

**DELEGATED APPROVAL FORM**  
**DIRECTOR, REAL ESTATE SERVICES**  
**MANAGER, REAL ESTATE SERVICES**

TRACKING NO.: 2019-129

Approved pursuant to the Delegated Authority contained in Item EX27.12, as adopted by City Council on October 2, 3 & 4, 2017, as amended by Item GM27.12, adopted by City Council on May 22, 23 & 24, 2018 or, where applicable, in Item EX28.8, as adopted by City Council on November 7, 8 & 9, 2017.

Prepared By:	Kathie Capizzano	Division:	Real Estate Services
Date Prepared:	June 18, 2019	Phone No.:	2-4825

<b>Purpose</b>	To authorize the City to acquire a Child Care Property (the "Transaction") by entering into: (1) an Agreement of Purchase and Sale with Aquabella Bayside Toronto Inc., as nominee for and on behalf of Aquabella Bayside Toronto Partnership, the beneficial owner (collectively called as "Aquabella Bayside") for a strata portion of the Development shown as Block R5 on Attachment "1"; (2) a Shared Facilities Agreement, Restrictive Covenant Agreement, Right of First Opportunity Agreement and Easement Agreements; (3) a Delivery Agreement with Toronto Waterfront Revitalization Corporation ("WT") for the fit out of the Child Care Property, (4) a Consent and Release Agreement with WT, and Aquabella Bayside and other site developers ; and (5) any and all ancillary agreements contemplated or required under the Transaction.
<b>Property</b>	A strata portion of Block R5 of the Bayside district of the East Bayfront on Queens Quay East, shown on Attachment "1", having an area of approximately 9,139 square feet of indoor space and approximately 3,626 square feet of outdoor amenity space together with easement areas including access and egress, parking for 3 vehicles, bicycle parking and mechanical services area ("Child Care Property"),
<b>Actions</b>	<ol style="list-style-type: none"> <li>The City, as Purchaser, enter into an Agreement of Purchase and Sale ("APS") with Aquabella Bayside, as Vendor, to acquire the Child Care Property for nominal consideration, and to enter into all other ancillary agreements required or contemplated under the APS or the Transaction, including a Restrictive Covenant Agreement, Right of First Opportunity Agreement, and Easement Agreements, substantially on the terms and conditions outlined in Attachment "2" together with such other terms and conditions as may be acceptable to the Deputy City Manager, Corporate Services, and in a form satisfactory to the City Solicitor</li> <li>The City enter into a Shared Facilities Agreement, with Aquabella Bayside and the Condominium Corporation created by Aquabella Bayside with the Development (the "Condominium"), substantially on the terms and conditions outlined in Attachment "3", together with such other terms and conditions as may be acceptable to the Deputy City Manager, Corporate Services, and in a form satisfactory to the City Solicitor;</li> <li>The City enter into a Delivery Agreement with WT for the fit-out of the Child Care Property, including the payment of land transfer tax and environmental oversight of the Development, substantially on the terms and conditions outlined in Attachment "4"; together with such other terms and conditions as may be acceptable to the Deputy City Manager, Corporate Services, and in a form satisfactory to the City Solicitor.</li> <li>The City enter into a Consent and Release Agreement with WT, and Aqualina Bayside Toronto Inc. ("Aqualina"), Aquavista Bayside Toronto Inc., ("Aquavista") Aquabella and Aqualuna Bayside Toronto Inc. ("Aqualuna") (collectively called the "Site Developers"), substantially in the form attached as Attachment "5", together with such other terms and conditions as may be acceptable to the Deputy City Manager, Corporate Services, and in a form satisfactory to the City Solicitor;</li> <li>The Deputy City Manager, Corporate Services, his/her successor/designate, administer and manage each of the agreements under the Transaction, including the provision of any consents, approvals, waivers, notices, status certificates, certificates of compliance, or any other documentation contemplated under such agreements under the Transaction, provided that the Deputy City Manager, Corporate Services may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.</li> <li>The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.</li> </ol>

<p><b>Financial Impact</b></p>	<p>As per the Council-approved Bayside transaction, the developer of the condominium, is responsible for the construction of the base building shell of the Child Care Property. WT has budgeted \$2.2 million dollars for construction of the interior fit-out of the Child Care Property and any land transfer tax payable on the sale of the Child Care Property to the City, as set out in the attached term sheets. The future operator of the child care centre will assume operational costs associated with the Child Care Property, including costs associated with the Shared Facilities Agreement. The Shared Facilities Agreement provides that the City is not required to share in the cost-sharing arrangements until the earlier of i) the date that the City opens the Child Care Property for business; and (ii) the first anniversary of the date of registration of the Condominium. If for some reason, the Child Care Property is not open by the first anniversary of the date Condominium registration, Children's Services will pay any costs related to the Operation of the Child Care Property including costs associated with the Shared Facilities Agreements, for a maximum of 1 year.</p> <p>The Chief Financial Officer has reviewed this DAF and agrees with the financial impact information</p>										
<p><b>Comments</b></p>	<p>The publicly owned Bayside lands are being redeveloped as a mixed-use community on the Waterfront with WT as Master Developer. The vision developed for East Bayfront has been for a complete and inclusive mixed-use community that includes residential and non-residential uses and provides for affordable housing and community facilities such as parks, a community centre and two child care facilities. Council approved the Bayside transaction by its adoption of EX46.33 "Staff Review of Waterfront Toronto's Proposed Sale and Lease of City Lands for Waterfront Revitalization – Bayside" at its meeting on August 25, 26 and 27, 2010.  <a href="http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.33">http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.33</a></p> <p>The two child care facilities that have been planned for East Bayfront are (1) a facility that is being constructed as part of the George Brown College Waterfront Campus Expansion. It will be owned and operated by George Brown College as a child care and training facility for its Early Childhood Education Program; and (2) the facility that is the subject of this report. It will be located in Bayside on Block R5 (map shown as Attachment 1) under separate strata-title ownership, in a mixed-use condominium building. The child care freehold parcel is being delivered by Hines/Tridel as a base building shell and outdoor space. Access, drop-off areas, bicycle parking, parking for 3 vehicles, mechanical and electrical service areas, will be secured through easements.</p> <p>The R5 condominium will contain approximately 170 units, a retail component and the proposed Child Care Property.</p> <p>This site is the third residential condominium building to be developed by Hines/Tridel in the Bayside district within East Bayfront. The second building, (R3/R4), located to the west, contains the affordable housing pilot project. Future buildings planned in the Bayside district will include a recreation centre, affordable rental housing and additional residential and commercial buildings. Aitken Place Park is currently being constructed on the west side of the site.</p> <p><b>Proposed Child-Care Facility</b></p> <p>The proposed facility will be a freehold parcel, and include indoor and outdoor space. The area of the Child Care Property will be approximately 9,139 square feet of indoor space, and approximate 3,626 square feet of outdoor area to accommodate approximately 62 children. The Child Care Property will be housed on the first and second floor of the Aquabella condominium, with the outdoor play space housed on a terrace on the second floor of the building.</p> <p>As part of the Transaction, the City will be entering into several Agreements. These include: (1) The APS with Aquabella for the conveyance of the Child Care Property to the City, and various ancillary agreements and easements under the APS (2) Shared Facilities Agreements, between the Condominium, the Retail component of the Development and the City, which outlines the procedure and payment for maintenance/operation of the shared areas (3) a Delivery Agreement between WT and the City, for the fit-out of the interior and outdoor space of the Child Care Property and (4) a Consent and Release Agreement between the City, WT and the Site Developers which deals with releases in favour of the City of portions of the Development Agreement between WT and the Site Developers. Terms and conditions of each of these agreements are attached.</p> <p>Funding for the child care centre fit-out will be provided by WT through its capital budget. WT will oversee the fit out of the child care facility once Hines/Tridel complete construction, currently targeted for 2020. The fit out of the child care facility has been designed under the direction of Children's Services.</p> <p>The Director of Service System Planning &amp; Policy Development, Children's Services and the Director, Waterfront Secretariat have been consulted and support this transaction.</p>										
<p><b>Property Details</b></p>	<table border="1"> <tr> <td data-bbox="297 1753 722 1795"><b>Ward:</b></td> <td data-bbox="722 1753 1573 1795">10 – Spadina Fort York</td> </tr> <tr> <td data-bbox="297 1795 722 1837"><b>Assessment Roll No.:</b></td> <td data-bbox="722 1795 1573 1837"></td> </tr> <tr> <td data-bbox="297 1837 722 1879"><b>Approximate Size:</b></td> <td data-bbox="722 1837 1573 1879"></td> </tr> <tr> <td data-bbox="297 1879 722 1921"><b>Approximate Area:</b></td> <td data-bbox="722 1879 1573 1921">9,139 sq ft of indoor space and approx 3,626 sq ft of outdoor space</td> </tr> <tr> <td data-bbox="297 1921 722 1955"><b>Other Information:</b></td> <td data-bbox="722 1921 1573 1955"></td> </tr> </table>	<b>Ward:</b>	10 – Spadina Fort York	<b>Assessment Roll No.:</b>		<b>Approximate Size:</b>		<b>Approximate Area:</b>	9,139 sq ft of indoor space and approx 3,626 sq ft of outdoor space	<b>Other Information:</b>	
<b>Ward:</b>	10 – Spadina Fort York										
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<b>Other Information:</b>											

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
<p>1. Acquisitions:</p> <p>2. Expropriations:</p> <p>3. Issuance of RFPs/REOs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions and Agencies:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System &amp; Parks &amp; Open Space Areas of Official Plan:</p> <p>9. Leases/Licences (City as Landlord/Licensor):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p><b>Delegated to a more senior position.</b></p> <p><b>Delegated to a more senior position.</b></p> <p><b>Delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to a more senior position.</b></p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding three (3) months, including licences for environmental assessments and/or testing, etc.</p> <p><b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to a more senior position.</b></p> <p><b>Delegated to a more senior position.</b></p>	<p><input checked="" type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> Issuance of RFPs/REOs.</p> <p><input type="checkbox"/> Initiate process &amp; authorize GM, Transportation Services to give notice of proposed by-law.</p> <p><b>Delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc.</p> <p><b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Caution</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>

**B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:**

- Documents required to implement matters for which he or she also has delegated approval authority.
- Expropriation Applications and Notices following Council approval of expropriation (Manager, Transaction Services is only Manager with such signing authority).

**Director, Real Estate Services also has signing authority on behalf of the City for:**

- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- Community Space Tenancy Leases approved by delegated authority by Deputy City Manager, Corporate Services and any related documents.

Consultation with Councillor(s)															
Councillor:	Joe Cressy					Councillor:									
Contact Name:	Tom Davidson					Contact Name:									
Contacted by:	Phone	x	E-Mail		Memo		Other	Contacted by:	Phone		E-mail		Memo		Other
Comments:	No objection – June 5, 2019					Comments:									
Consultation with Divisions and/or Agencies															
Division:	Children's Services / Waterfront Secretariat					Division:	Financial Planning								
Contact Name:	Gail O'Donnell / Jayne Naiman					Contact Name:	Lauren Birch								
Comments:	Concurs – June 18, 2019					Comments:	Concurs May 7, 2019								
Legal Division Contact															
Contact Name:	Kathleen Kennedy - June 18, 2019														

DAF Tracking No.: 2019- 129	Date	Signature
Concurred with by:            Manager, Real Estate Services		
<input checked="" type="checkbox"/> <b>Recommended by: Acting Manager, Real Estate Services Melanie Hale-Carter</b>	June 19, 2019	Signed by Melanie Hale-Carter
<input checked="" type="checkbox"/> <b>Approved by:    Acting Director, Real Estate Services Nick Simos</b>	June 25, 2019	Signed by Nick Simos

#### General Conditions ("GC")

- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases. In the event of a vacancy in the Ward in which the subject property is located, the Mayor's office shall be consulted in the alternative.
- (b) Where approving power has been delegated to staff, the Deputy City Manager, Corporate Services, in consultation with any other applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget, or funding being available from third party sources, except for "Strategic Property Acquisitions" as set out in EX44.22 adopted by Council August 25, 26, 27 and 28, 2014, which identifies alternative funding mechanisms subject to additional approval requirements.
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc., but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose, except for property acquisitions of 50M<sup>2</sup> or less for transit shelter purposes.
- (i) Authority to initiate the permanent road closure process in **A.4** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (l) Approving Authority with respect to land located in the Designated Waterfront Area as defined in the *Toronto Waterfront Revitalization Corporation Act, 2002* is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8** is conditional upon confirmation by the Chief Planner and Executive Director of City Planning, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in **A.9** Leases (City as Landlord) but not Licences (City as Licensor) is limited to periods (including options/renewals) of less than twenty-one (21) years, as leases of 21 years or more may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant's rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then Approving Authority is transferred upwards to the next more senior level of Approving Authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, including ancillary agreements, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor's prior "Approval as to Form".
- (z) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.
- (aa) All residential leasing documents shall adhere to the *Residential Tenancies Act, 2006* and any successor legislation.
- (bb) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years and total compensation in residential leasing matters where the City is landlord is to be calculated based on an assumed term of ten years unless the lease term expressly identified therein is longer.
- (cc) Where Approving Authority has been delegated to the Manager level, such authority shall be conditional upon the Manager first having secured the written concurrence of a second Manager within the Real Estate Services Division.
- (dd) Where the City is transacting with a public agency, and such agency requires that an unqualified environmental indemnity be granted by the City, the authority to acquire property includes authority to grant such an indemnity, provided that the Phase I and Phase II environmental site assessments undertaken on behalf of the City have identified no significant environmental impacts or human health threats, with no, or minor action required ("Low Risk").

ATTACHMENT 1



**Attachment 2**  
**MAJOR TERMS: AGREEMENT OF PURCHASE AND SALE (“APS”)**  
**AQUABELLA CHILD CARE CENTRE**  
**April 24, 2019**

Vendor	<b>Aquabella Bayside Toronto Inc.</b> as nominee for and on behalf of <b>Aquabella Bayside Toronto Partnership,</b> beneficial owner
Purchaser	<b>City of Toronto</b>
Child Care Property	<p>Part of the R5 Block and being:</p> <p>a freehold parcel in the Proposed Development (including indoor (base building shell only) and outdoor space, access and drop-off areas) of approximately nine thousand one hundred and thirty nine (9,139) square feet of indoor space and approximately three thousand six hundred and twenty-six (3,626) square feet of outdoor amenity space as shown on the attached <b>Schedule "F-1"</b>, with roughed in mechanical and electrical services and base building standards to the levels described in the attached <b>Schedule "F"</b> (Base Building Requirements and Design Guidelines for Child Care Space).</p> <p>Together with and subject to appurtenant and servient easements for vehicular and pedestrian access and egress, parking, servicing, maintenance, repair and support purposes in respect of the Proposed Development, as more particularly set out in Major Terms of the Shared Facilities Agreement <b>Attachment 2</b>.</p> <p>(collectively, the “<b>Child Care Property</b>”)</p>
Proposed Development	The overall project which will ultimately be developed and constructed on the R5 Block will be comprised of the residential condominium dwelling units, residential lobbies and amenities, residential underground parking and storage (collectively the “ <b>Residential Condominium</b> ”), the freehold ground floor retail parcel (the “ <b>Retail Component</b> ”), and the Child Care Property.

R5 Block	The lands in the City of Toronto, in the Province of Ontario, being all of PIN 21384-0220(LT) being Block 3, Plan 66M-2542, City of Toronto.
Purchase Price	<p>Nil \$0.00</p> <p>The Vendor agrees to sell and the Purchaser agrees to purchase the Child Care Property for nominal consideration.</p>
Land Transfer Taxes	The Purchaser shall be responsible for payment of any and all provincial land transfer tax (if any) that may be exigible in connection with the transfer of the Child Care Property from the Vendor to the Purchaser.
Conditions Precedent and Conditions of Closing	<p>The purchase and sale of the Child Care Property is conditional upon the satisfaction of the following conditions precedent:</p> <ol style="list-style-type: none"> <li>1. The Purchaser, Vendor and Waterfront Toronto complying with their respective obligations under the Consent Agreement to which they are a party; and</li> <li>2. the documents for the Residential Condominium, including the Disclosure Statement, the Declaration and the Shared Facilities Agreement, shall be consistent with this Agreement, and all matters that are disclosed (or required to be disclosed) and described in the condominium documents shall reflect the terms of this transaction, to the satisfaction of the City and Waterfront Toronto.</li> </ol>
Residential Condominium Documents	<p>In the event that the Residential Condominium is registered after the Closing of this transaction, the Vendor will not make any material changes to the condominium documents that have been approved by the City and Waterfront Toronto for the Closing of this transaction without further approval from the City and Waterfront Toronto to the extent such changes affect the Child Care Property.</p> <p>The Vendor will provide not less than 30 days' notice to the City and Waterfront Toronto of its intention to register the condominium documents.</p>

	<p>The Vendor will provide the City with the registered Declaration and Shared Facilities Agreement.</p>
<p>Construction completion prior to first interim occupancy of Residential Condominium</p>	<p>The Vendor shall complete the construction of the Child Care Property to the base building standards specified in <b>Schedule “F”</b> by no later than the date of the first interim occupancy closing of a dwelling unit in the Residential Condominium. The first interim occupancy closing of a dwelling unit in the Residential Condominium is currently tentatively scheduled for September 28, 2020.</p>
<p>Design and Drawings</p>	<p>1. The Vendor shall cooperate with the Purchaser, the Purchaser’s Architect, and Waterfront Toronto in providing all plans, drawings, sketches, specifications, and other materials (collectively, the <b>“Specifications”</b>) in order for the Purchaser (in consultation with the Purchaser’s Architect and Waterfront Toronto) to submit an application for pre-approval to Toronto Public Health and the Ministry of Education under s. 14 of O. Reg. 137/15 of the Child Care Early Years Act 2014. Notwithstanding the foregoing, the Vendor shall only be responsible for delivering the plans, drawings, sketches, specifications and other materials in connection with the Vendor’s responsibilities as described in Schedule “F” (hereinafter, the <b>“Base Building Specifications”</b>) which shall include a set of drawings (the <b>“Schedule F-1”</b>) illustrating:</p> <p>(i) the exact area and layout of the Child Care Property;</p> <p>(ii) the location and dimension of any structural, electrical, mechanical or plumbing encroachment of base building elements into the 3m (10ft) clear height of the Child Care Property, and</p> <p>(iii) section drawings showing the vertical extent of any structural, electrical, mechanical or plumbing encroachment of base building elements into the 3m (10ft) clear height of the Child Care Property, such requirement for section drawings being adequately satisfied by sections for typical encroachment where an encroachment repeats (such as column capitals) provided the locations of such repeating</p>



encroachments are readily apparent and the maximum vertical penetration of such encroachment does not exceed that shown in the typical section.

2. The Vendor will prepare the draft Base Building Specifications and provide the draft Base Building Specifications to the Purchaser for review and approval. The Purchaser shall provide any comments on the draft Base Building Specifications to the Vendor within **[ten (10) days][time period to be confirmed by the Purchaser's Architect]** of receipt by Purchaser of the complete set of draft Base Building Specifications (the "**Review Period**"). Subject to any comments from the Purchaser or the Purchaser's Architect made during the Review Period being addressed to the Purchaser's satisfaction, the draft Base Building Specifications shall be deemed approved on the expiry of the Review Period. If any changes of the draft Base Building Specifications are required in response to comments from the Purchaser or the Purchaser's Architect the Review Period shall be extended to expire ten (10) days after receipt by Purchaser of the amended draft Base Building Specifications.
3. The Purchaser's approval of the Base Building Specifications shall not relieve the Vendor of its obligation to construct and deliver the Child Care Property to the Purchaser in compliance with all applicable law, including, without limitation, the Building Code and Fire Code.
4. If the Vendor or Purchaser require changes to the Base Building Specifications after approval for any reason each party shall act reasonably in considering such changes with a view to implementing such changes while mitigating the impact of such changes on (i) the operation and capacity of the Child Care Property as a child care centre and (ii) the construction, operation and planned uses of other portions of the building. Subject to such mitigation, both the Vendor's and the Purchaser's costs of accommodating any change will be paid by the party requiring such

	<p>change. The parties acknowledge that the Vendor will be building the concrete floors, columns and other structural features in accordance with Schedule F-1 and that once in place, no changes will be feasible.</p> <p>5. Until completion of any construction deficiencies identified during the pre-delivery inspection after issuance of the Completion Notice defined below, the Vendor shall, at the Vendor's sole expense, make all changes which are required to bring the Child Care Property in compliance with the approved Base Building Specifications.</p> <p>6. The Vendor and Purchaser will work in good faith with one another, the Purchaser's Architect, and Waterfront Toronto, in all matters pertaining to the design, construction and delivery of the Child Care Property, including the attendance at regularly scheduled meetings, responding with information in a timely manner to questions and requests, attending site meetings as appropriate, providing current and up-to-date Base Building Specifications, and keeping one another informed of all matters and new information related to the Child Care Property.</p>
<p>Rogers, Beanfield and Enbridge</p>	<p><u>Rogers Easement Instrument No. AT-4831017</u></p> <p>The parties acknowledge that pursuant to the express terms of the Rogers easement, upon the registration of the Residential Condominium, the Rogers easement shall be automatically released and discharged from, inter alia, lands not forming part of the Residential Condominium including, inter alia, the Child Care Property. Following the registration of the Residential Condominium the Vendor shall request Rogers to provide or authorize a formal release and abandonment of the easement from title to the Child Care Property.</p> <p><u>Beanfield Easement Instrument No. AT-4831035</u></p> <p>The parties acknowledge that pursuant to the express terms of the Beanfield easement, upon the registration of the Residential Condominium, the Beanfield easement shall be automatically released and discharged from, inter alia, lands not forming part of the Residential Condominium including, inter alia the Child Care Property. Following the</p>

	<p>registration of the Residential Condominium the Vendor shall request Beanfield to provide or authorize a formal release and abandonment of the easement from title to the Child Care Property.</p> <p><u>Enbridge Gas</u></p> <p>1. The Vendor represents and warrants to the Purchaser that the Child Care Property will be designed and constructed such that:</p> <p>(a) no Enbridge equipment, including gas lines, piping, meters, attachments, apparatus, appliances, markers, fixtures, or other gas works that service the other components of the Proposed Development, namely the Residential Condominium and the Retail Component, will pass through or be installed within the Child Care Property; and</p> <p>(b) all Enbridge equipment servicing the Residential Condominium and Retail Component will be accessible to Enbridge through the Residential Condominium and/or Retail Component as applicable, such that access by Enbridge to the Child Care Property to operate and maintain Enbridge equipment servicing the Residential Condominium and/or Retail Component will not be necessary.</p> <p>2. The Purchaser acknowledges that the Vendor will, prior to Closing, grant a non-exclusive easement to Enbridge for the purposes of facilitating the provision and distribution of natural and/or manufactured gas to the R5 Block. The Vendor shall request Enbridge to include a provision in the schedule to the Enbridge easement that will exclude the freehold Child Care Property from the Enbridge easement.</p>
<p>Strata Reference Plan</p>	<p>When the Child Care Property has been constructed to the point where the as-built boundaries of the Child Care Property can be monumented and surveyed by the Vendor's surveyor, the Vendor shall, at the Vendor's sole cost, cause its surveyor to prepare a draft strata plan delineating the Child Care Property as well as any specific appurtenant and/or servient easements required between the Child Care Property and the other components of the Proposed Development. The strata plan shall be subject to review and approval by the Purchaser, acting reasonably.</p>

<p>Completion Notice</p>	<p>The Vendor shall notify the Purchaser in writing when the construction of the Child Care Property to base building standards has been substantially completed ("<b>Completion Notice</b>") and Purchaser shall attend at a time to be agreed upon by the parties to conduct its pre-closing inspection of the Child Care Property. Any construction deficiencies identified during the pre-delivery inspection shall be remedied by the Vendor as soon as reasonably possible. (For clarity, the Vendor shall not be responsible for the finishing of the Child Care Property.)</p>
<p>Closing and Closing Date</p>	<p>The closing of the purchase and sale transaction (the "<b>Closing</b>") shall be completed on the 60<sup>th</sup> day after publication of a certificate or declaration of "Substantial Performance" of the Child Care Property as that term is defined in the <i>Construction Act (Ontario)</i> (the "Act") or such longer period as may be required under the Act to ensure the expiry of any liens with respect of the Child Care Property, ("<b>Closing Date</b>").</p>
<p>Title Opinion on Closing</p>	<p>The Vendor shall, at its sole cost, provide the Purchaser with its solicitor's title opinion, in form and content satisfactory to the Purchaser's solicitor, confirming that on Closing the Purchaser will acquire good title to the Child Care Property in fee simple, together with appurtenant easements and subject to servient easements, free from all charges, liens, restrictions, easements and other encumbrances save and except the Permitted Encumbrances set out on the attached <b>Schedule "A"</b>. The Purchaser will not assume the Aquabella DA.</p>
<p>Appurtenant and Servient Easements</p>	<p>The APS will provide general servient easements over the Child Care Property in favour of the other components of the Proposed Development for servicing, maintenance, repair and support purposes. There will be appurtenant easements in favour of the Child Care Property over specific parts of the other components of the Proposed Development for purposes of vehicular and pedestrian access and egress as well as general appurtenant easements over the other components for servicing, maintenance, repair and support purposes. The Appurtenant and Servient Easements are more particularly set out in Major Terms of the Shared Facilities Agreement <b>Attachment 2</b>.</p>

<p>Three (3) Parking Spaces And Four (4) Bicycle Parking Spaces for Child Care Property</p>	<p>The Purchaser shall be granted, for nil consideration, a permanent easement (subject to the Appurtenant and Servient Easements described above), for the benefit of the Child Care Property, to access and use three designated parking spaces and four designated bicycle parking spaces, all situate on level A of the Residential Condominium, for motor vehicle parking and bicycle parking purposes respectively, by the Purchaser, its representatives, agents, employees, tenants, subtenants, licensees, invitees, successors and assigns. The use of the 3 parking spaces and the 4 bicycle parking spaces shall be subject to Residential Condominium's reasonable rules and security protocol.</p> <p>(It is acknowledged that if the condominium property manager approaches the City regarding off-hour use of the 3 parking spaces and/or the 4 bicycle parking spaces by condominium visitors, and provided the City does not require the parking or bicycle parking spaces for the period specified, the City will cooperate with the Residential Condominium to determine satisfactory terms of use. There will be no restrictions on the hours that the City may use the parking/bicycle spaces.).</p>
<p>s.119 Land Titles Act Restrictive Covenant on Use of the Child Care Property</p>	<p>A section 119 <i>Land Titles Act</i> restrictive covenant shall be registered on the title to the Child Care Property on Closing, for the benefit of the Residential Condominium and the Retail Component, which restrictive covenant shall prohibit the use of the Child Care Property:</p> <p>(a) for any use other than a non-profit or for-profit operated "child care centre" within the meaning of the <i>Child Care and Early Years Act</i>, as amended or replaced, or a facility providing services and programs for children under the age of six years together with their families (a "<b>Child Care Facility</b>") during the first ten (10) years following the registration of the restrictive covenant ("<b>Initial Term</b>"), and</p> <p>(b) following the expiry of the Initial Term, for any use other than any of the following uses:</p> <ul style="list-style-type: none"> <li>(i) Child Care Facility;</li> <li>(ii) library;</li> </ul>

ROFO	<p>(iii) municipal or government office space restricted to office staff and not being open to public access;</p> <p>(iv) any other municipal or governmental program, service or use ("<b>Governmental Use</b>"), provided that such Governmental Use is not inconsistent or incompatible with the use of the Residential Condominium, and provided further that the prior written consent of the board of the Residential Condominium to such Governmental Use has been obtained, which consent shall not be unreasonably withheld. In the event of a dispute as to whether consent has been unreasonably withheld by the board, the dispute may be settled by arbitration;</p> <p>(v) subject to the ROFO, any commercial use permitted by zoning other than the Prohibited Tenants and Uses clause attached as <b>Schedule "G"</b>;</p> <p>(c) On Closing, the Vendor (for the benefit of the Retail Component) and Purchaser shall enter into a Right of First Opportunity Agreement ("<b>ROFO</b>") in favour of the Vendor (which ROFO shall be assignable by the Vendor to any purchaser of the Retail Component). The ROFO shall require the Purchaser, or successor in title, to notify the registered owner of the Retail Component in writing if it wishes to use the Child Care Property for a commercial use permitted by zoning other than the Prohibited Tenants and Uses clause. In such event the registered owner of the Retail Component shall have up to 90 days in which to exercise its right (by notice in writing to the Purchaser, or successor in title) to purchase the Child Care Property at a purchase price equal to fair market value based on highest and best use that (i) is reasonably probable and achievable for the Child Care Property bearing in mind its size, location, configuration and other physical attributes; and (ii) permitted by then applicable zoning other than the Prohibited Tenants and Uses clause attached as <b>Schedule "G"</b> ("<b>Fair Market Value</b>"), with closing to take place a further 60 days thereafter, or, in the event of a dispute as to Fair Market Value, closing to take place 60 days after the Fair Market Value has been determined by arbitration as hereinafter provided.</p>
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	<p>In the event of dispute as to the Fair Market Value of the Child Care Property the dispute shall be settled by arbitration.</p> <p>(d) In the event that Vendor elects not to exercise the ROFO the ROFO will be deemed to have expired and the Purchaser or successor in title shall henceforth be prohibited from using the Child Care Property for any use other than the uses listed in (b) (i) to (v), except that clause (v) shall be read and construed without the words "subject to the ROFO".</p>
<p>Shared Facilities and Shared Facilities Agreement</p>	<p>The Shared Facilities are defined in <b>Attachment 2</b>. The location and description of certain Shared Facilities for the overall project are set out in the Ownership and Shared Use Areas architectural drawings dated April 18, 2019 prepared by Kirkor Architects and Planners attached as <b>Schedule "B"</b>.</p> <p>The Purchaser agrees that, shortly following the registration of the Residential Condominium under the provisions of the <i>Condominium Act</i>, the Purchaser shall enter into a Shared Facilities Agreement substantially in accordance with the Major Terms of the Shared Facilities Agreement <b>Attachment 2</b>. The Purchaser shall on Closing either deliver the executed agreement in escrow or provide an undertaking to execute the agreement upon the Vendor's request once the Residential Condominium has been registered.</p> <p>From and after Closing, the Vendor will manage, control, operate, maintain, repair, rebuild and insure all of the Shared Facilities and Shared Servicing Systems, as defined in the Shared Facilities Agreement (the "<b>Agreement</b>") in a first class standard and carry out the other duties of the Two-Way Shared Facilities Manager and the Three-Way Shared Facilities Committee on behalf of all Component Owners of the R5 Block development until the Agreement is executed by the Purchaser, the Condominium and the Declarant and registered on title to the R5 Block.</p>
<p>Shared Facilities Budgets</p>	<p>The Vendor's budgets for the first year immediately following the registration of the Residential Condominium in respect of the Two-Way Shared Facilities and the Three-</p>

	<p>Way Shared Facilities are attached as <b>Schedule "C" (the "Shared Facilities Budgets")</b>.</p> <p>The Shared Facilities Budgets incorporate an assumed inflation factor of 5% per annum, compounded annually based on a projected condominium registration date of February 28, 2021, and in the event that registration occurs sometime thereafter, then the budget statement (and all figures reflecting expenses set forth therein) should be read and construed as automatically being increased by the said inflation factor of 5% per annum, compounded annually (with said inflation rate applying to increase the budget figures for any all or any portion of a year following the aforementioned target registration date).</p> <p>The Vendor shall be accountable to the Purchaser for the Shared Facilities Budgets in the same manner as the Vendor is accountable to the Residential Condominium under the <i>Condominium Act</i> in respect of the budget statement for the first year immediately following the registration of the Residential Condominium.</p>
<p>Construction Warranties</p>	<p>The Vendor shall warrant the Child Care Property (completed to the base building standards specified in <b>Schedule "F"</b>) against construction deficiencies for a period of 2 years following Closing.</p> <p>The following shall form part of Vendor's closing deliveries to the Purchaser:</p> <ul style="list-style-type: none"> <li>Operating and maintenance manuals for all systems and equipment;</li> <li>The "as built" plans;</li> <li>Assignment of construction warranties and guarantees; and</li> <li>A statement from the Vendor's quantity surveyor (Altus Group), with supporting documentation as to the monetary value of the Child Care Property as at the Closing.</li> </ul>
<p>Occupancy Permits/Licensing of the Child Care Property</p>	<p>The Vendor shall <b>not</b> be responsible for obtaining any occupancy permits, licenses and/or government approvals as may be required in order for the Child Care Property to</p>



	<p>operate as a child care facility, all of which shall be the sole responsibility of the Purchaser.</p> <p>The Vendor shall close out any outstanding building permit requirements that relate to the base building shell of the Child Care Property and provide proof of same to the Purchaser in a timely manner.</p> <p>The Purchaser acknowledges that there will not be separate building permit for the Child Care Property base building shell – building permits will be for the entire Proposed Development and may not be fully closed out until entire Proposed Development is completed.</p>
<p>Environmental</p>	<p>The Vendor shall comply with and ensure satisfaction of all conditions and requirements of any Certificate(s) of Property Use or Risk Assessment(s), including without limitation, compliance with all applicable risk assessment and management plans ("<b>RA/RM</b>"), soil management plans, prohibitions on use, inspections, monitoring, sampling, maintenance, operations, systems, risk assessment and management measures, recording, reporting and filing requirements, and posting of all security or bonds, if any, required by the MOECC in respect of the Proposed Development ("<b>CPU Compliance</b>") until the Three-Way Shared Facilities Committee under the Shared Facilities Agreement assumes responsibility for such environmental matters on behalf of the owners of the Proposed Development. Costs of CPU Compliance will be borne by the Vendor until the registration of the Residential Condominium, and shall, from and after such registration form part of the Three-Way Shared Facilities Costs.</p> <p>The Vendor agrees that it will not and it will not permit the storage or deposition of any materials or substances on or in the vicinity of the Proposed Development (including, without limitation, any hazardous materials) that could adversely affect the environmental condition of the Child Care Property or the Proposed Development.</p> <p>The Purchaser agrees that after Closing it will not and it will not permit the storage or deposition of any materials or substances on or in the vicinity of the Child Care Property (including, without limitation, any hazardous materials) or on or in any other part of the Proposed Development, that could adversely affect the environmental condition of the</p>

	<p>Child Care Property or any other part of the Proposed Development.</p>
<p>Vendor's Representations and Warranties</p>	<p>The APS will contain representations and warranties of the Vendor, including:</p> <p>Corporate existence, power and authority, due authorization and enforceability of the APS; Vendor not a non-resident within the meaning of the Income Tax Act; no outstanding work orders, Vendor includes all legal and beneficial owners; no material breaches of any Permitted Encumbrances; no knowledge of notices or orders of violations of environmental law or the release of hazardous substances; compliance with environmental laws, and such other representations and warranties commonly included in purchaser and sale transactions.</p>
<p>Entry by Purchaser</p>	<p>Upon reasonable prior notice to the Vendor, the Purchaser shall be entitled to inspect the progress of the construction of the Child Care Property from time to time, and the Vendor agrees to meet regularly with the Purchaser to accommodate inspections at regular and mutually agreeable times up until Closing.</p>
<p>Redpath Sugar Agreements</p>	<p>The Redpath Sugar emissions warning clause shall be set out in the APS.</p> <p>It is acknowledged that the Purchaser (and its successors and assigns) shall be required to assume and be bound by the terms of the Redpath Sugar Agreement to the extent that same pertains to the Child Care Property, including, without limitation, acknowledging that the Purchaser has read the Redpath Sugar emissions warning clause. The assumption agreement is to include an acknowledgement from Redpath that Vendor is not in default of the Redpath agreement as it applies to the Child Care Property.</p> <p>The Vendor will confirm to the Purchaser on Closing that the construction of the Proposed Development, including the Child Care Property, has been constructed in compliance with the requirements of the air, noise and odor emissions reports and studies and building permit plans approved by the City of Toronto. Prior to Closing, the Vendor will identify all on-going maintenance and repair obligations arising out of such approved reports, studies and building permit plans, which the Purchaser will be</p>

	required to carry out in connection with the operation of the Child Care Property, which may include maintenance of mechanical systems and the provision of charcoal filters.
<i>Planning Act</i> compliance	The Vendor shall be responsible for obtaining <i>Planning Act</i> compliance or consent with respect to the transfer of the Child Care Property.
Mutual Indemnities	Each party will indemnify the other party against all losses, costs, and damages suffered by the other party by reason of the breach of the Agreement or the negligent act or omission or wilful misconduct by the party, its workers, contractors, employees, agents and those for whom they are responsible at law, save and except to the extent that they are caused by the negligent act or omission or wilful misconduct of the party claiming indemnity or its workers, contractors, employees, agents or those for whom they are responsible at law. This provision shall be carried forward in the Shared Facilities Agreement.
Survival	All covenants, representations and warranties survive and shall not merge on Closing.

## Attachment 2(a)

### PERMITTED ENCUMBRANCES

#### [Lands in LT PLUS]

#### PART I – General Qualifications

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates.
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.
3. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
4. Subject to the liabilities, rights and interests set out in section 44(1) of the *Land Titles Act* **except:** paragraphs 2, 3, 4, 5, 6, 8, 9, 11, 12, 14, and provincial succession duties and escheats or forfeitures to the Crown.

#### PART II – Specific Encumbrances

1. **Instrument No. AT-1847636**, registered on July 29th, 2008, being notice of Minutes Of Settlement dated November 15th, 2007 (hereinafter referred to as the “**November 2007 Minutes of Settlement**”), entered into by Toronto Waterfront Revitalization Corporation (hereinafter referred to as “**Waterfront Toronto**”), Redpath Sugar Ltd. (“**Redpath**”), the City of Toronto (hereinafter sometimes referred to as the “**City**” or the “**City of Toronto**”) and the City of Toronto Economic Development Corporation (“**TEDCO**”), in respect of Redpath’s appeal to the Ontario Municipal Board of an official plan amendment and zoning by-law amendment enacted by the City regarding the future development of certain lands owned by the City situate to the south of Queens Quay East, between lower Jarvis Street and lower Sherbourne Street, along the north shore of Lake Ontario, and comprising the western half of the East Bayfront lands;
2. **Instrument No. AT-1863348**, registered on August 13<sup>th</sup>, 2008, being notice of an agreement entered into by Redpath, TEDCO and the City of Toronto, which confirms, amongst other things, that the November 2007 Minutes of Settlement affords a complete answer to any action brought for damages or for an injunction, at any time in the future, for noise, dust, odour, air quality and any other emissions from the operations of the Redpath facilities situate on the Redpath lands municipally located at 95 Queens Quay East, Toronto;
3. **Instrument No. AT-3554855**, registered on April 9th, 2014, being a **subdivision agreement** dated June 26<sup>th</sup>, 2013 involving Plan 66M-2514, entered into between the City of Toronto in its capacity as the municipal authority, and Waterfront Toronto in its capacity as the master developer selected or appointed by the City of Toronto to oversee, manage and coordinate the overall development of certain designated portions of Toronto’s waterfront lands (hereinafter collectively referred to as the “**East Bayfront Lands**”), and which agreement governs or pertains to the servicing and development of certain adjacent or neighbouring lands situate within the plan of subdivision registered as Plan 66M-2514;
4. **Instrument No. AT-3605430**, registered on June 12th, 2014, is notice of an outstanding **Section 37 Density Bonus/Development Agreement**, entered into by Waterfront Toronto with the City of

Toronto, pertaining to the provision of public benefits in exchange for increases in the height and/or density of the Proposed Development or projects being developed on certain adjacent or neighbouring lands comprising part of the East Bayfront Lands, and which agreement requires, amongst other things, certain community facilities to be developed or paid for by Waterfront Toronto in exchange for such increased height and/or density rights, and which agreement may be amended, augmented, supplemented and/or replaced, in whole or in part, by one or more subsequently-registered agreements with the City of Toronto (hereinafter referred to as the “**First Section 37 Agreement**”);

5. **Instrument No. AT-3680825**, registered on September 4th, 2014, being a re-statement of the **First Section 37 Agreement**, and correcting page 5 of the First Section 37 Agreement registered as Instrument No. AT-3605430;
6. **Instrument No. AT-3683820**, registered on September 9th, 2014, being a **certificate of requirement** issued by the Ministry of the Environment pursuant to section 197(2) of the *Environmental Protection Act*, imposing risk assessment and risk management measures, and other preventive measures, affecting Part 14 on Reference Plan 66R-27456, and the corresponding development and completion of the residential or mixed-use project(s) developed on (or otherwise encompassing) said lands, including without limitation, building construction restrictions, barriers to site soils, coal tar mitigation barriers, soil management plans, health and safety plans, inspection and maintenance programs, and ground water, soil and/or air monitoring testing programs and reporting requirements;
7. **Instrument No. AT-3689842**, registered on September 16th, 2014, being a **certificate of requirement** issued by the Ministry of the Environment pursuant to section 197(2) of the *Environmental Protection Act*, imposing risk assessment and risk management measures, and other preventive measures, affecting Parts 3 and 15 on Reference Plan 66R-27456, and the corresponding development and completion of the residential or mixed-use project(s) developed on (or otherwise encompassing) said lands, including without limitation, building construction restrictions, barriers to site soils, coal tar mitigation barriers, soil management plans, health and safety plans, inspection and maintenance programs, and ground water, soil and/or air monitoring testing programs and reporting requirements;
8. **Instrument No. AT-4681664**, registered on September 15<sup>th</sup>, 2017, being notice of an outstanding **Section 37 Density Bonus/Development Agreement**, entered into by Waterfront Toronto with the City of Toronto, pertaining to the provision of public benefits in exchange for increases in the height and/or density of the Proposed Project, and/or with respect to other projects being developed on any portion of the East Bayfront Lands, and which agreement requires, amongst other things, certain community facilities to be developed or paid for by Waterfront Toronto in exchange for being granted increased height and/or density rights with respect to the Proposed Development (and/or with respect to other projects being developed on any portion of the East Bayfront Lands), and which agreement may be amended, augmented, supplemented and/or replaced, in whole or in part, by one or more subsequently-registered agreements with the City of Toronto (hereinafter collectively referred to as the “**Second Section 37 Agreement**”);
9. **Instrument No. AT-4734749**, registered on November 16<sup>th</sup>, 2017, being a **certificate of requirement** issued by the Ministry of the Environment pursuant to section 197(2) of the *Environmental Protection Act*, imposing risk assessment and risk management measures, and other preventive measures, affecting the lands comprising Parts 1 and 2 on Reference Plan 66R-27456, currently municipally known as 261 and 263 Queens Quay East, and more particularly described as part of PIN 201384-0186(LT), and the corresponding development and completion of the residential or mixed-use project(s) developed on (or otherwise encompassing) said lands, including without limitation, building construction restrictions, barriers to site soils, soil management plans, health and safety plans, inspection and maintenance programs, and air and groundwater testing/monitoring requirements and reporting requirements;

10. **Instrument No. AT-4738037**, registered on November 21<sup>st</sup>, 2017, being a **subdivision agreement** dated August 4<sup>th</sup>, 2017 involving Plan 66M-2542, entered into between the City of Toronto in its capacity as the municipal authority, and Waterfront Toronto in its capacity as the master developer selected or appointed by the City of Toronto to oversee, manage and coordinate the overall development of the East Bayfront Lands, and which agreement governs or pertains to the servicing and development of, inter alia, the Proposed Development on the R5 Block and correspondingly situate within the plan of subdivision registered as Plan 66M-2542;
11. **Instrument No. AT-4831017**, registered on March 29, 2018, being a **transfer of easement** from Aquabella Bayside Toronto Inc. in favour of Rogers Communications Inc. is a transfer of easement for communication services in favour of Rogers Communications Inc. ("**Rogers**"), for the purposes of facilitating the installation, repair, inspection, replacement, removal, renewal, expansion, enlargement, alteration, reconstruction, operation and/or maintenance of Rogers' cable television lines and appurtenant equipment, in order to provide cable television and other telecommunication services to the respective owners and residents of the R5 Block.
12. **Instrument No. AT-4831035**, registered on March 29, 2018, being a **transfer of easement** from Aquabella Bayside Toronto Inc. in favour of Beanfield Metroconnect WT Inc. is a transfer of easement for communication services in favour of Beanfield Metroconnect WT Inc. ("**Beanfield**"), for the purposes of facilitating the installation, repair, inspection, replacement, removal, renewal, expansion, enlargement, alteration, reconstruction, operation and/or maintenance of Beanfield's internet and other telecommunication lines and appurtenant equipment, in order to provide bulk internet and other telecommunication services to the respective owners and residents of the R5 Block.
13. **A transfer of easement** (hereinafter referred to as the "**Enbridge Easement**") to be registered in favour of Enbridge Gas Distribution Inc. (hereinafter referred to as "**Enbridge**"), pursuant to which Enbridge shall be granted a non-exclusive easement for the purposes of facilitating the provision and distribution of natural and/or manufactured gas to the R5 Block.
14. Specific Servient Easements over the Child Care Property in favour of the other components of the Proposed Development for servicing, maintenance, repair and support purposes.
15. A site plan agreement and/or other development agreement between Aquabella Bayside Toronto Inc. and the City of Toronto with respect to the Proposed Development.

**Attachment 2(d)**  
**SCHEDULE “F” to APS**

**BASE BUILDING REQUIREMENTS AND DESIGN GUIDELINES FOR CHILD CARE SPACE**

**Responsibilities of the Site Developer**

All to be installed in accordance with approved drawings and pursuant to coordination between Purchaser and Vendor.

- Base building interior and exterior spaces suitable for detailed design and final fit out by Waterfront Toronto.
- Overall interior building area dedicated to the provision of the Child Care to be a minimum of 10.2 SM/child (110 SF/child).
- The plans for the base building interior and exterior space, including the design depicted in Schedule F-1 attached hereto, to be provided by the Site Developer, must be able to conform to the requirements of the Child Care Early Years Act 2014, Planning & Design Guidelines for Child Care Centres from the Ministry of Child and Youth Services, CAN/CSA-Z614-03 Children’s Play Spaces and Equipment (or equivalent), and the City of Toronto Accessibility Guidelines (hereinafter collectively referred to as the “**Child Care Legislation/Guidelines**”).
- The City and/or its designated Child Care Operator are responsible for obtaining licenses required in order for the Child Care space to operate as a Child Care facility.
- The interior space shall be provided by the Site Developer ready for final fit out by Waterfront Toronto including the following:
  - Electrical Supply and sub-panel with sufficient capacity to serve the Child Care in a location acceptable to Waterfront Toronto.
  - Mechanical plumbing connections with sufficient capacity to serve the Child Care in locations suitable to Waterfront Toronto.
  - Primary heating, ventilation and air conditioning supply with sufficient capacity to serve the Child Care with distribution by Waterfront Toronto based on detailed design. This shall include provisions related to kitchen areas of the child care including possible requirements for kitchen exhaust and make up air.

- The provision of primary sprinkler system supply lines of sufficient capacity to serve the Child Care with sprinkler distribution within the Child Care space by Waterfront Toronto.
- The provision of a fire alarm system integrated with the overall building system.
- The provision of primary data and communication infrastructure suitable to Waterfront Toronto with distribution within the Child Care space by Waterfront Toronto.
- The provision of base building internal staircase within the Child Care space ready to accept Child Care finishes.
- The provision of base building staircase supporting the Child Care space (fire exit).
- Stair G and J – The provision of child height handrails from the second floor of the Child Care space down to grade (in accordance with *Ontario Building Code* requirements) in stairwells G and J on the wall-side only.
- The provision of child height handrails from the first floor of the Child Care space fire exit to down to grade (in accordance with *Ontario Building Code* requirements) in stairwells D and E on the wall-side only.
- A completed exterior building envelope including direct, secure and independent exterior primary facility access, exterior and interior glazing sufficient to serve the various program requirements of the Child Care, and exterior door access from the Child Care to the exterior play areas to the satisfaction of Waterfront Toronto.
- Base building height for the Child Care space to be a minimum of 3m (10 ft) from concrete finished floor to under side of concrete floor above, save and except for those portions identified in Schedule F-1 as having reduced vertical height, where the vertical height may be decreased by an amount not exceeding as shown in Schedule F-1 to allow structural, electrical, mechanical or plumbing encroachments of base building elements into the minimum 3m (10 ft) clear height.
- Floor surfaces shall be clean troweled concrete ready to accept Child Care finishes.
- All fire separation requirements including floor separations and those to adjacent occupancies.
- Access and provision for an appropriate sized garbage storage facility to accommodate daily refuse requirements of the Child Care including recycling and municipal diversion programs.



- Should a two storey design solution be proposed, then an elevator will be required. The Construction of the shaft and associated structure as well as the elevator equipment shall be the responsibility of the Site Developer.
- In the event that there is a conflict or inconsistency between the terms and provisions of this Schedule "F" and the plans for the base building interior and exterior space depicted in Schedule F-1, then, subject to paragraph 3 of the "Design & Drawings" section of the Term Sheet, Schedule F-1 shall prevail to the extent of such inconsistency.
- The exterior play space shall be ready for final implementation by Waterfront Toronto including the following:
  - Construction of sub-grade ready for final grading;
  - Glass guards installed on terrace as per Ministry of Education Rooftop guidelines; and
  - All sub-grade drainage requirements shall be the responsibility of the Site Developer with design and implementation suitable to the detailed design by Waterfront Toronto.
  - Planters along the outer edges, outside the glass guards, will be provided by the Vendor.

#### **Responsibilities of Waterfront Toronto**

- Detailed design and building permit for the fit out of the Child Care shall be the responsibility of Waterfront Toronto.
- All interior finishes and fit out by Waterfront Toronto.
- Hard and soft landscape treatment.

**Attachment 3**  
**MAJOR TERMS: SHARED FACILITIES AGREEMENT**  
**AQUABELLA CHILD CARE CENTRE**  
**May 24<sup>th</sup>, 2019**

<b>Parties</b>	<b>Aquabella Bayside Toronto Inc., ("Aquabella") Condominium Corporation (the "Condominium") and City of Toronto ("City")</b>
<b>Components of the Project</b>	<p>The Project consists of three components:</p> <ol style="list-style-type: none"> <li>1. The Condominium,</li> <li>2. the City's lands for the Child Care Centre (the "<b>City Lands</b>"), and</li> <li>3. the Retail Component.</li> </ol>
<p><b>Condominium/ Three-Way Shared Facilities Committee/  Roles</b></p>	<ol style="list-style-type: none"> <li>1. The Condominium will be responsible for the management, control, operation, maintenance and repair of the Two-Way Shared Facilities in a first class standard, will procure and maintain Shared Facilities Insurance, and will carry out the other duties set out in the Shared Facilities Agreement (the "<b>Agreement</b>") pertaining to the Two-Way Shared Facilities on behalf of both parties (namely the Condominium and the City). The Condominium will remain directly responsible to the City for carrying out such duties notwithstanding any delegations of such duties by the Condominium to a licensed property manager.</li> <li>2. The "<b>Three-Way Shared Facilities Committee</b>" (being a committee formed by representatives of each of the Condominium and the Retail Component only) will manage, control, operate, maintain, repair and rebuild the Three-Way Shared Facilities in a first class standard, procure and maintain Shared Facilities Insurance, and carry out the other duties set out in the Agreement pertaining to the Three-Way Shared Facilities on behalf of all three parties (namely the Condominium, the Retail Component Owner and the City).</li> </ol> <p>The City shall have the right to notice, attendance, being heard, and all minutes and decisions of the Condominium and/or its property manager and the Three-Way Shared</p>

	<p>Facilities Committee. The City shall have the right to submit any dispute regarding the Two-Way Shared Facilities and/or the Three-Way Shared Facilities, or any decision made by the Condominium and/or its property manager or the Three-Way Shared Facilities Committee, to the Dispute Resolution Process.</p>
<p><b>Shared Facilities</b></p>	<p>The "<b>Shared Facilities</b>" are the Two-Way Shared Facilities between the Condominium and the City; and the Three-Way Shared Facilities among the Condominium, the Retail Component and the City.</p>
<p><b>Ownership of Shared Facilities</b></p>	<ol style="list-style-type: none"> <li data-bbox="634 615 1425 1010">1. The Two-Way Shared Facilities will be owned by the Condominium Corporation or will be part of the common elements of the Condominium, and the Two-Way Shared Units shall be conveyed by the Declarant to (and be correspondingly owned by) the Condominium Corporation, and the Condominium Corporation will be prohibited from transferring, charging or selling the Two-Way Shared Units (inasmuch as same must be operated, maintained and repaired for the benefit of the Condominium and the City Lands respectively).</li> <li data-bbox="634 1052 1425 1818">2. The Three-Way Shared Facilities will be owned by the Condominium Corporation and the registered owner of the Retail Component jointly, or will be part of the common elements of the Condominium, and the Three-Way Shared Units shall be conveyed by the Declarant to (and be correspondingly owned by) the Condominium Corporation and the Retail Component Owner jointly, as tenants in common, and, save and except as hereinafter provided, they will be prohibited from transferring, charging or selling the Three-Way Shared Units (inasmuch as same must be operated, maintained and repaired for the benefit of the Condominium, the Retail Component and the City Lands respectively). Notwithstanding the foregoing, the Retail Component Owner shall be entitled to transfer its ownership interest in the Three-Way Shared Units to any transferee of the Retail Component (such that the owner of the Retail Component from time to time also owns Retail Component's interest in the Three-Way Shared Units.)</li> </ol>

<p><b>Two-Way Shared Facilities</b></p>	<p>The "<b>Two-Way Shared Facilities</b>" are the "<b>Two-Way Shared Units</b>" (being the Boiler Room and the Electrical Room), including the central fluid cooling system, the boilers for heating, the hot water storage tanks, electrical transformer and distribution system and portions of the Shared Servicing Systems that service both the Condominium and the City Lands.</p>
<p><b>Three-Way Shared Facilities</b></p>	<p>The "<b>Three-Way Shared Facilities</b>" are the "<b>Three-Way Shared Units</b>" (being the Loading Unit, the Sprinkler/Water Meter Unit and the Storm Water Storage Tank Unit), including the emergency generator, storm and sanitary sump pits, elevator sump pits, fire pump, telecom room, incoming water, gas and electrical servicing pipes, storm and sanitary sewer pipes, directional signage, and portions of the Shared Servicing Systems that service all or any portion of each of the Condominium, the Retail Component and the City Lands.</p>
<p><b>Shared Servicing Systems</b></p>	<p>The "<b>Shared Servicing Systems</b>" are the servicing pipes, wires, cables, conduits and systems intended to be shared by two or more components of the Project, including the electricity, water, storm and sanitary sewer systems, gas systems, emergency systems, heating and cooling systems, computer controlled access systems, security/fire alarm systems, telephone and cable computer software, and a parking garage elevator.</p>
<p><b>Proportionate Three-Way Interest and Proportionate Two-Way Interest</b></p>	<p>The City's Proportionate Interest in the Three-Way Shared Facilities will be <b>1.85%</b>.</p> <p>The City's Proportionate Interest in the Two-Way Shared Facilities will be <b>1.88%</b>.</p> <p>The proportionate interest is based on total area of each of the Components of the Project (including above and below grade), but excluding the outdoor space of the Child Care Centre.</p> <p>The Agreement will provide that the City is not required to share in the cost-sharing arrangements until the earlier of:</p> <p>(i) the date that the City opens the Child Care Centre for business; and</p>

	(ii) the first anniversary of the date of registration of the Condominium.
<p><b>Schedule "A" of Proportionate Interests and Costs</b></p>	<p><b>Schedule "A"</b> attached shows the Proportionate Interests and Costs of the Shared Facilities and other costs payable by each Component under the Agreement.</p> <p>The costs relating to the Shared Facilities shall be apportioned amongst the Condominium, the Retail Component and the City in accordance with their respective Proportionate Interests.</p>
<p><b>Annual Budget and Reserve Fund for Shared Facilities and other Shared Costs</b></p>	<ol style="list-style-type: none"> <li>1. The Condominium and/or its property manager will be responsible for preparing an annual budget for the parties in respect of the Two-Way Shared Facilities and other costs in accordance with the Two Way Costs shown on Schedule "A" (the "<b>Two-Way Shared Facilities Budget</b>") which budget will include an amount for the reserve fund to cover the major repair and replacement of the Two-Way Shared Facilities (based on the life expectancy of the components comprising the Two-Way Shared Facilities and their respective replacement cost).</li> <li>2. The Three-Way Shared Facilities Committee (comprising the representatives of only the Condominium and the Retail Component Owner) will prepare an annual budget for the parties in respect of the Three-Way Shared Facilities and other costs in accordance with the Three Way Costs shown in Schedule "A" (the "<b>Three-Way Shared Facilities Budget</b>") which budget will include an amount for the reserve fund to cover the major repair and replacement of the Three-Way Shared Facilities (based on the life expectancy of the components comprising the Three-Way Shared Facilities and their respective replacement cost).</li> <li>3. The Agreement will provide a mechanism for obtaining full financial disclosure of all matters pertaining to each of the Two-Way Shared Facilities Budget and the Three-Way Shared Facilities Budget, including the right of the City to have notice of, and to attend and be heard at any meeting respecting budget matters, obtain all minutes and decisions of meetings, and access the Dispute</li> </ol>

	Resolution process (based on mandatory mediation and binding arbitration) in the event of a dispute.
<b>Exterior Façade and Window Cleaning</b>	<p>The Condominium will be responsible for the approval of any alterations to the exterior façades of the Condominium and the City Lands to maintain an aesthetically consistent appearance of the Project. The City will be responsible for the costs pertaining to the exterior façade of the City Lands.</p> <p>The Condominium and/or its property manager will be responsible for arranging the exterior window cleaning in respect of the Condominium and the City Lands. The City will contribute to the exterior window cleaning based on its Two-Way Proportionate Interest.</p>
<b>Planter Boxes outside glass guard surrounding the outdoor area of the Child Care Centre</b>	<p>The Condominium will be responsible for installing the planter boxes on the exterior side of the glass guard perimeter surrounding the outdoor area of the Child Care Centre. The Condominium will be responsible for the repair, maintenance, and irrigation of the planter boxes and the plants/flowers in a first-class manner.</p> <p>The plants/flowers shall be of a type/quality that is not harmful to children and does not adversely affect or impair the use of the outdoor Child Care Centre space by children.</p> <p>The City will grant an easement to the Condominium for the purposes of the repair, maintenance, and irrigation and of the planter boxes and plants/flowers.</p>
<b>Signage</b>	<p>The location of exclusive signage for the City Lands will initially be determined by Aquabella. If the designated location for the exclusive signage for the City Lands is beyond the boundaries of the City Lands, on part of the residential common elements, then an access easement will be provided to the City to allow it to maintain and repair its exclusive signage. Whether located within or beyond the boundaries of the City Lands, all exclusive signage shall be installed, maintained and repaired at the sole cost and expense of the City or its successor.</p> <p>All exclusive signage for the City Lands, whether located within or beyond the boundaries of the City Lands, will be required to conform to and comply with the signage</p>

	<p>guidelines that are to be developed for “Bayside Village” as a whole. The initial exclusive signage installed at the outset will be required to fully comply with the signage guidelines. Any future changes or alterations to the exclusive signage (in terms of location, graphics, colour, size, design, etc.) will also be required to conform to the signage guidelines that will be developed, and any changes to exclusive signage affixed to the exterior façade of the building will also require the prior approval of the Condominium.</p>
<p><b>Exclusive City Equipment and Systems serving the City Lands</b></p>	<p>The Exclusive City Equipment and Systems are the equipment, fixtures and systems that service only the City Lands.</p> <p>The Exclusive City Equipment and Systems shall be owned by the City. The City shall maintain, repair and insure the Exclusive City Equipment and Systems at the City's sole cost.</p> <p>The City's servicing, maintenance and repair Easement over the Condominium and Retail Component will be in respect of both Shared Servicing Systems and Exclusive City Equipment and Systems.</p> <p>The Condominium shall have no obligation or liability to the City whatsoever with respect to the City's Exclusive Equipment and Systems, other than providing access to same to the City's authorized representatives, agents, employees and contractors through any portion of the non-exclusive use common elements of the Condominium (if and when required), pursuant to the easement created in favour of the City Lands, save and except for any damage caused to the City's Exclusive Equipment and Systems for which the Condominium is obligated to indemnify the City . If any of the Exclusive City Equipment and Systems are situated within the Retail Component, the foregoing applies in the same manner to the Retail Component Owner.</p>
<p><b>Easements</b></p>	<p>The City Lands will have the benefit of the following Easements for no consideration:</p> <ol style="list-style-type: none"> <li>1. Vehicular and Pedestrian Access Easement over part of the private Edgewater Drive to access the public street known as Merchants' Wharf;</li> </ol>

2. Easement over and access to the Two-Way Shared Units and the Three-Way Shared Units;
3. Permanent Easement for free parking for 3 vehicles and 4 bicycles in the parking garage of the Condominium;
4. Surface Driveway and Garage Ramp Easement;
5. Common Walkways & Landscaped Areas Easement;
6. Underground Garage Drivelanes & Walkway Areas Easement, confined to level A of the Condominium;
7. Condominium Servicing Areas and Retail Servicing Areas Easement, which will include access to the Shared Servicing Systems and the City's Exclusive Equipment and Systems;
8. Condominium Support Areas and Retail Support Areas Easement; and
9. All other easements required to access or use the City Lands, including easements over the "drop off and pick up" layby; parking garage elevator; stairwells, corridors, walkways and access routes to and from all components of the City Lands; a general easement over the common elements on Levels 1, 1 MEZZ and A(P1) of the residential condominium for emergency pedestrian egress purposes over, across and upon all corridors, stairwells, walkways and drivelanes that exit from Levels 1, 1 MEZZ and A (P1); permitted signage areas for exclusive signage for the City Lands (excluding directional signage areas); which will be identified by Aquabella's surveyors and architects, in consultation with the City, and shown on a strata reference plan for the Project, prior to the acquisition by the City of the City Lands.

The City Lands will be subject to the following Easements for no consideration:



	<p>10. Daycare Servicing Easements (for the benefit of the Condominium and the Retail Component); and</p> <p>11. Daycare Support Easements (for the benefit of the Condominium and Retail Component).</p>
<p><b>Environmental – Certificate of Property Use Obligations</b></p>	<p>The Three-Way Shared Facilities Committee will be responsible to carry out and comply with all of the obligations of the Certificates of Property Use in respect of the Project and to account to the other parties. The City will be given access by the Three-Way Shared Facilities Committee to copies of all reports, inspection results, and filings with the Ministry of Environment and Climate Change to evidence and confirm compliance with all applicable CPU Obligations. The Condominium shall indemnify the City for all claims, costs, damages, penalties, fines or prosecutions which the City may suffer by reason of the Condominium and/or the Three-Way Shared Facilities Committee failing to comply with the requirements of the Certificates of Property Use.</p>
<p><b>Shared Roadway Agreement</b></p>	<p>The City will not be entering into a Shared Roadway Agreement in respect of the private road Edgewater Drive.</p>
<p><b>Insurance and Insurance Trustee</b></p>	<p>The Declarant (and after the Transfer Date, the Condominium and the Three-Way Shared Facilities Committee) shall arrange for and maintain the Shared Facilities Insurance.</p> <p>The Condominium and the Three-Way Shared Facilities Committee will have the responsibility of retaining the Insurance Trustee (if any) in respect of the Two-Way Shared Facilities and the Three-Way Shared Facilities respectively. The City will not be a party to any Insurance Trustee Agreement.</p> <p>Each Contributor shall obtain and maintain Mandatory Insurance in respect of its own Component of the Project.</p> <p>Insurance coverage ("<b>Mandatory Insurance</b>") for the Shared Facilities will include:</p> <ol style="list-style-type: none"> <li>1. Commercial General Liability insurance in an amount of not less than \$5M per occurrence (to which the City will be an "added insured" in respect of the Shared Facilities Insurance);</li> </ol>

	<p>2. All-Risk Property insurance in an amount equal to 100% replacement cost;</p> <p>3. Boiler, machinery and pressure vessel insurance.</p> <p>The City will have its own insurer and own broker with respect to the City Lands and will not be participating in a single insurance policy for the Project or participating in any co-insurance.</p> <p>The parties acknowledge that there are no Shared Facilities within the City Lands.</p> <p>The City is not an owner of the Shared Facilities.</p> <p>The City will not be a "named insured" under the Shared Facilities Insurance policy.</p> <p>The City will not be obtaining Shared Facilities Insurance, however the City will contribute to the costs of maintenance (the premiums and deductibles for the Shared Facilities Insurance) in accordance with its Proportionate Two-Way and Proportionate Three-Way Interest in the Shared Facilities.</p> <p>The City will not be obtaining any appraisal of its own component, however it will obtain and maintain 100% replacement cost coverage for all property owned by the City.</p> <p>Certificates of Insurance, evidencing that the required Mandatory Insurance for the Shared Facilities has been obtained and is in place, will be provided to each Component owner annually and at such other times upon reasonable request from time to time.</p> <p>Any dispute regarding the Shared Facilities Insurance will be submitted to the Dispute Resolution Process.</p>
<p><b>Damage or Destruction of any Component of the Project</b></p>	<p>Each of the parties will maintain their respective components in a "first class" standard of building maintenance and repair and each will be required to rebuild and restore their respective buildings and structures in the event of damage or destruction in a good and workmanlike manner.</p>

	This obligation will ensure that the Easements described in the Agreement continue to be enjoyed by the parties in the event of damage or destruction.
<b>Self-Help Remedies</b>	<p>The Agreement will provide a mechanism for a party to carry out and complete any work for which another party has failed to carry out and complete. Accordingly:</p> <ol style="list-style-type: none"> <li>1. If the Shared Services Manager fails to carry out and complete its responsibilities regarding the Two-Way Shared Facilities then the City will have a right to do so and be reimbursed for the Condominium's share of the Two-Way Shared Facilities Costs so incurred; and</li> <li>2. If the Three-Way Shared Facilities Committee fails to carry out and complete its responsibilities regarding the Three-Way Shared Facilities then the City will have a right to do so and be reimbursed for the Condominium's share and the Retail Component Owner's share of the Three-Way Shared Facilities Costs so incurred.</li> </ol>
<b>Easement Charge</b>	<p>If any party fails to pay or contribute to the monies required to be paid under the Agreement, another party may pay the amount and the amount paid shall form a lien ("<b>Easement Charge</b>") on the non-paying party's lands together with simple interest in the amount of <b>15 %</b> per annum, until it is paid, and enforceable in the same manner as provided in the <i>Mortgages Act</i> in respect of a mortgage in default. Interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the outstanding amount is paid. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest.</p>
<b>Certificate of Compliance</b>	<p>Subject to Section (c), below, the parties will be obligated to provide a Certificate to any other party to the Agreement, within thirty (30) days of receiving a written request for same from such other party for a fee not to exceed the fee prescribed under the <i>Condominium Act</i> for providing a status certificate, plus HST; provided that:</p> <p>(a) the City shall not be required to provide a Certificate to the Condominium more frequently than once quarterly in any given calendar year;</p>

	<p>(b) no party shall be required to provide a Certificate to any Condominium unit owner or mortgagee and for clarity only the Condominium and the owner of the Retail Component (and any mortgagee of the owner of the Retail Component), as parties to the Shared Facilities Agreement, shall be entitled to request a Certificate from the City; and</p> <p>(c) in the case of a Certificate issued by the City, the fee payable to the City shall be the fee prescribed under the <i>Toronto Municipal Code, Chapter 441 Fees and Charges</i>, for the provision of a compliance certificate under a shared facilities agreement, or if there is no such prescribed fee in the case of a shared facilities agreement the fee shall be the fee prescribed for the issuance of a landlord/tenant acknowledgment under a complex lease on a full recovery basis (currently set at \$1,258.83 plus disbursements and HST).</p>
<b>Dispute Resolution</b>	The Agreement will include a Dispute Resolution process consisting of mandatory mediation and binding arbitration.
<b>Mutual Indemnities</b>	Each party will indemnify the other parties against all losses, costs, and damages suffered by the other parties by reason of the breach of the Agreement or the negligent act or omission or wilful misconduct by the party, its workers, contractors, employees, agents and those for whom they are responsible at law, save and except to the extent that they are caused by the negligent act or omission or wilful misconduct of the party claiming indemnity or its workers, contractors, employees, agents or those for whom they are responsible at law.

## Attachment 3(a)

### Schedule A of SFA Costs and Proportionate Interests MAJOR TERMS: SHARED FACILITIES AGREEMENT AQUABELLA CHILD CARE CENTRE

TWO-WAY COSTS	Condo %	Retail %	City %
<b>A.) Two-Way Shared Facilities Boiler Room, Electrical Room and Shared Servicing Systems*:</b>			
1. <u>Service and Maintenance Contracts</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Mechanical maintenance contract			
2. <u>Repairs and Maintenance</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Mechanical Repairs and Maintenance –non- contractual			
• Plumbing Repairs, Maintenance & Supplies			
• Electrical Repairs, Maintenance & Supplies			
• Maintenance of Hydro Transformer Vault and Switch Gears			
• General Repairs, Maintenance & Supplies/Equipment			
• Cleaning (twice per week)			
3. <u>Utilities</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Electricity			
• Water			
<b>B.) Other Two-Way Costs</b>			
4. <u>Window-Cleaning</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Exterior window cleaning once annually			
<b>C.) Administration (attributable to Two-Way Shared Facilities and Two-Way Costs)</b>			
Property Management Services; Reserve Fund Study/Consulting Services; Insurance; Annual Finance Audit; Legal Fees; Office Expenses; Telephone and Communications	<b>98.12%</b>	N/A	<b>1.88%</b>
<b>D.) Reserve Fund Contribution</b>			
For major repair/replacement of Two-Way Shared Facilities	<b>98.12%</b>	N/A	<b>1.88%</b>

**\*Explanatory Note: The Shared Servicing Systems means the shared servicing systems in connection with the Boiler Room and Electrical Room.**

THREE-WAY COSTS	Condo %	Retail %	City %
<b>A.) Three-Way Shared Facilities Loading Unit, Sprinkler/Water Meter Unit and Storm Water Storage Tank and Shared Servicing Systems*:</b>			
1. <u>Service and Maintenance Contracts</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Emergency Generator Contract</li> <li>• Grounds Maintenance Contract (for snow/debris removal from private walkways and driveways)</li> <li>• Cleaning Service Contract (outdoor shared loading area)</li> <li>• Garage Bicycle Elevator Maintenance (this is the only elevator in the Development for which the City is sharing costs)</li> </ul>			
2. <u>Repairs and Maintenance</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Emergency Generator –non-contractual Repairs and Fuel</li> <li>• Cleaning</li> <li>• Cleaning Supplies</li> <li>• General Maintenance</li> <li>• Plumbing Repairs, Maintenance &amp; Supplies – Sanitary and Elevator Sump Pumps</li> <li>• Electrical Repairs, Maintenance &amp; Supplies</li> <li>• Fire Safety Testing and Monitoring</li> </ul>			
3. <u>Utilities</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Electricity</li> <li>• Water</li> </ul>			
<b>B.) Other Three-Way Costs</b>			
4. <u>CPU Compliance Costs</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
Costs to carry out and comply with CPU obligations but not including costs arising out of failure to comply, such non-compliance costs attributable solely to the Condo.			
<b>C.) Administration (attributable to Three-Way Shared Facilities and Three-Way Costs)</b>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
Property Management Services; Reserve Fund Study/Consulting Services; Insurance; Annual Finance Audit; Legal Fees; Meeting Costs; Office Expenses; Telephone and Communications			
<b>D.) Reserve Fund Contribution</b>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
For major repair/replacement of Three-Way Shared Facilities			

**\*Explanatory Note: The Shared Serving Systems means the Garage Bicycle Elevator and Vestibule; the Rogers Communication system; the Beanfield Communication system (provided the City's contribution will be Nil if the City is not using Beanfield for internet access); and the shared servicing systems on Levels 13 and 14 of the Condominium.**

## Attachment 3(a)

### Schedule A of SFA Costs and Proportionate Interests MAJOR TERMS: SHARED FACILITIES AGREEMENT AQUABELLA CHILD CARE CENTRE

TWO-WAY COSTS	Condo %	Retail %	City %
<b>A.) Two-Way Shared Facilities Boiler Room, Electrical Room and Shared Servicing Systems*:</b>			
1. <u>Service and Maintenance Contracts</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Mechanical maintenance contract			
2. <u>Repairs and Maintenance</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Mechanical Repairs and Maintenance –non- contractual			
• Plumbing Repairs, Maintenance & Supplies			
• Electrical Repairs, Maintenance & Supplies			
• Maintenance of Hydro Transformer Vault and Switch Gears			
• General Repairs, Maintenance & Supplies/Equipment			
• Cleaning (twice per week)			
3. <u>Utilities</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Electricity			
• Water			
<b>B.) Other Two-Way Costs</b>			
4. <u>Window-Cleaning</u>	<b>98.12%</b>	N/A	<b>1.88%</b>
• Exterior window cleaning once annually			
<b>C.) Administration (attributable to Two-Way Shared Facilities and Two-Way Costs)</b>			
Property Management Services; Reserve Fund Study/Consulting Services; Insurance; Annual Finance Audit; Legal Fees; Office Expenses; Telephone and Communications	<b>98.12%</b>	N/A	<b>1.88%</b>
<b>D.) Reserve Fund Contribution</b>			
For major repair/replacement of Two-Way Shared Facilities	<b>98.12%</b>	N/A	<b>1.88%</b>

**\*Explanatory Note: The Shared Servicing Systems means the shared servicing systems in connection with the Boiler Room and Electrical Room.**

THREE-WAY COSTS	Condo %	Retail %	City %
<b>A.) Three-Way Shared Facilities Loading Unit, Sprinkler/Water Meter Unit and Storm Water Storage Tank and Shared Servicing Systems*:</b>			
1. <u>Service and Maintenance Contracts</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Emergency Generator Contract</li> <li>• Grounds Maintenance Contract (for snow/debris removal from private walkways and driveways)</li> <li>• Cleaning Service Contract (outdoor shared loading area)</li> <li>• Garage Bicycle Elevator Maintenance (this is the only elevator in the Development for which the City is sharing costs)</li> </ul>			
2. <u>Repairs and Maintenance</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Emergency Generator –non-contractual Repairs and Fuel</li> <li>• Cleaning</li> <li>• Cleaning Supplies</li> <li>• General Maintenance</li> <li>• Plumbing Repairs, Maintenance &amp; Supplies – Sanitary and Elevator Sump Pumps</li> <li>• Electrical Repairs, Maintenance &amp; Supplies</li> <li>• Fire Safety Testing and Monitoring</li> </ul>			
3. <u>Utilities</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
<ul style="list-style-type: none"> <li>• Electricity</li> <li>• Water</li> </ul>			
<b>B.) Other Three-Way Costs</b>			
4. <u>CPU Compliance Costs</u>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
Costs to carry out and comply with CPU obligations but not including costs arising out of failure to comply, such non-compliance costs attributable solely to the Condo.			
<b>C.) Administration (attributable to Three-Way Shared Facilities and Three-Way Costs)</b>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
Property Management Services; Reserve Fund Study/Consulting Services; Insurance; Annual Finance Audit; Legal Fees; Meeting Costs; Office Expenses; Telephone and Communications			
<b>D.) Reserve Fund Contribution</b>	<b>98.39%</b>	<b>1.76%</b>	<b>1.85%</b>
For major repair/replacement of Three-Way Shared Facilities			

**\*Explanatory Note: The Shared Serving Systems means the Garage Bicycle Elevator and Vestibule; the Rogers Communication system; the Beanfield Communication system (provided the City's contribution will be Nil if the City is not using Beanfield for internet access); and the shared servicing systems on Levels 13 and 14 of the Condominium.**



Attachment 4

Major Terms: Delivery Agreement for Child Care Property at Aquabella

April 30, 2019

<b>Parties</b>	The City of Toronto (“City”) and Toronto Waterfront Revitalization Corporation (“Waterfront Toronto”)
<b>Child Care Property</b>	<p>Part of the R5 Block and being:</p> <p>a freehold parcel in the Proposed Development including approximately nine thousand one hundred and thirty-nine (9,139) square feet of interior space and approximately three thousand six hundred and twenty-six (3,626) square feet of exterior space as described on the attached <b>Schedule "A"</b>, with roughed in mechanical and electrical services and base building standards to the levels described in <b>Schedule "B"</b> (Base Building Requirements and Design Guidelines for Child Care Space).</p> <p>Together with and subject to appurtenant and servient easements for vehicular and pedestrian access and egress, parking, servicing, maintenance, repair and support purposes in respect of the Proposed Development.</p> <p>(collectively, the “<b>Child Care Property</b>”)</p>
<b>Waterfront Toronto Obligations:</b>	
<b>1. Detailed Design</b>	<ul style="list-style-type: none"><li>• Waterfront Toronto is responsible for procuring and managing the architectural services to complete the detailed design of the child care layout, fixed millwork, fixtures, lighting, HVAC, interior work and exterior treatment of the Child Care Property, by way of a “Prime Consultant”.</li></ul> <p>The detailed design shall be in compliance with all provincial codes, municipal planning, zoning and by-law criteria and requirements as provided by the City of Toronto’s Children’s Services Division representative, including but not limited to the following: City of Toronto’s requirements for a Child Care Facility and in accordance with the Child Care and Early Years Act, 2014, CAN/CSA-Z614-03 Children’s Play Spaces and Equipment or equivalent, the Toronto Child Care Design &amp; Technical Guideline</p>

	<p>R1, 2016, the Toronto Accessibility Guidelines, Children’s Services Early Learning &amp; Child Assessment for Quality Improvement, 2014 (AQI).The detailed design will abide by the requirements provided by the Children’s Services Division at the start of the design process.</p> <p>Waterfront Toronto and Prime Consultant shall cooperate with the City of Toronto in connection with providing any plans, drawings, specifications required to seek any approval or other consent required from any governmental authority under applicable law in connection with the Child Care Property. Waterfront Toronto will ensure the Prime Consultant includes a quantity surveyor to provide costing at milestone stages including 1 Class C and 1 Class A costing.</p>
<p><b>2. Timing</b></p>	<p>Waterfront Toronto will initiate a Request for Proposal process to select an architectural firm in 2018. The architectural firm will be the Prime Consultant and be responsible for contracting all sub-consultants to complete detailed design of the Child Care Property. Waterfront Toronto will commence fit out of interior space and completion of exterior space following the turnover of possession of the Child Care Property to the City by conveyance as agreed to between the City and the Site Developer (the “<b>Closing Date</b>”) and in compliance with applicable laws including Ontario Health &amp; Safety Act. The City will promptly notify Waterfront Toronto after the City receives notice from Aquabella Bayside Toronto Inc. that the construction of the Child Care Property to base building standards has been substantially completed under the Agreement of Purchase and Sale.</p>
<p><b>3. Maximum Budget Amount</b></p>	<p>Waterfront Toronto will fund the 1) Detailed Design, 6) Fit Out of Interior Space, 7) Completion of Exterior Space, 8) Permits and surveys, 11) Land Transfer Taxes, and soft costs including consultant fees, project management and project contingency, up to Waterfront Toronto’s Maximum Budget Amount.</p>

<b>4. Contractor and Construction Process</b>	<p>Waterfront Toronto is responsible for engaging a contractor to fit out the Child Care Property in accordance with the design of the Prime Consultant (the “Construction Contract”), and for managing the Construction Contract. The Construction Contract shall contain in its scope the items set out in paragraphs 5, 6, 7, 8 and 9, below.</p>
<b>5. Value Engineering</b>	<p>Waterfront Toronto and the City of Toronto cannot contribute funding to the Child Care Property beyond the Maximum Budget Amount. In the event the cost to complete the project is forecasted to exceed the Maximum Budget Amount, Waterfront Toronto and the City of Toronto will work co-operatively to modify or reduce scope of work of the Child Care Property to comply with the Maximum Budget Amount.</p>
<b>6. Fit Out of Interior Space</b>	<p>The Construction Contract will provide for the interior work of the Child Care Property in order to fully meet Ministry of Education licensing criteria. Waterfront Toronto will not provide any equipment for the Fit Out of the Interior Space for the Child Care Property with the exception of a commercial dishwasher and range hood.</p>
<b>7. Completion of Exterior Space</b>	<p>The Construction Contract will provide for the hard and soft landscape treatment of the Child Care Property’s exterior space inclusive of all surface treatments. The Construction Contract will include installation of the Child Care Property’s signage, including all applicable permits, wiring and power required to operate the Child Care Property’s signage. Waterfront Toronto will not provide playground play structure for the exterior space.</p>
<b>8. Permits</b>	<p>Waterfront Toronto is responsible for obtaining, at its cost, all building permits.</p>
<b>9. Building Permit Closure</b>	<p>Waterfront Toronto is responsible to ensure that the Contractor closes all the pertinent building permits at project closure in order for the Child Care Property to be licensed.</p>
<b>10. City of Toronto Sign-off at Project Milestones</b>	<p>Waterfront Toronto and City of Toronto shall work in partnership to:</p> <ul style="list-style-type: none"> <li>• Complete the detailed design of fit-out scope and exterior treatment of the Child Care Property;</li> <li>• Complete the fit-out of the interior space of the Child Care Property;</li> </ul>

	<ul style="list-style-type: none"> <li>• Complete the exterior space.</li> </ul> <p>A representative from Children’s Services Division will attend all project meetings as required with Waterfront Toronto, its consultants and contractors. A representative from Children’s Services Division will sign-off at project milestones (milestones will be determined jointly by Waterfront Toronto and representative from Children’s Services Division and included in the Delivery Agreement).</p> <p>In addition, any major changes to the detailed design of the fit-out of interior space or exterior treatment will require sign-off from Children’s Services Division.</p>
<p><b>11. Land Transfer Taxes (LTT)</b></p>	<p>Waterfront Toronto will seek a ruling from the Ministry of Finance as to the amount, if any, of LTT payable relating to the City acquisition of the Child Care Property from Aquabella Bayside Toronto Inc. under the Agreement of Purchase and Sale (APS) and the post-closing fit out work to be carried out by Waterfront Toronto under this Agreement.</p> <p>The City will work co-operatively with Waterfront Toronto to ensure that the Ministry has all relevant particulars of the overall transaction. Waterfront Toronto will promptly seek the ruling upon the execution by the parties of the APS and this Agreement. The City shall provide Waterfront Toronto with Aquabella Bayside Toronto Inc.’s valuation of the Child Care Property on the Closing Date, which Waterfront Toronto may rely on in seeking such ruling. All LTT payable in connection with the City acquisition under the APS and the finishing work to be done to the Child Care Property under this Agreement is the responsibility of Waterfront Toronto. Waterfront Toronto will pay for all applicable LTT in connection with the Child Care Property.</p>
<p><b>12. Environmental Obligations</b></p>	<p>Waterfront Toronto shall ensure that its contractors will observe and comply with all Environmental Laws.</p> <p>Waterfront Toronto shall ensure that its contractors will permit Aquabella, its agents and contractors, to access the Child Care Centre as necessary to carry out all conditions and requirements of any Certificate of Property Use.</p> <p>Waterfront Toronto shall ensure that its contractors will not cause or permit any Hazardous Material to be brought into,</p>

	<p>stored, kept, used, or left in or about the Child Care Centre or any part thereof, other than any Hazardous Material that is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto.</p> <p>Waterfront Toronto shall ensure that its contractors will not permit any emissions, discharges or releases of Hazardous Materials or materials containing Hazardous Materials from the Child Care Centre.</p> <p>Waterfront Toronto will advise the City immediately of the orders of any authority having jurisdiction with respect to the Hazardous Material and comply forthwith with such orders, failing which, the City may undertake the required work itself at Waterfront Toronto's cost.</p>
<b>13. Hand Over and Warranties</b>	<p>The Child Care Property including warranties and guarantees, will be turned over to the City upon substantial performance of the work under the Construction Contract, and the City will accept the Child Care Property subject to completion of the work under the Construction Contract, including rectification of deficiencies. Waterfront Toronto and its contractors will continue to have a right of re-entry into the Child Care Property to complete the Construction Contract and manage warranties for a period of one year.</p> <p>Waterfront Toronto will notify the City if issues related to the enforcement of the base building warranties arise as a result of completion of the Waterfront Toronto fit-out work.</p>
<b>14. Collective Agreements</b>	<p>When performing the fit-out, Waterfront Toronto will employ contractors that are in compliance with any collective agreements to which the City is bound in the Construction Industry. In this regard, Waterfront Toronto's contractors will comply with the Labour Trades Contractual Obligations in the Construction Industry Policy and Fair Wage Policy; these policies are attached as Schedule C and D as part of this agreement, and may be updated by the City from time to time. Prior to the commencement of the fit out work, the City will provide the updated policies to Waterfront Toronto.</p>
<b>City of Toronto Obligations:</b>	
<b>15. Licenses, government approvals</b>	<p>The City of Toronto and the Child Care Operator are responsible for obtaining, at its cost, all licenses and government approvals as may be required in order for the Child Care Property to operate as a Child Care facility.</p>

<p><b>16. Access to Child Care Property</b></p>	<p>As owner of the Child Care Property, the City of Toronto will allow Waterfront Toronto employees, contractors and agents to access the Child Care Property as necessary to complete the fit out of interior and exterior spaces. Insurance documentation for all parties accessing the Property is required.</p>
<p><b>17. Selection of Child Care Operator</b></p>	<p>A child care operator will be chosen through an Expression of Interest (EOI) process undertaken by the Children's Services Division at the City of Toronto.</p>

**Attachment 5**

**EAST BAYFRONT – BAYSIDE  
CHILD CARE SPACE CONSENT AND RELEASE AGREEMENT**

**THIS AGREEMENT** dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**BETWEEN:**

**CITY OF TORONTO** (the “City”)

OF THE FIRST PART

- and –

**TORONTO WATERFRONT REVITALIZATION CORPORATION**, a corporation incorporated under the *Business Corporations Act* (Ontario) and continued as a corporation without share capital pursuant to the *Toronto Waterfront Revitalization Corporation Act*, S.O. 2002

(“Waterfront Toronto”)

OF THE SECOND PART

- and –

**AQUALINA BAYSIDE TORONTO INC.**

(“Aqualina”)

OF THE THIRD PART

- and –

**AQUAVISTA BAYSIDE TORONTO INC.**

(“Aquavista”)

OF THE FOURTH PART

- and –

**AQUABELLA BAYSIDE TORONTO INC.**

(“Aquabella”)

OF THE FIFTH PART

- and –

**AQUALUNA BAYSIDE TORONTO INC.**

(“Aqualuna”)

OF THE SIXTH PART

(Aqualina, Aquavista, Aquabella and Aqualuna being hereinafter collectively called the “Site Developers”)

**WHEREAS:**

- A. Waterfront Toronto, in its capacity as the master developer of the East Bayfront Lands in the City of Toronto, Ontario, and Aquabella, in its capacity as the developer of the Proposed Development, entered into a development agreement dated October 18, 2016, notice of which was registered in the Land Titles Office on December 12, 2017 as Instrument No. AT4758240, as clarified by a Side Letter dated November 2, 2016 (such agreement, as amended, the “**Aquabella Development Agreement**”);
- B. Pursuant to Section 6.19 of the Aquabella Development Agreement, Aquabella agreed to develop the Child Care Space in the Proposed Development at its own cost and execute an offer to sell and convey the Child Care Space for nominal consideration to the City or to an operator designated by Waterfront Toronto and satisfactory to Aquabella, acting reasonably, in a form and substance satisfactory to Waterfront Toronto and the City, acting reasonably (such conveyance being the “**Transfer**”);
- C. The City (as transferee) and Aquabella, as nominee for the Aquabella Bayside Toronto Partnership (as transferor) have entered into a purchase and sale agreement dated as of the date hereof regarding the sale of the Child Care Space to the City (the agreement, as amended from time to time, being hereinafter called the “**Purchase Agreement**”), which Waterfront Toronto approves in form and substance subject to the terms set out herein;
- D. The City, as transferee under the Purchase Agreement, has required that the Aquabella Development Agreement be discharged from title to the Child Care Space upon the completion of the Transfer; and
- E. The parties have agreed to enter into this Agreement to confirm the basis on which Waterfront Toronto will, effective upon the completion of the Transfer, provide certain discharges and releases in connection with the Child Care Space and consent to the release of the Aquabella Development Agreement from title to the Child Care Space.

**NOW THEREFORE**, in consideration of the foregoing, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**Section 1.1 Definitions**



All terms used herein with initial capital letters and not defined herein have the same meanings ascribed to them in the Aquabella Development Agreement. In addition, the following terms used herein with initial capital letters will have the following meanings herein:

“**Assumption Date**” has the meaning ascribed thereto in Section 2.4(1);

“**Changes**” has the meaning ascribed thereto in Section 2.4(2);

“**Condominium Corporation**” means any condominium corporation created on the Land;

“**Development Agreements**” means the agreements described in Section 3.1(a) hereof;

“**Development Partner**” has the meaning ascribed thereto in Section 3.1(f);

“**Land**” means Block 3 on Plan 66M-2542, City of Toronto;

“**Shared Facilities Agreement**” means the shared facilities and cost sharing agreement to be entered into by the transferee of the Child Care Space, the owner of the Ground Floor Animation Space and the Condominium Corporation for the sharing of operating costs associated with shared elements of the Proposed Development for the mutual benefit of all of the owners from time to time of portions of the Proposed Development; and

“**Warranties**” means all express or implied warranties, guarantees, rights of action or other claims available to Aquabella against any and all contractors and suppliers engaged by or on behalf of Aquabella in respect of or relating to the Child Care Space.

## **ARTICLE 2**

### **CONDITIONS PRECEDENT TO WATERFRONT TORONTO CONSENT AND RELEASE OF DEVELOPMENT AGREEMENTS**

#### **Section 2.1 Development Agreement in Good Standing**

On the date of Transfer, Aquabella shall confirm to Waterfront Toronto that to the best of its knowledge and belief, Aquabella has complied with all of its obligations under the Aquabella Development Agreement required prior to the date of Transfer.

#### **Section 2.2 Completion of Child Care Space**

Aquabella shall give Waterfront Toronto notice (i) sixty (60) days prior to the date of the Transfer; and (ii) ten (10) days prior to the date of the Transfer confirming that the Child Care Space is complete, or complete subject to a list of specific outstanding deficiencies or outstanding incomplete items. Aquabella will use its best efforts to complete all outstanding deficiencies and incomplete items prior to the Transfer. If any deficiencies or incomplete items remain unremedied or incomplete as at the date of Transfer Aquabella will provide to Waterfront Toronto on the date of Transfer an undertaking to complete each item that remains outstanding by specific dates identified in the undertaking and satisfactory to Waterfront Toronto, acting reasonably, as being sufficiently early so as to not interfere with the completion of Waterfront Toronto’s work in the Child Care Space. Waterfront Toronto and its consultants

may access the Child Care Space to inspect the Child Care Space and confirm the status of all deficiency remediation at any time after delivery of the first of such notices.

### **Section 2.3 Transfer of Base Building Warranties**

- (1) The City hereby directs Aquabella to provide copies of all Warranties to Waterfront Toronto not less than ten (10) days prior to the Transfer. Aquabella and Waterfront Toronto will coordinate with one another to enable Waterfront Toronto to complete the fit-out work without impairing any of the base building warranties.
- (2) On or before Transfer, Aquabella shall, as provided in the Purchase Agreement, assign to the City all of the Warranties. Aquabella shall obtain any consents or approvals required in connection with such assignment at its own cost or, to the extent any such consent is not obtained, shall hold any Warranty for which consent is required in trust for the City. To the extent that Waterfront Toronto or any of its contractors discover defects or deficiencies in the Child Care Space during the completion of the Child Care Space, Aquabella shall:
  - (a) perform its obligations under its warranty provided to the City at the time of Transfer; and
  - (b) enforce the Warranties against the contractor or supplier providing such Warranties as may be reasonably directed by Waterfront Toronto from time to time,  
at Aquabella's own cost.
- (3) Aquabella represents and warrants to Waterfront Toronto, and will represent and warrant to Waterfront Toronto on Closing, that Aquabella has not released or taken any action to reduce or impair any potential claim under any Warranty.

### **Section 2.4 Performance of Specified Development Agreement Obligations After Transfer**

- (1) After the Transfer and until the date such obligations are to be funded under the Shared Facilities Agreement (the "**Assumption Date**") Aquabella shall continue to perform any obligations under Section 6.18 of the Aquabella Development Agreement in respect of the Child Care Space to the same extent as though the Aquabella Development Agreement continued in full force and effect in respect of the Child Care Space and Aquabella had not been released. Aquabella shall continue to perform all inspection and monitoring obligations under the Certificate of Property Use in respect of the Child Care Space to the same extent as was required under the Aquabella Development Agreement until the Assumption Date, and shall continue to seek LEED Gold Certification in respect of the Proposed Development including the Child Care Space and shall continue to comply with the Mandatory Green Building Requirements in respect of the Child Care Space pursuant to Section 6.04 of the Aquabella Development Agreement to the same extent as though the Aquabella Development Agreement continued in full force and effect in respect of the Child Care Space and

Aquabella had not been released. On the Assumption Date, Aquabella shall transfer to the parties to the Shared Facilities Agreement all records necessary to demonstrate performance of its obligations under Section 6.18 of the Aquabella Development Agreement through to the Assumption Date. Aquabella shall not be liable to Waterfront Toronto for not completing its obligations under the Aquabella Development Agreement in respect of the Child Care Space to the extent and for so long as the same are obstructed or cannot be performed due to the City restricting Aquabella's access to the Child Care Space.

- (2) From and after the date of the Transfer, the City, as owner of the Child Care Space, and Waterfront Toronto, in engaging consultants and contractors for the design and finishing of the Child Care Space, agree with Aquabella to comply with the current LEED Gold Certification requirements and the Mandatory Green Building Requirements applicable to the Child Care Space (including without limitation the completion and finishing of the Child Care Space) as set out on Schedule "A" attached (which Aquabella represents and warrants is a complete list of such requirements at this time) together with any amendments to such requirements which may subsequently become applicable to the completion and finishing of the Child Care Space (the "**Changes**") provided that:
  - (a) Aquabella gives written notice of any Changes to the City and Waterfront Toronto (which Aquabella agrees to do promptly as it becomes aware of same); and
  - (b) if any Changes increase the cost to the City of completing and finalizing the Child Care Space then Aquabella shall reimburse the City for such increased cost upon receiving from the City and/or Waterfront Toronto back-up confirming such increased cost incurred by the City in a form satisfactory to Aquabella acting reasonably.
- (3) In respect of the Child Care Space, the City will: (a) enter into the Shared Facilities Agreement pursuant to which the ongoing monitoring, operation and maintenance obligations under Section 6.18(b) and (c) of the Aquabella Development Agreement will be assumed from and after the Assumption Date; and (b) after the Transfer Date, negotiate in good faith a competitive service agreement with the Designated Provider for the Child Care Space and not enter into an exclusive arrangement with any other broadband service providers.
- (4) The release of the Development Letter of Credit shall not be withheld by Waterfront Toronto as a result of the failure of Aquabella to obtain LEED Gold Certification for the Proposed Development if such failure is caused by a breach by the City and/or Waterfront Toronto of their respective obligations set out in Section 2.4(2) of this Agreement.

## ARTICLE 3

### WATERFRONT TORONTO CONSENT AND RELEASES

#### Section 3.1 Waterfront Toronto Obligations

- (1) Subject to the performance by Aquabella of Aquabella's obligations described herein, including compliance with Sections 2.1 and 2.3, Waterfront Toronto shall provide the following to the Site Developers upon the completion of the Transfer:
  - (a) a discharge and release of the Site Developers of the Child Care Security Amount delivered to Waterfront Toronto under the Restated Development Agreement between Waterfront Toronto and Aqualina dated October 31, 2014, as amended, the Restated Development Agreement between Waterfront Toronto and Aquavista dated September 30, 2015, as amended, the Aquabella Development Agreement, and the Development Agreement between Waterfront Toronto and Aqualuna dated April 24, 2018, as amended (collectively, the "**Development Agreements**");
  - (b) a complete discharge and release of any and all charges, letters of credit and/or other security provided to Waterfront Toronto by the Site Developers or any of them to secure payment of the Site Specific Child Care Security Amount (as defined in the Development Agreements);
  - (c) a partial discharge and release of the Aquabella Development Agreement from title to the Child Care Space;
  - (d) a full and complete release of Aquabella, the Condominium Corporation and the future owner(s) of the Ground Floor Animation Space or any part thereof, from any and all Aquabella obligations under the Aquabella Development Agreement to the extent that they pertain to or are to be performed in or with respect to or in connection with the Child Care Space, other than those obligations which Aquabella has agreed to continue to perform pursuant to Section 2.4(1);
  - (e) the consent of Waterfront Toronto to the Transfer of the Child Care Space as required by the Section 118 restrictive covenant registered as Instrument No. AT4758243; and
  - (f) an acknowledgement from Waterfront Toronto to Hines Canada Management Company II ULC (the "**Development Partner**") confirming that the Child Care Space obligations of the Development Partner under the master Project Agreement have been fulfilled.
- (2) Aquabella shall prepare or cause to be prepared all necessary documents to implement the foregoing and provide such documents to the City and Waterfront Toronto in draft not less than ten (10) days before the scheduled completion of the Transfer.

## **ARTICLE 4 GENERAL**

### **Section 4.1 Notice**

Notices required or permitted under this Agreement shall be given in accordance with Sections 15.01 and 15.02 of the Development Agreements, *mutatis mutandis*. Notices to the City under this Agreement shall be given in accordance with the Purchase Agreement.

### **Section 4.2 Waiver**

- (1) No waiver made or given by a party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any such right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power or remedy or with respect to any other such right, power or remedy.
- (2) Failure by any party to exercise any of its rights, powers or remedies hereunder or any delay in doing so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- (3) No consent or approval contemplated herein or provided by a party shall constitute a waiver of any requirement herein.

### **Section 4.3 Entire Agreement**

The Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

### **Section 4.4 Severability**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by a court of competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

### **Section 4.5 Enurement**

This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted transferees and assigns.

#### **Section 4.6 Counterpart and Facsimile**

This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission and the parties hereby adopt any signature received by a receiving fax machine as original signatures of the transmitting Party. In the case of facsimile transmission, the transmitting party shall forthwith deliver an originally executed copy of this Agreement to the other parties.

*[signature page follows]*

**IN WITNESS WHEREOF** this Agreement has been executed by the parties as of the date first above written.

**CITY OF TORONTO**

Per:

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Name:

Title:

Per:

---

Name:

Title:

We have authority to bind the corporation

**TORONTO WATERFRONT  
REVITALIZATION CORPORATION**

Per:

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Name:

Title:

Per:

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Name:

Title:

We have authority to bind the corporation

**AQUALINA BAYSIDE TORONTO INC.**

Per:

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Name:

Title:

Per:

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Name:

Title:

We have authority to bind the corporation

**AQUAVISTA BAYSIDE TORONTO INC.**

Per:

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Name:

Title:

Per:

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Name:

Title:

We have authority to bind the corporation

**AQUABELLA BAYSIDE TORONTO INC.**

Per:

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Name:

Title:

Per:

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Name:

Title:

We have authority to bind the corporation

**AQUALUNA BAYSIDE TORONTO INC.**

Per:

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Name:

Title:

Per:

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Name:

Title:

We have authority to bind the corporation



## **SCHEDULE “A” REQUIREMENTS FOR CHILD CARE SPACE**

### **Child Care LEED and TGS requirements for Child Care Centre Located at 118 Merchants Wharf, Aquabella Bayside Toronto Inc.**

Aquabella will be a LEED Gold certified community, including its retail spaces and the Child Care Centre. As a LEED Gold certified community, the unfinished retail spaces and Child Care Centre is exempt from certain LEED credit requirements (e.g. – pedimats) as long as it comprises less than 10% of the overall GFA, which is the case. As such, the Child Care Centre will be turned over as a LEED core and shell structure, as per the Agreement of Purchase and Sale. Below are the items which are required by the Child Care Centre in regards to LEED and Toronto Green Standards. There are no additional requirements for the Child Care that are required in the fit out.

#### **LEED and Toronto Green Standards Requirements**

1. Child Care Centre is responsible to ensure that lighting panel is controlled and interior lighting will be reduced by 50% between the hours of 11:00pm and 6:00am in accordance with Toronto Green Standards.
2. Any additional HVAC units, plumbing fixtures, or related equipment, or other modification to the space that may impact building heating, cooling, or ventilation loads must be supported by calculations, drawings, and professional seals demonstrating that the space is in compliance with all applicable codes and standards, including, without limitation, OBC 2012 Sentence 6.2.1(2) (maintain minimum indoor temperature of 18C), and OBC Sentence 6.2.2.1(2) (compliance with ASHRAE 62.1-2010 ventilation standard).
3. The Child Care Centre shall only use Low Flow Plumbing fixtures in order to comply with the projects LEED and Environmental Requirements: Not exceeding the following rates, where applicable – WC: dual flush at 3/4.8LPF (0.8/1.28 GPF); Urinals at 0.5LPF (0.125GPF); Showers at 5.7 LPM at 552kPa (1.5GPM at 80psi); Lavatory at 1.9LPM at 414kPa (0.5GPM at 60psi), Specifically the 3 child size toilets are to be 4.8LPF
4. The Child Care Centre to ensure that all equipment within the space will be verified to be in good working order and properly commissioned. Following fit-up, the Child Care will allow access to the Aquabella’s commissioning agent as required to implement the commissioning plan and verify that the operations of all base building systems are consistent with the Aquabella’s project requirements. Commissioning of all Child Care supplied HVAC equipment and associated controls is the responsibility of the Child Care Centre, however Aquabella reserves the right to verify the equipment necessary to ensure it is consistent with all aspects of the agreement.
5. The Child Care Centre agrees that in order to reduce the risk of environmental tobacco smoke to other tenants, purchasers, staff and public, smoking is not permitted anywhere in the building and any exterior designated smoking areas must be at least 7.5 meters (25 feet) away from entries, outdoor air intakes, and operable windows. Signage shall be posted at the exit doors by the Child Care.