

**CITY OF TORONTO**

**and**

**[PROPONENT]**

---

**LEASE**

**[35 Bellevue Avenue / 11 Brock Avenue], Toronto, Ontario**

**THIS LEASE** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**IN PURSUANCE OF** the Short Forms of Leases Act

**B E T W E E N:**

**CITY OF TORONTO**

(hereinafter called the “**Landlord**”)

**OF THE FIRST PART**

- and -

**[PROPONENT]**

(hereinafter called the “**Tenant**”)

**OF THE SECOND PART**

**WHEREAS:**

In consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **Section 1.1 Definitions**

The terms defined herein shall have for all purposes of this Lease and of all agreements or other subsequent instruments, implemental or confirmatory or amendatory hereof now or hereafter entered into in accordance with the provisions hereof, the following meanings unless the context expressly or by necessary implication otherwise requires:

“**Additional Rent**” means any and all amounts, other than Basic Rent, required to be paid by the Tenant under this Lease, whether or not same are designated “Additional Rent” or whether or not the same are payable by Landlord;

“**Affordable Housing**” means rental housing that is operated in accordance with the terms of the Contribution Agreement;

**“Applicable Fire Authorities”** shall have the meaning given in Subsection 5.2.1(b);

**“Applicable Laws”** shall mean, collectively, every statute, regulation, by-law, building code, order, which from time to time affects the Demised Premises, the Building or the Work;

**“Arbitration”** means that the specified dispute is to be resolved pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17 or any successor thereto. Each party is to bear its own costs and share equally in the fees and expenses of the Arbitrator and Arbitration, unless otherwise awarded by the Arbitrator. The parties hereby expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, c. M.48 relating to arbitrations shall not apply;

**“Article”, “Section”, “Subsection” or “Paragraph”** means the specified Article, Section, Subsection or Paragraph of this Lease;

**“Basic Rent”** means the rent payable pursuant to Section 3.2;

**“BCA”** means an inspection and study of the Demised Premises, commonly known as a “building condition assessment”, to determine the anticipated costs of major repair and replacements expected to be required, over the term of the Lease in order to maintain the Demised Premises in the condition as required under this Lease, including any update thereof from time to time and where used herein shall refer to the most recent BCA or update thereof;

**“Building”** means the [67 unit (35 Bellevue Ave) / 40 unit (11 Brock Ave)] affordable housing rental building constructed, on behalf of the Landlord on the land and all other improvements including, without limitation, the Building Systems, all fixtures, fixed machinery, accessories and equipment or other facilities, installations, alterations, additions, renovations, mechanical, electrical and utility installations which in each case are permanently affixed thereto or permanently situated thereon or are of a permanent nature that are used in connection therewith from time to time and which together with the land forms the Demised Premises;

**“Building Systems”** means: (a) all heating, ventilating, air conditioning, climate control and humidity control equipment and systems serving the Demised Premises; (b) other systems, services, installations and facilities installed in or servicing the Building including, without limitation, the following systems, services, installations and facilities: mechanical, plumbing, sprinkler, drainage and sewage, elevators, electrical and other utilities, lighting, life safety (including fire prevention, detectors, safety system testing and plans, communications, security and surveillance), computer (including environmental, security and lighting control), ice and snow melting, refuse removal, window washing and music; (c) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and

the structures and shafts housing and enclosing any of them; and (d) all Landlord owned or controlled telecommunications facilities, pathways, installations and equipment on or forming part of the Building or the land described in Schedule "A";

**"Capital Repair Cost"** shall mean the total expected costs as set out in the BCA;

**"Certificate of Property Use"** shall have the meaning given in Subsection 6.11(1); **[NTD: this definition only applies in respect of 35 Bellevue Avenue]**

**"CMHC"** means Canada Mortgage and Housing Corporation and any successor thereto;

**"Commencement Date"** means **[DATE]**;

**"Control"** means, with respect to any Person at any time, the possession, directly or indirectly of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract, by virtue of being (or Controlling) the general partner, manager, managing partner, board of managers, board of trustees or board of directors of such Person, or by virtue of the beneficial ownership of or control over a majority of the economic interest of such Person or otherwise; and each of **"Controlled by"** or **"Controlling"** has a corresponding meaning;

**"Contribution Agreement"** means the Contribution Agreement to be entered into between the Tenant and the Landlord, concurrent with the execution of this lease, with respect to the operation of the affordable housing units located on the Demised Premises and all schedules attached thereto;

**"Demised Premises"** means those lands described in Schedule "A" and shall include the Building and Building Systems;

**"Deputy City Manager"** means the Deputy City Manager – Corporate Services for the Landlord, the Deputy City Manager's successor, or the Deputy City Manager's designate(s) from time to time;

**"Emergency"** means an unforeseen situation that poses an immediate and serious risk to health, life, property or the environment or access to essential services (including but not limited to water, electricity, heat and sanitary services) and necessitates immediate action;

**"Environmental Laws"** shall have the meaning given in Subsection 6.10(3);

**"Fire Prevention Act"** shall have the meaning given in Subsection 5.2.1(b);

**"Force Majeure"** means strikes, labour troubles, inability to procure materials or services, power failure, riots, insurrection, sabotage, rebellion, actions of military or civil authorities, wars, revolutions, and terrorism, act of God, epidemics as identified by the Medical Officer

of Health for the City of Toronto, and quarantines as directed by the Medical Officer of Health for the City of Toronto, or other reason whether of a like nature or not, which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement. In no event shall the Tenant inability to pay any money due under this Lease be considered a "Force Majeure" event or otherwise relieve the Tenant of its obligation to make payment as required under this Lease;

**"Hazardous Materials"** means any hazardous or toxic substances or materials including but not limited to any products of waste, asbestos, urea formaldehyde foam insulation, radon gas or PCBs or any other contaminant or pollutant or condition of any nature or kind, including but not limited to any substance or condition defined as a contaminant or pollutant or as a hazardous or toxic substance or material or as having a negative environmental impact from time to time in any applicable legislation, by-laws or regulations or in any governmental, quasi-governmental regulatory or municipal policy or guideline;

**"HST"** means all harmonized taxes, goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes and any other taxes (however they are characterized) imposed in respect of the Rent payable by the Tenant, the rental of space by the Tenant or the provision of any service to or by the Landlord under this Lease;

**"Hereof", "hereto", "hereunder"** or similar expressions means this Lease and, where relevant, the particular Article, Section, Subsection or Paragraph of this Lease;

**"Landlord"** means the City of Toronto and its successors and assigns;

**"Lease"** means this Agreement and all amendments thereto in writing that may be agreed upon by the Landlord and the Tenant from time to time;

**"Lease Year"** means: (a) in the case of the first Lease Year, the twelve month period commencing on the Commencement Date or if such date is not the first day of the month, then on the first day of the month next following; and (b) in the case of Lease Years subsequent to the first Lease Year, the twelve month period commencing on the date immediately following the end of the previous Lease Year, provided that the period of the final Lease Year shall end at the expiry of the Term or on the earlier termination of this Lease;

**"Licensee"** means any Person who enters into any lease, sublease or licence or other occupancy agreement with the Tenant related to the Residential Units in any building on the Demised Premises;

**"Licence Agreement"** means an agreement between the Tenant and a Licensee;

**"Ontario Building Code"** shall have the meaning given in Subsection 5.2.1(a);

**"Ontario Fire Code"** shall have the meaning given in Subsection 5.2.1(a);

**"Parties"** means the Landlord and the Tenant and their respective successors and permitted assigns; and **"Party"** means any one of the Parties;

**"Person"** means any individual, partnership, corporation, trust, unincorporated organization, municipality, government, or governmental agency or any combination thereof;

**"Plans and Specifications"** means the plans and specifications prepared or to be prepared for or on behalf of the Tenant for any reconstruction, renovation and/or additions to the Building, as the case may be;

**"Required Work"** shall have the meaning in Section 6.9;

**"Rent"** means Basic Rent and Additional Rent;

**"Reserve Fund"** has the meaning set out in Section 6.3(2);

**"Reserve Fund Account"** has the meaning set out in Section 6.3(2);

**"Residential Units"** means the living units within the Demised Premises described in Section 3.7 below;

**"RTA"** means the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended, all regulations and any successor or replacement legislation;

**"Taxes"** means all taxes, rates, duties, charges, impositions, levies, assessments, realty taxes, licence and permit fees, and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen of any kind and nature whatsoever whether municipal, parliamentary or otherwise, which are from time to time levied, imposed or assessed against the Demised Premises and including those levied, imposed or assessed thereon for education, schools, utilities and local improvements or in respect of any occupancy or use thereof, capital taxes and any business transfer tax, national goods and services tax, value added tax, sales tax or any tax levied, rated, charged or assessed in respect of Rent payable by the Tenant under this Lease and municipal business taxes relating to the ownership levied or imposed on all or any portion of the Demised Premises or the revenues therefrom or the Tenant in substitution for, or in addition to, Taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included in Taxes. Notwithstanding the foregoing, the Demised Premises will be the subject of an exemption from taxation for municipal and school purposes (municipal property taxes) for the term of the Lease in accordance with the terms of the Contribution Agreement;

**"Tenant"** means [Proponent], its successors and permitted assigns;

**"Term"** means the period from the Commencement Date to the fiftieth (50<sup>th</sup>) anniversary of such date, less a day;

**“Toronto Fire Services”** shall have the meaning given in Subsection 5.2.1(b);

**“Transfer”** means an assignment or sublet of this Lease or any transaction whereby the rights of the Tenant under this Lease or to the Demised Premises or any part, are transferred, any transaction by which any right of use or occupancy of all or any part of the Demised Premises is conferred upon a third party, any encumbrance of this Lease or the Demised Premises or any part thereof or other arrangement under which either this Lease or the Demised Premises become security for any indebtedness or other obligations and includes any transaction or occurrence whatsoever (including, but not limited to, receivership proceedings, seizure by legal process and transfer by operation of law);

**“Transferee”** means the Person or Persons to whom a Transfer is or is to be made;

**“TSSA”** shall have the meaning given in Subsection 5.2.2(a); and

**“Work”** shall mean any renovation, replacement or capital repair of the Building or any part thereof, including all ancillary services thereon or connected therewith and the provision of all labour, materials, tools, machinery or equipment related thereto.

## **ARTICLE 2 DEMISE**

### **Section 2.1 Demise of Demised Premises**

(1) In consideration of and subject to the Rent reserved and the covenants and conditions herein contained and in the Contribution Agreement on the part of the Tenant to be paid, performed, observed and complied with, the Landlord hereby demises and lets to the Tenant, and the Tenant hereby leases from the Landlord, the Demised Premises to have and to hold during the Term, unless and until sooner terminated as expressly provided herein.

(2) The Tenant acknowledges that it has carefully examined the Demised Premises and hereby declares that it is accepting the Demised Premises in their present state of repair and condition on an “as is, where is” basis, except as explicitly provided in this Lease.

(3) Each of the Landlord and the Tenant covenant and agree to perform, fulfil and observe the covenants, obligations and conditions herein contained to the extent they bind or are expressed to bind the Landlord or the Tenant, respectively.

### **Section 2.2 Excluded Areas [NTD: as applicable]**

Notwithstanding anything else contained herein, the Tenant acknowledges that as of the Commencement Date, the Tenant shall not have access to, possession or use of:

- (a) those areas of the Building (the "**Restricted Interior Areas**") that are excluded from the partial occupancy permit **[INSERT PERMIT/REFERENCE NUMBER]** issued on **[DATE]**. The Tenant acknowledges receipt of a copy of said partial occupancy permit; and
- (b) such exterior areas of the Demised Premises (the "**Restricted Exterior Areas**"), as may be required by the Landlord, for the purposes of performing ongoing work to fulfill the notice of approval conditions for the site plan application for the Demised Premises;

(collectively the "**Excluded Areas**") until such time as, in the case of the Restricted Interior Areas, the Landlord provides notice in writing to the Tenant that an occupancy permit has been issued in respect of the Restricted Interior Areas, and in the case of the Restricted Exterior Areas, that the notice of approval conditions have been fulfilled.

## **ARTICLE 3 RENT**

### **Section 3.1      Covenant to Pay Rent**

The Tenant agrees to pay Basic Rent and Additional Rent as herein provided.

### **Section 3.2      Basic Rent**

(1) The Tenant shall pay to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and, unless otherwise expressly set out herein, without any deduction, abatement, set-off or compensation whatsoever, as Basic Rent, annual rent equal to \$2.00 (TWO DOLLARS) per annum, for the duration of the Term.

(2) In the event that an Event of Default, as set out in ARTICLE 11 of this Lease, occurs which Event of Default subsists beyond any applicable cure periods set out therein, then, from and after the occurrence of such default and until such time as such default is corrected, and in addition to any other rights and remedies of the Landlord under this Lease, the Tenant will be responsible for the payment of basic rent equal to the then current fair market rent for the use of the Demised Premises as a residential building as permitted under this Lease, as of the time when the Landlord invokes its rights herein to receive payment and to be agreed to by the Landlord and the Tenant. If the Landlord and Tenant cannot reach agreement, as to the basic rent payable, within three months of when such basic rent becomes due and payable, then the basic rent payable will be determined by Arbitration. The Landlord and the Tenant will each pay one-half of the fees and expenses of the Arbitration (except for the separate costs of each of the Parties. For certainty, upon correction of the event of default in question, the obligations of the Tenant under this subparagraph shall cease to apply.



### **Section 3.3 Additional Rent**

Subject always to the terms and conditions of the Contribution Agreement and compliance by the Landlord with the provisions thereof, the Tenant shall pay when due at the Tenant's sole expense and for its own account from and after the Commencement Date:

- (1) each and every instalment of Taxes on the Demised Premises or any part thereof, if applicable; and
- (2) all utility charges and rates and similar taxes, rates, charges and assessments including payments in lieu thereof which are properly charged, levied or assessed in connection with the Demised Premises or any part thereof or which are properly levied or assessed against the Tenant or which would, if unpaid, become a lien on the Demised Premises or the Tenant's leasehold interest therein or where such lien will, at any time, affect the interest of the Landlord; and
- (3) all of the other costs and expenses of maintaining and operating the Demised Premises, its services, equipment and facilities; such costs and expenses to include, without limiting the generality of the foregoing: ground water discharge filtration system maintenance and repair costs, water, gas, oil, electricity, heat, air conditioning, telephone, telecommunications, water heating, snow and ice removal and clearance, administrative charges and salaries, repairs and replacement of equipment, fixtures and facilities, landscaping contracts, grass cutting, lighting, cleaning, supplies, supervising;
- (4) all costs incurred by the Landlord with respect to the Demised Premises or any obligations of the Tenant under this Lease, including costs and expenses related to any of the Landlord's obligations under this Lease, which costs shall be provided to the Tenant by notice in writing within ninety (90) days after the expiration of each Lease Year together with reasonable details as to the breakdown and calculation of such costs, which costs shall be due within 30 days of the date of the notice in writing; and
- (5) all other charges and expenses which are the responsibility of the Tenant pursuant to this Lease.

### **Section 3.4 HST Payable**

HST shall be payable on all Rent and or Additional Rent amounts, where applicable. The Tenant will pay to the Landlord, at the same time as the amounts to which HST applies are payable, the full amount of all HST, with the intent that the Landlord be fully indemnified in respect of all HST payable or collectible by the Landlord. Despite anything else in this Lease, HST will not be considered to be consideration for the rental of space or the provision of any service by the Landlord under this Lease but will be considered to be Rent and the Landlord will have all of the same remedies for and rights of recovery with respect to such amounts as it has for non-payment of Rent under this Lease or at law.

### **Section 3.5 Late Payment Charges/NSF Cheques**

If any amount due and payable to the Landlord remains unpaid thirty (30) days after it is due, interest on the amount outstanding from time to time shall be paid to the Landlord at the rate of 1.25% per month. Interest will be calculated monthly from and including the day after the last day of the thirty (30) day period and paid monthly until payment in full is received by the Landlord. The obligation of the Tenant to pay interest in accordance with this subsection is without prejudice to any of the other remedies available to the Landlord, at law or otherwise. A charge of \$40.00 (the "NSF Fee") will be paid by the Tenant for each cheque given by the Tenant to the Landlord that is not honored by the bank on which it is drawn. The NSF Fee may be increased from time to time by the Landlord so that it is equal to the fee charged by the Landlord in respect of cheques tendered in payment of municipal tax and water charges that are not honored by the banks on which they are drawn, and the Tenant agrees to pay the NSF Fee as it may be so increased from time to time.

### **Section 3.6 Net Lease**

The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net lease to the Landlord, save and except as is otherwise provided for in this Lease and/or the Contribution Agreement. The Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Demised Premises including, without limitation, the Building, or the use and occupancy thereof, or the contents thereof or the business or operation carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind whatsoever relating to the Demised Premises and the use thereof by the Tenant including, without limitation, the costs of all insurance and all Taxes, save and except as is otherwise provided for in this Lease and/or the Contribution Agreement.

### **Section 3.7 Nature of the Lease**

This Lease shall be construed and deemed to be a commercial lease, notwithstanding that parts of the Demised Premises are used for residential purposes and may be considered "Rental Units" (as this term is defined under the RTA). The Tenant itself will not occupy the Demised Premises as a residential tenant, although Persons may occupy portions of the Demised Premises as their residential premises (the "Residential Units"). The Landlord and the Tenant acknowledge that Landlord shall not be considered to be a "landlord" as defined in the RTA in relation to the Tenant's Licensees. The Landlord and the Tenant specifically acknowledge and agree that the relationship of the parties herein shall be governed by the provisions of the *Commercial Tenancies Act*, R.S.O. 1990, c.L.7.

### **Section 3.8 Waiver of Set-Off by Tenant**

Except as otherwise provided for in this Lease and/or the Contribution Agreement, the Tenant hereby waives and renounces any and all existing and future claims and rights of set-off against any Rent and other monies payable hereunder to the Landlord and agrees

to pay such Rent and other monies payable hereunder to the Landlord regardless of any claim or set-off which may be asserted by the Tenant or on its behalf.

**Section 3.9 Landlord may Pay Taxes, etc.**

If the Tenant fails to pay when due any Rent and or Additional Rent required to be paid by the Tenant pursuant to this Lease, the Landlord shall have the right but shall have no obligation to pay the same at the expense of the Tenant after thirty (30) days' prior notice to the Tenant and the Tenant covenants to pay to the Landlord forthwith upon demand as Rent any amounts so paid by the Landlord.

**Section 3.10 Adjustment of Rent**

If applicable, sums paid by the Tenant under this Article 3 shall be subject to adjustment to reflect any partial billing periods encountered at the commencement or termination of this Lease.

**Section 3.11 Payments of Rent**

All payments of Rent are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever, unless otherwise expressly set out herein. Additional Rent is due and payable as specifically provided in this Lease.

**ARTICLE 4  
TRANSFERS**

**Section 4.1 Dealings by Landlord**

The Landlord shall have the right to transfer, encumber or grant any right or interest in the Lease or the Demised Premises, without notice to or consent of the Tenant, provided that no such transfer, encumbrance or right shall interfere with, and the Tenant, except as otherwise provided in this Lease, shall be permitted to remain in quiet possession of the Demised Premises without interruption or disturbance from the freehold mortgagee, assignee or purchaser so long as it is in good standing under this Lease. Upon the request of the Landlord, the Tenant shall execute any acknowledgements, agreements, or certificates confirming the terms of this Lease and that the Lease is in good standing.

**Section 4.2 Transfer by Tenant**

Except as permitted by Section 5.1, the Tenant shall not, without the prior written consent of the Landlord, which consent may be unduly delayed and unreasonably withheld, Transfer this Lease or grant the use of the Demised Premises to any person, in whole or in part, and any such purported Transfer is void and of no effect. Any request for consent shall be accompanied by payment of the Landlord's processing fee for review of such requests, and by such information and documentation as reasonably required by the Landlord.

### **Section 4.3      Conditions of Transfer**

(1) Prior to the written consent of the Landlord being obtained, no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of the Tenant's covenants or any acceptance of the Transferee as Tenant or a release from the Tenant from the further performance by the Tenant of its obligations under this Lease. Any consent by the Landlord shall be subject to the Tenant and Transferee executing an agreement with the Landlord, in form and content satisfactory to the Landlord's solicitor, acting reasonably, agreeing that the Transferee will be bound by all of the terms of this Lease and the Contribution Agreement and except in the case of a sublease, that the Transferee will be so bound as if it had originally executed this Lease as tenant.

(2) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Rent for the month in which such effective date occurs shall be paid in advance by the Tenant so that the Landlord will not be required to accept partial payments of Rent for such month from either the Tenant or the Transferee.

(3) Any document evidencing any Transfer permitted by the Landlord, or setting out any terms applicable to such Transfer or the rights and obligations of the Tenant or Transferee thereunder, shall be prepared by the Tenant or its solicitors and all associated reasonable legal costs shall be paid by the Tenant, subject to the Landlord's approval of the applicable form.

## **ARTICLE 5 USE**

### **Section 5.1      Use and Management of Demised Premises**

(1) The Tenant shall use, manage and operate the Demised Premises solely, continuously and actively for the sole purpose of providing Affordable Housing, together with all ancillary uses related thereto, or benefitting or contributing to the principal use, in each case, in accordance with the requirements of the Contribution Agreement and this Lease. The Tenant shall not use or permit the use of the Demised Premises or any part thereof for any other business or purpose except as may be permitted under the Contribution Agreement and this Lease or as otherwise consented to by the Landlord, in its sole discretion.

(2) The Tenant shall be permitted to lease, sublease or licence units in the Building and permit occupancy of the Building only in accordance with the terms of this Lease and the Contribution Agreement.

(3) The Tenant shall protect all public works services and/or utilities and all easements and rights-of-way in favour of the Landlord on, above, under or affecting the Demised Premises.

(4) Notwithstanding the foregoing, the Tenant shall not be in default of its obligations under this Section 5.1 to the extent that it has ceased to operate in connection with any circumstance or delay contemplated by Section 15.12 hereof or any event of Force Majeure; in connection with any repair or restoration work after damage or destruction; or any alteration, remodelling, renovation or expropriation.

## **Section 5.2      Observance of Law**

The Tenant shall, at its sole cost and expense (except as otherwise specified in this Lease and subject always to the terms of the Contribution Agreement), promptly:

(1) observe and comply with all Applicable Laws, and all requirements of all governmental authorities, including, without limitation, federal, provincial and municipal legislative enactments, zoning and building by-laws (where applicable), and any other governmental or municipal regulations or agreements now or hereafter in force which relate to or affect the demolition or construction of buildings and to equipping or maintenance, operation and use of the Demised Premises or the conduct of any business in the Demised Premises, and public ways adjacent thereto and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Demised Premises or any part thereof and including further all police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities and all requirements made by fire insurance underwriters to the extent required in order to keep the required insurance in force;

(2) observe and comply with all requirements of, and pay all costs and expenses in connection with, the controls imposed by governmental authorities for ambient air and environmental standards;

(3) observe and comply with all police, fire and sanitary regulations imposed by any governmental authorities (whether federal, provincial or municipal); and

(4) to comply with all present and future legislation under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, or any successor or replacement legislation including any regulations to designated substances;

(5) carry out all modifications, alterations or changes of or to the Demised Premises and the Tenant's conduct of business in or use or operation of the Demised Premises which are required by any such authorities as set out above.

### **Section 5.2.1      Compliance with Fire Prevention Laws and Regulations**

(a) The Landlord shall ensure that the Demised Premises is equipped with up-to-date fire protection systems in compliance with the *Building Code* (O. Reg 332/12) ( the "**Ontario Building Code**") and the *Fire Code* (O. Reg. 213/07) (the "**Ontario Fire Code**"), as same may be amended from time to time, and all other laws, by-laws, rules and regulations governing same. This shall include the monthly, semi-annual,

annual and five year inspections for the fire alarm, sprinkler system, standpipe, kitchen suppression, fire extinguishers, emergency lighting, engineer smoke exhaust (if applicable), generator (if applicable) and all in unit fire protection devices. The Landlord will install and maintain offsite Underwriters Laboratories of Canada compliant monitoring. All costs incurred by the Landlord pursuant to this Subsection 5.2.1(a) shall be charged to the Tenant as Additional Rent.

- (b) With the exception of the responsibilities of the Landlord under Subsection 5.2.1(a) above, the Tenant shall at all times during the Term strictly adhere to, and comply with, all fire prevention laws, statutes, by-laws, codes and regulations, including but not limited to the *Fire Protection and Prevention Act, 1997* (S.O. 1997, c. 4) (the “**Fire Prevention Act**”) and the Ontario Fire Code, regulations, codes, permits, licences, industry standards, guidelines rules and directives as any of the same may be replaced or amended from time to time (collectively, the “**Applicable Fire Authorities**”) and all notice requirements, fire prevention obligations, and all maintenance, repair, inspection, monitoring and reporting responsibilities imposed thereby as well as by the City of Toronto’s Fire Services, as the Authority Having Jurisdiction (“**Toronto Fire Services**”).
- (c) The Tenant shall work with the Landlord to comply with all Notices of Violation and/or Orders received from Toronto Fire Services, and address any and all deficiencies noted by Toronto Fire Services.
- (d) The Tenant shall repay the Landlord, forthwith and upon demand therefor, for any fines, penalties or demands for monies whatsoever which are charged to, levied against, requested or demanded of the Landlord, as a result of the conduct of the Tenant or the residential tenants. The Tenant shall be responsible for the damage caused to fire protection equipment within units by residential tenants.
- (e) The Tenant shall, at the Tenant's own cost, develop and implement a fire safety plan, approved by the Landlord, as required by the Ontario Fire Code, reviewed on an annual basis pursuant to the Ontario Fire Code.
- (f) The Tenant shall immediately notify the Landlord of any fires (or incidents that are required to be reported to Toronto Fire Services as required by same or by the Applicable Fire Authorities) that take place at the Demised Premises, and shall deliver to the Landlord any relevant reports, documents or information in connection therewith within ten (10) business days of said reports, documents or information being received by the Tenant.
- (g) Tenant shall permit the Landlord to inspect Tenant's records relating to fire safety and compliance with the Ontario Building Code and Ontario Fire Code at any time upon forty-eight (48) hours advance notice. The Tenant shall facilitate access by the Landlord or its contractors to the Demised Premises for the purpose of this Section 5.2.1(g), at any time upon forty-eight (48) hours advance notice (save in

an emergency when no Notice shall be required). The Tenant shall be responsible for providing notice to the residential tenants, in accordance with the RTA.

### **Section 5.2.2 Compliance with Technical Standards and Safety Act, 2000**

- (a) Without limiting the generality of Section 5.2 above, the Tenant shall at all times during the Term strictly adhere to, and comply with, all requirements of the Technical Standards and Safety Authority (“**TSSA**”), and all statutes, laws, by-laws, regulations, licences, permits and codes pertaining to elevating device safety, including but not limited to the *Technical Standards and Safety Act, 2000*, (S.O. 2000, c. 16) and all regulations made thereunder (the “**Act**”).
- (b) For greater certainty, the obligations contained in Subsection 5.2.2(a) above shall include, but shall not be limited to, the following:
  - i. Performance, completion and compliance with all registration, licensing and maintenance obligations required by the TSSA and the Act and in this regard, prior to or upon execution of this Lease the Tenant shall deliver to the Landlord proof that the Tenant is registered with the TSSA and has entered into a valid and binding contract with a contractor licensed to inspect and repair existing elevating devices in accordance with the requirements of the TSSA and the Act;
  - ii. Immediate compliance with all notices of violation and/or orders received from the TSSA with copies of said notices and orders (as well as remedial steps to be taken) delivered to the Landlord within three (3) business days of receipt of same; and
  - iii. Timely submission to the TSSA of all maintenance reports, as well as all annual and semi-annual reports as may be required by the TSSA and the Act, with copies delivered to the Landlord immediately thereafter.
- (c) The Tenant shall deliver to the Landlord in a prompt and timely manner, notice of any unsafe condition or conditions with respect to the elevating devices at the Demised Premises as well as the Tenant’s plan to remedy same (which remedial plan shall state that any such conditions will be addressed in a prompt and timely manner) or confirmation that any such condition has been rectified, and the Tenant shall also provide notice to the Landlord of any accidents with respect to the elevating devices at the Demised Premises immediately after any such accident takes place. The Tenant shall also provide all notices referred to in this section 5.2.2 to the TSSA and any other authority as may be required by the TSSA, the Act or otherwise at law.
- (d) For the purposes of this Section 5.2.2 and all requirements hereunder, the Tenant shall be deemed to be the owner of the Demised Premises and the Tenant shall

at all times during the Term comply with this Section 5.2.2 as though it were the legal owner of the Demised Premises.

### **Section 5.3      Tenant's Covenants**

The Tenant covenants in respect of the use of the Demised Premises as follows:

- (1) not to commit, suffer or permit any act or omission in the Demised Premises which shall result in an illegal use or cause any breach of any of the Applicable Laws;
- (2) to maintain in force during the Term all necessary licences, permits, and authorizations relating to the use and occupancy of the Demised Premises by the Tenant; and
- (3) to comply with all terms and conditions set out in the Contribution Agreement.

### **Section 5.4      Nuisance**

The Tenant and its employees, agents, occupants and invitees shall not commit, cause or permit any nuisance or waste on the Demised Premises and shall ensure that nothing is done or kept at or on the Demised Premises which causes adverse disturbance, damage to or interference with normal use of any adjoining property. For certainty, the parties acknowledge and agree that the undertaking of the permitted uses herein do not violate this provision. Without limiting the generality of the foregoing, the release from the Demised Premises of ten (10) or more balloons within a twenty-four hour period shall be considered a nuisance and Tenant shall not engage in such activity at any time.

## **ARTICLE 6 REPAIR, MAINTENANCE AND IMPROVEMENT**

### **Section 6.1      Landlord Not Responsible**

The Landlord shall not be obliged to furnish any services, maintenance, repairs or facilities to the Demised Premises, it being agreed by the Tenant that the Landlord shall not at any time during the term of this Lease be required or called upon to make any repairs in or to the Demised Premises of any nature or kind whatsoever. The Landlord acting in its capacity as Landlord and not as a municipal corporation shall not be obliged to make any repairs whatsoever to the Demised Premises at any time during the Term nor to furnish any services or facilities to the Demised Premises except as set out in this Lease (including as a result of any Excluded Liability).

### **Section 6.2      Tenant's Obligation to Repair**

- (1) The Tenant shall, at its sole cost and expense, and at all times throughout the Term, keep and maintain the whole of the Demised Premises, and every part thereof, in first class condition and repair having regard to buildings of similar age and quality, and to the same accessibility and energy efficiency levels met by the Demised Premises on the Commencement Date, all as determined by the Landlord in its sole discretion, acting



reasonably. Without limiting the generality of the foregoing the Tenant shall promptly repair, replace and maintain and shall conduct routine, scheduled and preventative maintenance, in all cases as would a prudent owner, on and to:

- (a) the structure of the Building including the roof and roof membrane, windows, interior concrete slab floors and exterior walls;
- (b) any capital repairs to the Demised Premises;
- (c) the Building Systems;
- (d) all components of the exterior of the Demised Premises; and,
- (e) interior of the Demised Premises including the Residential Units, all trade fixtures, improvements and equipment in the Demised Premises and the Residential Units, other than property owned by a Licensee.

(2) Notwithstanding subsection (1), the Tenant shall be entitled to avail itself of any limited warranty (the "Warranty") provided in the design-build construction contract between the Landlord and the builder with respect to any repairs or replacements that arise from deficiencies related to the construction of the Demised Premises and which are covered under the Warranty, if applicable. The Landlord shall advise the Tenant whether there is any such applicable Warranty, and if so, shall provide the Tenant with a process for pursuing any claims under the Warranty, which may be amended from time to time by the Landlord. The Tenant shall comply with any warranty management process established by the City from time to time.

(3) The Tenant shall at all times keep the Demised Premises in a neat and orderly condition, maintain in first class condition all landscaping and exterior areas, and keep all areas clear of ice and snow including any adjacent public areas as required by law, as would a prudent owner.

(4) In the event that the Landlord determines that any condition existing or potentially existing on the Demised Premises creates a risk to life, health or safety, the Tenant shall, at its own cost and expense, effect any repairs, maintenance or other modifications to the Demised Premises required to alleviate such condition as communicated by the Landlord to the Tenant.

### **Section 6.3 Building Condition Assessment and Reserve Fund**

(1) The Tenant shall conduct or cause to be conducted a BCA of the Demised Premises in the fifth Lease Year of the Term, and thereafter, the Tenant shall conduct or cause to be conducted a BCA of the Demised Premises no later than five (5) years after the date of the previous BCA. Each BCA shall be conducted in accordance with the Landlord's standards, provided to the Landlord in a prompt and timely manner upon receipt by the Tenant, and subject to the approval of the Deputy City Manager acting reasonably.

(2) The Tenant shall deposit in a trust account at a Canadian chartered Bank (the "**Reserve Fund Account**") an amount equal to five per cent (5%) of the aggregate annual effective gross income (including all subsidies) from the Demised Premises, including any rent supplement income and affordability payments from the Province of Ontario, the City of Toronto or any other municipality (the "**Reserve Fund**") to be deposited monthly in estimated amounts, adjusted within 60 days of the end of each Lease Year to reflect actual effective gross income from the Leased Premises for the preceding fiscal year (the "**Reserve Fund Deposit**"). The Landlord reserves the right, acting reasonably, to review the amount of the Reserve Fund Deposit with each BCA conducted and to require the Tenant to increase the amount of the Reserve Fund Deposit where the Landlord has determined in its sole discretion that the amount of the Reserve Fund Deposit is not sufficient to establish at the end of each Lease Year the annual amount required in the most recent BCA.

(3) The Tenant may, with the prior written approval of the Landlord, withdraw amounts from the Reserve Fund Account to fund Work (excluding routine, scheduled or preventative maintenance) in order to maintain the same in the condition required to be maintained hereunder or under the BCA. Such approval shall not be unreasonably withheld, provided the Tenant shall comply with Section 6.5, Section 6.6 and Section 6.8 hereof in connection with all such Work.

(4) Prior to the Commencement Date, the Tenant shall provide the Landlord with evidence the Reserve Fund Account has been established in the name of the Landlord in trust for the Tenant.

(5) In the event the Tenant fails to do any Required Work in accordance with Section 6.9 hereof, the Landlord shall be entitled to recover the costs from the Reserve Fund to conduct such Required Work including an administration fee of fifteen (15%) per cent.

(6) The Tenant hereby grants to the Landlord a security interest in and lien upon, and pledges to the Landlord, all amounts in the Reserve Fund Account and all amounts at any time in or attributable to such account or successor accounts, as security for all existing and hereafter arising obligations, liabilities and indebtedness of the Tenant to the Landlord relating to or arising from this Lease and the Demised Premises. The Landlord shall take whatever action it considers appropriate and necessary, relying upon an opinion of counsel, to protect and enforce its rights respecting the Reserve Fund Account, including completion and registration of any documents or financing statements at the expense of the Tenant in order to perfect any security interests in the Reserve Fund Account.

#### **Section 6.4 Reserve Fund at the End of Term**

All amounts in the Reserve Fund shall revert to the Landlord absolutely at the end of the Lease Term and, provided the Tenant has made all repairs to the Demised Premises in

accordance with the BCA, the Landlord shall reimburse the Tenant for the cost of any repair or replacement in accordance with Section 6.7 hereof.

### **Section 6.5      Landlord's Approval of the Tenant's Work**

(1) Except if Work is required to be performed in an Emergency, the Tenant shall not initiate construction of any Work without the Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Landlord's review for consent will be limited to ensuring compliance with the terms of this Lease. If the Tenant carries out Work required to be performed in an Emergency, the Tenant shall notify the Landlord of such Work and shall seek the Landlord's approval thereof as soon as reasonably possible following the initiation of such Work.

(2) If and when approved by the Landlord, the Work shall be completed at the Tenant's sole cost and expense in accordance with Schedule "B".

(3) If the Tenant performs any Work, repairs or replacements without compliance with all of the provisions of this Section, the Landlord shall have the right to require the Tenant to remove such Work, repairs or replacements forthwith, at the Tenant's sole cost and expense, and to restore the Demised Premises to its prior condition, satisfactory to the Landlord, acting reasonably.

(4) If at any time prior to completion of any Work, the Work ceases and has not been resumed within three (3) months of the date Work was discontinued or if the Tenant abandons the Demised Premises, then the Landlord shall have the right, upon at least ninety (90) days prior written notice given to the Tenant, to terminate this Lease, provided that in the event the Tenant recommences and thereafter is diligently proceeding with the undertaking of the work during such ninety (90) day period, the Landlord's entitlement to terminate the Lease pursuant to this provision in such instance shall be null and void.

### **Section 6.6      Construction Liens**

(1) If any lien under the *Construction Act*, R.S.O. 1990, c. C30, or any like statute shall at any time be registered against the Demised Premises by reason of work done or materials supplied for or to the Tenant or for or to anyone holding an interest in the Demised Premises through the Tenant or if the Landlord is given notice of any such lien, the lien shall be discharged or vacated from the title to the Demised Premises by the Tenant within ninety (90) days after the lien is filed or sooner if the Demised Premises are in jeopardy of forfeiture or sale by the party performing the Work in respect of which the lien was filed even if the validity of the lien is being contested, if requested by the Landlord, or by a Leasehold Mortgagee. If the Tenant wishes to contest the amount or validity of any lien and has so notified the Landlord and if the Tenant has deposited with the Landlord or paid into court to the credit of the lien action the amount of the lien plus a reasonable amount for costs and has registered a discharge of such lien, the Tenant may defer payment of such lien for a period of time sufficient to enable the Tenant to contest

the lien with due diligence, provided always that the Demised Premises shall not thereby become liable to forfeiture or sale.

(2) The Landlord may, but shall not be obligated to, discharge or vacate any construction lien if in the Landlord's judgment, exercised reasonably, the Demised Premises become liable to immediate forfeiture or sale or the Demised Premises is otherwise in jeopardy, and any amount paid by the Landlord in so doing, shall be reimbursed to the Landlord by the Tenant as Additional Rent within thirty (30) days after demand. If a construction lien is not discharged and vacated within three (3) months of registration, notwithstanding that the lien may be contested, the Landlord shall have the right, on written notice to the Tenant, to terminate the Lease.

(3) Nothing herein contained shall authorize Tenant, or imply any consent or agreement or request on the part of the Landlord to subject the Landlord's estate or interest in the Demised Premises and/or the Building to any construction lien or any other lien of any nature or kind whatsoever. Notice is hereby given to all parties that the Landlord expressly refuses and denies any consent or agreement or request to permit their estate or interest in the Demised Premises and/or the Building to be subject to any construction lien or other lien of any nature or kind whatsoever without the express written agreement of the Landlord to this effect. Tenant acknowledges that the Landlord is not, and should not be held to be, an owner as that term is defined in the *Construction Act* with respect to the construction of any work on the Demised Premises by, or on behalf of Tenant.

#### **Section 6.7 Work in Last Three Years of Lease**

Provided the Tenant has made all repairs to the Demised Premises, in a manner a prudent owner would make, during the term of this Lease, should the Tenant, be required to effect any Work during the last three (3) years of the Term, the economically useful life of which would extend beyond the expiry of the Term, the Landlord and the Tenant may agree to terminate this Lease, or require the Tenant to proceed with the repair or replacement and, only if this Lease is not renewed and upon expiry, the Landlord shall reimburse to the Tenant any unamortized amount of such repair or replacement for the period beyond the expiry of the Term. The calculation of the unamortized amount will be based on straight line amortization of the costs of such repair or replacement over the improvements' economic life, in the opinion of the Landlord acting reasonably.

#### **Section 6.8 Access by Landlord**

Save in the case of emergency, as determined by the Landlord, acting reasonably in which case the Landlord shall have access without notice to the Demised Premises, the Landlord and its agents shall be entitled to enter the Demised Premises from time to time upon twenty-four (24) hours' prior notice or, where necessary, such period of time as set out in the RTA, to view its state of repair [or to carry out any obligations of the Landlord under Subsection 6.11(2) **{NTD: only applicable in respect of 35 Bellevue Avenue}**], and without being considered to be interfering unreasonably with the Tenant's possession

of the Demised Premises or the possession of any of the Tenant's subtenants or occupants. The Tenant shall be responsible for providing notice to the residential tenants, in accordance with the RTA. The Tenant shall permit the Landlord to inspect the Tenant's records relating to any maintenance, repairs, alterations, improvements, renovations and replacements to confirm compliance with this Lease, at any time upon reasonable notice.

### **Section 6.9 Repairs by Landlord**

In the event the Landlord determines in its sole opinion, that the Demised Premises are not being maintained in the condition required under this Lease, the Landlord may on written notice require the Tenant to make repairs, alterations, changes, adjustments, improvements or additions to the Demised Premises or any part of them (the "**Required Work**"), as the Landlord reasonably considers necessary or desirable to maintain the Demised Premises in such condition. In the event the Tenant fails to do so within thirty (30) days after receipt of the Landlord's notice, the Landlord may elect to carry out the Required Work and recover all expenses, including a fifteen percent (15%) administration fee, from the Tenant to the extent that there are insufficient funds in the Reserve Fund to cover the said expenses.

### **Section 6.10 Environmental Matters**

(1) The Tenant shall not cause or allow any hazardous or toxic waste or substances (collectively the "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from, the Demised Premises (collectively the "Hazardous Materials Activities") except in strict compliance, at the Tenant's expense, with all applicable Environmental Laws, as hereinafter defined, and using all necessary and appropriate precautions which a prudent operator would exercise.

(2) The Landlord shall not be liable to the Tenant for any Hazardous Materials Activities conducted on the Demised Premises during the Term or any extension thereof, however caused, whether or not consented to by the Landlord; the Tenant shall indemnify, defend with counsel, and hold the Landlord harmless from and against any claims, damages, costs and liabilities arising out of any and all such Hazardous Materials Activities.

(3) For purposes hereof, Hazardous Materials shall include but not be limited to substances defined as contaminants or pollutants under the *Environmental Protection Act* (Ontario), R.S.O. 1990, c. E.19 or the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, and all other laws and ordinances governing similar matters; and any regulations adopted and publications promulgated pursuant thereto (collectively the "Environmental Laws"), as they may be amended from time to time.

(4) The Tenant shall notify the Landlord, as soon as reasonably possible both by telephone and in writing of any material spill or material unauthorized discharge of Hazardous Materials or of any material discharges under the Environmental Laws, and the Landlord, its representatives and employees at their expense may enter the Demised

Premises at any time, upon reasonable notice, during the Term to inspect the Tenant's compliance herewith.

(5) The Tenant shall also be responsible for proper disposal of all substances and toxic materials, and other materials which, under the Environmental Laws or any Governmental regulations dealing with waste and or recycling, by virtue of prudent waste management procedures in the Tenant's industry require special disposal measures, including, without limitation, oil, kitchen waste, grease and cleaning substances.

(6) Subject to the provisions of Subsections Section 6.10(7), (8) and (9) below and subject to the provisions of [Section 6.11 relating to the Certificate of Property Use and **{NTD: only applicable in respect of 35 Bellevue Ave}**] Section 8.1 relating to Excluded Liability, after the Commencement Date, the Demised Premises shall be entirely at the risk of the Tenant and the Tenant shall assume any and all responsibilities and liabilities arising out of or in any way connected with any matter or condition in, on, under or in the vicinity of the Demised Premises from and after the Commencement Date, whether known or unknown and whether such responsibilities are imposed by federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives or by any regulatory authority, and whether imposed by common law, equity or statute ("Environmental Laws").

(7) The Landlord releases and discharges the Tenant, its employees, directors, officers, appointees, representatives and agents from any claims, demands and actions arising out of or as a result of the condition of the Demised Premises as of the Commencement Date and any impact such condition has had on any adjacent land owned by the Landlord, except where the claim, demand or action has been caused by the negligence of the Tenant or the negligence of any person on the Demised Premises at the invitation or request of the Tenant.

(8) The Tenant hereby indemnifies the Landlord, its elected and appointed officials, directors, officers, employees, appointees, agents and representatives (the "Indemnified Parties") from and against all damages, losses, liabilities, harm, injury, costs, expenses, actions, demands and claims (including legal and witness costs) that are suffered, sustained or incurred by an Indemnified Party as a result of or in connection with the activities or omissions of the Tenant on the Demised Premises or the activities or omissions of any person on the Demised Premises at the invitation or request of the Tenant, including in respect of any environmental investigations or remediation undertaken by the Tenant.

(9) Notwithstanding the provisions of SubSection 6.10 (6), (7) and (8) in the event that:

- (a) the soil, subsoil, surface water or groundwater of any other lands ("Neighbouring Properties") are affected by Hazardous Substance emanating from the Demised Premises to the extent that such effect is the result of the presence of Hazardous Substance on the Demised Premises prior to the Commencement Date or in respect of any Excluded Liability;

and/or

- (b) after the Commencement Date, Hazardous Substance emanating from lands owned or controlled by the Landlord affects the soil, subsoil, surface water or ground water at, on or under the Demised Premises, this Lease shall in either case not relieve the Landlord from any responsibilities and liabilities therefor to the Tenant or the owners or occupants of any Neighboring Properties and/or any Governmental Authority to the extent the Landlord has such responsibility under Environmental Laws or otherwise under the Contribution Agreement and such effects cause damages, losses, liabilities, harm, injury, costs, expenses to, or actions, demands and claims against the Tenant or are the subject of regulatory action or third party claims, and the Tenant shall not be required to indemnify the Landlord with respect thereto.

For clarity, it is understood and agreed that in the circumstances described in this SubSection 6.10 (9), the Landlord shall bear the responsibility and liability therefor, including as it would have had at law as if Subsections Section 6.10 (6), (7) and (8) had not been included herein.

**Section 6.11 Certificate of Property Use [NTD: this provision only applies in respect of 35 Bellevue Avenue]**

(1) The Tenant acknowledges that it has received from the Landlord a copy of the Certificate of Property Use attached as Schedule "C", being Certificate of Property Use number 2587-CJ8ND5, dated September 20, 2022, and registered on title to the Demised Premises as Instrument No. AT6203466 ("**Certificate of Property Use**").

(2) Notwithstanding Subsection 6.2(1), the Landlord shall be responsible for complying with the risk management measures required by the terms of the Certificate of Property Use, including any inspection, maintenance, repair, and reporting obligations required thereunder.

(3) The Tenant shall not commit, suffer or permit any act or omission in the Demised Premises which shall result in any breach by the Landlord of its obligations under the Certificate of Property Use.

**ARTICLE 7  
SURRENDER**

**Section 7.1 Surrender**

At the expiration of the Term or the earlier termination of this Lease:

(1) The Tenant agrees to peaceably surrender and yield up to the Landlord the Demised Premises in the state of repair required of the Tenant pursuant to this Lease, which shall thereupon vest in the Landlord free and clear of all financial encumbrances

without any necessity for any transfer documentation and for no consideration and thereupon the rights of the Tenant under this Lease shall terminate.

(2) The Tenant also agrees to deliver to the Landlord copies of all books and records with respect to the Demised Premises as are in its possession at such time so as to ensure the orderly continuance of operation of the Demised Premises by the Landlord if the Landlord so requires beginning on the date this Lease is terminated. The Landlord shall have the right to review the Tenant's original books and records related to the Demised Premises as and when necessary.

(3) The Tenant shall not execute any agreement with respect to the Demised Premises (including a lease or an agreement for the provision of services) which expires after the end of the Term, without the consent of the Landlord, which may be unreasonably withheld, conditioned or delayed.

(4) Notwithstanding the termination of the Lease, whether at the expiration of the Term or earlier as is provided herein, the Tenant shall remain liable to the Landlord for any default hereunder by the Tenant, notice of which has been received by the Tenant, during the Term and which remain outstanding as of the expiry of the Term.

(5) Notwithstanding the foregoing, it is understood that the Tenant, upon termination or expiry of this Lease for any cause, may go upon the Demised Premises and remove chattels, trade fixtures and other personal property in each case placed thereon by the Tenant, other than chattels and personal property required for the use and operation of the commercial kitchen and the Residential Units in compliance with the residential tenancy agreements signed with Licensees, including, without limitation, appliances and furnishings supplied by the Landlord and/or the Tenant.

(6) The Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, leave the Building and any subsequent leasehold improvements in the same condition it is required to be maintained pursuant to the provisions of this Lease.

## **Section 7.2 Assignment of Rights**

(1) At the expiration of the Term or the earlier termination of this Lease, the Tenant shall, for no consideration, assign to the Landlord all of the Tenant's interest in the Demised Premises including, for greater certainty, the Building and all Tenant's fixtures located thereon which the Tenant elects not to remove in accordance with its rights under Section 7.1 above, together with the benefit of all subleases, licence agreements, guarantees, warranties and other agreements and rights benefiting the Demised Premises or the Tenant's interest therein, if and to the extent that the Landlord shall require such benefits to be assigned, provided that such benefits are capable of being assigned. The Tenant agrees to deliver executed copies of all such documents to the Landlord at such time. The Landlord shall assume the Tenant's rights and obligations under such documents, provided that such rights and obligations are capable of being assigned. Notwithstanding the foregoing, the Tenant shall remain liable for any default,



cost or obligation arising pursuant to such documents prior to the date of such assignment.

(2) The Tenant agrees to assign all contracts and ongoing obligations, capable of being assigned to the Landlord and the Landlord agrees to assume the Tenant's rights and obligations under such contracts, provided such rights and obligations are capable of being assigned.

(3) The Tenant hereby constitutes the Landlord as the Tenant's true and lawful attorney fully empowered to execute any required documents in order to take any reasonable steps necessary to effect any such assignments set out in Section 7.2(2).

### **Section 7.3 Overholding**

If the Landlord permits the Tenant to remain in possession of the Demised Premises after the expiration of the Term and without an agreement concerning such overholding and accepts Rent, as set out below, in respect thereof, a tenancy from month to month shall be deemed to have been created. Such tenancy may be terminated at any time either by the Landlord or, by the Tenant by notice to the other with the termination date to be set out in the notice and to be at least sixty (60) clear days after delivery of the notice and, in the absence of written agreement to the contrary, shall be subject to all of the terms of this Lease, except as to the Term.

## **ARTICLE 8 INDEMNITY**

### **Section 8.1 Non-Liability of Landlord**

The Landlord is not liable or responsible in any way to the Tenant or to any other Person for, and the Tenant hereby releases the Landlord from, all claims of every nature and kind arising out of or in respect of:

- (1) the use and occupation of the Residential Units by the Licensees;
- (2) ensuring that the Licensee's use of and conduct within the Demised Premises complies with this Lease and all applicable laws;
- (3) enforcing the provisions of any Licence Agreement relating to the Residential Units;
- (4) the acts of (including the negligent and wilful acts of): (i) any Person in the Demised Premises; (ii) occupants of properties adjacent to the Demised Premises; and/or (iii) the public;
- (5) any occurrence on the Demised Premises, howsoever caused.

All property kept or stored on the Demised Premises is at the risk of the Tenant and the Tenant shall hold the Landlord harmless from and against claims arising out of damages to same, including any subrogation claims by the Tenant's insurers or by third parties. Notwithstanding the foregoing or any other provision herein or in any other agreement, the Landlord shall not be released from any liability and shall be responsible to the Tenant for all costs, fees, expenses, claims, actions, losses and damages arising from any breach of its obligations under this Lease or for any Hazardous Materials and any Hazardous Materials Activities in existence or pertaining to the period prior to the commencement date of this Lease (the "**Excluded Liability**").

## **Section 8.2      Tenant's Indemnity**

Other than in respect of the Excluded Liability, the Tenant shall indemnify and save harmless the Landlord from any and all costs, expenses, claims, actions and losses of every nature and kind whatsoever and of and from all liabilities of every nature and kind whatsoever in connection with the Demised Premises and this Lease, whether accrued, actual, contingent including, without limitation, the following but for certainty, excluding the Excluded Liability:

- (1) any breach, violation or non-performance of any covenant, obligation or agreement in this Lease on the part of the Tenant to be fulfilled, kept, observed or performed;
- (2) all legal fees and disbursements incurred in connection with any appeal, pertaining in any manner to this Lease and the Demised Premises;
- (3) any damage to property, either real or personal, owned by the Landlord or others resulting at any time upon or occurring in or about the Demised Premises, unless caused by the negligence of the Landlord or those for whom the Landlord is in law responsible;
- (4) any personal or bodily injury to any person or persons, including death, resulting at any time upon or occurring in or about the Demised Premises, unless caused by the negligence of the Landlord or those for whom the Landlord is in law responsible;
- (5) any contract, lien, mortgage, charge or encumbrance on or in respect of the Demised Premises arising from or occasioned by the act, default or negligence of the Tenant or those for whom the Tenant is in law responsible;
- (6) all costs and expenses of every kind and nature relating to the Demised Premises, unless expressly excluded under this Lease or unless expressly stated in this Lease to be the responsibility of the Landlord. Without limiting the generality of the foregoing, the Tenant is not responsible for any costs incurred by the Landlord with respect to the preparation and/or review of such documentation required by the Landlord to give effect to this Lease unless expressly stated to be the responsibility of the Tenant; and

(7) any appeal of an assessment of Taxes made by the Tenant, excluding any financial loss of the Landlord due to a reduction in the amount of Taxes payable by the Tenant resulting from such appeal being successful.

This section shall survive the termination or expiry of this Lease, any provisions in this Lease to the contrary notwithstanding.

### **Section 8.3 Loss or Damage**

The Landlord shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Demised Premises or damage to property of the Tenant or of others located on the Demised Premises, nor shall it be responsible for any loss of or damage to any property of the Tenant or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the Landlord, its agents, employees, contractors, or others for whom it may, in law, be responsible, or as a result of any Excluded Liability. Without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, failing fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Demised Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the Building or from the street or any other place or by dampness or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by other Persons on the Demised Premises or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Demised Premises shall be so kept or stored at the risk of the Tenant only and the Tenant releases and agrees to indemnify the Landlord and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Tenant's insurers.

## **ARTICLE 9 INSURANCE**

### **Section 9.1 Tenant's Insurance**

At all times during the Term and any renewal thereof, the Tenant at its own expense, shall take out and keep in full force and effect:

- (1) All risks (including flood and earthquake) property insurance in an amount equal to one hundred (100%) percent of the full replacement cost, insuring:
  - (a) the Demised Premises (including all buildings on the premises) and the Landlord is to be included as an additional named insured and/or joint loss payee;

- (b) contingent liability from the enforcement of building by-laws including the demolition and replacement of undamaged portions of the buildings or structures and increased costs of construction;
  - (c) all property owned by Tenant or for which Tenant is legally liable or installed by or on behalf of Tenant, or located on the Premises including, without limitation, leasehold improvements, chattels, furniture, stock, office equipment, equipment, fixtures, contents, boiler or mechanical or electrical equipment, if applicable, and the policy will include a Waiver of Subrogation in favour of the Landlord; and
  - (d) extra expense insurance in such amounts as will reimburse the Tenant for extra expense incurred arising out of prevention of access to the Demised Premises and/or business interruption insurance covering any rental obligation to the Landlord;
- (2) Coverage for the repair and replacement of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus on a broad form blanket coverage basis including Business Interruption insurance. The Property and Boiler and Machinery policies shall contain provisions for settling joint loss disputes;
  - (3) Commercial general liability insurance, which includes products liability (if applicable), personal injury, bodily injury, employer's/and contingent employer's liability, tenants legal liability (if occupying the premises as a tenant), blanket contractual liability, non owned automobile liability, Completed Operations Liability, Owners and Contractors Protective liability, tenant discrimination, wrongful eviction, occurrence property damage, and provisions for cross liability and severability of interests with limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence. The Landlord is to be included as an additional insured;
  - (4) During any period of construction, the Tenant will take out, or cause to be taken out wrap-up or commercial general liability insurance in appropriate amount applicable to the works. The Landlord shall be added as an additional insured on the wrap-up or any hired contractor's policy of insurance;
  - (5) Standard owner's automobile liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) in respect of any one accident; and
  - (6) Any such other forms of insurance as the Landlord acting reasonably, may require from time to time.

## **Section 9.2 Insurance Terms and Conditions**

- (1) Approval of Insurers

All insurance policies taken out by the Tenant shall be placed with insurers satisfactory to the Landlord acting reasonably. Without limiting the generality of the foregoing, all insurers must be licensed to underwrite insurance in the Province of Ontario, except to the extent the Landlord waives such requirement in writing.

(2) Notice of Material Change or Cancellation

Each policy shall contain an endorsement requiring the insurers to notify the Landlord in writing, by registered mail, at least thirty (30) days prior to any cancellation thereof.

(3) Waiver of Subrogation

All applicable policies of insurance required to be taken out by the Tenant shall contain a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom it is in law responsible.

(4) Breach of Conditions

Each policy will contain a waiver in favour of the Landlord of any breach of a policy condition or warranty such that the insurance policy in question will not be invalidated in respect of the interest of the Landlord by reason of a breach of any condition or warranty contained in such policies.

(5) Deductibles

The parties agree that insurance policies may be subject to deductible amounts, and which amounts shall be borne by Tenant.

(6) Primary Coverage

The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the Landlord.

(7) Limits of Insurance

The Landlord, acting reasonably, may require the limits of the insurance policies provided by Tenant to be increased from time to time. Tenant shall cause the limits of its insurance on its physical assets located on the Demised Premises to be adjusted for inflation from time to time.

### **Section 9.3 Cancellation of Insurance or Reduction in Coverage**

Tenant agrees that it, its employees, agents, occupants and invitees will not keep in or upon the Demised Premises any article or substance which may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything which will cause the cancellation of any insurance policy. If any insurance policy

should be cancelled or the coverage reduced or a threat of cancellation or reduction of coverage made by reason of anything arising out of the use or occupation of the Demised Premises by Tenant, whether or not the first sentence of this section has been complied with, and if Tenant fails to remedy the condition giving rise to such cancellation, reduction or threat, upon ten (10) days' notice thereof by the Landlord, the Landlord may enter the Demised Premises and remedy the condition at the sole cost and expense of Tenant which cost and/or expense shall be payable to the Landlord forthwith on demand as rent in arrears, and in addition or in the alternative, may exercise any other remedy available to it.

#### **Section 9.4      Payment of Premiums**

The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article. In the event of default of payment by Tenant, the Landlord may pay same and the amount so paid shall be forthwith payable as Additional Rent.

#### **Section 9.5      Evidence of Insurance**

Upon execution of this Lease, Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the Landlord, not acting unreasonably, signed by an authorized representative of the insurer. The Tenant will make available the complete original certified copies of all applicable policies delivery to the Landlord if required. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the Landlord fifteen (15) days prior to the expiration of then current policies, without demand having to be made therefore by the Landlord.

### **ARTICLE 10 DAMAGE OR DESTRUCTION**

#### **Section 10.1      Continuation of Rent**

Subject to subsection 10.2(2) below, the partial or complete damage to or destruction of the Building shall not terminate this Lease or entitle the Tenant to any abatement of Rent.

#### **Section 10.2      Repair and Replacement by Tenant**

(1) If the Building from time to time standing on the Demised Premises, or any equipment, machinery and other facilities are totally or partially destroyed by any cause whatsoever, there shall be no abatement of Rent and the Tenant shall repair, replace, rebuild or restore same with all reasonable diligence, and the Tenant shall not be entitled to use the Reserve Fund in respect thereof. Any new Building shall have a cost of not less than the replacement cost of the Building damaged or destroyed. The Tenant shall first submit its plans to the Landlord for approval and such plans shall be approved by the Landlord acting reasonably to the extent required herein and provided that all of the terms of this Lease continue to be complied with. The Landlord shall either approve of such

plans or advise the Tenant of any changes to be made, acting reasonably, within ten (10) Business Days of the receipt of such plans, failing which the Landlord shall be deemed to approve of such plans. The Tenant shall deliver such assurances as the Landlord may reasonably require with respect to any aspect of the said repair, rebuilding or replacement.

(2) Provided further that, notwithstanding Section 10.2(1), if the Building is damaged or destroyed in excess of 50% of the replacement cost of the Building above ground, then either the Landlord or the Tenant, may within ninety (90) days of such damage or destruction, at its option, give written notice to the other Party that it wishes to terminate the Lease, in which case neither the Landlord nor the Tenant shall be obliged to repair, the Tenant shall surrender the Demised Premises to the Landlord within thirty (30) days after delivery of the notice, the Rent shall be apportioned and paid to the date of such damage or destruction, and the Lease shall forthwith be terminated. The Tenant and the Landlord agree that all of the insurance proceeds payable with respect to such damage or destruction shall be paid in accordance with the insurance policies required under Article 9, with the Landlord as an additional insured or loss payee. If either Party elects to terminate this Lease, the Tenant (to the extent of the insurance proceeds paid to the Tenant) shall undertake such activities as are required to demolish the Building and leave the Premises in a level condition, free from debris, with the balance of such insurance proceeds payable by reason of such damage or destruction to be retained by the Tenant absolutely. In that event, the Tenant is under no obligation to repair, rebuild or replace the Building on the Premises notwithstanding any other provision of this Lease and the Landlord shall accept the Premises in "as is" condition at that time, subject only to the demolition of the Building by the Tenant with the Premises being left in level condition, free from debris.

(3) The Tenant shall not be deemed to be in default under this Lease during any period of construction or repair while the Demised Premises is untenable in whole or in part.

(4) The certificate of a quantity surveyor shall bind the Parties as to:

- (a) the percentage of the Demised Premises rendered untenable;
- (b) the date upon which the reconstruction or repair is completed and the date when the Demised Premises are rendered tenable; and
- (c) the state of completion of any repair or replacement by the Tenant.

## **ARTICLE 11 REMEDIES OF LANDLORD**

### **Section 11.1 Default and Right to Re-Enter**

If and whenever:

- (a) the Tenant fails to pay any Rent or other sums due hereunder within forty-five (45) days of the later of the day or dates appointed for the payment thereof and receipt of written notice by the Tenant from the Landlord of the amounts delinquent and then outstanding; or
- (b) the Tenant fails to observe or perform any other material terms, covenants, obligations or conditions of this Lease and the Contribution Agreement and any shared facilities or reciprocal agreement affecting the Demises Premises to be observed or performed by the Tenant, (other than those terms, covenants or conditions set out below in Subsections (c), (c), (e), (f) and (g) for which no notice is required) provided the Landlord first gives the Tenant fifteen (15) days prior written notice of any such failure to perform and the Tenant fails to cure such failure within such period given in the notice of default or such longer time as would have reasonably sufficed for the remedying of such breach or non-performance if the Tenant had commenced to remedy the same within such period given and thereafter proceeded to remedy the same within reasonable diligence provided that the Tenant shall not be entitled to the advantage of such longer time unless it shall have actually proceeded thereafter to remedy the same with all due diligence and shall have provided to the Landlord, if requested by the Landlord, reasonable evidence as to the steps being taken by the Tenant toward remedying the same; or
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement of compromise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property and the receiver's appointment is not vacated within thirty (30) days; or
- (e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets other than a corporate re-organization of the Tenant and such dissolution, winding-up or liquidation is not rescinded within thirty (30) days; or



(f) the Tenant abandons the Demised Premises or the Demised Premises becomes unoccupied for a period of sixty (60) consecutive days or more without the consent of the Landlord, other than as a result of circumstances set out in Section 15.12, any permitted renovations, construction, alteration or due to damage or destruction; or

(g) this Lease is taken under any writ of execution; or

(h) the Tenant purports to make a Transfer other than in compliance with this Lease, which Transfer is not withdrawn within ninety (90) days following written notice from the Landlord in respect thereof;

then and in every such case the Landlord, in addition to any other rights or remedies it has pursuant to this Lease or by law, but subject to Section 11.6, has the immediate right of re-entry upon the Demised Premises and it may repossess the Demised Premises, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

Notwithstanding the foregoing and without limiting any other remedies, the Landlord may have arising out of this Lease or at law, upon the happening of a default by the Tenant under this Lease which the Tenant has not rectified within the time required pursuant to the provisions of this Lease, the Landlord shall have the right, without any re-entry or termination of this Lease, to enter upon the Demised Premises and cure or attempt to cure such default (but this shall not obligate the Landlord to cure or attempt to cure any such default or, after having commenced to cure or attempted to cure such default, to continue to do so), and to recover from the Tenant all damages and expenses incurred by the Landlord (plus 15% for administration costs) as a result of any breach by the Tenant.

**Section 11.1A** Notwithstanding the foregoing and any other provision of this Lease or any right or entitlement of the Landlord at law or in equity, the Landlord acknowledges and agrees that:

(a) in the event that the Landlord is in material breach of any of its obligations in the Contribution Agreement it may not assert a default by the Tenant of its obligations under this Lease which default may be reasonably attributable to or connected with the Landlord's failure to materially comply with its obligations under the Contribution Agreement; and

(b) in no event shall the Landlord be entitled to terminate this Lease for any default under this Lease and/or the Contribution Agreement or otherwise, save and except in the event of a breach under Section 11.1(a), (c), (d), (e), (f) or (g) that persists beyond any applicable cure period, provided that with respect to the assertion of an event of default under subparagraph 11.1(b), such default must form part of a series of habitual, and persistent defaults by the Tenant of its non-

monetary obligations under this Lease such that the Tenant is habitually and persistently over time failing to undertake the operation of an affordable housing project from the Demised Premises in the manner required under this Lease and the Contribution Agreement.

**Section 11.1B** In the event that the Landlord elects to terminate the Contribution Agreement in accordance with its rights therein, the Landlord must concurrently terminate this Lease and similarly, in the event that the Landlord elects to exercise its right to terminate this Lease in accordance with its rights herein, the Landlord must concurrently exercise its right to terminate the Contribution Agreement.

## **Section 11.2 Right to Relet**

If the Landlord elects to re-enter the Demised Premises as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease make such alterations and repairs as are necessary in order to relet the Demised Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable. Upon each such reletting all rent received by the Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such Rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Demised Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such reletting without termination the Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Demised Premises, solicitor's fees (on a solicitor and client basis) and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid pursuant to this Lease for the remainder of the stated Term over the then reasonable rental value of the Demised Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord.

In any events referred to in Section 11.1(e), in addition to any and all other rights, including the rights referred to in this Section and in Section 11.1(e), the full amount of the current month's instalment of Additional Rent and any other payments required to be

made monthly hereunder, together with the next three months instalments for Additional Rent, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

### **Section 11.3 Landlord's Expenses**

If legal action is brought for recovery of possession of the Demised Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including solicitor's fee (on a solicitor and client basis), unless a Court shall otherwise award.

### **Section 11.4 Removal of Chattels**

In case of removal by the Tenant of the goods and chattels of the Tenant from the Demised Premises other than in accordance with this Lease, the Landlord may follow same for such period and in such manner as is provided for in the *Commercial Tenancies Act*, R.S.O. 1990, c.L.7.

### **Section 11.5 Waiver by Tenant of Exemption from Distress**

The Tenant hereby agrees with the Landlord that notwithstanding anything contained in the *Commercial Tenancies Act*, or any statute subsequently passed to take the place of or amend the said Act, none of the goods and chattels of the Tenant on the Demised Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears by the Tenant as provided for by any sections of the said Act or any amendments thereto, and that if any claim is made for such exemption by the Tenant or if a distress is made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in any sections of the said Act or any amendments thereto; the Tenant waiving, as it hereby does, all and every benefit that could or might have accrued to the Tenant under any or by virtue of any sections of the said Act, or any amendments thereto but for this covenant. Notwithstanding the foregoing, in the event that CMHC holds leasehold title, as tenant, this clause will not be enforced.

### **Section 11.6 Remedies of Landlord Cumulative**

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

### **Section 11.7 Obligation to Mitigate**

Whether or not the Landlord shall repossess the Demised Premises on default of the Tenant, the Landlord shall use reasonable efforts to mitigate its damages.

## **ARTICLE 12 QUIET ENJOYMENT**

### **Section 12.1 Right of Tenant**

If the Tenant is not in default with respect to the payment of Rent hereby reserved, which default persists beyond any applicable cure period, the Tenant shall and may peaceably enjoy and possess the Demised Premises during the Term, without any interruption or disturbance whatsoever from the Landlord or any other Person, firm or corporation lawfully claiming from or under the Landlord, and free from the adverse claims of any Persons whatsoever and the Landlord will protect the Tenant, with full, complete and absolute possession of the Demised Premises subject in each case only to the other express provisions of this Lease. The Landlord covenants and agrees that no exclusive uses, rights or privileges shall be granted to any Persons (nor will the Landlord consent to same) which would affect the use of the Demised Premises without the written consent of the Tenant, which consent may be withheld in the sole discretion of the Tenant. The Landlord covenants and agrees that if any lien or encumbrance is registered against the Demised Premises which may result in the sale thereof or which causes harm to the Tenant, then the Landlord, shall, as soon as is reasonable possible, at its own expense cause the same to be removed by payment to the lien claimant or posting security in the appropriate court of any like proceeding.

## **ARTICLE 13 ESTOPPEL CERTIFICATES**

### **Section 13.1 Estoppel Certificates**

Each of the Parties shall, at any time and from time to time during the Term, upon not less than fifteen (15) clear days' prior notice by the other Party, execute, acknowledge and deliver to the other Party a statement in writing certifying whether this Lease and Contribution Agreement are in good standing, unmodified and in full force and effect, or where requested, that the particular terms thereof have been met or satisfied, as the case may be, or if there have been modifications that the same are in good standing, in full force and effect as modified, stating the modifications, the dates to which the Rent and other charges, if any, have been paid in advance, the defaults, if any, on the part of the Party requesting such statement known to the Party from whom such statement is requested and the action taken or proposed to be taken by such last-mentioned Party with respect to the same; it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of the Landlord's freehold estate, the Tenant's leasehold estate, any mortgagee of the freehold, any assignee or sublessee of the Tenant's leasehold estate or any leasehold mortgagee, as the case may be.

## **ARTICLE 14 APPROVALS, NOTICES, ETC.**

### **Section 14.1 Approvals**

Where by a provision of this Lease an approval, consent or agreement of a Party (hereinafter individually or collectively referred to as an “Approval”) is required, unless the contrary is expressly provided in this Lease:

- (a) the Party whose Approval is required will, within sixty (60) clear days after receipt of a request for Approval which request shall contain reasonable detail if the circumstances require, give notice to the requesting Party either that it gives its Approval, or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding;
- (b) Notwithstanding any consent or approval given by Landlord with respect to any plans, specifications or other construction-related matter, the Landlord will not be in any way liable for the design or construction of any proposed structure, and the party that has obtained the consent or approval of the Landlord shall be wholly liable for such design and construction.

### **Section 14.2 Notices**

(1) All notices, demands, requests, agreements, consents, approvals and payments (hereinafter, individually or collectively called a “Notice”) which may be or are required to be given pursuant to this Lease shall be in writing and shall be delivered by personal service or email to the following address:

(a) to the Landlord at:

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

City of Toronto  
Metro Hall, 55 John Street 7<sup>th</sup> Floor  
Toronto, ON M5V 3C6  
Attention: Executive Director, Housing Secretariat  
Email: [HSS@toronto.ca](mailto:HSS@toronto.ca)

(b) to the Tenant at:

**NAME**  
**[ADDRESS]**

Attention: [NAME, TITLE]

Email: [EMAIL]

Any such notice given as aforesaid shall be deemed to have been effectively given on the next business day following the date of such delivery. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

(2) Either party under this Lease may from time to time by Notice to the other party change its address for service under this Lease.

## **ARTICLE 15 GENERAL**

### **Section 15.1 Gender and Number**

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders.

### **Section 15.2 Index and Captions**

The index and the captions contained in this Lease are for reference only and in no way affect this Lease.

### **Section 15.3 Applicable Law**

This Lease shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein from time to time and shall be treated in all respects as an Ontario lease.

### **Section 15.4 Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Lease shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

### **Section 15.5 Covenants Independent**

Each covenant contained in this Lease is a separate and independent covenant, and a breach of covenant by any Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise expressly provided herein.

### **Section 15.6 Currency**

All reference to currency in this Lease shall be deemed, unless the context otherwise requires, to be a reference to lawful money of Canada.

### **Section 15.7 Entire Agreement**

This Lease, the Contribution Agreement, and the other agreements specifically referred to herein constitute the entire agreement among the Parties pertaining to the Lease of the Demised Premises to the Tenant and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect thereto. There are no conditions, warranties, representations or other agreements between the Parties in connection with this Lease except as specifically set forth herein or in such other agreements.

### **Section 15.8 Amendments**

No supplement, modification, amendment, waiver or termination of this Lease shall be binding unless executed in writing by the Landlord and the Tenant.

### **Section 15.9 Non-Waiver**

No waiver of any of the provisions of this Lease shall be deemed to be or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

### **Section 15.10 Calculations**

Except as otherwise provided herein, all calculations required or permitted under this Lease shall be made on the basis of generally accepted accounting principles and practices applied on a consistent basis. All calculations made by the Landlord under this Lease shall be final and binding on the parties in the absence of manifest error or fraud.

### **Section 15.11 Successors and Assigns**

All of the provisions of this Lease shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

### **Section 15.12 Excusable Delay**

Except as expressly otherwise provided in this Lease:

(1) if because of an event of Force Majeure, either party is delayed in performing or observing a covenant or in complying with a condition under the terms of this Lease that party is required to do by a specified date or within a specified period of time or with all due diligence (save and except for the payment of Basic Rent and/or surrender of the Demised Premises on the expiration or earlier termination of the Term); and

(2) if the circumstance is not caused by the default or act of commission or omission of that party nor avoidable by the exercise of reasonable effort or foresight by that party;

then, in that event, the date or period of time by or within which that party is to perform, observe or comply will be extended by a period of time equal to the duration of the delay, provided that nothing excuses a delay dealing with a life and safety issue or excuses the

Tenant from the payment of Basic Rent hereunder when due or payment under the Contribution Agreement.

### **Section 15.13 Time of Essence**

Time shall be of the essence of this Lease, except as specifically provided otherwise herein.

### **Section 15.14 Relationship of Parties**

This Lease shall not be deemed to create any relationship between the Parties other than that of Landlord and Tenant as to the Demised Premises. For greater certainty, the Parties agree that they are not partners or joint ventures and that the Tenant is not the agent or representative of the Landlord and has no authority to bind the Landlord.

### **Section 15.15 Continuation of Certain Obligations**

Wherever specifically provided for in this Lease or if it is necessary for the full implementation of any provision of this Lease, the obligations of a Party shall survive the expiration of the Term or the earlier termination of this Lease, as the case may be.

### **Section 15.16 No Voluntary Surrender**

The Tenant shall not have the right to surrender this Lease without the prior written consent of the Landlord.

### **Section 15.17 Expropriation**

In the event of expropriation of the Demised Premises or any part thereof by any lawful power or authority which the Tenant acknowledges may include the Landlord, each of the Landlord and the Tenant shall be entitled to seek compensation for their respective interest so expropriated. In the event of expropriation of all of the Demised Premised, this Lease and the Term shall be terminated forthwith and thereupon Rent shall be apportioned and paid to the date of termination and the Tenant shall surrender possession of the Demised Premises and the Demised Premises to the Landlord, provided that such termination shall not affect the Tenant's claim to seek compensation. In calculating any compensation payable to the Tenant, any secured or unsecured consideration provided to the Tenant by the Landlord in respect of construction of the Demised Premises (the "Sum"), and outstanding amounts payable by the Tenant to the Landlord with respect to this Lease and the Contribution Agreement which are then due and outstanding shall be deducted from such compensation and paid to the Landlord. In determining the amount of the Sum to be included in the amount deducted from the Tenant's compensation, the Sum shall be present valued as at the day compensation is determined (the "New Sum"), and such New Sum shall be deducted from any compensation payable to the Tenant.



### **Section 15.18 Registration of Agreement**

The Tenant shall have the right to register a notice of this Lease and any Leasehold Mortgage against title to the Demised Premises. If the Tenant registers the Lease, the Tenant agrees that it will, at its sole expense, discharge and withdraw from title any such registration of the lease within thirty (30) days after the termination of this Lease at the Tenant's sole cost. If such registration is not discharged or withdrawn within such time, the Landlord shall have the right and is hereby appointed by the Tenant as the Tenant's agent to prepare, execute and register such documentation as is required to discharge and withdraw any such registration (at the Tenant's cost, to be paid forthwith upon demand).

### **Section 15.19 Rights, Obligations and Capacity of the Landlord**

All rights and benefits and all obligations of the Landlord under this Agreement shall be rights, benefits and obligations of the Landlord in its capacity as a party to this Agreement and shall not derogate from or interfere or fetter with the rights, benefits and obligations of the Landlord, its Council or its elected and appointed officials and representatives in their respective functions and capacities.

### **Section 15.20 Administration of Agreement**

The Tenant acknowledges that all references herein to the "Deputy City Manager - Corporate Services" shall mean the Landlord's Deputy City Manager - Corporate Services, his/her successor or designate from time to time. The Deputy City Manager - Corporate Services will administer the terms of this Lease on behalf of the Landlord. The Deputy City Manager - Corporate Services shall administer and manage the Lease including the provision of any consents, approvals, waivers, notices and notices of termination provided that the Deputy City Manager - Corporate Services may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction.

### **Section 15.21 Signage**

- (1) The signage policy for the Demised Premises identifying the, form, type, colour, design, content and location of exterior signs identifying the Demised Premises and any material amendments thereto, together with any exterior canopies and lights, shall be subject to the prior approval of the Landlord.
- (2) Tenant shall not erect any signs other than those relating directly to the Demised Premises.
- (3) Tenant shall be responsible for the cost of all signage, canopies and lighting.

### **Section 15.22 Further Assurances**

Each Party agrees to make such further assurances as may be reasonably required from time to time by the other Party to more fully implement the true intent of this Lease.

### **Section 15.23 Assignment by the Landlord**

If the Landlord transfers the Demised Premises and if the transferee executes an assumption of this Lease and the Contribution Agreement, each in a form and content acceptable to the Tenant, then the Landlord shall be relieved of all liability under this Lease after the date of such transfer.

### **Section 15.24 City as Municipal Corporation**

(1) Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), 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 its planning rights and responsibilities. Nothing in this Lease derogates from, 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 Lease.

(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 that is not clearly in respect of and in accordance with this Lease will be deemed to be a communication or dealing under this Lease between the Tenant and the City as parties to this Lease, or affect the City with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between the Tenant and the City as parties to this Lease will only be effective if delivered in accordance with the notice provisions in this Lease. No communication or dealing between the City as a party to this Lease and the Tenant as a party to this Lease will relieve from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Lease.

### **Section 15.25 Arbitration**

Where a Party wishes to refer a matter to Arbitration for determination (including for certainty whether the occurrence of a default of Tenant's obligations under this Lease has occurred), after a Party gives notice that it is referring such matter to Arbitration for determination (the "**Arbitration Notice**"):

(1) The Parties shall, within fifteen (15) days after the delivery of the Arbitration Notice, agree in writing upon the appointment of a single arbitrator who will determine the dispute or matter acting alone, failing which such arbitrator may be appointed by order of the Court in accordance with the applicable legislation in respect of private arbitrations in the Province of Ontario, upon the application of either Party, made on notice to the other Party. The language to be used in the arbitral proceedings shall be English.

(2) Within fifteen (15) days of the appointment of the arbitrator, the Party who delivered the Arbitration Notice (the "**Initiator**") shall deliver to the other Party and to the arbitrator

a statement (the "**Statement of Claim**") describing the facts supporting its position, the points at issue and the relief sought. The responding Party shall deliver to the Initiator and to the arbitrator a responding statement within 15 days from the receipt of the Statement of Claim.

(3) Unless expressly agreed to in writing to the contrary, the parties undertake as a general principal to keep confidential all awards in their Arbitration, together with all materials, proceedings and evidence created for the purpose of the Arbitration and all documents produced by any Party in the proceedings not otherwise in the public domain, save and except to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a competent court.

(4) It is the intent of the parties that, barring extraordinary circumstances, the Arbitration proceedings shall be concluded within sixty (60) days from the date the arbitrator is appointed. The parties may agree to extend this time limit or the arbitrator may do so in his or her discretion if he or she determines that the interest of justice so requires. The arbitrator shall use his or her best efforts to issue the final award or awards within fifteen (15) days after closure of the proceedings. Failure to adhere to these time limits will not be a basis for challenging the award.

(5) The determination made by the arbitrator shall be final and binding upon the Landlord and the Tenant. The costs of Arbitration shall be apportioned between the parties hereto as the arbitrator may decide. Neither Party shall be deemed to be in default in respect of the dispute which is subject of the Arbitration so long as the Arbitration is proceeding.

(6) The parties expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, Chapter M.48 shall not apply at any time to any arbitration whatsoever initiated pursuant to this Lease. Arbitration initiated pursuant to this Lease shall proceed in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, Chap. 17.

## **Section 15.26 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. Each counterpart of this Agreement, and any other document to be delivered by one or more parties under this Agreement, may be executed by electronic signature through a City-Approved Electronic Signature Platform (as defined below), or by handwritten signature delivered to the other party or parties by electronic transmission in PDF format. Any such electronic signature or handwritten signature delivered by electronic transmission shall be valid, binding and enforceable upon the party or parties so executing and/or delivering same electronically to the same extent and shall have the same legal effect as an original signature. If and when one or more parties hereto executes this Agreement by or through a City-Approved Electronic Signature Platform, then such party or parties shall, upon the request of another party hereto, be obliged to forthwith provide the requesting party with

a certificate of completion or similar certificate produced or issued by such City-Approved Electronic Signature Platform, which confirms, verifies and/or validates the electronic signature of the party or parties so executing same electronically. For the purposes of this section, "City-Approved Electronic Signature Platform" means DocuSign Inc.'s electronic signing platform or any other similar secure electronic application or platform acceptable to the City in its sole and absolute discretion and "electronic signature" and "electronic" shall have the meanings respectively ascribed to such terms in the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17, as amended.

## **Section 15.27 Schedules**

The following schedules form part of this Lease:

- Schedule "A"** - Legal Description
- Schedule "B"** - Landlord's Requirements for Tenant's Work
- Schedule "C"** - Certificate of Property Use **[NTD: this Schedule only applies in respect of 35 Bellevue Avenue]**

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF** the Parties have duly executed this Lease as of the date of this Lease.

**CITY OF TORONTO**

per: \_\_\_\_\_  
Name:  
Title:

**TENANT**

per: \_\_\_\_\_  
Name:  
Title:

per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

## **SCHEDULE “A”**

### **Legal Description & Permitted Encumbrances**

#### **[35 Bellevue Avenue:**

##### Legal Description:

PIN 21236-0414 (LT), LRO #66

LT 24 PL D55 TORONTO; PT LT 21, 25 PL D55 TORONTO; LT 6-8 PL 319 CITY WEST; PT LT 5, 9-11 PL 319 CITY WEST PARTS 1 TO 14 EXPROP PL WA83651; CITY OF TORONTO

##### Permitted Encumbrances:

1. Instrument No. WA83651, registered October 21, 1964, Plan of Expropriation
2. Instrument No. AT6203466, registered October 17, 2022, Certificate of Requirement
3. Instrument No. 66R32977, registered November 4, 2022, Reference Plan

#### **11 Brock Avenue:**

##### Legal Description:

PIN 21304-0153 (LT), LRO #66

LT 16-17 PL 429 PARKDALE; PT LT 15 PL 429 PARKDALE AS IN WG103750 AND WG104185; CITY OF TORONTO

##### Permitted Encumbrances:

1. Instrument No. AT4256685, registered June 23, 2016, Application to Change Name – Owner
2. Instrument No. 66R31540, registered October 15, 2020, Reference Plan]

## **Schedule "B"**

### **Landlord's Requirements for Tenant's Work**

#### **1. Requirements Prior to the Commencement of the Tenant's Work**

**(a) Submission of Plans, Drawings and Specifications to the City** The Tenant shall, with its application for the Landlord's consent for any Tenant's Work, furnish the Landlord with one (1) set of sepias and three (3) white prints of each of its plans and drawings (including the plans and drawings for any exterior signage) together with the specifications, in such detail as the Landlord, acting reasonably and having regard to the nature of the work, may require. The said plans, drawings and specifications must **(i)** be prepared by qualified architects, designers and engineers, **(ii)** conform to good engineering practice, and **(iii)** include, if and to the extent applicable to the Tenant's Work, floor plans, a reflected ceiling plan, wall elevations, sections, details, and sign design drawings and details duly prepared by a qualified designer or architect. The Tenant will submit for the City's approval, complete mechanical and electrical drawings prepared by persons suitably qualified in the field. Mechanical and electrical drawings, to the extent applicable for the Tenant's Work, must include all under-floor requirements, all special equipment connections and installations, water and sewage, heating, ventilating and air-conditioning distribution systems, sprinkler mains and runs, electrical diagrams and panel schedules. The Tenant shall be responsible for any fees incurred by the City or its consultants as a result of the City's review of the Tenant's plans, drawings and specifications.

**(b) City's Approval of Tenant's Drawings and Specifications** - The City will notify the Tenant within 14 days after receipt of the Tenant's plans, drawings and specifications, either of its approval or of its disapproval of the Tenant's plans, drawings and specifications and may indicate any specific changes required by it. The Tenant will then promptly prepare and submit to the City, within fourteen (14) days following notice of the disapproval, complete drawings and specifications amended as required by the City.

**(c) Tenant's Insurance** - Before entering on the Premises for any purpose, the Tenant will provide the City with a certificate of insurance, duly executed by the Tenant's insurers, evidencing that the insurance required to be placed by the Tenant pursuant to the Lease is in force.

**(d) Tenant's Contractors** - The Tenant will employ a general contractor acceptable to the City, who will be responsible for all construction within the Premises, including the contracting and co-ordination of all trades. For clarity, the Parties agree that it is reasonable for the City to consider compliance with applicable City policies and construction labour obligations in determining whether a general contractor is acceptable. All work on or in respect of the Premises will be performed by such persons as are professionally and technically qualified, careful, skilled and experienced in the duties required of them to perform the work properly, competently and in professional manner to the appropriate highest standards.

**(e) Workplace Safety and Insurance Act Clearances** - The Tenant will provide to the City prior to commencing any Tenant's Work in respect of the Premises, a current clearance certificate issued pursuant to the Workplace Safety and Insurance Act, 1997 (Ontario) in respect of the contractor and every sub-contractor which the Tenant proposes to employ or to permit to do work in respect of the Premises and the Tenant will not permit any contractor or sub-contractors to do work in respect of the Premises except for those for which the clearance certificate has been provided.

**(f) Tenant's Permits** - The Tenant will provide evidence satisfactory to the City prior to commencing any Work in respect of the Premises that the Tenant has obtained at its expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction and will post permits when required by law. Should the Tenant fail to obtain any required consent, permit, license, inspection or certificate, the City may, but will not be obligated to, obtain it on behalf of the Tenant at the Tenant's expense.

**(g) Letter of Credit** - Prior to commencing construction of any Tenant's Work with a value of \$500,000.00 or greater, if requested by the City, the Tenant shall provide to the City a letter of credit in a form satisfactory to the Chief Financial Officer of the City and the City Solicitor in the amount sufficient to secure all such work, as estimated by the Chief Financial Officer on the basis that the City will complete all such work, plus a 10% supervision fee, which letter of credit shall be cancelled the first day of the month next following the expiration of the construction lien period immediately following Completion of the Tenant's Work. The letter of credit may be drawn upon in the event of a default by the Tenant in its obligations in respect of the Tenant's Work.

## **2. Requirements With Respect to Performance of the Tenant's Work**

**(a) Compliance with Laws, Insurers' and City's Requirements** - All Tenant's Work will comply with all applicable laws, Building codes, permits and approvals for the work and will comply also with the requirements of the City. If the Tenant is in default of this obligation and does not correct the default within the time period required by the authority or insurer, the City may (but will not be obligated to) cure the default and all charges and costs incurred by the City will be paid to the City by the Tenant together with an administrative fee equal to fifteen percent (15%) of those charges and costs, as Additional Rent forthwith on demand.

**(b) Compliance with the Tenant's Drawings and Specifications** - The Tenant will, immediately after satisfying all the requirements of Section 1 herein but not before, proceed to complete the Tenant's Work in a good and workmanlike manner using new materials, the whole of which is to be to the City's satisfaction and in conformity with the plans, drawings and specifications approved by the City. Mediocre or inferior materials or workmanship will be replaced by the Tenant at its expense by materials or workmanship of first class quality, to the City's satisfaction. One set of the plans, drawings and specifications with the City's consent endorsed on them will remain on the Premises at all times when the Tenant's Work is being performed.



**(c) Compliance with the City's Requirements** - The Tenant will itself and will also cause its contractors to: **(i)** abide by all safety regulations, **(ii)** provide adequate fire protection including, without limitation, fire extinguishers, **(iii)** deliver and store materials and tools as may be directed by the City, **(iv)** stop immediately, if requested by the City, any work which, in the opinion of the City, by reason of public hazard, noise or otherwise, is likely to affect the normal operation of the Premises or any part of it, and **(v)** abide by all the rules and regulations and requirements established by the City from time to time relative to the construction of the Premises, including, without limitation, the City's Fair Wage Policy and Labour Trades Contractual Obligations in the Construction Industry, as applicable, which are subject to amendments and change from time to time. The Tenant shall provide such evidence of compliance as the City may reasonably request from time to time. The Tenant shall contact the City's Fair Wage Office prior to commencement of any construction, obtain copies of current policies and applicable information for the purpose of pre-qualifying proposed contractors, as determined by and in accordance with the then-current usual practices for the City's Fair Wage Office and obligations to the City. The Tenant hereby covenants that it shall adhere to and comply with all collective agreements in the construction industry (under the Labour Relations Act) to which the City is bound (or becomes bound prior to the commencement of any construction). The Tenant further acknowledges that any violations of any collective agreement may result in grievances being filed against the City and/or applications being made to the Labour Relations Board. The Tenant agrees to indemnify the City for any costs, damages, losses, awards, settlements and/or legal expenses associated with any violations of any collective agreements to which the City is bound in the construction industry as a result of a breach by the Tenant of its obligations in this Section, including without limitation, negotiated settlements resulting in payment by the City or any awards against the City resulting from a grievance filed against the City with respect to a breach of any of the collective agreements to which the City is bound in the construction industry. The Tenant shall pay any such award, settlement, loss and other costs and damages, incurred by the City, within fifteen (15) Business Days of receipt of demand therefore from the City. The Tenant shall be permitted to attend the mediation and/or hearing of any grievance subject to an order to the contrary by an arbitrator or the Ontario Labour Relations Board hearing the grievance referral, jurisdictional dispute, sector dispute or any other form of proceeding before the Ontario Labour Relations Board. For grievances or other disputes under the Labour Relations Act that are settled by the City prior to or at any point during any grievance or grievance arbitration or referral hearing or other proceeding, the City shall engage and consult with the Tenant as to the financial terms of settlement, but final determination as to whether a matter is to be settled and the terms of settlement shall remain with the City. All amounts payable by the Tenant under this Section shall be Additional Rent.

**(d) Testing of the Tenant's Systems** – To the extent applicable to the Tenant's Work, the Tenant will test all plumbing, gas or fire protection and electrical systems within five (5) days of the installation and give two days' prior written notice to the City that the test will take place. The City will have the right to be present in the Premises when the test is performed. The Tenant will be responsible for any damage caused as a result of the performance of the test. Following completion of any testing, the Tenant will provide the City with a copy of the test results and a final certificate or certificates of approval.

**(e) Disposal of Waste/Restoration of Lands** - The Tenant shall from time to time, and upon Completion of any work, dispose of all waste, refuse and excess soil off site, restore the Lands to its original condition including relocating trees where feasible, and restore grades in accordance of final approved plans, all to the satisfaction of the DCM.

### **3. Requirements After the Performance of the Tenant's Work**

**(a) Tenant's Declaration** - The Tenant will provide the City, within 60 days after the completion of the Tenant's Work, with a statutory declaration (the "Declaration"):

**(i)** stating that the Tenant's Work has been performed in accordance with all of the provisions of this Schedule and that all deficiencies (if any) which the City has brought to the Tenant's attention have been corrected;

**(ii)** stating that there are no construction, builders, workers', workers compensation or other liens and encumbrances affecting the Premises with respect to work, services or materials relating to the Tenant's Work and that all accounts for work, services and materials have been paid in full with respect to all of the Tenant's Work;

**(iii)** listing each contractor and sub-contractor who did work or provided materials in connection with the Tenant's Work;

**(iv)** confirming the date upon which the last such work was performed and materials were supplied; and

**(v)** confirming as correct, an itemized list showing the actual cost of all improvements including, without limitation, sprinklers, washrooms, or any other special facilities.

**(b) Final Workplace Safety and Insurance Act Clearances** - The Tenant will also furnish to the City, within 60 days after the completion of the Tenant's Work, a clearance certificate issued under the Workplace Safety and Insurance Act, 1997 (Ontario) in respect of each contractor and sub-contractor listed on the Declaration.

**Schedule “C”**

**Certificate of Property Use**

**[NTD: this Schedule only applies in respect of 35 Bellevue Avenue]**

## Certificate of Property Use

Issued under the authority of the Environmental Protection Act, R.S.O. 1990, c. E.19,  
sections 168.6 (CPU) and 197 (Order)

Certificate of Property use number 2587-CJ8ND5  
Risk Assessment number 4422-CCUMS8

**Owner:** City of Toronto  
55 John Street  
Toronto, ON M5V 3S6

**Site:** 35 Bellevue Avenue, Toronto, ON

with a legal description as follows:

Being Lot 24 Plan D55 Toronto; Part Lots 21, 25 Plan D55 Toronto; Lots 6-8 Plan 319 City West; Part Lots 5, 9-11 Plan 319 City West, Parts 1 to 14 Expropriation Plan WA83651; City of Toronto

Being All of PIN 21236-0414 (LT)

This Certificate of Property Use and Section 197 Order set out the requirements regarding the above-noted Property and the Modified Generic Risk Assessment carried out in relation to the Property which was assigned the number noted above and is described in more detail in Part 1 below

**Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.**

### Part 1: Interpretation

In this CPU, the following capitalised terms have the meanings described below. These terms are also defined in the Approved Model. Not all of these terms may be used in this CPU.

“Act” means the Environmental Protection Act, R.S.O. 1990, c. E.19.

“Active SVIMS” means a soil vapour intrusion mitigation system designed and operated to collect and remove soil vapour from below a Building and convey the soil vapour through vent risers to the outside air by means of one or more electrical fan powered vents drawing air from below the Building.

“Approved Model” has the same meaning as in subsection 1 (1) of Schedule C of O. Reg. 153/04, namely, the data file entitled “Modified Generic Risk Assessment Model” and dated October 19, 2009 as amended from time to time, that is maintained by the Ministry as part of its Brownfield initiative and is available on the Internet and may be available in such other manner as the Minister considers appropriate.

“ASTM” means the American Society for Testing and Materials.

“Barrier” means a Fill Cap Barrier, Hard Cap Barrier or Shallow Soil Cap Barrier.

“Building” means an enclosed structure occupying an area greater than ten square metres consisting of a wall or walls, roof and floor.

“Building Area” means the horizontal area of a Building at Grade within the outside surface of the exterior wall or walls.

“Building Code” means Ontario Regulation 332/12 (Building Code) as amended to January 1, 2017, made under the Building Code Act, 1992, S.O. 1992, c. 23.

“Capping Soil” means,

- a. soil that meets the applicable site condition standards for the Property, or
- b. soil that meets any higher standards for the contaminant or contaminants as generated by the Approved Model without incorporation of risk management measures, and as specified in Schedule ‘A’ of the CPU.

“Certificate of Property Use” or “CPU” means this certificate of property use bearing the number 2587-CJ8ND5 issued for the Property by the Director under section 168.6 of the Act, as it may be amended from time to time.

“Competent Person” has the same meaning as in the Occupational Health and Safety Act, R.S.O. 1990, c. O.1.

“Contaminant” has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that causes or may cause an Adverse Effect.

“Contaminants of Concern” has the same meaning as in O. Reg. 153/04, which, for the Property, means one or more contaminants found on, in or under the Property at a concentration that exceeds the applicable site condition standards for the Property, as specified in section 3 of the Risk Assessment report and in Schedule ‘A’ of the CPU.

“Director” means a person in the Ministry appointed as a director for the purpose of issuing a certificate of property use under section 168.6 of the Act.

“Fill Cap Barrier” means cover, above the Property Specific Contaminants of Concern, that, is at least,

- a. 1.0 metre thick, or any greater thickness than 1.0 metre, as specified in section 7 of the Risk Assessment report, or
- b. 1.5 metres thick, where the option to modify the S3 component value in the Approved Model for protection of subsurface workers from direct soil contact has been used in the Risk Assessment, as specified in section 7 of the Risk Assessment report, whichever is applicable, and,

consists of at least 0.5 metres thickness of Capping Soil, and above this, cover consisting of additional Capping Soil or non-soil surface treatment such as asphalt, concrete or concrete pavers, stone pavers, brick or aggregate.

“First Storey” has the same meaning as in the Building Code.

“Grade” has the same meaning as in the Building Code.

“Hard Cap Barrier” means an asphalt or concrete cover layer, above the Property Specific Contaminants of Concern, that is at least 225 millimetres thick, and consists of at least 75 millimetres thickness of hot mix asphalt or poured concrete underlain by Granular “A” aggregate or equivalent material and includes a building slab or building foundation and floor slab meeting these specifications.

“Intrusive Activities” means any intrusive activity undertaken at the Property, such as excavating or drilling into soil or ground water, which may disturb or expose Property Specific Contaminants of Concern at the Property.

“Licenced Professional Engineer” means a person who holds a licence, limited licence or temporary licence under the Professional Engineers Act, R.S.O. 1990, c. P.28.

“Minister” means the Minister of the Ministry.

“Ministry” means the ministry of the government of Ontario responsible for the administration of the Act, currently named the Ministry of the Environment, Conservation and Parks.

“O. Reg. 153/04” means Ontario Regulation 153/04 (Record of Site Condition – Part XV.1 of the Act), as amended, made under the Act.

“Owner” means the owner(s) of the Property, beginning with the person(s) to whom the Certificate of Property Use for the Property is first issued by the Director under section 168.6 of the Act based on the Risk Assessment, and any subsequent owner of the Property.

“Passive SVIMS” means a soil vapour intrusion mitigation system designed and operated to collect and remove soil vapour from below a Building and convey the soil vapour through

vent risers to the outside air by means of natural forces or one or more wind turbines, or solar powered wind turbine operated vents drawing air from below the Building.

“Property” means the property that is the subject of the Risk Assessment.

“Property Management Oversight” means management, on an ongoing basis, of all structural, mechanical, electrical, ventilation and other Building and Property services that relate to the installed Passive SVIMS, or the installed Active SVIMS, as applicable for the Property as set out in section 7 of the Risk Assessment report including oversight of operation, inspection, monitoring, maintenance and repair activities, and of operational and reserve funding for these activities, by a property manager or management company engaged by the Owner or, in the case of collective ownership, by an authorized representative or representatives of the collective ownership of the Building and Property, such as a condominium board.

“Property Specific Contaminants of Concern” means one or more contaminants found on, in or under the Property at a concentration that exceeds the applicable site condition standards for the Property and any higher standards for the contaminant or contaminants as generated by the Approved Model without incorporation of risk management measures, and as specified in section 3 of the Risk Assessment.

“Property Specific Standards” means the standards established as the maximum allowable concentrations for the Property Specific Contaminants of Concern at the Property, as generated by the Approved Model with incorporation of risk management measures, as specified in section 6 of the Risk Assessment report and in Schedule ‘A’ of the CPU.

“Provincial Officer” has the same meaning as in the Act, namely, a person who is designated by the Minister as a provincial officer for the purposes of the Act and the regulations.

“Qualified Person” means a person who meets the qualifications set out in subsection 5 (2) of O. Reg. 153/04.

“Risk Assessment” and “MGRA” means the modified generic risk assessment number 4422-CCUMS8 submitted with respect to the Property and accepted by a Director under section 168.5 of the Act on September 20, 2022, and set out in the following documents:

- Report entitled “35 Bellevue Avenue, Toronto, Ontario, Modified Generic Risk Assessment” prepared by exp Services Inc., dated March 24, 2022; and
- Report entitled “35 Bellevue Avenue, Toronto, Ontario, Modified Generic Risk Assessment” prepared by exp Services Inc., dated August 8, 2022.

“Risk Management Measures” means the risk management measures specific to the Property described in the Risk Assessment and/or Part 4 of the CPU.

“Shallow Soil Cap Barrier” means cover, above the Property Specific Contaminants of Concern, that is at least 0.5 metres thick, and consists of Capping Soil.

“Storage Garage” has the same meaning as in the Building Code.

“SVIMS” means soil vapour intrusion mitigation system

## **Part 2: Legal Authority**

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 168.6(1) of the Act states that if a risk assessment relating to a property has been accepted under clause 168.5(1)(a), the Director may issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
  1. Take any action specified in the certificate and that, in the Director’s opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the risk assessment, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
  2. Refrain from using the property for any use specified in the certificate or from constructing any building specified in the certificate on the property.
- 2.3 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.4 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate of property use has been issued under subsection 168.6(1),
  - a. alter any terms and conditions in the certificate or impose new terms and conditions; or
  - b. revoke the certificate.
- 2.5 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property,
  - a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
  - b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
  - c. the owner of the property shall ensure that every occupant of the property complies with the provision.



- 2.6 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.
- 2.7 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.
- 2.8 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.
- 2.9 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

## Part 3: Background

- 3.1 The Risk Assessment was undertaken for the Property on behalf of the Owner to assess the human health risks and ecological risks associated with the presence or discharge of Contaminants on, in or under the Property and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: “residential use” as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present above the residential/ parkland/institutional property use standards within Table 3 of the ***Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act*** published by the Ministry and dated April 15, 2011, for medium/fine textured soils as set out in the Risk Assessment and in Schedule ‘A’ (Contaminants of Concern). The Property Specific Standards for these Contaminants of Concern are also set out in Schedule ‘A’ which is attached to and forms part of the CPU. Also attached to and forming part of the CPU is a copy of a current plan of survey of the Property or a site plan of the Property (if applicable).
- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property that has been identified in the Risk Assessment.

- 3.4 I am of the opinion, for the reasons set out in the Risk Assessment, that Contaminants of Concern require on-going pathway elimination and it is necessary to restrict the use of the Property and/or the construction of buildings and/or the notice provisions as outlined in Part 5 of this CPU.
- 3.5 I am of the opinion, that the requirements set out in Part 6 of this CPU are necessary to supplement the Risk Management Measures described in the Risk Assessment and in Part 4 of the CPU.
- 3.6 I believe for the reasons set out in the Risk Assessment that it is also advisable to require the disclosure of this CPU and the registration of notice of the CPU on title to the Property as set out in the order requirements in Part 7 of this CPU.

## **Part 4: CPU Risk Management Measures and Requirements Relating to the Risk Assessment and the Property**

I hereby require the Owner to do or cause to be done the following under the authority of paragraph 168.8(1)1 of the Act:

### **Risk Management Measures**

- 4.0 Implement, and thereafter maintain or cause to be maintained, the following Risk Management Measures and requirements identified in the Risk Assessment and set out in Sections 4.1 to 4.16 as applicable.
- 4.1 Shallow Soil Cap Barrier Risk Management Measure
- N/A
- 4.2 Hard Cap Barrier or Fill Cap Barrier (1.0 metre(s)) or specified greater thickness) Risk Management Measure:
- a. Cover all areas of the Property where Contaminants of Concern are present at or within 1.0 metre(s) below the soil surface such that a Hard Cap Barrier or Fill Cap Barrier is in place in these areas, so as to prevent exposure to the Contaminants of Concern at the Property, in conjunction with any existing Barriers in any other areas of the Property where Contaminants of Concern are present below the soil surface; and
  - b. Before commencing development of all or any part of the Property, install fencing and implement dust control measures for any part of the Property requiring covering but which has not been covered, so as to prevent exposure to the Contaminants of Concern at the Property. Fencing and dust control measures shall be maintained until such time as the Hard Cap Barrier or Fill Cap Barrier (s) are installed.

4.3 Hard Cap Barrier or Fill Cap Barrier (modified S3 soil component value) Risk Management Measure:

N/A

4.4 Inspection, maintenance and reporting requirements for all Barriers:

- a. Prepare and implement a written inspection and maintenance program, prepared by a Qualified Person and to be retained by the Owner, and to be available for inspection upon request by a Provincial Officer, so as to ensure the continuing integrity of each Barrier at the Property so long as the Property Specific Contaminants of Concern are present at the Property, including, at a minimum:
  - i. procedures and timing for implementing the program;
  - ii. semi-annual inspections, in spring and fall, of the Barrier;
  - iii. noting any deficiencies in the Barrier observed during the inspections, or at any other time;
  - iv. repairing promptly any such deficiencies, to the original design specifications, with written confirmation that the Barrier has been properly repaired;
  - v. contingency measures, such as fencing, to be implemented if cracks, breaches or any loss of integrity of the Barrier cannot be repaired or addressed in a timely manner, to prevent exposure to the Property Specific Contaminants of Concern in that area of the Property; and
  - vi. recording, in writing, all inspections, deficiencies, repairs and implementation of contingency measures, to be retained by the Owner and be available for inspection upon request by a Provincial Officer;and which is,
  - vii. delivered to the Owner before use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  - viii. updated and delivered to the Owner within 30 days following making any alteration to the program.
- b. Prepare a site plan of the entire Property, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the Property, any fencing, and the location, type and design of each Barrier at the Property, including cross-sectional drawings of the Barrier showing its design and vertical and lateral extent; and which are,
  - i. delivered to the Owner before use of all or any part of the Property begins, or within 90 days following completion of covering of all or any part of the Property, whichever is earlier; and
  - ii. updated and delivered to the Owner within 30 days following making any alteration to the location, design or extent of the Barrier, or other relevant feature shown on the site plan; and
- c. Prepare and implement written procedures, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for written and oral communication to all persons who may be involved in Intrusive Activities at the Property that may disturb a Barrier at the Property, so as to ensure the persons are made aware of the presence and significance of the Barrier and the Property Specific Contaminants of Concern at the

Property and the precautions to be taken to ensure the continued integrity of the Barrier when undertaking the Intrusive Activities, and if damaged, to ensure that the Barrier is repaired promptly to the original design specifications, or, if it cannot be repaired promptly, to ensure that the contingency measures are implemented, and records kept, as specified in the inspection and maintenance program; and which are,

- i. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
- ii. updated and delivered to the Owner within 30 days following making any alteration to the procedures.

4.5 Building with Storage Garage (intermittent 3.9 Litres/second of Ventilation) Risk Management Measure:

N/A

4.6 Building with Storage Garage (continuous 3.9 Litres/second of Ventilation) Risk Management Measure:

N/A

4.7 Building with Storage Garage (continuous 10.0 Litres/second of ventilation) Risk Management Measure:

N/A

4.8 Building Prohibition Risk Management Measure:

N/A

4.9 Passive soil vapour intrusion mitigation system (SVIMS) or Active soil vapour intrusion mitigation system (SVIMS) Risk Management Measures:

N/A

4.10 Quality Assurance/Quality Control, Inspections, Maintenance and Reporting Requirements for Passive SVIMS or Active SVIMS:

N/A

4.11 Building with no first storey residential, institutional or parkland use Risk Management Measure:

N/A

4.13 No ground water use Risk Management Measure:

N/A

4.14 Health and Safety Plan:

N/A

4.15 Soil and Groundwater Management Plan:

Prepare and implement a written soil and groundwater management plan for the Property, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for managing excavated soil or soil brought to the Property, and, if any, groundwater from dewatering during Intrusive Activities at the Property, so as to prevent exposure to or uncontrolled movement or discharge of the Property Specific Contaminants of Concern in soil or groundwater at the Property, including, at a minimum:

- a. procedures and timing for implementing the plan, including the supervision of persons implementing the plan;
- b. measures to control dust and prevent tracking of soil by vehicles and persons from the Property, including the cleaning of equipment and vehicles;
- c. measures, in addition to any applicable measures specified in O. Reg. 153/04, to manage soil excavated at the Property and any soil brought to or removed from the Property, including:
  - i. characterizing for contaminant quality all excavated soil and any soil brought to the Property, including determining whether the soil:
    1. is Capping Soil;
    2. meets the Property Specific Standards; or
    3. exceeds the Property Specific Standards;
  - ii. managing excavated soil separately from any soil brought to the Property, including any excavated soil that is to be:
    1. used as Capping Soil at the Property;
    2. otherwise used as fill at the Property;
    3. removed from the Property and
  - iii. stockpiling of excavated soil and any soil brought to the Property in separate designated areas that:
    1. reflect the distinctions described in parts ii. 1) and 2);
    2. have been lined and covered, as appropriate, to prevent uncontrolled movement
    3. have been bermed or fenced, as appropriate, to restrict access by persons; and
    4. have storm water runoff controls in place to minimize storm water runoff contacting stockpiled soil, with provision for discharge of storm water runoff to a sanitary sewer or to other approved treatment if needed;
- d. measures to manage storm water and any ground water from dewatering at the Property to prevent the movement of entrained soil within and away from the

- Property, including, in addition to any applicable measures specified pursuant to other applicable law or other instruments, measures such as silt fences, filter socks for catch-basins and utility covers, and provision for discharge to a sanitary sewer or to other approved treatment if needed; and
- e. recording, in writing, the soil, storm water and any ground water management measures undertaken, in addition to any applicable record keeping requirements specified in O. Reg. 153/04 or pursuant to other applicable law or other instruments, to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, including:
    - i. dates and duration of the Intrusive Activities being undertaken;
    - ii. weather and site conditions during the Intrusive Activities;
    - iii. the location and depth of excavation activities, and dewatering activities, if any;
    - iv. dust control and soil tracking control measures;
    - v. characterization results for excavated soil and any soil brought to or removed from the Property, and for any ground water from dewatering;
    - vi. soil management activities including soil quantities excavated and brought to and removed from the Property, and stockpile management and storm water runoff control;
    - vii. management activities for any ground water from dewatering;
    - viii. names and contact information for the Qualified Persons and on-site contractors involved in the Intrusive Activities;
    - ix. names and contact information for any haulers and receiving sites for soil and any ground water removed from the Property, and for haulers and source sites of any soil brought to the Property; and
    - x. any complaints received relating to the Intrusive Activities, including the soil, storm water and any ground water management activities;
 and which is,
    - xi. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
    - xii. updated and delivered to the Owner within 30 days following making any alteration to the plan.

#### 4.16 ANNUAL REPORTS

The Owner shall prepare by March 31 each year, an annual report documenting activities relating to the Risk Management Measures undertaken during the previous calendar year. A copy of this report shall be maintained on file by the Owner and shall be made available upon request by a Provincial Officer. The report shall include, but not be limited to, the following minimum information requirements as applicable:

- a. a copy of all records relating to the inspection and maintenance program for the barrier to site soils;
- b. a copy of all records relating to the soil and groundwater management plan;
- c. a copy of signed site plans including any alternations; and

## **Part 5: CPU Restrictions on Property Use, Building Construction and Notice Requirements**

I hereby require the Owner to do or cause to be done the following under the authority of paragraph 168.6(1)2 of the Act:

### **5.1 Property Use Restriction:**

Refrain from using the Property for any of the following use(s): N/A

### **5.2 Building Construction Restrictions:**

N/A

### **5.3 Notice of Restrictions**

Pursuant to the requirements of subsection 168.6(4) of the Act, the Owner shall ensure that every occupant of the Property is given notice that the Ministry has issued this CPU and that it contains the provisions noted above in Items 5.1 and 5.2, except where noted N/A, and that every occupant complies with such provisions. For the purposes of this requirement, an occupant means any person with whom the Owner has a contractual relationship regarding the occupancy of all or part of the Property.

## **Part 6: Additional Requirements**

I hereby require the Owner to do or cause to be done the following things under the authority of subsection 168.6(1) of the Act.

### **6.1 Site Changes Affecting Risk Management Measures**

In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, the Owner shall forthwith notify the Director of such changes and the steps taken, to implement, maintain and operate any further Risk Management Measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property or the discharge of any Contaminant of Concern into the natural environment from the Property. In support of this work, a new risk assessment may need to be completed in accordance with O. Reg. 153/04 and submitted to the Ministry for acceptance. An amendment to the CPU will be issued to address the changes set out in any notice received and any future changes that the Director considers necessary in the circumstances.

### **6.2 Report Retention Requirements**

The Owner shall retain a copy of any reports required under the CPU for a period of seven (7) years from the date the report is created and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the

requesting Director or Provincial Officer.

**6.3 Owner/Occupant Change Notification**

While the CPU is in effect, the Owner shall, forthwith report in writing to the Director any changes of ownership, or occupancy except that while the Property is registered under the Condominium Act, 1998, S.O.1998 c.19, as amended, no notice shall be given of changes in the ownership of individual condominium units or any appurtenant common elements on the Property of the Property.

## **Part 7: Section 197 Order (Property Notice and Certificate of Requirement Registration) Requirements**

I hereby order the Owner to do or cause to be done the following under the authority of subsections 197(1) and 197 (2) of the Act:

**7.1 Property Notice Requirement**

For the reasons set out in the CPU and pursuant to the authority vested in me by subsection 197(1) of the Act I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property as a result of the dealing.

**7.2 Certificate of Requirement Registration**

Within fifteen (15) days from the date of receipt of a certificate of requirement issued under subsection 197(2) of the Act and as set out in Schedule 'B', register the certificate of requirement on title to the Property, in the appropriate land registry office.

**7.3 Verification**

Within five (5) days after registering the certificate of requirement provide to the Director a copy of the registered certificate and of the parcel register(s) for the Property confirming that registration has been completed.

## **Part 8: General Requirements**

**8.1** The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the CPU shall not be affected thereby.

**8.2** An application under section 168.6(3) of the Act to, a) alter any terms and conditions in the CPU or impose new terms and conditions; or b) revoke the CPU; shall be made in writing to the Director, with reasons for the request.

**8.3** Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.



- 8.4 The requirements of the CPU are minimum requirements only and do not relieve the Owner from, a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or b) obtaining any approvals or consents not specified in the CPU.
- 8.5 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require.
- 8.6 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,
- a. natural phenomena of an inevitable or irresistible nature, or insurrections,
  - b. strikes, lockouts or other labour disturbances,
  - c. inability to obtain materials or equipment for reasons beyond your control, or
  - d. any other cause whether similar to or different from the foregoing beyond your control,
- the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.
- 8.7 Failure to comply with a requirement of the CPU by a date specified does not absolve the Owner from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 8.8 The Risk Management Measures identified in the Risk Assessment and also in Part 4 of the CPU and all the other requirements in the CPU shall commence upon the issuance of the CPU and continue in full force and effect in accordance with the terms and conditions of the CPU until such time as the Director alters or revokes the CPU.
- 8.9 The provisions of the CPU shall take precedence in the event of a conflict between the provisions of the CPU and the Risk Assessment save and except for the Part 4 Risk Management Measures.
- 8.10 In the event that the Owner complies with the provisions of Items 7.2 and 7.3 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the *Condominium Act, 1998*, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU can be carried out by the condominium corporation on behalf of the new Owners of the Property.

## **Part 9: Information regarding a Hearing before the Ontario Land Tribunal**

With respect to those provisions relating to my authority in issuing a certificate of property use under section 168.6 and an order under section 197 of the Act:

- 9.1 Pursuant to section 139 of the Act, you may require a hearing before the Ontario Land Tribunal (the “Tribunal”), if within fifteen (15) days after service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.
- 9.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU, or to rely on a ground, that is not stated in the notice requiring the hearing.
- 9.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: Service of Documents, made under the Act. The contact information for the Director and the Tribunal is the following:

Registrar  
Ontario Land Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON, M5G 1E5  
Email: [OLT.Registrar@ontario.ca](mailto:OLT.Registrar@ontario.ca)

and

Jimena Caicedo  
Ministry of the Environment, Conservation and Parks  
5775 Yonge Street, 8<sup>th</sup> Floor  
Toronto, ON M2M 4J1  
Fax: 416-326-5536  
Email: [jimena.caicedo@ontario.ca](mailto:jimena.caicedo@ontario.ca)

The contact information of the Ontario Land Tribunal and further information regarding its appeal requirements can be obtained directly from the Tribunal at: Tel: (416) 212-6349 or Toll Free 1 (866) 448-2248 or [www.olt.gov.on.ca](http://www.olt.gov.on.ca).

Further information regarding service can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws). Please note that where service is made by mail, it is deemed to be made on the fifth day after the date of mailing and choosing service by mail does not extend any timelines.

- 9.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.

- 9.5 The procedures and other information provided in this Item 9 are intended as a guide.  
The legislation should be consulted for additional details and accurate reference.  
Further information can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws).

Issued at Toronto this 20<sup>th</sup> day of September 2022.

*Paul Celsie*

for Jimena Caicedo  
Director, section 168.6 of the Act

**Schedule 'A'**

**Contaminants of Concern, Property Specific Standards, and Capping Soil Concentrations**

<b>Media</b>	<b>Contaminants of Concern (COC)</b>	<b>Units</b>	<b>Property Specific Standards</b>	<b>Capping Soil Concentrations</b>
Soil	Benz[a]anthracene	µg/g	0.92	0.63
Soil	Benzo[a]pyrene	µg/g	0.80	0.3
Soil	Benzo[b]fluoranthene	µg/g	1.1	0.78
Soil	Fluoranthene	µg/g	2.2	0.69
Soil	Lead	µg/g	470	120

**SCHEDULE 'B'**

**CERTIFICATE OF REQUIREMENT**

**s.197(2)**

***Environmental Protection Act***

This is to certify that pursuant to Item 7.1 of Certificate of Property Use number 2587-CJ8ND5 issued by Jimena Caicedo, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the *Environmental Protection Act*, on September 20, 2022 being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as 35 Bellevue Avenue, Toronto, Ontario, being all of Property Identifier Number (PIN) 21236-0414 (LT) (the "Property") with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the Property

**CITY OF TORONTO**

and any other persons having an interest in the Property, are required before dealing with the Property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the Property.

Under subsection 197(3) of the *Environmental Protection Act*, the requirement applies to each person who, subsequent to the registration of this certificate, acquires an interest in the Property.

## CPU 2587-CJ8ND5

