

THIS AGREEMENT made this 8 day of May, 2021

B E T W E E N

XXXXXXX  
(hereinafter the "Tenant")

and

CITY OF TORONTO  
(hereinafter the "Landlord" or the "City")

**WHEREAS:**

- A. The Landlord is the owner in fee simple of certain lands and premises municipally known in the year 2020 as 140 Merton Street (the "Site");
- B. The existing building on the Site is a designated heritage property;
- C. The Tenant has entered into a lease dated 8 (the "Lease") in respect of the Site;
- D. City of Toronto Zoning By-law No. 569-2013, as amended ("By-law 569-2013") has been amended to permit the redevelopment of the Site with an 18-storey tall building (up to 63.0 metres), including a five-storey base building, comprising 16,650 square metres of development, and including approximately 180 rental residential units, and approximately 2,150 square metres of community space on the ground and second floors (the "Development");
- E. Through the adoption of Item PH11.2 at its meeting on December 17 and 18, 2019, City Council approved the Development and zoning by-law amendment as set out in By-law 1779-2019 (the "Amending By-law");

**NOW THEREFORE**, in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the parties to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties to this Agreement hereby covenant and agree as follows:

1. **Definitions**

In this Agreement, the following terms shall have the meanings assigned hereto and capitalized terms not otherwise defined herein have the meaning given to them in the Lease:

- 1.1 "Above-Grade Building Permit" means a Building Permit issued by the Chief Building Official pursuant to section 8 of the *Building Code Act*, which permits the construction of a new building or structure, or portion thereof, above-grade on all or part of the Site, in accordance with the Amending By-law but does not include a permit for construction of a temporary sales/rental office, a foundation permit, permit for excavation and/or shoring, or a Demolition Permit;
- 1.2 "Accessibility for Ontarians with Disabilities Act, 2005" or "AODA" means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended, superseded or replaced from time to time;
- 1.3 "Amending By-law" has the meaning set out in Recital E;
- 1.4 "Architect" means the holder of a license under the *Architects Act*, R.S.O. 1990, c. A.26, as amended, superseded or replaced from time to time;
- 1.5 "ASHRAE" means standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

- 1.6 **"Base Building Conditions"** as they pertain to the Community Space shall have the meaning set out in Section 6;
- 1.7 **"Building"** has the meaning set out in Section 1.1 of the Lease;
- 1.8 **"Building Systems"** has the meaning set out in Section 1.1 of the Lease;
- 1.9 **"Building Code Act"** means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, superseded or replaced from time to time;
- 1.10 **"Building Permit"** means a permit, issued by the Chief Building Official pursuant to section 8 the *Building Code Act*, and includes conditional permits and any permit for excavation, shoring, or grading, or a permit for the construction of a temporary sales/rental office on the Site;
- 1.11 **"Chief Building Official"** means the Chief Building Official for the City and shall include his or her designates;
- 1.12 **"Chief Engineer"** means the Chief Engineer & Executive Director, Engineering and Construction Services for the City, and shall include his or her designates;
- 1.13 **"Chief Financial Officer"** means the Chief Financial Officer for the City and shall include his or her designates;
- 1.14 **"Chief Planner"** means the Chief Planner and Executive Director, City Planning Division, or his or her designate;
- 1.15 **"City"** means the City of Toronto and any successor thereof;
- 1.16 **"City Community Space"** has the meaning set out in Section 6.4(a);
- 1.17 **"City Council"** or **"Council"** means the Council of the City;
- 1.18 **"City of Toronto Accessibility Design Guidelines"** means the standard for the design of public space, as amended, superseded or replaced from time to time;
- 1.19 **"City of Toronto Act"** means the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule A, as amended, superseded or replaced from time to time;
- 1.20 **"City Solicitor"** means the City Solicitor for the City and shall include his or her designates;
- 1.21 **"Commissioning"** means the systematic process of ensuring that new building systems perform interactively according to the documented design intent and the Tenant's operational needs, and that specified system documentation and training are provided to the facility staff operating such systems. Commissioning begins before Substantial Performance of a project and may continue until occupancy by the Tenant;
- 1.22 **"Community Spaces"** has the meaning set out in Section 6.1;
- 1.23 **"Community Space Obligation"** has the meaning set out in Section 6.1;
- 1.24 **"Community Space Warranty Period"** has the meaning set out in Section 6.10;
- 1.25 **"Community Space Users"** has the meaning set out in Section 6.4(a);
- 1.26 **"Conservation Plan"** is a detailed report that includes plans and specifications as needed that explain in detail the conservation strategy for the designated heritage building on the Site, what alterations and repairs are being undertaken and how its heritage values and attributes are being conserved all to the satisfaction of the Senior Manager, Heritage Planning;
- 1.27 **"Construction Act"** means the *Construction Act*, R.S.O. 1990, c. C.30, as amended, superseded or replaced from time to time;

- 1.28 **"Construction Price Index"** means the "Non-Residential Construction Price Index for the Toronto Census Metropolitan Area", reported quarterly by Statistics Canada in Building Construction Price Statistics Table 18-10-0135-01 or its successor;
- 1.29 **"Day"** or **"Days"** means a calendar day, unless otherwise noted;
- 1.30 **"DCM"** means the City's Deputy City Manager, Internal Corporate Services and shall include his or her designates;
- 1.31 **"Demised Lands"** has the meaning set out in the Lease;
- 1.32 **"Demolition Permit"** means a permit to demolish all or part of a building existing on the Site on the date of this Agreement, issued pursuant to the *Building Code Act*;
- 1.33 **"Designated Substance Regulation"** means Ontario Regulation 278/05: Designated Substance – Asbestos On Construction Projects and In Buildings and Repair Operations issued pursuant to the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as may be amended, superseded or replaced from time to time;
- 1.34 **"Development"** means the development of the Demised Lands in accordance with the Amending By-law;
- 1.35 **"Development Charges"** means those charges under the City's development charges by-law passed from time to time, pursuant to the *Development Charges Act*;
- 1.36 **"Development Charges Act"** means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, superseded or replaced from time to time;
- 1.37 **"Executive Director, Corporate Real Estate Management"** means the Executive Director, Corporate Real Estate Management for the City and shall include his or her designates;
- 1.38 **"Executive Director, SDFA"** means the Executive Director, Social Development, Finance and Administration for the City and shall include his or her designates;
- 1.39 **"Final Acceptance"** as it relates to the Community Space has the meaning set out in Section 6;
- 1.40 **"Foundation Permit"** means the Building Permit that permits the erection of the below ground concrete structure required for part of the Demised Lands;
- 1.41 **"Heritage Easement Agreement"** has is an agreement in accordance with Section 37 of the *Ontario Heritage Act*;
- 1.42 **"Heritage Impact Assessment"** is the Heritage Impact Assessment prepared by ERA Architects Inc., dated July 4, 2019, and which was adopted by City Council;
- 1.43 **"Heritage Lighting Plan"** has the meaning set out in Section 5.2(d);
- 1.44 **"Interpretation Plan"** is a report that details the measures that will be utilised to communicate the heritage significance of the designated heritage building on the Site in accordance with the strategy detailed in the Conservation Plan to the satisfaction of the Senior Manager, Heritage Planning;
- 1.45 **"Janitorial Closet"** as it relates to the Community Space has the meaning set out in Section 6;
- 1.46 **"Land Titles Act"** means the *Land Titles Act*, R.S.O. 1990, c. L.5, 18 as may be amended, superseded or replaced from time to time;
- 1.47 **"Landscape Plan"** has the meaning set out in Section 5.2(f);

- 1.48 **"Lease"** has the meaning set out in Recital C;
- 1.49 **"Leasehold Interest"** means the Tenant's leasehold estate, and all of the Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate;
- 1.50 **"Leasehold PIN"** means the PIN to be created in respect of the Leasehold Interest;
- 1.51 **"Letter of Credit"** means an irrevocable unconditional standby letter of credit, in a form and from a Canadian Chartered Bank, satisfactory to the City's Chief Financial Officer;
- 1.52 **"Mid-Block Connection"** has the meaning set out in Section 4.1 of this Agreement;
- 1.53 **"Mid-Block Connection Easement"** has the meaning set out in Section 4.5 of this Agreement;
- 1.54 **"Mid-Block Reference Plan"** has the meaning set out in Section 4.3;
- 1.55 **"Official Plan"** means the official plan of the City as may be amended or replaced from time to time;
- 1.56 **"Ontario Heritage Act"** means the *Ontario Heritage Act*, R.S.O 1990, c. O.18, as amended, superseded or replaced from time to time;
- 1.57 **"Parties"** means the Tenant and the City; and **"Party"** means either the Tenant or the City as the context requires;
- 1.58 **"Planning Act"** means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, superseded or replaced from time to time;
- 1.59 **"Senior Manager, Heritage Planning"** means the Senior Manager, Heritage Planning for the City and shall include his or her designates;
- 1.60 **"Site"** has the meaning set out in Recital A;
- 1.61 **"Site Plan Agreement"** means an agreement between the Tenant of the site and the City as a condition of Site Plan Approval;
- 1.62 **"Site Plan Application"** means an application for the approval of plans pursuant to Section 41(4) of the *Planning Act* and/or Section 114 of the *City of Toronto Act* for the Site;
- 1.63 **"Site Plan Approval"** means the final approval of the Site Plan Application, by the City, for all or any part of the Site pursuant to Section 41 of the *Planning Act* and/or Section 114 of the *City of Toronto Act*, as the case may be;
- 1.64 **"SPRINT Community Space"** has the meaning set out in Section 6.4(a);
- 1.65 **"Substantial Performance"** or **"Substantially Perform"** means substantial performance as set out in the *Construction Lien Act*, R.S.O. 1990, c. 30 and **"Substantially Performed"** shall have a meaning consistent therewith;
- 1.66 **"Temporary Sales/Rental Office"** means a building, structure, facility or trailer on the Demised Lands used exclusively for the purpose of the initial leasing of the Demised Lands;
- 1.67 **"Tenant"** has the meaning given to it in Section 1.1 of the Lease;
- 1.68 **"Tenant's Work"** has the meaning given to it in Section 6.4; and
- 1.69 **"Washroom"** as it relates to the Community Space has the meaning set out in Section 6;

## 2. **Attachments**

2.1 The following Appendices form part of this Agreement:

- (a) Attachment "A" – Amending By-law
- (b) Attachment "B" – Summary of Financial Obligations

2.2 The Tenant is required to comply with the provisions of this Agreement and the Lease and with the provisions of the Amending By-law and any other by-law applicable to the Site. In the event there is a conflict between the provisions of this Agreement and the Lease on the one hand, and the provisions of the Amending By-law or any other by-law applicable to the Site on the other hand, the Tenant shall be required to comply with the most onerous provision.

2.3 Wherever an area measurement is expressed in this Agreement, such area shall be calculated in accordance with Zoning By-law 569-2013, as amended by the Amending By-law.

## 3. **Warranties**

3.1 The City warrants that at the date of execution of this Agreement it is the registered and beneficial owner in fee simple of the Site.

3.2 The Tenant warrants that at the date of execution of this Agreement it is the Tenant of the Leasehold Interest.

## 4. **Mid-Block Connection**

4.1 The Tenant shall, at its sole expense, and to the satisfaction of the Chief Planner, design, construct, program, operate and maintain as part of the Development, at grade, a mid-block pedestrian connection (the "**Mid-Block Connection**") on the west and/or east and/or north side of the Site, with a minimum width of 2.1 metres, to enhance connectivity in the Midtown area, the details of which shall be secured as part of the Site Plan Approval process for the Development.

4.2 The specific location, configuration, design and width of the Mid-Block Connection shall be determined to the satisfaction of the Chief Planner through the Site Plan Approval process for the Development, and shall be further secured in a Site Plan Agreement with the City, to the satisfaction of the City Solicitor.

4.3 Prior to final Site Plan Approval, the Tenant shall, at its own expense, prepare and deposit in the appropriate Land Registry Office, one or more draft reference plans of survey, in metre units and integrated with the Ontario Co-ordinate System showing the co-ordinate values of the Mid-Block Connection in a schedule on the face of the plan and delineating thereon by separate PARTS, all lands upon which the City's rights in the Mid-Block Connection are reserved in the Lease, together with the remainder of the Demised Lands or that portion of the Demised Lands that is the subject of the Site Plan Application, as the case may be (the "**Mid-Block Connection Reference Plan**"). Draft reference plans shall be submitted for review and acceptance by the Chief Planner prior to deposit, as applicable.

4.4 The Tenant acknowledges that, pursuant to the Lease, and as set out in Section 11.1 of this Agreement, the Tenant's Leasehold Interest in the Demised Lands is subject at all times to the creation of easements and/or reservation of equivalent rights in favour of the City as may be required in the context of the development process and at the time specified.

4.5 On the date of issuance of final Site Plan Approval by the Chief Planner for the Demised Lands, the Tenant shall, to the satisfaction of the Chief Planner and City Solicitor, grant a non-exclusive easement or equivalent rights, to the City for public access and use over the entirety of the Mid-Block Connection, as described in the Mid-Block Connection Reference Plan, together with any necessary rights of support (the "**Mid-Block Easement**"). The Mid-Block Easement shall be granted

to the City for nominal consideration and free and clear of all physical and title encumbrances, unless acceptable to the Chief Planner and the City Solicitor.

- 4.6 The Tenant shall complete the construction of the Mid-Block Connection to the satisfaction of the Chief Planner prior any residential or non-residential use or occupancy of all or any part of a building within the Demised Lands. The timing for completion may be subject to extension allowing for landscaping seasonality at the sole discretion of the Chief Planner, and on such terms as may be deemed appropriate to the Chief Planner.
- 4.7 The Tenant shall ensure that the Mid-Block Connection shall be open and accessible to the general public at all times, seven days a week, or such reduced hours as may be acceptable to the Chief Planner, or in the event of an emergency, such that the public has the right to use such lands. The Tenant may refuse access to the Mid-Block Connection or may require a person to leave such lands during such times only in the case where that person:
  - (a) unreasonably interferes with or restricts, or attempts to unreasonably interfere with or restrict the ability of other members of the public or lawful users, including occupants of the Demised Lands to access, use or enjoy the Mid-Block Connection or any portion thereof;
  - (b) carries on or attempts to carry on, an illegal or unlawful activity on or within any part of the Mid-Block Connection;
  - (c) acts in a manner unreasonably inconsistent with the intended use of the Mid-Block Connection;
  - (d) obstructs or injures, or attempts to obstruct or injure, any other person or person who are using or enjoying the Mid-Block Connection or any portion thereof;
  - (e) harms or destroys, or attempts to harm or destroy, the Mid-Block Connection or any portion thereof or any property rights associated therewith and/or any property of any person or persons entitled to use or enjoy the Mid-Block Connection;
  - (f) obstructs, damages, injures or interferes with, or attempts to obstruct, damage, injure or interfere with, any lawful business or occupation carried on by, or any rights or interest of, the building Tenant(s) or person(s) in lawful possession or tenancy of the Mid-Block Connection, the Demised Lands or any portion thereof; or
  - (g) commits or attempts to commit any criminal or quasi-criminal offence or is in breach of any municipal by-law.
- 4.8 The Tenant shall ensure that the Mid-Block Connection is:
  - (a) illuminated to a minimum average intensity of 10 lux on the surface or to such lesser standard as the Chief Planner may agree to;
  - (b) constructed in accordance with accepted plans and drawings and in a manner acceptable to the Chief Planner;
  - (c) maintained in a prudent manner as is required of a residential landlord and is reasonably required by the Chief Planner; and
  - (d) kept free of graffiti and kept free of obstruction or encumbrance that may hinder access and use for the purpose intended, including clear of rubbish, run-off, water, snow and ice.
- 4.9 The Tenant agrees that the Mid-Block Connection shall, for the term of the Lease, remain as a Mid-Block Connection subject to the Mid-Block Connection Easement in accordance with the provisions of this Agreement.

- 4.10 The City and the Tenant agree that the Mid-Block Connection, or a portion thereof, may be closed to the public during emergencies.
- 4.11 Following delivery of the Mid-Block Connection Easement for use by the public, the City acknowledges that the Tenant may be required, from time to time, to use or obstruct parts of the Mid-Block Connection for the purpose of effecting maintenance or repairs to the Mid-Block Connection and also for the purpose of effecting maintenance and repairs to the adjacent lands, buildings and structures, above and below grade, also within the Demised Lands, which may necessitate the obstruction and closure of all or part of the Mid-Block Connection. In the case of obstruction or closure of all or part of the Mid-Block Connection, the Tenant shall obtain the prior written consent of the Chief Planner for such closure and for such period as may be specified by the Chief Planner.

## 5. Heritage

- 5.1 The existing building on the Site, the War Amputations of Canada (War Amps) building, was designated on March 9, 2017 under City of Toronto by-law 1020-2017 under Part IV, Section 29 of the *Ontario Heritage Act* for its cultural heritage value, and meets Ontario Regulation 9/06, the provincial criteria prescribed for municipal designation under all three categories of design, associative and contextual value. The conditions and requirements noted below are intended to ensure that the cultural heritage value and attributes of this designated property are conserved in accordance with the City's Official Plan policies.
- 5.2 Prior to final Site Plan approval for the Development, the Tenant shall:
- (a) execute and register on title to the Site a Heritage Easement Agreement with the City, pursuant to City of Toronto By-law 1021-2017 for the heritage property at 140 Merton Street, wherein the Tenant covenants that any alterations or conservation work will occur substantially in accordance with the plans and drawings prepared by Montgomery Sisam Architects Inc., dated September 3, 2019 (the "**Heritage Easement Agreement**"), submitted with the Heritage Impact Assessment prepared by ERA Architects Inc., dated July 4, 2019 (the "**Heritage Impact Assessment**"), subject to and in accordance with the approved Conservation Plan required in Section 5.2(b), all to the satisfaction of the Senior Manager, Heritage Planning, and registered on title to the satisfaction of the City Solicitor. The Parties acknowledge that the Heritage Easement Agreement will be registered with the Lease;
  - (b) provide a detailed Conservation Plan prepared by a qualified heritage consultant that is substantially in accordance with the conservation strategy set out in the Heritage Impact Assessment for 140 Merton Street, prepared by ERA Architects Inc., dated July 4, 2019 (the "**Conservation Plan**"), all to the satisfaction of the Senior Manager, Heritage Planning;
  - (c) provide final site plan drawings substantially in accordance with the approved Conservation Plan required in Section 5.2(b) to the satisfaction of the Senior Manager, Heritage Planning;
  - (d) provide a Heritage Lighting Plan that describes how the exterior of the heritage property will be sensitively illuminated to enhance its heritage character to the satisfaction of the Senior Manager, Heritage Preservation Services (the "**Heritage Lighting Plan**"), and thereafter shall implement such Heritage Lighting Plan to the satisfaction of the Senior Manager, Heritage Planning;
  - (e) provide an Interpretation Plan for 140 Merton St. to the satisfaction of the Senior Manager, Heritage Preservation Services (the "**Interpretation Plan**"), and thereafter shall implement such Interpretation Plan to the satisfaction of the Senior Manager, Heritage Planning; and

- (f) provide a detailed Landscape Plan for 140 Merton St. satisfactory to the Senior Manager, Heritage Planning (the "**Landscape Plan**").

5.3 Prior to the issuance of any permit for all or any part of the property on the Site, including a heritage permit or a Building Permit, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage building as are acceptable to the Senior Manager, Heritage Planning, the Tenant shall:

- (a) provide building permit drawings, including notes and specifications for the conservation and protective measures keyed to the approved Conservation Plan required in Section 5.2(b), including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Planning;
- (b) provide a Letter of Credit, including provision for upwards indexing, in a form and amount and from a bank satisfactory to the Senior Manager, Heritage Planning, to secure all work included in the approved Conservation Plan, and approved Interpretation Plan; and
- (c) provide full documentation of the existing heritage property at 140 Merton Street, including two (2) printed sets of archival quality 8" x 10" colour photographs with borders in a glossy or semi-gloss finish and one (1) digital set on a CD in tiff format and 600 dpi resolution keyed to a location map, elevations and measured drawings, and copies of all existing interior floor plans and original drawings as may be available, to the satisfaction of the Senior Manager, Heritage Planning.

5.4 Prior to the release of the Letter of Credit required in Section 5.3(b) above, the Tenant shall:

- (a) provide a letter of Substantial Performance prepared and signed by a qualified heritage consultant confirming that the required conservation work and the required interpretive work has been completed in accordance with the Conservation Plan and Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Planning; and
- (b) provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Heritage Planning.

## 6. **Community Spaces**

6.1 The Tenant acknowledges and agrees that the Lease requires the Tenant to provide community space within the Development (the "**Community Space Obligation**"). This community space is required by the Amending By-law (the "**Community Spaces**").

6.2 The Community Spaces shall be leased to the City for nominal base rent, but the Community Space Users shall be solely responsible for the costs of furnishing and outfitting the Community Spaces, the operating costs of the facility, any utility costs and property taxes attributable to the Community Space and the reasonable share of common area costs (related to facilities, including but not limited to the lobby, that may be shared between the Community Spaces and the rest of the Development) attributable to the Community Spaces.

6.3 The Tenant covenants and agrees that as the landlord of the Community Spaces, it shall be responsible for the following costs associated with the Community Spaces:

- (a) repair, maintenance, alteration and replacement costs of the Building Systems serving the Community Spaces, provided that the cost of any alterations and replacements requested or undertaken by the Community Space User to enhance, improve or reconfigure the Community Spaces shall be paid by the Community Space Users;



- (b) property damage to the extent such damage is caused by failure of the building systems, including the Building Systems serving the Community Spaces, or by the negligence of the Tenant;
  - (c) liability insurance; and
  - (d) local improvement charges.
- 6.4 As soon as possible, but in any event, no later than 9 months prior to the commencement date of the lease back to the City for the Community Spaces, the Tenant will work with the Executive Director, SDFA to estimate, as closely as possible, the operating costs for the Community Spaces, once occupied.
- 6.5 The Tenant shall design, construct, complete and lease back to the City two Community Spaces, in consultation with the City and in accordance with the following (the "**Tenant's Work**"):
  - (a) a minimum of 2,150 square meters (23,142 square feet) of total area for both Community Spaces (the Community Spaces are made up of the "**SPRINT Community Space**", designated for the community group Senior Peoples' Resources in North Toronto Incorporated (SPRINT), and the "**City Community Space**", yet to be designated for a specific community organization, collectively these community organizations are the "**Community Space Users**");
  - (b) the Community Spaces shall be partitioned into two distinct spaces with the SPRINT Community Space having a minimum of 1,150 square metres of contiguous floor area;
  - (c) the Community Spaces shall be located on the ground floor and second floor of the Development, in accordance with the Amending By-law, to the satisfaction of the Chief Planner in consultation with the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA;
  - (d) acceptable access to each of the SPRINT Community Space and City Community Space shall be provided for members of the public and staff using the Community Spaces, to the satisfaction of the Chief Planner, the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA; and
  - (e) acceptable security is provided to the satisfaction of the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA.
- 6.6 A design, construction and completion approval process for the Community Spaces will be outlined by the City's Social Development, Finance and Administration division once the Request for Proposals has been awarded.
- 6.7 In addition to the requirements of Section 6.4, the Tenant shall obtain all necessary permits and approvals and shall construct and complete the Community Spaces in accordance with the following base-building conditions, in accordance with plans approved by the Chief Planner, in consultation with the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA:
  - (a) Floor, Ceiling and Walls
    - (i) Slip resistant flooring, if intended to be the final finish, to be decided in consultation with Social Development, Finance and Administration. For wet areas, porcelain tiles for ease of maintenance;
    - (ii) perimeter demising walls finished with drywall walls taped, sanded, primed and painted together with trim, moldings, and detailing; all

interior and exterior doors and locks; all interior and exterior doors should be AODA compliant and where feasible, meet AODA best practices; locks keyed to specific tenant requirements;

- (iii) data receptacles and power outlets including utility outlets at every (20) feet of usable wall space, or what is required by Electrical Safety Authority standard, whichever is more;
  - (iv) perimeter window glazing with window shades or privacy film; and
  - (v) dropped ceilings with acoustic tiles, or exposed ceilings (if agreed upon through the approval process with Social Development, Finance and Administration ).
- (b) Exterior
- (i) all cladding, roofing, weather proofing, finishes and protective coatings completed, along with any exterior work and/or building envelope, including doors and windows;
  - (ii) windows along exterior walls, glass doors, and/or sunlight shafts where appropriate, are to be used to bring in maximum sunlight; and
  - (iii) all insulation, fireproofing and sound proofing as required through applicable laws and codes.
- (c) Life Safety Systems
- (i) all infrastructure required for the safe occupancy of the Development, including but not limited to manual pull stations, notification devices (speaker or bells), fire suppression system, kitchen system, stand pipe, hydrant, fire hoses, extinguishers, egress/exit fire doors, fire safety plans, heat and smoke detectors, fire alarm monitoring throughout the Development to meet applicable law requirements for a 4 wall unoccupied space. Supervisory valves and flow switches for the sprinkler system shall be monitored as part of the base building fire alarm system to be operated by the Tenant or the Tenant's Designate.
- (d) Mechanical and Electrical Systems
- (i) all related and supporting mechanical and electrical systems including heating, air conditioning, lighting, intercom, public address, security, elevating devices, fire detection and suppression, automated door openers, computer cables, telephone, wireless internet;
  - (ii) Mechanical Systems
    - A. Utility and Service Connections include all sized and located within, servicing, leading up to, through, from and under the Community Spaces, as appropriate for its intended function;
      - (1) domestic hot and cold water service and drain connections for wet spaces (ex. kitchen) for each of the community spaces at a location to be determined in consultation with the City's Social Development, Finance and Administration Division and Corporate Real Estate Management Division;
      - (2) ventilation duct connections inside the demising wall of the Community Spaces fully fitted with supply and return grilles as part of the finished ceiling, with capacity of ventilation air equal to ventilation air

requirements per ASHRAE Standard 62 "Ventilation for Acceptable Indoor Air Quality" or the most recent equivalent standard;

- (3) Fully fitted heat pump supply and return lines connections to the Community Spaces with approximate heating and cooling capacity of 30 btuh of cooling per square foot and 25 btuh of heating per square foot (or, with the consent of the SDF&A, equivalent system with the same specifications if building systems are modified by the Tenant). A separate thermostat is to be provided to each of the Community Spaces;
- (4) backup heat as required when heating is provided by heat pump system; if supplementary heating is not part of the system
- (5) necessary plumbing system, commercial grade fixtures and finishes that would be required or requested by the City for wet spaces, this would include but not be limited to wet spaces such as Washrooms, janitorial closet, kitchen and any other spaces required by the City for the proposed uses;
- (6) Tenant shall construct demising walls for the required Washrooms and the janitorial closet and construct the necessary sanitary and water connections to the Washrooms; and all fire separations as required by the Ontario Building Code;
- (7) capped exhaust air duct connections terminated in close vicinities to all wet spaces and capped supply (tempered) air duct connections to make up for the exhaust air so as to maintain the Community Spaces in positive air pressure relative to outdoors; and
- (8) separate utilities metres (hydro and water meters) are to be provided for each of the Community Spaces.

(iii) Electrical Systems

- A. base building lighting fixtures to achieve a minimum of 50 foot-candles lighting level. Provide local lighting control such as wall switches with integrated motion sensors as required to meet energy savings requirements;
- B. basic lighting fixtures to meet basic life safety requirements and electric panel (minimum 8 WATT per square foot) and appropriate distribution if the electrical requirements for normal commercial or office power service are terminated at a disconnect switch within each of the Community Spaces for typical power supply for an office use;
- C. emergency lighting as required by Building Code. Emergency battery units, if provided, shall be maintenance-free type with dedicated electrical circuits;
- D. electrical service to be minimum of 9 Watts/ square feet for normal commercial or office use. A dedicated electrical panel with main breaker for local shutoff and appropriate distribution to suit layout;

- E. a minimum of three (3) 1" empty conduits complete with pull strings to be provided from the main telephone room to each of the Community Spaces in locations to be agreed upon by the City and the Tenant; and
- F. a minimum number of two (2) empty standard data conduits and communication cabling will be provided to each of the Community Spaces in locations to be agreed upon by the City's SDF&A staff and the Tenant during the design approval process. In order for data service to be on time and reduce billing charges due to an early installation, the SDF&A and the Tenant will agree on a date for the activation of the service.

(e) Parking

- (i) The Tenant shall provide fifteen (15) dedicated exclusive parking spaces at minimum for use by the SPRINT Community Space, as required in the Amending By-law at no cost to the City. If feasible, additional parking should be made available to the City Community Space.

(f) Signage

- (i) The Tenant shall provide signage and way finding for each of the Community Spaces, wherever appropriate, including signs on the street level. The location of appropriate signage will be determined at the time of Site Plan Approval.
- (ii) Exterior signage for the Community Spaces shall be provided and clearly visible from Merton Street. Tenant to acquire and pay for exterior sign permits.
- (ii) Any signage for the Community Spaces shall be consistent with the Tenant's signage policy and subject to the Tenant's approval, with such approval not to be unreasonably withheld, provided that the Tenant provides signage that is consistent with current standard signs for washrooms, elevators, exits and emergency exits, stairs, and meeting rooms.

(g) Waste

- (i) The Tenant shall provide waste diversion systems available/accessible to both Community Spaces. The Tenant shall provide at its sole cost the required system to meet the City's waste diversion program.
- (ii) The Tenant is responsible for the cost of the removal of all construction debris and any and all demolition, stripping, clearing and grubbing, excavation, removal and disposal, clean-up and soil remediation as required in order to complete the project in accordance with all codes, standards and practices.

(h) Janitorial closet

- (i) The Tenant shall provide a janitorial closet for the exclusive use of each of the Community Spaces. The closet shall be fitted with commercial grade fixtures and finishes and shall include at a minimum: floor mop sink with tile surround to 2' t above faucet height, floor drain, tiles flooring with coved base, wall mounted shelving and broom rack. Door to be fitted with SS kick plate and commercial grade hardware.

## (i) Finishes

- (i) The Tenant shall provide one kitchen for each of the Community Spaces. The SPRINT Community Space kitchen should be able to accommodate a minimum of eight freezers in addition to a sink, stove and dishwasher. A kitchen island, with minimum of three (3) spare electrical outlets per countertop and/or island including GFI as mandated by the *Ontario Building Code*. A dedicated hand washing sink is also required.

Countertop space for food preparation and storage space is also to be provided. Countertop and cabinets should be able to be lowered for barrier-free use

Backsplash: at all counters and wet areas to extend to underside of upper cabinetry;

Walls: Moisture resistant drywall taped, sanded, primed and painted with 0 VOC paint. Corner guards at all wall corners to a min height of 5 ft AFF;

All appliances should be commercial grade including plumbing fixtures.

- (ii) The Tenant shall provide Washrooms for the Community Spaces. A minimum of one AODA compliant universal washroom is to be provided in each of the two Community Spaces. The AODA compliant universal washrooms should meet AODA best practices where feasible, to be confirmed through the design approval process with the City's Social Development, Finance and Administration division.
- (iii) The Tenant shall provide a laundry room for the SPRINT Community Space, to accommodate one washer, one dryer, and a small table.
- (iv) The Tenant shall ensure the Community Spaces are fully commissioned as per ASHRAE 5.10. The Tenant will retain a third party certified commissioning agent, at the sole cost and expense of the Tenant, prior to leasing back the Community Spaces to the City. The commissioning agent will set out the requirements for training facility operators;
- (v) All materials, products, finishes, devices, appliances and systems shall be designed and specified with regard for the demands of an intensively used public building. The Tenant will provide sample boards or catalogue sheets of products, finishes, devices, appliances and systems that are proposed to fit out the Community Spaces. The City has the right to accept and/or reject any or all as proposed by the Tenant.

## (j) Access to the Community Spaces

- (i) The Tenant shall provide Property Access and Building Access to each of the partitioned Community Spaces.
  - A. Property Access shall be provided by an easement or other rights of uninterrupted, continuous access and egress for the users of the Development to enter through the building or lands in which the Development is located, including access to and use of all stairs, elevating devices, ramps and any other access area.

B. Building Access shall be provided by an easement or other right of uninterrupted, continuous access and egress to the building and floors on which the Community Spaces are located, including:

- (1) all vehicular access, parking (including accessibility requirements), service access and turn-rounds for shipping, receiving and waste/garbage removal, visitor drop-off. More specifically, the Community Spaces should have internal access and use of the loading and garbage areas, and service corridors. All of the access routes shall be functional and not require special care and attention to gain access to the service corridor leading to the loading and garbage facility.
- (2) a separate corridor access to the elevator and to the main building lobby ; and
- (3) all related open space, landscaped out door areas, and walkways.

(k) Conveying Systems

- (i) The Tenant shall provide a passenger elevator that meets AODA requirements, and best practices where feasible and escalators, if necessary. Wheelchair evacuation will be provided at the exit staircases if feasible, to be confirmed through the design approval process with the City's Social Development, Finance and Administration division.

- 6.8 No alterations to base building improvements in the Development will be permitted without City consent.
- 6.9 To the extent of any conflict between the requirements of Sections 6.7, 6.8 and 6.9 on the one hand, and any by-law, regulation or legislation on the other hand, the by-law, regulation or legislation shall prevail.

### **Design of the Community Spaces**

- 6.10 The Tenant and the Tenant's Architect designing the Community Spaces shall consult with the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA throughout the design phases of the Community Spaces, particularly at 30%, 60% and 90% design completion stages.
- 6.11 At every design stage identified in Section 6.9 above, the Tenant's Architect shall submit architectural, mechanical, electrical, cost estimates and product specifications and cut sheets for review by the Executive Director, SDFA (the "**Design Submission**").
- 6.12 After each design submission, the Tenant and the City shall work cooperatively to finalize the Community Spaces, and make any amendments as required, with consent of the City, and such final design and programming of the Community Spaces shall be at the discretion of the Executive Director, SDFA. The Tenant agrees that the Community Space design process will include that the Tenant's Architect shall actively participate in meetings with City staff, stakeholders, and other agencies, as may be required, in the context of refining the Design Submission for the City's Final Acceptance.
- 6.13 The final design to be submitted to Toronto Buildings for a building permit shall have written design sign-off from the Executive Director, SDFA as it relates to the Community Spaces.
- 6.14 Prior to the issuance of any Above-Grade Building Permit for the Site, the Tenant shall submit cost estimates for the proposed Community Spaces.



- 6.15 The environmental work and associated costs related to the filing of a Risk Assessment for the Property have been undertaken by CreateTO on behalf of the City. A Phase 1 and 2 Environmental Site Assessment (ESA) have been completed for the site. As per the findings of the Phase 2 ESA, a Risk Assessment (RA) was completed for this site in coordination with the Ministry of Environment, Conservation and Parks (MECP). A Certificate of Property Use 2161-BHFGV2 and RSC 226456 have been acknowledged by the MECP. The Tenant will be responsible for satisfying all of the requirements of the Certificate of Property Use. The Tenant shall submit, to the satisfaction of the City's peer reviewer, an Asbestos Management Plan as required through the planning application process. The Tenant agrees to obtain from the Qualified Person confirmation to the City that development of the Designated Heritage Property is in compliance with the accepted Asbestos Management Plan.
- 6.16 At the 90% design stage for the Community Spaces, the Tenant shall ensure that construction documents are prepared with input from the commissioning agent and include:
- (a) The commissioning plan, including the scope and sequence of the commissioning program;
  - (b) The commissioning specifications, including a manual with examples of verification forms and testing procedures, noting probable duration;
  - (c) Any specialized documentation related to testing, such as CSA Standards, which may describe options for testing methods;
  - (d) Standards for submission and acceptance of:
    - (i) shop drawings;
    - (ii) contractor's tests;
    - (iii) product, system, operations, and maintenance manuals;
    - (iv) training programs;
    - (v) post-occupancy or seasonal testing; and
    - (vi) the consequences of non-compliance.

### **Construction of the Community Spaces**

- 6.17 The City shall be entitled, at any reasonable time, with prior notice to the Tenant, to enter the Development to perform visual inspections as construction progresses on the Community Spaces, including progress and quality of work.
- 6.18 The Tenant shall advise of any change orders during construction that affect the Community Spaces and provide a copy of the change orders to Social Development, Finance and Administration staff reviewing the construction.
- 6.19 The Tenant will advise Social Development, Finance and Administration staff in writing, of any substitutions during construction that may affect the Community Spaces in any manner.

### **Commissioning**

- 6.20 The Tenant shall arrange and ensure that contractors or suppliers as appropriate, have provided appropriate training to City staff or have demonstrated the operation and maintenance of any equipment or systems requiring special procedures; in accordance with Guideline 0-2005, The Commissioning Process, from the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) to verify that a facility and its systems meet the City's project requirements.

## Component Verification

- 6.21 The Tenant's commissioning agent shall submit prepared checklists for the verification of each construction element of the Community Spaces to be tracked, using the risk management assessment classifications — such as fundamental, critical, and essential — to record compliance with the specifications.
- 6.22 In the case of material substitutions, variances from the specifications must include a written statement of recommendation for acceptance by the Tenant's Architect and for approval by the Executive Director, SDFA.

## Systems Verification

- 6.23 After all components within the system are accepted and deficiencies are corrected, the Tenant's Architect and engineers shall perform regular commissioning meetings to ensure that all parties are available to:
  - (a) verify that all prerequisites to testing are in place;
  - (b) review test procedures and acceptable results; and
  - (c) witness tests.
- 6.24 The Tenant agrees that attendance at testing procedures by the independent commissioning agent and by the City and/or operator(s) of the Community Spaces shall include the trades responsible for proving or testing systems prior to being witnessed by the commissioning agent.
- 6.25 Once conditional acceptance is established, a building operator training program can be started.
- 6.26 After conditional acceptance is established, but prior to the commencement of the training program, the Tenant shall provide:
  - (a) complete and accurate operating and maintenance manuals;
  - (b) a description of the systems' intended operation;
  - (c) the warranties and information outlining maintenance contracts.

## Substantial Performance of the Community Spaces

- 6.27 The Tenant shall ensure that all construction work is certified to Substantial Performance in accordance with the *Construction Act* and the Tenant shall provide a copy of all documentation for Substantial Performance to the Director, Corporate Real Estate Management and the Executive Director, Social Development, Finance and Administration.
- 6.28 The Tenant shall provide a copy of the Certificate of Substantial Performance to the Executive Director, Corporate Real Estate Management and the Executive Director, Social Development, Finance and Administration.
- 6.29 The Tenant shall be responsible for vacating any liens placed on the Community Spaces as a result of the design, construction as required by this Agreement.
- 6.30 The Tenant acknowledges that the City will attend a deficiency walkthrough with the general contractor's (as applicable) and the Tenant's architect and the City shall advise of any deficiencies, whereby the Tenant shall forthwith remedy within a reasonable time at the Tenant's sole cost and expense. All deficiencies arising from the deficiency walkthrough shall be remedied to the satisfaction of the Executive Director, Corporate Real Estate Management, and the Executive Director, Social Development, Finance and Administration prior to the leasing back of the Community Spaces to the City.



- 6.31 The Tenant will provide the City with a copy of the deficiency walkthrough list with details on cost of each identified deficiency and estimated timeline to rectify. The Tenant shall advise when all deficiencies are rectified and the City shall complete an inspection of the Community Space upon such time as the deficiencies are rectified.

### **Provision of As Built Plans and Drawings and Other Documentation**

- 6.32 The Tenant shall provide a complete set of as-built drawings in hard copy (two (2) full size bond and one (1) set 11x17 format) and digital format (CD or USB, in the latest version of AutoCAD, and as PDFs) which shall include all drawings and but are not specification binders, locations of all hidden services, and all deviations from the design drawings, shop drawings, inspection reports, change orders, certificates, progress images, warranties, close out documentation, compliance letters (for any kitchen equipment that requires it e.g. TSSA), manuals, etc. The files are to be organised in folders, including a file index and submitted.
- 6.33 The Tenant shall provide all warranties, certificates or documents for all equipment, machinery, devices and systems to be leased back to the City.
- 6.34 The Tenant shall provide all spare or replacements parts, special tools and other such items as may be provided by the manufacturer to the City.
- 6.35 The Tenant shall provide a statement as to the actual total cost of the Community Spaces as constructed; and such other similar types of information or materials relating to the improvements in the Community Spaces as may be relevant.
- 6.36 The Tenant shall provide a complete set of keys and/or access cards as may be required.
- 6.37 The Tenant shall provide any relevant certification to the operation of various systems, such as:
- (a) fire alarm(s);
  - (b) sprinkler system(s);
  - (c) HVAC systems;
  - (d) security system(s); and
  - (e) boiler plant.
- 6.38 The Tenant shall submit a Letter of Assurance by the Owner's architect to the Chief Building Official, the Executive Director, Corporate Real Estate Management and the Executive Director, Social Development, Finance and Administration prior to an Occupancy Permit being issued under the *Building Code Act* or the *Planning Act*.
- 6.39 The Tenant shall provide a copy of the Occupancy Certificate issued by the building inspector authorized under the *Building Code Act* to the Director, Real Estate Services.

### **Warranty**

- 6.40 The Tenant shall, at its sole cost and expense, warrant and guarantee the workmanship and materials in the Community Spaces described in Sections 6.7 and 6.8 for a period of two years from the date that each of the City Community Spaces is leased to the City (the "**Community Space Warranty Period**").
- 6.41 The Tenant shall correct or cause to be corrected at its sole expense and to the satisfaction of the Executive Director, Corporate Real Estate Management, and the Executive Director, SDFA any defects or deficiencies, that are not the result of lack of maintenance or improper maintenance by the City, in any portion of the

improvements in the Community Spaces appearing within a period of (one (1) year) after the Final Acceptance Certificate has been given.

- 6.42 If the Executive Director, Corporate Real Estate Management and the Executive Director, SDFA deem at any time during the Community Spaces Warranty Period that any of the improvements in the Community Spaces are defective or unsuitable the Executive Director, Corporate Real Estate Management, and Director Social Development, Finance and Administration following thirty (30) days' notice having been provided to the Tenant in writing giving an opportunity to remedy and apply monies to pay for part or all of the costs to correct such deficiencies or to do such maintenance, including the City's management fee equal to twenty percent (20%) of the total cost of the required work by City's own forces if necessary

### **Community Space Documentation to be used by the City**

- 6.43 The Tenant acknowledges and agrees that the City may in the future rely on all documentation comprising any description of the improvements to the Community Space, along with all drawings, correspondence, documentation and information provided to the City by the Tenant's Architect and/or contractor in connection with, or arising out of the construction of the Community Spaces to perform leasehold improvements as it sees fit for the provision of community programs in the future.

### **Final Acceptance of the Community Spaces**

- 6.44 Not later than thirty (30) days prior to expiry of the Community Space Warranty Period, the Tenant shall provide the City with complete commissioning documentation and all operating manuals for the Community Spaces, and a letter by the Tenant's Architect that the Community Spaces have been completed in accordance with all building permits.
- 6.45 Prior to the first occupancy of any market residential units within the Development, the Tenant shall provide the City with:
- (a) review and inspection fees as required by Toronto Buildings; and
  - (b) satisfactory performance and completion of the Community Spaces and obligations defined in this Agreement, including, but not limited to:
    - (i) retaining an architect to prepare and submit to the Chief Planner detailed design and plans of the Community Spaces;
    - (ii) obtaining the necessary Building Permits for the Community Spaces;
    - (iii) construction of the Community Spaces provided for in Sections 6.7, 6.8 and 6.9;
    - (iv) providing "as-built" drawings following construction of the Community Spaces;
    - (v) any *Construction Act* claims that may be claimed as holdback as provided under the *Construction Act*, R.S.O. 1990, c. C.30, as amended, in respect of work done or improvements made to lands dedicated as public streets, highways or made to other public lands; and
    - (vi) warranting and guaranteeing the workmanship and materials to the satisfaction of Corporate Real Estate Management and Social Development, Finance and Administration..
- 6.46 Provided that all matters related to the Community Spaces have been completed to the satisfaction of the City, and the City is not aware of any claims against it in connection with this Agreement or matters related hereto, the City shall sub-lease the Community Spaces from the Tenant.

## Financial Securities

6.47 Prior to the issuance of the first Above-Grade Building Permit for all or any part of the Development, the Tenant shall provide the City with:

- (a) Satisfactory performance and completion of the Community Spaces and obligations defined in this Agreement, including, but not limited to:
  - (i) retaining an architect to prepare and submit to the Chief Planner detailed design and plans of the Community Spaces;
  - (ii) obtaining the necessary Building Permits for the Community Spaces;
  - (iii) construction of the Community Spaces provided for in Sections 6.7, 6.8 and 6.9;
  - (iv) providing "as-built" drawings following construction of the Community Spaces;
  - (v) any *Construction Act* claims that may be claimed as holdback as provided under the *Construction Act*, R.S.O. 1990, c. C.30, as amended, in respect of work done or improvements made to lands dedicated as public streets, highways or made to other public lands; and
  - (vi) warranting and guaranteeing the workmanship and materials for the duration of the Maintenance Guarantee Period in accordance with Section 6.41.

6.48 Provided that all matters related to the Community Spaces have been completed to the satisfaction of the City, and the City is not aware of any claims against it in connection with this Agreement or matters related hereto, the City shall sub-lease the City Community Space from the Tenant in accordance with the Offer to Lease Back attached as Schedule XX to the Offer to Lease the Site.

## 7. Easements

7.1 Where this Agreement contemplates the grant and registration of an easement interest by the Tenant, and such easement cannot be granted by the Tenant owing to the nature of its leasehold property interest, then the Tenant and City each acknowledge and agree that the Tenant's leasehold interest shall instead be subject at all times to equivalent and comparable rights in favour of the City, and any other third party who would otherwise benefit from such easement.

## 8. Confirmation of Recitals

8.1 The Parties confirm and agree that the recitals in this Agreement are true, both in substance and in fact.

## 9. Miscellaneous

### *Development Charges, Park Levies and Contributions*

9.1 The Parties acknowledge and agree that none of the facilities, works, services, matters or funds to be provided by the Tenant to the City under the terms of the Agreement shall constitute Development Charges nor do they qualify as a Development Charges credit pursuant to any by-law enacted by the City pursuant to the *Development Charges Act* or any successor legislation nor do they constitute a parks levy payment pursuant to Section 42 of the *Planning Act*. The Tenant further acknowledges that it will be required to make all applicable Development Charge payments in accordance with the provisions of any by-law enacted by the City pursuant to the *Development Charges Act* and all applicable park levy payments, subject to the terms of this Agreement and the terms of the Contribution Agreement.

- 9.2 The Tenant acknowledges and agrees that any payments or contributions made to the City pursuant to this Agreement are separate and distinct from any other payment the Tenant may be liable for pursuant to the *Planning Act*, the *City of Toronto Act* or other applicable legislation, including but not limited to the aforesaid Development Charges or park levy payments pursuant to Section 42 of the *Planning Act* and the *Development Charges Act*. The Tenant further acknowledges that the Tenant may be required to make such other payments or pay such other charges as may be applicable in addition to the contributions made pursuant to this Agreement and the terms of the Contribution Agreement.

#### *Enurement*

- 9.3 The Tenant agrees that the covenants, restrictions, rights, duties, provisos, conditions and obligations in this Agreement, as they apply to the Tenant, shall run with the Site and shall enure to the benefit of and be binding upon the Tenant and its heirs, executors, administrators, successors and assigns, including all subsequent Tenants of all or any portion of the Site.

#### *Jurisdiction to Enter into this Agreement*

- 9.4 It is agreed and acknowledged by the Parties hereto that each is satisfied as to the jurisdiction of the other to enter into this Agreement. The Tenant therefore covenants and agrees that it shall not question the jurisdiction of the City to enter into this Agreement nor question the legality of any portion thereof; and, likewise, the City agrees that it shall not question the jurisdiction of the Tenant to enter into this Agreement, subject to receiving a Title Opinion for Agreements in accordance with this Agreement, nor question the legality of any portion hereof. The Parties hereto and their respective heirs, executors, administrators, successors, assigns and sub-lessees are and shall be estopped from challenging the jurisdiction of the other Party to enter into this Agreement in any proceeding before a court of competent jurisdiction.
- 9.5 If this Agreement as a whole is determined by a court of competent jurisdiction to be illegal or beyond the power and jurisdiction of the City, and appeals from such decision have been exhausted, the Tenant and the City agree that the Amending By-laws may be repealed by the City, and any alteration approval may be rescinded by the City and the Tenant covenants and agrees not to oppose or cause to be opposed the said repeal and rescission and the termination provisions of this Agreement shall apply *mutatis mutandis*.
- 9.6 If any individual provision(s) of this Agreement is or are determined by a court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement if both the Tenant and the City agree, and the remainder of the Agreement shall continue in full force and effect, *mutatis mutandis*; and, in such case, the Tenant and the City agree to negotiate in good faith to amend the Agreement in order to implement the intentions as set out herein. If the Tenant and the City cannot agree that such provision or provisions shall be severed, or if this Agreement is found not to have jurisdiction or authority to restrain the issuance of a Building Permit or a Heritage Permit or to restrain occupancy in accordance with the terms of this Agreement, City Council may repeal or amend the Amending By-laws with the object of restoring the zoning by-law provisions applicable to the Site to the state they were in on the day immediately prior to the date of the passing of the Amending By-laws, and the Tenant covenants and agrees not to oppose or cause to be opposed the repeal of the Amending By-laws.

#### *Headings*

- 9.7 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

### *City Officials*

- 9.8 Reference to a City official in this Agreement shall be deemed to include a reference to the City official who performs the duties of such referenced person from time to time. Whenever the provisions of this Agreement require an approval or consent of any Official of the City, in the event the City Council deems it appropriate, the approval or consent may be given by any other Official of the City or may include the approval of the Council.

### *Gender and Number*

- 9.9 This Agreement shall be construed with all changes in number and gender as may be required by the context.

### *Time to be of Essence*

- 9.10 Time shall be of the essence in this Agreement.

### *Failure is Not Waiver*

- 9.11 The failure of the City at any time to require performance by the Tenant of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

### *Statutory References*

- 9.12 Reference in this Agreement to any legislation (statutes, regulations, by-laws, etc.) includes an amendment, replacement, subsequent enactment or consolidation of such legislation.

### *Specific Performance*

- 9.13 The Tenant acknowledges that any breach of this Agreement by the Tenant would not be adequately compensated by payment of damages and, accordingly, the Tenant admits that specific performance is an appropriate form of remedy in the event of default by the Tenant.

### *Commencement of Agreement*

- 9.14 This Agreement shall commence on the date of execution by the Parties.

### *Enforcement*

- 9.15 The Tenant agrees that the facilities, works and matters required by the Agreement shall be provided by the Tenant at its sole risk and expense. Such facilities, works and matters required by this Agreement shall be to the satisfaction of the City. In addition, the Tenant agrees that upon failure by it to do any act that is required by this Agreement, the City may, in addition to any other remedy under this Agreement or otherwise, enter upon the Site, if necessary and do the said act at the Tenant's expense and collect the cost in like manner as municipal taxes as provided for in Section 386 of the *City of Toronto Act*.

### *Chief Building Official*

- 9.16 The Tenant agrees that wherever the provisions of this Agreement permit the City to refuse to process or issue a Building Permit, such provisions shall apply equally to the Chief Building Official.

### *Default*

- 9.17 The Tenant acknowledges and agrees that despite the *Building Code Act* or any successor legislation or any other Ontario statute, the Chief Building Official shall not issue, or be required to issue, nor shall the Tenant demand or be entitled to receive, any Building Permit while the Tenant is in default of its obligations under

this Agreement. The Tenant acknowledges and agrees that neither the City nor any City official shall be required to issue a Heritage Permit, nor shall the Tenant demand or be entitled to receive, any such permit while the Tenant is in default of its obligations under this Agreement.

#### *Estoppel*

- 9.18 The provisions of Section 16.17 may be pleaded by the City as an estoppel against a plaintiff/defendant by counterclaim in any proceedings of any nature or kind whatsoever against the Chief Building Official or the City or any of its employees or officials, as a result of the non-issue or revocation of a Building Permit or a Heritage Permit, as the case may be.

#### *Force Majeure*

- 9.19 Notwithstanding anything in this Agreement to the contrary, and subject to Section 16.20 herein, if the Tenant or the City is *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, pandemic, acts of public enemy, war, terrorism, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, , then the performance of such obligation is excused for so long as such cause exists, and the party so delayed shall be and is entitled, without being in breach of this Agreement, to carry out such obligations within the appropriate time period after the cessation of such cause.
- 9.20 Nothing in Section 16.19 shall operate to excuse the Tenant from prompt payment of all sums required to be paid to the City or prompt provision of Letters of Credit, or Upwards Indexing of those Letters of Credit, to be provided to the City, pursuant to the terms of this Agreement.

#### *Jurisdiction is Not Fettered*

- 9.21 Notwithstanding any other provision of this Agreement, the Parties agree with each other that none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the City Council which authorized the execution of this Agreement or any of its successors in the exercise of any of City Council's discretionary powers. Without limiting the generality of the foregoing, such discretionary powers include the power to pass, amend or repeal by-laws; to adopt, amend or rescind official plan amendments; and to approve or withhold approval to allow any demolition, relocation, construction, alteration, remodelling or any other things or act which may materially affect any building, structure or part thereof that is the subject of an agreement.

#### *City Not Bound as Tenant*

- 9.22 In the event that the City leases any part of the Site, the City shall not be bound by this Agreement as a Tenant.

#### *Further Acts and Assurances.*

- 9.23 The Parties covenant and agree that at all times and upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

#### **10. Governing Law and Attornment**

- 10.1 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties attorn to the jurisdiction of the courts of the Province of Ontario.

11. **Execution and Counterparts**

- 11.1 This Agreement may be executed by the Parties in counterparts and when all Parties have executed at least as many counterparts as there are parties, all of such counterparts shall be deemed to be originals and all such counterparts taken together shall constitute one and the same agreement.
- 11.2 This Agreement may be executed by one or more parties by facsimile or electronic transmitted signature and all parties agree that the reproduction of signatures by way of facsimile or electronic device will be treated as though such reproductions were executed originals. Any Party may require executed originals of the other upon written demand.

**IN WITNESS WHEREOF** the Parties have hereunto caused their respective hands and corporate seals to be affixed as attested to by the hands of their proper signing officers duly authorized in that behalf.

xxxxxxx

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the  
corporation

CITY OF TORONTO

**APPROVED AS TO FORM**

**For Wendy Walberg  
City Solicitor  
File No. •**

Per:

Name: \_\_\_\_\_

Title:

Per:

Name: \_\_\_\_\_

Title:

Authorized by Item PH11.2, as adopted by  
City of Toronto Council at its meeting on  
December 17 and 18, 2019.



**Attachment “A”**  
**Amending By-law to Zoning By-law 569-2013**

**TO BE INSERTED**

**Attachment "B"**  
**Summary of Financial Obligations**  
**(other than construction costs)**

<b>Community Space</b>			
<b>Instrument</b>	<b>Quantum</b>	<b>Timing</b>	<b>Section(s) of Agreement</b>
Any required environmental remediation as per the approved Ministry of the Environment Modified Generic Risk Assessment	No additional environmental remediation costs specific to the Community Space will be required, however the approved Modified Generic Risk Assessment should be reviewed in detail to ensure understanding of any cost implications to the project as a whole.	Prior to first Above-Grade Building Permit	
Certified cheque for review and inspection fees	Five percent (5%) of the final estimated costs of the construction of Services and all other construction obligations	Prior to the Release for Construction of Services	
<b>Heritage</b>			
All associated fees related to the submission of a Heritage Conservation and Interpretation Plans and Heritage Easement Agreement per the approved Alterations to the Designated Heritage Property	Estimate approx. \$25,000	Prior to Site Plan Approval	
Heritage Preservation and/or Restoration Costs as per the approved Heritage Conservation Plan	Estimated cost is dependent on approved Heritage Conservation Plan, but may be approx. \$250,000	Prior to Site Plan Approval	