation and maintenance of a heritage resource centre for use by citizens of the City of Toronto;
- (iii) displaying and making available the Tenant's historical collection as a resource to the public;
- (iv) providing space for meetings and related activities by community groups and associations;
- (v) providing space for private functions on a permit basis, for which the Tenant may charge permit fees as approved in advance by City Council;
- (vi) any other use approved by the Commissioner in consultation with the Ward Councillor and which does not jeopardize or interfere with the above uses.

The City reserves the right, upon six months' notice to the Tenant, to change the purposes and uses set out above to reflect changes in City policy, in consultation with all then-current community users groups and the Ward Councillor.

6. Management

- (i) The Tenant shall operate, manage and maintain the Premises diligently and efficiently for the purposes set out in Section 5, all to the satisfaction of the Commissioner. All policies regarding the operation and maintenance of the Premises shall be subject to the prior approval of the Commissioner, in consultation with the Ward Councillor. The Tenant shall perform its duties strictly in accordance with such policies.

- (ii) The Tenant shall make recommendations to the Commissioner concerning the day-to-day operation and maintenance of the Premises and the Commissioner shall take such recommendations into bona fide consideration in setting policy for the operation and maintenance of the Premises. Any fees or charges for the use of the Premises shall be approved by City Council.
- (iii) The Tenant shall provide, at its expense, sufficient staff required for the management, operation and maintenance of the Premises in accordance with the Lease.

#### 7. Hours of Operation

The Tenant shall make the Premises accessible to the public for the purposes set out in Section 4 for 6 days a week on an appointment or permit basis only. Except between December 24 and January 1, the Premises shall not be inaccessible to the public for more than seven consecutive days or for more than seven days in a calendar month without the prior approval of the Commissioner.

#### 8. Use of Premises

- (i) The Tenant shall permit the Highland Creek Community Association to have the exclusive use of the 3<sup>d</sup> floor space indicated in Appendix A for the purpose of office and storage uses, on such terms as to security and access as shall be proposed by the Highland Creek Community Association and approved by the Tenant, each acting reasonably.
- (ii) The Tenant shall maintain for permitting the areas of the Premises indicated in Appendix A. The permit fees collected by the Tenant, after covering the Tenant's out-of-pocket costs, shall contribute to a capital restoration reserve fund to assist in funding future restoration and maintenance of the Premises, shall be invested in an interest-bearing account in a financial institution acceptable to the City's Chief Financial Officer and Treasurer and shall be managed in accordance with prudent investment practices. Permit fees shall be approved by City Council from time to time. The reserve fund shall comply with City by-laws and policies for the establishment of reserve funds.
- (iii) The City and the Tenant shall co-operate in rearranging any established periods of usage of the Premises to accommodate special events considered desirable by the City, except in respect of those portions of the Premises, indicated on Appendix A, used for storage. The City shall provide notice of its requirements to the Tenant at the earliest reasonable opportunity. The City shall not be liable for any costs or liabilities that may be incurred by the Tenant as a result of the City's use of the Premises other than the Tenant's out-of-pocket expenses.
- (iv) The City shall have access to the Premises at any time, on reasonable prior notice to the Tenant (except in the case of an emergency, when no such notice shall be required) to do anything that the City may be obligated or have the right to do under the Lease. The City shall attempt to minimize disruption to scheduled programs and uses.

9. Occupancy “as is”

The Tenant shall accept the Premises in their existing condition on an “as is” basis at the commencement of the Term, except as otherwise set out in this term sheet.

10. Operating Costs:

- (i) Except as otherwise set out in this term sheet, the Tenant shall be responsible for all operating costs relating to the Premises.
- (ii) The Tenant will be responsible for repair and maintenance costs, with the exception of structural repairs, which will be the responsibility of the City.
- (iii) The City shall provide and maintain security and fire monitoring systems at its expense. The Tenant is responsible for charges related to false alarm responses that are caused by the Tenant’s error or negligence.

11. Utility fees and charges

The Tenant shall pay for all charges (including penalties and connecting fees) for utilities, including water, hydro, gas, telephone charges supplied to the Premises.

12. Taxes

The Tenant shall pay, in full, any taxes which are payable in respect of the Premises and the Tenant’s use and occupation of the Premises, with the exception of any realty taxes that may be assessed, which shall be paid by the City.

13. Restoration of the Premises

- (i) The Tenant agrees to contribute a minimum \$85,000.00 in cash or work-in-kind to the maintenance and/or restoration of the Premises over the initial Term of the Lease. Payment schedule and value attributed to work-in-kind will be determined by the Commissioner, acting reasonably, after consulting with the Tenant. Progress of any fund-raising in respect of this contribution is to be reported on an annual basis to the Commissioner.
- (ii) The Tenant shall not undertake any restoration work except as approved by the Commissioner or in accordance with a restoration plan developed by Nexus Architects in 2003 and approved by the Commissioner.

14. Revenues and Compensation

The Tenant shall not be entitled to any fees from the City for its services in operating and maintaining the Premises. The Tenant shall retain all revenues generated by the Premises, except revenues generated during special events organized and paid for by the City. The net revenue collected by the Tenant, after covering its out-of-pocket costs, shall contribute to a capital restoration reserve fund to assist in funding future restoration and maintenance of the Premises, as described in section 7(ii).

The Tenant shall keep full and accurate accounting records relating to the management and operation of the Premises in accordance with generally accepted accounting principles. The Tenant will arrange for an independent auditor to prepare annual audits in accordance with generally accepted accounting principles. The City and its authorized representatives shall have the right to be provided with and to inspect and audit all the Tenant's books and financial records relating to the operation and management of the Premises.

15. Termination

- (i) Either party shall have the right to terminate the Lease at any time upon giving six (6) months prior written notice to the other.
- (ii) The City, after the Commissioner has consulted with the Ward Councillor, shall have the right to immediately terminate the Lease if:
  - (a) the Tenant fails to comply with any of its obligations under the Lease, which default can be cured but is not wholly cured within 30 days following notice of the default being given by the City, or if the default is non-monetary and the nature of the default is such that it cannot with due diligence be cured within 30 days and the Tenant has not promptly begun and thereafter diligently and continuously proceeded to rectify the default through to completion; or
  - (b) the Tenant fails to comply with any of its obligations under the Lease and the default is not, in the reasonable opinion of the Commissioner, capable of being cured; or
  - (c) the Tenant becomes, or is at risk of becoming, in the reasonable opinion of the Commissioner, insolvent, or the Tenant is dissolved.
- (iii) No compensation shall be payable by the City to the Tenant or any affected third party as the result of the termination of the Lease. Any termination will not operate to relieve the parties of their respective obligations or liabilities existing or accruing as at the date of termination.

16. Maintenance of Premises

The Tenant acknowledges that the Premises is designated under Part IV of the Ontario Heritage Act and agrees, at its sole expense, to be responsible, with or without notice from the City, for all repairs and maintenance, including, without limitation,

- (i) interior maintenance including all fittings and fixtures, painting, heating, electrical, plumbing, mechanical and equipment; and
- (ii) exterior maintenance including ground maintenance of grassed areas, walkways, driveways, parking lots, fences, painting of building and fences.

The Tenant agrees to maintain the Premises in good state of repair to the satisfaction of the Commissioner and to comply with the Ontario Heritage Act. The Tenant shall obtain City approval prior to undertaking any repairs that are likely to affect the Reasons for Designation included in the designation by-law. The Tenant shall provide annual maintenance reports on all life safety equipment, to the Commissioner's satisfaction.

17. Landscaping

- (i) The City shall install parking areas, fence(s) or physical barrier(s), if necessary, to delineate the parking area, and make existing grassed areas suitable for on-going grounds maintenance.
- (ii) The Tenant shall not remove any trees without the prior consent of the Commissioner.

18. Janitorial Services

The Tenant shall provide all janitorial and cleaning services to the Premises and maintain the Premises in a clean and tidy condition, to the satisfaction of the Commissioner.

19. Signage

The City, in consultation with the Tenant and the Ward Councillor, shall provide appropriate exterior signage to identify the Premises. The Tenant shall not install any signage unless specifically approved by the Commissioner, in consultation with the Ward Councillor. The Tenant shall comply with all applicable City policies, procedures, by-laws and agreements with respect to interior and exterior advertising and signage and the Tenant shall obtain approval from the City prior to erecting or displaying or permitting the erection or display of any signage or advertising.

The City reserves the right to require the removal of any advertising or signage which it deems to be inappropriate, offensive, or contrary to City policies or requirements and the Tenant shall remove any such signage on 24 hours notice. Where advertising or signage is erected in contravention of the Lease, the City may remove same without notice and the Tenant shall be liable for the City's costs. No compensation shall be payable by the City to the Tenant or any affected third party as the result of the removal of any advertising or signage.

20. Alterations and Repairs

The Tenant shall not alter, improve, add or make replacements to the Premises, including interior renovation and restoration, as well as exterior grading, surfacing and landscaping, without the prior approval of the Commissioner, which approval may be arbitrarily or unreasonably withheld or given subject to such conditions as the Commissioner sees fit.

21. Insurance

- (i) The Tenant shall maintain in force during the Term of the Lease and any renewal term with respect to the Premises:



- (a) Commercial General Liability insurance, including owners' and contractors' protective, products, completed operations, intentional bodily injury for protection of persons or property, personal injury, employers liability, broad blanket contractual liability coverage, occurrence basis property damage, and provisions for cross-liability and severability of interests with limits of not less than \$5,000,000.00 per accident or occurrence.
  - (b) Standard Automobile Liability insurance for both owned and non-owned vehicles, if any such vehicles are used in the operation of the Premises, with limits of not less than \$2,000,000.00.
- (ii) Every policy of insurance shall:
- (a) include the City as a named insured;
  - (b) contain a waiver in favour of the City of any breach of a policy condition or warranty such that the policy in question will not be invalidated in respect to the City's interest by reason of a breach of any policy condition or warranty;
  - (c) contain an endorsement requiring the insurers to notify the City in writing at least 30 days prior to any material change that restricts or reduces the insurance required under this section, or cancellation of the policy;
  - (d) be placed with insurers and in deductible amounts satisfactory to the Chief Financial Officer, acting reasonably;
  - (e) be primary and shall not call into contribution any insurance available to the City; and
  - (f) have the limits increased as may be necessary to bring the limits in line with other similar City facilities, upon 12 months notice by the City;
- (iii) the Tenant should also maintain during the Term an insurance policy for inclusive coverage of its contents in the Premises, including its historical collections, chattels and belongings; and
- (iv) notwithstanding any of the above, the insurance requirements in the Lease shall be satisfactory to the Chief Financial Officer and Treasurer.

## 22. City Indemnity

- (i) The Tenant shall at all times indemnify and save harmless the City of Toronto, its agents, officers, employees and elected and appointed officials from and against any and all manner of claims, demands, losses, costs, charges, proceedings, and actions whatsoever in any way arising out of, resulting from, sustained as a result of or incidental to the Tenant's occupancy, use, management or improvement of the Premises, the implementation of the Lease, or the lack of good condition or

repair of the Premises, or anything in connection therewith, including without limiting the generality of the foregoing, those arising in association with the Workplace Safety and Insurance Act, 1996, the Occupational Health and Safety Act, the Construction Lien Act or any successor legislation, on account of any injury or death of persons and/or damage to property sustained by any persons including, but not limited to, any employees, workers, servants or agents of the Tenant, and/or non-payment or deficient payment of contractors, sub-contractors, consultants, sub-consultants and suppliers.

- (ii) The Tenant shall promptly see to the removal from the registered title to the Premises of every claim for lien and certificate of action registered pursuant to the Construction Lien Act.
- (iii) The Tenant shall, at the sole option and upon written demand of the City Solicitor,
  - (a) defend by counsel acceptable to the City Solicitor; or
  - (b) in the event, in the opinion of the City Solicitor, of actual or potential conflict between the interest of Tenant and that of the City or those for whom it is at law responsible or, if in the opinion of the City Solicitor, counsel selected by the Tenant is not fully defending the interests of the City, forthwith provide funds for the retention of counsel acceptable to the City Solicitor to defend,

any proceeding taken in any court, tribunal or otherwise in which the City or its agents, officers, employees or elected officials or title to the Premises is named, joined, or claimed against arising in any way out of, or incidental to the Tenant's implementation of the Lease, the Tenant's occupation, use, management or improvement of the Premises, including access and egress to and from the Premises, or anything in connection therewith.

### 23. Major Damage Provisions

During the Term, if the Premises are damaged by fire or the elements or other causes beyond the control of the Tenant; the following provisions shall apply:

- (i) If the Premises, in the opinion of the City, are so badly damaged as to be unfit for occupancy, and to be incapable of being repaired, the Term shall cease from the date of the damage;
- (ii) If the Premises, in the opinion of the City, are capable of being repaired, the City shall repair the base building (excluding the Tenant's leasehold improvements) with all reasonable speed and the Tenant shall resume its duties after the City's repairs are completed.

In either case, the Tenant shall have no claim for damage or indemnity from the City, and there shall be no abatement of the charges and costs required to be paid by the Tenant under the Lease.

24. Vacating the Premises

Upon the expiration of the Lease or any early termination, the Tenant shall surrender and vacate the Premises upon the effective date of the expiration or termination. The Premises, including any renovations or improvements undertaken by the Tenant, and any furnishings and equipment supplied by the City, shall be returned to the City in good repair, reasonable wear and tear excepted. If so directed by the City, the Tenant shall remove, at its expense, any additions or improvements made to the Premises by the Tenant, and shall restore the Premises to the condition they were in prior to the removal. No compensation shall be payable by the City for any renovations, additions or improvements to the Premises made by the Tenant. The Tenant shall not remove any fixtures it added to the Premises except with the written consent of the Commissioner, acting reasonably. The Tenant shall restore any damage caused by such removal.

25. Storage of Hazardous Materials Prohibited

No storage or use of hazardous materials or environmentally sensitive materials shall be permitted.

26. Smoking Prohibited

No smoking shall be allowed within any part of the Premises.

27. Safe Access to Premises

The Tenant shall, at its expense, keep the Premises and sidewalks in and around the Premises free and clear of obstructions and to keep the sidewalks, driveway and parking area, entrances, exits and porches free and clear of ice and snow at all times during the winter season.

28. Protection of Utility Services

The Tenant shall protect all services of public works and/or utilities easement(s) that may encumber the Premises and shall be liable for any damage to such by action(s) or omission(s) by the Tenant, its agents or contractors.

29. Prohibited Uses and Activities

- (i) The Tenant shall ensure that the Premises shall not be used for any purposes and/or allow installation of any equipment that would render the insurance on the Premises void or would increase the insurance risk.
- (ii) The Tenant shall ensure that nothing is kept on the Premises which is or may be a nuisance, or which will cause disturbance or interference with the users or occupants of any neighbouring properties, or which, in the opinion of the Commissioner, may cause damage to the Premises or any neighbouring properties.

30. Compliance with Laws and Policies

- (i) The Tenant shall comply with all municipal, provincial and federal laws and any by-laws, rules, regulations or requirements of any other authority and shall obtain all the necessary permits and licences that may be required for the intended use of the Premises and shall save the City harmless from any failure of the Tenant to so comply.
- (ii) The Tenant shall comply with all policies, rules and regulations that the City may set from time to time.

31. No Partnership or Joint Venture

It is understood that there is no intention to create the relationship of partners or a joint venture between the City and the Tenant. None of the officers, agents or employees of the Tenant shall be deemed to be employees or agents of the City for any purpose whatsoever.

32. Non-Assignment

The Tenant shall not assign the Lease or its interest in the Premises, or, except as specifically permitted in the Lease, sub-lease or licence any portion of the Premises without the prior approval of the Commissioner, which approval may be unreasonably withheld.

33. Funding Condition

The Tenant acknowledges and agrees that all of the City's obligations are conditional upon funding being available and are subject to budgetary constraints and the will of Council or any other decision-making body having jurisdiction.

34. Form of Lease

Notwithstanding any clause contained or not contained in this term sheet, or any negotiations between the parties, the Lease shall (except as otherwise expressly provided) be a completely net lease, in a form and content acceptable to the City Solicitor.

35. Approval of the City of Toronto

This term sheet is subject to the concurrence of the Commissioner and the approval of City Council.