

OFFER TO LEASE

TO: CITY OF TORONTO (the "Landlord")
FROM: [●] (the "Tenant")
RE: 140 Merton Street, Toronto (the "Demised Premises")

WHEREAS:

it is intended that a residential rental building, together with Community Spaces will be built on the Demised Premises;

the Landlord will enter into a sublease with the Tenant to lease back the Community Spaces, upon completion of the Building;

the Tenant will work with the Landlord to design the Building, in general and the Community Spaces, specifically, in accordance with the terms of the Project Agreement and the Heritage Easement Agreement;

1. Tenant Offers to Lease

- (a) The Tenant hereby offers to lease the Demised Premises from the Landlord and to construct Building substantially on the terms and conditions set out in the lease attached hereto as Schedule "A" (the "Lease") and the Project and Heritage Easement Agreements that form part of the Lease;
- (b) Unless otherwise defined herein, all capitalized terms used in this Offer to Lease shall have the meaning set out in the Lease and Contribution Agreement.

2. Conditions

2.1 Tenant's Conditions

The closing of this transaction is conditional, for a period of eighteen months from the date of acceptance of this Offer by the City, upon:

- (a) the Tenant's board of directors or its members authorizing the transaction contemplated herein;
- (b) the Tenant obtaining first mortgage financing on terms and conditions satisfactory to the Tenant;
- (c) the Tenant is satisfied it has sufficient funding to complete the construction of the Building;
- (d) the Tenant having received site plan approval;

- (e) the City has passed a by-law exempting the Demised Premises from taxation for municipal and school purposes;
- (f) the City being in a position to offer vacant possession of the Demised Premises;

The Tenant shall have the right to terminate this Offer by notice in writing to the Landlord on or before the expiry of the time set out above for each of the Tenant's conditions in the event that any one or more of the foregoing conditions has not been satisfied. Upon such notice, this Offer shall be null and void. In the event that the Tenant does not notify the Landlord within the time so limited, the Tenant shall be deemed to have waived the foregoing conditions. The foregoing conditions are expressed to be for the sole benefit of the Tenant, which the Tenant shall have the right to waive, and to complete the transaction contemplated by this Offer.

2.2 Landlord's Conditions

The closing of this transaction is conditional, for a period of eighteen months from the date of the City's acceptance of this Offer, upon:

- (a) the Demised Premises have been vacated by the current tenant;
- (b) the Tenant shall have provided the Landlord with a signed commitment for a first mortgage, satisfactory to the Tenant;
- (c) the City is satisfied that the Tenant has sufficient funding to complete the construction of the Building;
- (d) the Tenant shall have received site plan approval for the Project;
- (e) the Tenant shall have provided current operating and capital budgets satisfactory to the Executive Director, Housing Secretariat;
- (f) the Tenant shall have provided an up-to-date and comprehensive work plan and cash flow chart that includes the construction start date and anticipated date of First Occupancy, satisfactory to the Executive Director, Housing Secretariat;
- (g) the Tenant shall have provided proof that all major contracts have been entered into in accordance with normal business practices, including using a competitive process, where appropriate. If normal business practices have not been followed, a business case for not following such practices must have been approved by the the Executive Director, Housing Secretariat;
- (h) the Tenant shall have provided a copy of a fully executed contract, in the form of the Canadian Construction Document Committee ("CCDC"), with a construction contractor for the completion of the Project, which contract shall include the bonds required by the City and provide for standard warranties, satisfactory to the Executive Director, Housing Secretariat;
- (i) the Tenant shall have provided proof that the following bonds, in a form and content that is in accordance with the most current CCDC approved bond forms,

have been obtained:

- (i) a performance bond in the amount of fifty (50%) per cent of the contract price; and
- (ii) a labour and materials payment bond in the amount of fifty (50%) per cent of the contract price for labour, materials and/or services;
- (j) the Tenant shall have provided proof that the Tenant's board of directors has authorized the transaction contemplated herein;
- (k) the Tenant shall have provided the final design set of design drawings and specifications for the Building, incorporating the City's Affordable Housing Guidelines, the City's Accessibility Design Guidelines all details of the Community Spaces and other requirements of the Project Agreement, and the Heritage Easement Agreement, to the satisfaction of the Executive Director, Housing Secretariat, and the Chief Planner and Executive Director, City Planning and the Executive Director, Social Development and Finance Administration;
- (l) the Tenant shall have provided a heritage conservation plan, in accordance with the Heritage Easement Agreement, attached to the Lease, to the satisfaction of the Senior Manager, Heritage Planning, City Planning;
- (m) Nothing shall have occurred which, in the sole opinion of the Executive Director, Housing Secretariat could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent; and
- (n) the Tenant shall have provided such additional information and documentation, as required by the Executive Director, Housing Secretariat, with respect to status of construction and any other matters deemed relevant to the success of the Project;

The Landlord shall have the right to terminate this Offer by notice in writing to the Tenant on or before the expiry of the time set out above for each of the Landlord's conditions in the event that any one or more of the foregoing conditions has not been satisfied. Upon such notice, this Offer shall be null and void. In the event that the City does not notify the Tenant within the time so limited, the Landlord shall be deemed to have waived the foregoing conditions. The foregoing conditions are expressed to be for the sole benefit of the Landlord, which the Landlord shall have the right to waive, and to complete the transaction contemplated by this Offer.

3. **Tenant's Covenants**

- (a) The Tenant shall design the Building, substantially in accordance with its proposal, dated [●], made in response to the request for proposals issued by the City with respect to the Demised Premises.
- (b) The Tenant acknowledges and agrees that the Landlord has obtained, all Official Plan and zoning by-law amendments for the development of the Demised Lands (the "**Existing Approvals**") and the Tenant agrees to satisfy all conditions and obligations pursuant to the Existing Approvals. The Tenant shall be responsible for securing and have carriage of all other approvals required to develop the Demised Premises and construct the Building as contemplated in this Lease,

including but not limited to the site plan application and heritage permit and any and all other land use and building approvals, licenses and permits not already secured by the Landlord (the "**Tenant's Approvals**") and shall diligently and continuously proceed with same. The Tenant agrees to (1) keep the Landlord informed of all developments with respect to the Tenant's Approvals; (2) provide the Landlord with copies of the Tenant's Approvals and all amendments thereto and all reports, including but not limited to, reports, studies and such other documents available in connection therewith; (3) permit the Landlord to attend all meetings with Governmental Authorities held in connection therewith; and (4) make enquiries of Governmental Authorities respecting same.

- (c) The Tenant agrees that the Project Agreement and Heritage Agreement attached as Schedules D and E to the form of lease attached to this offer as Schedule A form obligations under this Offer to Lease and the Lease and the Tenant shall ensure that all building plans and specifications comply with the terms of the Project Agreement, the Heritage Easement Agreement and the Lease.
- (d) The Tenant agrees that it will diligently and in good faith, prepare and submit, in accordance with plans and specifications submitted to the Landlord, for its prior written approval, all Tenant's Approvals. The Tenant shall comply with all obligations of the Landlord and the Tenant pursuant to the Tenant Approvals. Notwithstanding anything to the contrary, no consent or approval of the Landlord to the Tenant's Approvals, including any application or variance or amendments thereto, shall be construed as endorsement by the City in its regulatory capacity of such Tenant's Approvals, applications, variance or amendments, which the Tenant acknowledges shall be subject to the normal City planning approvals processes.
- (e) The Tenant shall have carriage of the Tenant's Approvals and shall diligently and continuously proceed with same. The Tenant agrees to (1) keep the Landlord informed of all developments with respect to the Tenant's Approvals; (2) provide the Landlord with copies of the Tenant's Approvals and all amendments thereto and all reports, including but not limited to, planning reports, studies and such other documents available in connection therewith; (3) permit the Landlord to attend all meetings with governmental authorities held in connection therewith; and (4) make enquiries of governmental authorities respecting same.
- (f) The Tenant agrees that as a condition of constructing on the Demised Premises, the Tenant shall present to the Landlord, for its approval before the Landlord consents to the submission of applications for Tenant Approvals to the City, the Tenant's plan for the design development and community consultation process as part of the Tenant's development timelines. The Tenant should expect to have more than one public consultation.

4. **Pre-Development Funding and Open Door Incentives Letter**

- (a) In consideration of the Tenant entering into this Offer to Lease, the City will provide the following within thirty (30) days of the City's acceptance of this Offer to Lease:

- (i) the sum of Fifty Thousand Dollars (\$50,000), to assist with costs associated with obtaining the Tenant Approvals; and
- (ii) a letter evidencing the Tenant's entitlement to the City's Open Door Incentives.

5. Closing

This transaction will close on the thirtieth (30) days after the last of the conditions, in favour of the Tenant and the Landlord have either been met or waived. On closing:

- (a) the Landlord and the Tenant shall duly execute and deliver to one another:
 - (i) the Lease, the commencement date of which will be the date of closing;
 - (ii) the Contribution Agreement, in the form of the Contribution Agreement attached hereto as Schedule "B";
 - (iii) all other agreements and documentation and all acknowledgements and directions and other documentation required to complete this transaction and to register a satisfactory notice of the Lease on title to the Demised Premises; and
- (b) the Tenant will deliver to the Landlord:
 - (i) a certified copy of the directors' or members resolution authorizing the transaction;
 - (ii) a signed Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy substantially in the form of the declaration attached hereto as Schedule "D"; and
 - (iii) proof of insurance as set out in Article 7 of the Lease.

6. Notice

6.1 Unless otherwise provided in this Offer, any notice, approval or other communication required or permitted to be given ("Notice") shall be in writing and shall be personally delivered, sent by prepaid registered mail, or sent by fax and, in the case of notice to the Landlord, addressed to it as follows:

to the Landlord at:

City of Toronto
Metro Hall, 55 John Street, 2nd Floor, Suite 204
Toronto, ON M5V 3C6
Attention: Deputy City Manager – Corporate Services

City of Toronto
Metro Hall, 55 John Street 7th Floor
Toronto, ON M5V 3C6
Attention: Executive Director, Housing Secretariat

with a copy to:

City of Toronto – Legal Services
 55 John Street, Metro Hall, 26th Floor, Station 1260
 Toronto Ontario M5V 3C6

Attention: City Solicitor
 Fax No.: (416) 397-5624

to the Tenant:

Attention: President and CEO
 Fax No.:

6.2 Any Notice so given shall be deemed conclusively to have been given and received on the date of delivery if personally delivered, or on the third (3rd) business day following the date of mailing if sent by prepaid registered mail, on the day of transmission by fax (if transmitted prior to 5:00 p.m. on a business day), and on the business day next following transmission (if transmitted after 5:00 p.m., or if transmitted on other than a business day), provided that if there is any anticipated or existing postal dispute, Notice shall be personally delivered or transmitted by fax. Either party may from time to time change its address for service by Notice to the other party to this Offer.

7. Divisions/Headings

The division of this Offer into Articles, Sections, Subsections, Paragraphs and Subparagraphs, and the insertion of headings or captions, are for convenience of reference only, and shall not affect the construction or interpretation of this Offer or any parts of them.

8. Cumulative Remedies

No remedy conferred upon or reserved by one or both of the parties is intended to be exclusive of any other remedy. Each remedy shall be cumulative and in addition to every other remedy conferred or reserved, whether such remedy exists on the date of this Offer or after, and whether such remedy becomes available under common law, equity or statute.

9. Interpretation

This Offer shall be read with all changes of gender and number required by the context. If two or more persons have executed this Offer as Tenant, their liability shall be joint and several.

10. Time of Essence

Time shall in all respects be of the essence of all matters provided for in this Offer provided that the time for the doing or completing of any matter may be extended or abridged by an agreement,

in writing, executed by the Landlord and the Tenant, or by their respective solicitors, who are expressly appointed for that purpose.

11. Assignment

The Tenant shall not assign this Offer, or direct that the Lease be taken in the name of any person or entity other than the Tenant, without the prior written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld. It shall be deemed to be an assignment of this Offer requiring the prior written consent of the Landlord if there is a transfer or assignment of the whole or any part of the ownership or control of the Tenant. If the Landlord consents to an assignment, or to a direction that the Lease be taken in the name of any person or entity other than the Tenant, the Tenant shall agree, and shall cause the assignee or such other person or entity to agree, in writing in favour of the Landlord, to be jointly and severally bound to perform the obligations of the Tenant under this Offer. The Offer shall enure to the benefit of and be binding upon the Landlord, its successors and assignees, and the Tenant, its successors and permitted assignees.

12. No Registration

The Tenant agrees not to register this Offer or any other document providing evidence of this Offer or of any interest of the Tenant in the Demised Premises against title to the Demised Premises (collectively, the "Tenant's Registration"). The Tenant irrevocably nominates, constitutes and appoints the City as its agent and attorney in fact and in law to cause the removal of the Tenant's Registration from title to the Demised Premises. Should the Tenant be in default of its obligations under this Section, the City may (as agent and attorney of the Tenant) cause the removal of the Tenant's Registration from the title to the Demised Premises.

13. City as Landlord

13.1 Nothing in this Offer derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities. Nothing in this Offer derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Offer.

13.2 No communication or dealing between the Tenant and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City will be deemed to be a communication or dealing under the provisions of this Offer between the Tenant and the City as parties to this Offer or to affect the City with notice of any such communication or dealings. It is intended and agreed that the City acts solely in a private capacity under this Offer and any communication or dealing between the City and the Tenant as parties to this Offer will only be effective if delivered in accordance with the notice provisions set out in this Offer. No communication or dealing between the City as a party to this Offer and the Tenant as a party to this Offer will relieve the Tenant from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or in any other lawful manner separate and apart from the obligations of the Tenant imposed by this Offer.

13.3 Any of the rights and obligations of the City under this Offer may be exercised and performed, respectively, by the Chief Corporate Officer from time to time, or by his or her successors and designate(s) from time to time.

14. **Applicable Laws**

This Offer shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada. Any legal proceeding arising in connection with this Offer shall be commenced and heard in a court (or, if applicable, a tribunal of competent jurisdiction) sitting in Toronto, Ontario, which it is agreed will be the appropriate location. If the court (or, if applicable, tribunal of competent jurisdiction) does not sit in Toronto, the legal proceedings shall be commenced and heard in the jurisdiction nearest to the City of Toronto within the Province of Ontario in which such court (or, if applicable, tribunal of competent jurisdiction) convenes.

15. **Schedules**

All Schedules attached, form part of this Agreement. If there is any conflict between what is set out in a Schedule and what is otherwise set out in the Agreement, the conflicting term set out in the Schedule shall prevail.

16. **Entire Agreement**

This Offer, including any Schedules attached to this Offer shall constitute the entire agreement between the parties concerning the transaction contemplated by this Offer. The Tenant acknowledges that the City has made no representation, warranty, agreement or condition, whether direct or collateral, or express or implied, which induced the Tenant to make this Offer or on which reliance is placed by the Tenant, other than as expressly set out in this Offer.

17. **Counterparts**

This Agreement may be executed in any number of counterparts (including counterparts delivered electronically) and all such counterparts taken together will be deemed to constitute one and the same instrument. This Agreement may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

18. **Offer**

This Offer shall not be modified or amended except by written agreement executed by both the City and the Tenant.

DATED the day , 2021.

[●]

by: _____

Name:

Title:

by: _____

Name:

Title:

We have the authority to bind the Corporation

The City accepts this Offer the _____ day of _____, 2021.

CITY OF TORONTO

by: _____

Name:

Title:

APPROVED AS TO FORM

CITY OF TORONTO

.....
For Wendy Walberg, City Solicitor
File # 4318-203-3440.20

by: _____

Name:

Title:

Authorized by Committee Item No. EX1.1 as adopted by City of Toronto Council at its meeting held on January 30 and 31, 2019.

Schedule "A"
Lease

Schedule "B"
Contribution Agreement

Schedule "D"



Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

For Office Use Only
DECLARATION OF COMPLIANCE WITH ANTI-HARASSMENT/DISCRIMINATION LEGISLATION & CITY POLICY

Date: _____
Group/Vendor/Individual Name: _____

Organizations/individuals in Ontario, including the City of Toronto, have obligations under the Ontario Human Rights Code, the Occupational Health and Safety Act, the Employment Standards Act, the Accessibility for Ontarians with Disabilities Act, the Criminal Code of Canada and the Charter of Rights and Freedoms. In addition, the City of Toronto also has policies that prohibit discrimination on the additional grounds of political affiliation or level of literacy, subject to the requirements of the Charter. Organizations are required to have and post policies, programs, information, instruction, plans and/or other supports, and an appropriate internal process available to their employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints under the applicable legislation and including the additional grounds of discrimination prohibited under City policy. Individuals are obliged to refrain from harassment/hate activity.

The City of Toronto requires all organizations and individuals that contract with the City to sign the following Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy. This Declaration must be signed by your organization and submitted with the contract or Letter of Understanding. The name of your organization and the fact that you have signed this declaration may be included in a public report to City Council.

Declaration:

I/we uphold our obligations under the above provincial and federal legislation. In addition, I/we uphold our obligations under City policies which prohibit harassment/discrimination on a number of grounds including political affiliation and level of literacy.

WHERE LEGALLY MANDATED I/we have in place the necessary policies, programs, information, instruction, plans and/or other supports that are consistent with our obligations, and I/we have an internal process available to my/four employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints. I/we agree that I/we shall, upon the request of the City, provide evidence of the policies, programs, information, instruction, plans and other supports and an appropriate internal complaint resolution process required under this Declaration which is sufficient to allow the City to determine compliance. I/We acknowledge that failure to demonstrate compliance with this declaration to the satisfaction of the operating Division, in consultation with the City Solicitor, may result in the termination of the contract.

Name of Vendor or Name of Grant Applicant (Organization or Individual): _____

Complete Address: _____ Email _____

Tel. No. _____

Postal Code: _____ Fax No. _____

Name of Signing Officer or Name of Applicant (Name – *please print*): Position _____

Signature: _____ Date: _____
Authorised Signing Officer or Individual

Multilingual Services: 311 and TTY 416-338-0889. Further information: www.toronto.ca/diversity.ca

