

**AGREEMENT FOR THE USE OF ARTS AND CULTURAL SPACE**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**BETWEEN:**

**TORONTO MEDIA ARTS CLUSTER  
("TMAC")**

**OF THE FIRST PART**

-and -

**CITY OF TORONTO  
("City")**

**OF THE SECOND PART**

**WHEREAS** on June 7<sup>th</sup>, 2012 the City and Edge on Triangle Park Inc. (the "**Edge**") entered into a Section 37 Agreement pursuant to Section 37 of the *Planning Act* in which Council or the Ontario Municipal Board on appeal may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the density or height of development beyond that otherwise permitted by the applicable zoning, that will be permitted in return for the provision of such facilities, services and matters as are set out in such by-law (the "**Section 37 Agreement**"), attached hereto as Schedule A;

**AND WHEREAS** pursuant to such by-law, the City required that the Edge provide certain facilities, services and matters in return for the authorized increases in height and density including, the provision of approximately 2,800 square metres of stratified finished commercial fee simple space in the Development as shown in the sketch attached hereto as Schedule B, (the "**Cultural Space**");

**AND WHEREAS** the Edge has agreed to transfer an additional 670 square meters of space in the Development as shown in the sketch attached hereto as Schedule B, to TMAC on such terms, including compensation, as agreed between those parties (the "**TMAC Space**") (the Cultural Space and the TMAC Space shall be referred to hereafter as the "**Arts and Cultural Space**");

**AND WHEREAS**, pursuant to the Section 37 Agreement the City agreed that the Edge is to enter into a purchase agreement with TMAC for the conveyance of the Arts and Cultural Space to TMAC, or, in the event that TMAC and the Edge do not enter into a purchase agreement, before March 31, 2014 (or such other date as may be agreed to by the parties), then the Edge shall enter into a purchase agreement for the conveyance of the Arts and Cultural Space to the City, or such other non-profit arts and cultural organization selected by the City at nominal consideration;

**AND WHEREAS** pursuant to section 3.2(1)(a) of the Section 37 Agreement, the City has agreed that the Edge shall enter into a purchase agreement with TMAC for the conveyance of the Arts and Cultural Space to TMAC, a copy of which is attached hereto as Schedule C (the "Purchase Agreement");

**AND WHEREAS** the Cultural Space constitutes a Section 37 *Planning Act* public benefit received in exchange for increase height and development in the Development and shall be so used by TMAC;

**AND WHEREAS** in order to secure the Cultural Space as a public benefit pursuant to the Section 37 Agreement, TMAC has agreed to enter into this agreement with the City, providing for the following: (i) restrictions on the use of the Cultural Space by TMAC; (ii) the registration of a Section 118 Certificate in favour of the City on title to the Cultural Space; and (iii) the grant of an option in favour of the City to purchase the Arts and Cultural Space for nominal consideration exercisable by the City, upon an Event of Default (defined below) by TMAC under this Agreement ("Restrictions and Security");

**AND WHEREAS** TMAC has agreed that the TMAC Space shall be subject to the same Restrictions and Security as the Cultural Space, and that this Agreement shall apply to the Cultural Space and the TMAC Space;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of two dollars (\$2.00), the receipt and sufficiency of which is acknowledged, the premises contained herein and other good and valuable consideration, TMAC and the City agree to and with each other as follows:

**1. Definitions**

1.1 For the purposes of the Agreement, the term,

- (a) "City of Toronto Act" means the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule A, as amended, superseded or replaced from time to time;
- (b) "City Solicitor" means the City Solicitor for the City and shall include his or her designates;
- (c) "Closing" means the closing of the transaction relating to the Arts and Cultural Space, between TMAC and the Edge as contemplated in the Section 37 Agreement;
- (d) "Council" means the Council of the City;
- (e) "Development" means the construction of any buildings or structures on, and the development of, the Site;
- (f) "Edge's Security" means security (in the form of a vendor take back mortgage), relating to a loan by the Edge to TMAC to acquire the TMAC Space and to improve the Arts and Cultural Space and registered on title to the Arts and

Cultural Space. (For greater certainty, the City is not a party to Edge's Security, nor does the City acknowledge or approve of any of the terms contained therein);

- (g) **"Option"** has the meaning ascribed in the Section 37 Agreement substantially in the form attached hereto as Schedule D;
- (h) **"Parties"** means TMAC and the City; and **"Party"** means either TMAC or the City as the context requires;
- (i) **"Permitted Encumbrances"** has the meaning ascribed thereto in the Purchase Agreement;
- (j) **"Permitted Leasing Threshold"** has the meaning set out in Section 5.2 of this Agreement;
- (k) **"Permitted Use"** has the meaning set out in section 3 of this Agreement;
- (l) **"Planning Act"** means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, superseded or replaced from time to time;
- (m) **"Section 118 Certificate"** has the meaning ascribed thereto in the Section 37 Agreement substantially in the form attached hereto as Schedule E;
- (n) **"Site"** means the property known municipally as 2-6 Lisgar and legally described at Schedule F attached hereto;
- (o) **"Title Opinion"** means a solicitor's title opinion in the City's standard form.

## **2. Schedules**

2.1 The following Schedules form part of this Agreement:

- (a) Schedule A - Section 37 Agreement;
- (b) Schedule B - Sketch of the Arts and Cultural Space
- (c) Schedule C - TMAC/Edge Purchase Agreement
- (d) Schedule D - Option to Purchase
- (e) Schedule E - Section 118 Certificate
- (f) Schedule F - Legal Description of Site
- (g) Schedule G - Terms of the Conveyance of the Arts and Cultural Space

## **3. Purchase Agreement**

3.1 TMAC agrees to enter into the Purchase Agreement by March 31, 2014 (or such other date as may be agreed to by the parties).

**4. Easement and Reciprocal Arrangements**

- 4.1 The Purchase Agreement shall include terms whereby the parties thereto shall agree, before or on the closing of the transaction, to complete the necessary arrangements, including but not limited to, reciprocal agreements and easements for shared facilities and services required between TMAC as owner of the Arts and Cultural Space, and the Edge, as owner of the Development (the "**Reciprocal and Easement Agreements**"). The terms and financial implications of any and all Reciprocal and Easement Agreements shall be to the satisfaction of the City's Director of Real Estate Services.

**5. Use of the Arts and Cultural Space**

- 5.1 The Arts and Cultural Space shall be used, or permitted to be used, by TMAC (or any other party described in Section 5.2) for not-for-profit community arts and cultural uses comprising the following (any such use of the Arts and Cultural Space shall be in keeping with the first class residential development in which the Arts and Cultural Space is located, as determined by the City, acting reasonably) (the "**Permitted Use**");
- (a) studio, presentation, teaching and/or workshop space;
  - (b) cultural and arts facility;
  - (c) art gallery;
  - (d) theatre cinema, together with associated ticketing and food and beverage counter;
  - (e) offices;
  - (f) a maximum of 55 square meters of gross floor area, located at grade, may be used for a single artist short term residence;
  - (g) a maximum of 110 square meters of gross floor area, located more or less on the sketch attached hereto as Schedule B (representing the TMAC Space) may be used for a cafe, Bistro or coffee shop, selling such goods as one would ordinarily find in a cafe, Bistro or coffee shop, acting reasonably, on condition that TMAC remains in compliance with all applicable laws and its own corporate requirements relating to its status as a not-for-profit organization.
  - (h) any uses ancillary to the above listed uses.
- 5.2 TMAC shall have the right to lease or license, or otherwise permit occupancy of, the Arts and Cultural Space, or any part thereof, to or by another party, in each case without the City's consent, provided that (i) the City is given written notice from TMAC informing the City of such lease, license or occupancy, as the case may be; (ii) the use proposed by the lessee, licensee or occupant, as the case may be, falls within one or more of the uses that make up the Permitted Use hereunder; and (iii) the total gross floor area that is leased, licensed or occupied, as the case may be, by such lessees, licensees or occupants does not exceed, in the aggregate and at any relevant time, ten thousand (10,000) square

feet of gross floor area of the Arts and Cultural Space (the "Permitted Leasing Threshold").

- 5.3 TMAC shall have the further right to lease or license, or otherwise permit occupancy of, the Arts and Cultural Space, or any part thereof, to or by another party, in circumstances where such proposed lease, license or occupation exceeds the Permitted Leasing Threshold, in each case, subject to receiving the City's consent, and provided that the use proposed by the lessee, licensee or occupant, as the case may be, falls within one or more of the uses that make up the Permitted Use hereunder.

- 5.4 TMAC covenants and agrees that except as otherwise agreed to by the City, each lease, license or agreement permitting occupancy of any portion of the Arts and Cultural Space shall include a provisions pursuant to which the lessee, licensee or occupant agrees that in the event the City becomes the successor in title to the Arts and Cultural Space as a result of the Option and/or this Agreement, the City shall have the right, at its option, to terminate such lease, license or occupancy agreement on prior reasonable notice, and without cost, notwithstanding that such lease, license or occupancy may include a fixed term.

**6. Section 118 Certificate**

- 6.1 In accordance with the Section 37 Agreement, TMAC shall register the Section 118 Restriction on title to the Arts and Cultural Space on Closing in order to preserve the long term intended use of the space as a community arts/cultural space, as set out in section 5, above.
- 6.2 TMAC consents to the registration of the Section 118 Certificate and the Option at its own cost and expense against the title to the Arts and Cultural Space in priority to all other encumbrances, save and except for the Permitted Encumbrances.

**7. Option to purchase**

- 7.1 Pursuant to Section 3.2 of the Section 37 Agreement, TMAC shall enter into the Option with the City, upon the execution of this Agreement, and shall register in priority to all other encumbrances against the Arts and Cultural Space on Closing, save and except for Permitted Encumbrances.

**8. Registration of Section 118 Certificate and Option**

- 8.1 TMAC agrees to do such things and to obtain such discharges, releases or postponements as are required to permit the Section 118 Certificate and the Option to be so registered in priority to all other encumbrances on title to the Arts and Cultural Space, save and except for Permitted Encumbrances. For greater certainty, and with respect to any Permitted Encumbrance, there shall be no liens, charges, mortgages or other security interests or options to purchase, leases or options to lease, so similar rights contained therein which could result in the exercise of rights and remedies by the holders thereof such that the City could not exercise its rights or enforce the provisions of this Agreement or the Option.

- 8.2 Prior to the registration of the Section 118 Certificate and the Option, against the title to the Arts and Cultural Space, pursuant to this Agreement, TMAC shall, at its sole expense, obtain and deliver to the City a Title Opinion for the Section 118 Certificate and the Option from TMAC's solicitors, addressed to the City setting out the priority of the Section 118 Certificate and the Option to all other encumbrances on title to the Arts and Cultural Space and as contemplated by this Agreement.

**9. Events of Default**

The following shall constitute "Events of Default" under this Agreement and a written notice of an Event of Default shall be referred to herein as a "**Notice of Event of Default**":

- 9.1 TMAC shall use the Arts and Cultural Space, or any part thereof, for something other than the Permitted Use and TMAC does not cease such use within five (5) days following receipt of a Notice of Event of Default;
- 9.2 TMAC shall sell, offer for sale, or shall enter into an Agreement of Purchase and Sale respecting the Arts and Cultural Space, or any part thereof; or, except as provided for in Section 5.2, shall offer or enter into any lease, license or permit any other party to occupy the Arts and Cultural Space, or any part thereof; or shall charge, mortgage or otherwise encumber in each case, without the City's prior written consent (except for any encumbrance that constitute a Permitted Encumbrance); and
- 9.3 Assign this Agreement or the Purchase Agreement, or any part thereof, to any other party;
- 9.4 TMAC allows anything to occur, or suffers anything to occur on the Arts and Cultural Space, or any part thereof, which, in the opinion of the City, acting reasonably, constitutes a nuisance or is an act of waste to the Arts and Cultural Space, or any part thereof and TMAC fails to rectify such default within fifteen (15) days following receipt of a Notice of Event of Default from the City, or if such default cannot reasonably be remedied within fifteen (15) days of receipt of such Notice of Event of Default from the City and TMAC within such fifteen (15) day period fails to commence diligently and thereafter to proceed diligently to remedy such default;
- 9.5 TMAC uses or permits the Arts and Cultural Space, or any part thereof, to be used for the sale of goods and services except pursuant to the Permitted Use and TMAC fails to rectify such default within fifteen (15) days following receipt of a Notice of Event of Default;
- 9.6 TMAC abandons the Arts and Cultural Space. In this Agreement, "Abandon" means any of the following circumstances:
- (a) If the Arts and Cultural Space is not being fit-up for use by TMAC, as determined by the City acting reasonably, for a period of time longer than 180 consecutive days;
  - (b) If the Arts and Cultural Space has been continuously vacant for a period of time longer than 180 consecutive days while capable of use and occupancy;



- (c) TMAC provides a written statement to the City that it surrenders the Arts and Cultural Space;
- 9.7 TMAC undergoes any change of Control to which the City has not consented in writing. In this agreement, "Control" means the right to direct the management and policies of TMAC, whether directly or indirectly, or to elect a majority of its board of directors and/or members, whether through ownership of voting securities or by contract or otherwise (TMAC agrees to make available and to cause to be made available to the City any and all corporate books and records, including financial records, from time to time for inspection at all reasonable times to the extent considered necessary or desirable by the City to determine, among other things, whether a change of Control has occurred), provided that notwithstanding the foregoing, any change, from time to time, in the constitution of the members of TMAC shall not constitute a change of Control;
- 9.8 TMAC ceases to be duly incorporated as a validly existing non-profit organization, being either an organization that is (i) a corporation in good standing and registered under the laws of either Ontario or Canada as a not-for-profit; or (b) a registered charitable organization in good standing under the *Income Tax Act of Canada*, R.S.C. 1985, c. 1, as amended, or does anything in breach of all applicable laws and its own corporate requirements relating to its status as a not-for-profit organization;
- 9.9 TMAC defaults under any security registered on title to the Arts and Cultural Space beyond any applicable notice and cure period allowed thereunder to cure such defaults;
- 9.10 TMAC 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 or compromise;
- 9.11 a receiver or a receiver and manager or trustee or any other officer with similar powers is appointed for TMAC, or of the Arts and Cultural Space and any assets situate within the Arts and Cultural Space and such appointment is not vacated within thirty (30) consecutive days;
- 9.12 any steps are taken or any action or proceedings are instituted by TMAC or by any other party or acquiesced in by TMAC, including, without limitation, any court or governmental body of competent jurisdiction, for the re-organization, arrangement, composition, readjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief, of TMAC or its assets and such dissolution, winding-up or liquidation is not rescinded within thirty (30) consecutive days; and
- 9.13 TMAC makes a sale in bulk of any of its assets, wherever situated, other than a bulk sale made to an assignee pursuant to a permitted assignment hereunder and pursuant to the *Bulk Sales Act*, R.S.O. 1990, c. 6.14, as the same may be amended from time to time, or any successor legislation, and other than a bulk sale of worn out furniture and equipment that has been replaced with new furniture and equipment.

**10. Enurement**

- 10.1 The Parties hereto agree that the covenants, rights, duties, provisos, conditions and obligations herein contained shall enure to the benefit of each Party and their successors and assigns. Without limiting the generality of the foregoing, the Parties expressly acknowledge and agree that the Parties and their successors and assigns (with respect to all or any portion of the Site) shall be entitled to enforce the provisions of the Agreement which are covenants, duties or obligations of each other against each other and their respective successors and assigns.

**11. Notices**

- 11.1 Any notices to be given under the Agreement shall be in writing and shall be delivered as follows by personal delivery or email transmission only as follows:

(a) To TMAC:

c/o TMAC  
9 Ossington Avenue  
Toronto, Ontario  
M6J 2Y8

Attention: Laura Berazadi  
Email: [laura.berazadi@interaccess.org](mailto:laura.berazadi@interaccess.org)

with a copy to:

Goodmans LLP  
3400-333 Bay Street  
Toronto, Ontario  
M5H 2S7

Attention: Bram Green  
Email: [bgreen@goodmans.ca](mailto:bgreen@goodmans.ca)

(b) To the City:

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

Attention: Jason Aurini, Solicitor  
Email: [jaurini@toronto.ca](mailto:jaurini@toronto.ca)

- 11.2 The Parties agree to notify each other immediately, in writing, of any changes of address or email address from those set out above.



- 11.3 Notice shall be deemed to have been received by a Party on the date of personal delivery or if by email transmission, if received by 4:30 p.m. on a Business Day, or the next Business Day if received after 4:30 p.m.
- 12. Remedies**
- 12.1 Before the expiry of the Option Period (as defined in the Option), upon the occurrence of an Event of Default that is continuing, the Option shall constitute the sole remedy available to the City. During the period commencing immediately following the Expiration of the Option (as defined in the Option) and expiring thirty (30) years thereafter, the provisions contained in Sections 12.2 - 12.5 inclusive shall constitute the sole remedies available to the City upon an Event of Default that is continuing.
- 12.2 TMAC covenants and agrees that, subject to Section 12.5, it shall, within ninety (90) days of receiving a Notice of Event of Default, and upon the expiration of any applicable cure period, if such Event of Default is still continuing, pay to the City, by certified cheque, an amount equal to the fair market value of the Arts and Cultural Space (the "FMV"), at the time of the occurrence of the Event of Default as more particularly set out below (the "Arts and Cultural Space Entitlement Amount").
- 12.3 The Parties hereto agree that the Arts and Cultural Space Entitlement Amount constitutes valid and reasonable predetermined liquidated damages which will permit the City to re-establish for the local community and greater public of the City of Toronto the long-term community benefit and capital facility originally secured by the Section 37 Agreement and to which community benefit the greater public of Toronto is entitled and which may have been lost through an Event of Default.
- 12.4 The FMV of the Arts and Cultural Space shall be determined by an independent third party valuation conducted by an appraiser with an Appraisal Institute of Canada ("AIC") designation. The FMV shall be the amount that an owner could realize through the sale of a like property on the open market, without deduction for any costs or expenses, including but not limited to real estate commission, provided that consideration of the restrictions on the use of the Arts and Cultural Space as set out in this Agreement shall be taken into account in determining the FMV. The Parties hereto shall use reasonable efforts to agree upon the identity of the arm's length appraiser who will conduct the third party valuation. If the Parties hereto are unable to agree upon the identity of the appraiser within thirty (30) days of the date of receipt by TMAC of the Notice of Event of Default, each Party shall select one arm's length appraiser within seven (7) days of the expiry of such thirty (30) day period and notify the other Party. The appraisers so selected shall, within seven (7) days of the selection of the last appraiser so selected, choose a single arm's length appraiser with an AIC designation. If any Party neglects or refuses to name an appraiser within seven (7) days of being requested to do so by the other Party, the appraiser named by the first Party shall proceed to undertake the third party valuation to obtain the FMV. The Parties agree that the appraiser's determination of FMV pursuant to this Section 12.4 shall be final and shall not be subject to appeal by any Party.
- 12.5 In the event that TMAC is unwilling or unable to pay the Arts and Cultural Space Entitlement Amount, in order to permit the City to re-establish the community benefit of

the Arts and Cultural Space, then the City shall instead be entitled to a conveyance of the Arts and Cultural Space, for nominal consideration (the "**Conveyance Payment**"), on the terms and conditions set out in Schedule G, attached hereto (the "**Conveyance of the Arts and Cultural Space**"). TMAC shall notify the City no later than twenty (20) days after the final determination of the FMV, of whether it will be paying the Arts and Cultural Space Entitlement Amount to the City or completing the Conveyance of the Arts and Cultural Space. TMAC's notice of its election to complete the Conveyance of the Arts and Cultural Space shall be referred to herein as the "**Notice of the Conveyance**".

### 13. **Indemnity and Release**

- 13.1 TMAC will well and truly save, defend and keep harmless and fully Indemnify the City and each of its elected and appointed officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City, its elected and appointed officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the fulfilment by TMAC of its obligations under this Agreement including the default or breach by TMAC of its obligations under this Agreement or by reason of any negligence or wilful default of TMAC, its officers, employees, agents or persons acting under its direction in connection with TMAC's obligations hereunder.
- 13.2 Any amounts owing to the City pursuant to the obligation of TMAC to indemnify the City pursuant to the terms of this Agreement may be collected by the City, In addition to any other remedies it may have, as taxes with all such amounts to be payable as directed by City Council pursuant to Section 386 of the *City of Toronto Act*.
- 13.3 TMAC hereby releases, waives and forever discharges the City and each of its elected and appointed officials, officers, employees and agents, successors, and assigns (collectively the "**Released Persons**") of and from any and all manner of claims, demands, damages, costs, expenses, actions and causes of actions, whether in law or equity, in respect of death, injury, loss or damage to the person or any property of TMAC, the City or others by reason of or on account of the fulfillment of their respective obligations or exercise of their respective power under this Agreement, which TMAC may at any time hereafter have against any of the Release Persons arising or to arise by reason the City and TMAC entering into this Agreement or any of the terms and conditions hereof.
- 13.4 The obligations of TMAC to indemnify and release the City under the provisions of this Agreement shall survive any termination or release in whole or in part of this Agreement, anything in this Agreement to the contrary notwithstanding.

### 14. **Enforcement**

- 14.1 TMAC agrees that certain facilities, works, matters and payments required by this Agreement shall be provided and maintained by TMAC at its sole risk and expense and to the satisfaction of the City. In addition, TMAC agrees that upon failure by it to do any

act that is required by this Agreement (after the expiry of any applicable cure period), the City may, in addition to any other remedy under this Agreement, enter upon the Arts and Cultural Space, if necessary, and do the said act at TMAC's expense and collect the cost in the same manner as municipal taxes as provided for in section 386 of the *City of Toronto Act*.

**15. Interpretation**

- 15.1 The headings in the body of the Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.
- 15.2 The Agreement shall be construed with all changes in number and gender as may be required by the context.
- 15.3 Time shall be of the essence of the Agreement.
- 15.4 The failure of the City at any time to require performance by TMAC of any obligation under the Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.
- 15.5 Whenever the provisions of the Agreement require an approval or consent of any official of the City, the approval or consent may alternatively be given by Council or such other official as Council may direct or is otherwise empowered to act.

**16. City as a Municipality**

- 16.1 Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities. Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.
- 16.2 No communication or dealing between TMAC and the City or TMAC and any agency, board, commission, department, committee, body, commissioner, elected official, appointed official, officer, employee, agent or representative of the City will be deemed to be a communication or dealing under the provisions of this Agreement between TMAC and the City in its capacity as a party to this Agreement or to affect the City with notice of any such communication or dealing; it being agreed that, any communication or dealing between the City and TMAC as parties to this Agreement will only be effective if delivered in accordance with the notice provisions set out herein. No communication or dealing between the City as a party to this Agreement and TMAC as a party to this Agreement pursuant to the provisions of this Agreement will relieve TMAC from the responsibility of discharging its lawful obligations to the City imposed by statute,

regulation, a by-law or by any other lawful manner separate and apart from the obligations of TMAC imposed by this Agreement.

**17. Commencement**

- 17.1 The Agreement commences on the date of its execution and delivery by the Parties.

**18. Force Majeure**

- 18.1 Neither Party shall be responsible for any default or delay in the performance of its obligations under this Agreement if and to the extent that such default or delay is caused by force majeure, provided that the non-performing Party has not in any way caused or contributed to such default or delay and that such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party. The non-performing Party hereby agrees to use its best efforts to fulfill all of its obligations under this Agreement notwithstanding the existence of any force majeure event. For the purposes of this Agreement, "force majeure" means any bona fide delay beyond the reasonable control of a Party (other than as a result of financial incapacity and other than a delay caused by the Party relying upon such force majeure) which shall cause any Party to be unable to fulfill or to be delayed or restricted in the fulfilment of any obligation hereunder including, without limitation, any such delay arising in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service, utility, or labour required to enable it to fulfill such obligation or by reason of any statute, law, by-law or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administrator, controller or board, or any governmental administrator, controller or board, or any governmental department or officer or other authority or by reason of its inability to procure any licence or permit required thereby, or by reason of not being able to obtain any permission or authority required thereby, or by reason of any strikes, lockouts, slow-downs or other combined action of workmen, or shortages of materials.

**19. Counterparts**

- 19.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, electronic pdf or telecopied form and the parties to this Agreement shall adopt any signatures received by email or receiving telecopier machine as original signatures of the parties. Each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of the full execution of this Agreement.

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

**TORONTO MEDIA ARTS CLUSTER**

Per: \_\_\_\_\_

Name: LAURA GERAZADI  
Title: BOARD PRESIDENT

Per: \_\_\_\_\_

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

I/We have the authority to bind the Corporation.

**CITY OF TORONTO**

*DK*  
Authorized by Notice of Motion MM 24.35  
moved by CLER BILLO  
and seconded by CLER ANNIZADA  
as adopted in Council on the June 6<sup>th</sup> 2012  
day of JUNE, 2012

*for*  
Marilyn M. Toft

City Clerk

*DK* Per: \_\_\_\_\_

Name: M. ST. AMANT  
Title: DIRECTOR  
ACCOUNTING SERVICES

Per: \_\_\_\_\_

Name: Marilyn M. Toft  
for Ulli S. Watkiss  
Title: City Clerk

I/We have the authority to bind the Corporation.

*DK*  
Authorized by Toronto and East  
York Community Land  
Item No. TE 15.3  
as adopted by City of Toronto on June 8, 2012  
Council on June 8, 2012

*for*  
Marilyn M. Toft

City Clerk

**APPROVED AS TO FORM**

*for*  
For ANNA KINASTOWSKI  
City Solicitor

*for*  
MAY 11  
TWO 805. 9515. 11



## SCHEDULE A SECTION 37 AGREEMENT

LHO # 80 Notice

Received as AT3240353 on 2013 02 20 at 14:10

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 1 of 34

### Properties

**PIN** 21298 - 0424 LT  
**Description** PT LOTS 5 & 7, ALL LOT 6 PLAN 860 CITY WEST & PT BLK 5 PLAN ORDNANCE RESERVE, TORONTO, DESIGNATED AS PTS 7 & 8 ON PLAN 06R23688, T/W CT344444, CITY OF TORONTO, SUBJECT TO AN EASEMENT AS IN AT3226393  
**Address** TORONTO

**PIN** 21298 - 0004 LT  
**Description** PCL STREET-1 SEC A-ORDNANCE RESERVE; PT ABELL ST PL A ORDNANCE RESERVE TORONTO AS CLOSED BY BY-LAW D33202, PARTS 13 & 14 06R17443; S/T PARTS 13 & 14 06R17443 AS IN WF27767; T/W PT ORDNANCE RESERVE & ABELL ST AS CLOSED BY BY-LAW 5321 PARTS 4, 7 & 8 06R17443 AS IN WF27767; RELEASE AS TO PT 4 PL 66R17443 AS IN AT2198438; TORONTO, CITY OF TORONTO, SUBJECT TO AN EASEMENT AS IN AT3226393  
**Address** TORONTO

**PIN** 21298 - 0197 LT  
**Description** LT 8 PL 960 CITY WEST; PT LT 7 9 PL 960 CITY WEST; PT BLK 5 PL ORDNANCE RESERVE TORONTO AS IN CT682964, T/W CT682964; TORONTO, CITY OF TORONTO, SUBJECT TO AN EASEMENT AS IN AT3226393  
**Address** TORONTO

**PIN** 21298 - 0188 LT  
**Description** LT 10-12 PL 960 CITY WEST; PT LT 9 PL 960 CITY WEST; PT BLK 5 PL ORDNANCE RESERVE TORONTO AS IN WF61410, T/W WF61410; TORONTO, CITY OF TORONTO, SUBJECT TO AN EASEMENT AS IN AT3226393  
**Address** TORONTO

### Consideration

Consideration \$ 2.00

### Applicant(s)

This notice is based on or affects a valid and existing estate, right, interest or equity in land

**Name** CITY OF TORONTO  
**Address for Service** Anna Krasnowski, City Solicitor  
City of Toronto Legal Services  
Metro Hall  
55 John Street  
28th Floor  
Toronto, ON M5V 3C8  
  
Attention: Thomas Wall, Solicitor

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation Thomas Wall, Solicitor for the City of Toronto.

### Party To(s)

Capacity

Share

**Name** EDGE ON TRIANGLE PARK INC.  
**Address for Service** 120 Lynn Williams St.  
Suite 2A  
Toronto, ON  
M6K 3N8  
  
Attention: Alan Saskin, President

I, Alan Saskin, President, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

### Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period



LRO # 80 Notice

Received as AT3240353 on 2013 02 20 at 14 10

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 34

**Statements**

Schedule: See Schedules

**Signed By**

Irina Helen Hewko

55 John St., 26th Floor  
Toronto  
M5V 3C6

Acting for  
Applicant(s)

Signed

2013 02 20

Tel 4163926047

Fax 4163975624

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

CITY OF TORONTO

55 John St., 26th Floor  
Toronto  
M5V 3C6

2013 02 20

Tel 4163928047

Fax 4163975624

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Applicant Client File Number : 2-6 LISGAR ST (S37 ACMT - TWALL)

**THIS AGREEMENT** made this 7th day of June, 2012.

**BETWEEN:**

**EDGE ON TRIANGLE PARK INC.**

(the "Owner")

**OF THE FIRST PART**

- and -

**CITY OF TORONTO**

(the "City")

**OF THE SECOND PART**

**WHEREAS:**

- a) The Owner is the registered owner of lands in the City of Toronto, municipally known as 2 - 6 Lisgar Street, of which is legally described in Schedule "A" hereto (collectively, the "Site");
- b) The Owner proposes to develop the Site being a mixed use building with 2 towers with maximum heights of 19 and 22 storeys building containing 665 residential units referred to herein as (the "Development");
- c) The Owner applied for amendments to site specific Zoning By-law 1431-2011 (OMB) in respect of the Site to permit the Development (the "Planning Applications"), which included an increase in the density and height of development beyond that otherwise permitted;
- d) Pursuant to Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "Planning Act"), City Council or the Ontario Municipal Board on appeal may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the density or height of development beyond that otherwise permitted by the applicable zoning, that will be permitted in return for the provision of such facilities, services and matters as are set out in such by-law;
- e) Subsection 37(3) of the *Planning Act*, as amended, provides that where an owner of land elects to provide facilities, services and matters in return for an increase in height or density of the development, the municipality may require the landowner to enter into one or more agreements with the municipality dealing with the facilities, services and matters;
- f) The Owner has elected to provide certain facilities, services and matters in return for the authorized increases in height and density as set forth in the Zoning By-law Amendment as attached as Schedule "B" hereto;

- g) City Council has agreed to use the City's powers under Subsection 37(1) of the Planning Act;
- h) This Agreement has been entered into by the Owner and the City pursuant to Section 37(3) of the Planning Act, subject to compliance with the provisions of Section 37(2) of the Planning Act, in order to evidence, confirm and secure the Owner's obligations to provide those facilities, services and matters described;

IN CONSIDERATION of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the Parties to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Parties covenant and agree, to and with each other, as follows:

#### 1. DEFINITIONS

1.1 For the purposes of this Agreement, the term:

- 1.1.1 "Additional Arts and Culture Space" separate stratified parcels of fee simple freehold land on portions of the first, second and third floors of the Building having a total minimum gross floor area of 670 square metres, and as shown approximately on Schedule "C";
- 1.1.2 "Agreement" means this agreement and all amendments hereto or replacements thereof;
- 1.1.3 "Building" means a building for which a Building Permit is required, but does not include the building existing on the Site at the time the Owner submitted the Planning Applications or a temporary sales office;
- 1.1.4 "Building Code Act, 1992" means the *Building Code Act, 1992*, S.O. 1992, c.23, as amended;
- 1.1.5 "Chief Planner" means the Chief Planner and Executive Director, City Planning with the City of Toronto;
- 1.1.6 "Cultural Space" separate stratified parcels of fee simple freehold land on portions of the first, second and third floors of the Building having a total minimum gross floor area of 2800 square metres, and as shown approximately on Schedule "C";
- 1.1.7 "Development" has the meaning ascribed to that term in the Recitals to this Agreement;
- 1.1.8 "Development Charges Act" means the Development Charges Act, 1997, S.O. 1997, c. 27, as amended;
- 1.1.9 "Development Charges" means those charges under the City's Development Charges By-law, being By-law No. 547-2004, as amended;

- 1.1.10 "Non-profit Arts and Cultural Organization" means a non-profit arts and cultural organization satisfactory to the Chief Planner and Executive Director, City Planning Division in consultation with the General Manager and Director, Economic Development and Culture Division.
- 1.1.11 "Parties" means the Owner and the City;
- 1.1.12 "Planning Act" has the meaning ascribed to that term in the Recitals to this Agreement;
- 1.1.13 "Planning Applications" has the meaning ascribed to that term in the Recitals to this Agreement;
- 1.1.14 "Purchase Agreement" means the agreement of purchase and sale contemplated by either Section 1(a) or (b) of this Agreement as the case may be;
- 1.1.15 "Section 118 Certificate" means a restriction imposed under Section 118 of the *Land Titles Act* R.S.O. 1990 c.L.5, as amended, superseded or replaced from time to time, restricting the transferring or charging of the Cultural Space without the written consent of the Chief Planner
- 1.1.16 "Site" has the meaning ascribed to that term in the Recitals to this Agreement;
- 1.1.17 "Title Opinion" means a Solicitor's title opinion in the City's standard form;
- 1.1.18 "TMAC" means Toronto Media Arts Cluster;
- 1.1.19 "Zoning By-law" means the former City of Toronto By-law No. 438-86, as amended;
- 1.1.20 "Zoning By-law Amendment" means the Zoning By-law Amendment substantially in the form and having the content attached hereto as Schedule "B".

1.2 The following schedules are attached to and form part of this Agreement:

1.2.1 Schedule "A" - Legal Description of the Site

1.2.2 Schedule "B" - Zoning By-law Amendment

2. CONFIRMATION OF RECITALS

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

3. COMMUNITY BENEFITS

3.1 MONETARY CONTRIBUTION

Prior to the issuance of the Notice of Approval Conditions for Site Approval, the owner agrees to provide the following:

1. The owner shall make a cash payment to the City in the amount of \$ 1,000,000, indexed from May 2011, prior to the issuance of any above-grade building permits for the Development, the amount to be used for one or more of the following benefits:
  - a) Affordable live/work studios and/or affordable artist work studios for artists owned and operated by the City or by a not-for-profit arts management organization approved by the Chief Planner in consultation with the Executive Director, Toronto Culture;
  - b) the design or construction of Lisgar Park;
  - c) the renovation and restoration of the Carnegie Library building at 1115 Queen Street West for use as a performing arts hub and community meeting space; and
  - d) public art in the immediate vicinity of this site.

### 3.2 NON-PROFIT ARTS AND CULTURAL SPACE

1. (a) On or before December 31, 2012, the Owner shall enter into a Purchase Agreement with TMAC, to convey to TMAC the Cultural Space and the Additional Arts and Culture Space.
  1. (b) If Owner and TMAC do not enter into the Purchase Agreement by the date set out above, or close the transaction contemplated therein, in accordance with the Purchase Agreement, then the Owner shall enter into a Purchase Agreement to convey to the City, or such Non-Profit Arts and Cultural Organization as selected by the City, the Cultural Space and the additional Arts and Culture Space at a nominal consideration of Two Dollars (\$2.00), and at no cost to the City, free and clear of all encumbrances including without limitation any security interest of the Owner.
  1. (c) The Purchase Agreement described in 1(a) or (b), as the case may be, shall have the terms set out in this 3.2 (all of which shall survive the closing of any transaction) and be otherwise consistent with the terms of this Agreement, and to the satisfaction of the City's Director of Real Estate Services, in consultation with the City Solicitor. The Purchase Agreement shall include a term whereby the parties shall agree, before or on the closing of the transaction, to complete the necessary arrangements, including but not limited to, reciprocal agreements and easements for shared facilities and services required between TMAC as owner of the Cultural Space, and the Owner, as owner of the remainder of the Development (the "Reciprocal and Easement Agreements"). The terms and financial implications of any and all Reciprocal and Easement Agreements shall be to the satisfaction of the City's Director of Real Estate Services.

2. If the Owner conveys the land to the City, the Owner acknowledges that it is responsible for registration costs including the payment of any applicable land transfer tax, if any (including land transfer tax relating to the conveyance of the Cultural Space)), and any applicable sales taxes on any chattels being acquired, if any.
3. The Owner acknowledges that the City will enter into an option agreement to purchase the Cultural Space and the Additional Arts and Culture Space, with TMAC, or in the event of a conveyance pursuant to Section 1(b) above, with a Non-profit Arts and Cultural Organization, other than TMAC, (the "Option"). The Owner agrees to postpone any security interest it maintains in the Cultural Space and the Additional Arts and Culture Space to the City's Option, and that the Option will be in priority to any such security interest.
4. The Cultural Space shall be to a finished commercial standard, ready for occupancy of the intended user, at the Owner's sole cost and expense, substantially in accordance with the Letter of Intent and its appendices between the Owner and TMAC, dated September 29, 2011, attached hereto as Schedule "D", all to the satisfaction of the Director of Real Estate Services.
5. The Option shall be registered on title to the Cultural Space on the closing of the transaction contemplated by the Purchase Agreement.
6. The Purchase Agreement shall contain a term requiring TMAC or the Owner, as the case may be, to enter into a Section 118 Restriction on title to the Cultural Space on the closing of the transaction contemplated by the Purchase Agreement in order to preserve the long term intended use of the space as a community arts and cultural space.
7. If TMAC chooses to vacate or abandon the space, or fails to enter into the Purchase Agreement or close the transaction with the Owner, then the City Planning Division, in consultation with the Ward Councillor will hold a Community Consultation meeting with respect to the selection of a new non-profit and/or community uses. Notice for the Community Consultation meeting will be given to residents within 120 metres of the subject site, ratepayers, and any identified interested party.
8. If a non-profit arts user can not be found, and the City determines that the space will be occupied by a City Division, Board or Agency, the City uses shall be limited to community services and facilities such as, but not limited to, day care, community or



recreation centres, including office space relating to those uses, but shall not be used for stand-alone City offices.

9. If the City is unable to find another suitable non-profit arts organization, or City Division, Board or Agency to occupy the space, the City shall have the right to sell the space at market value. The proceeds from the sale shall be applied to community services and facilities, and/or parkland/open space, or streetscape improvements in the immediate vicinity of the subject lands, or in the vicinity of Ward 18.

### 3.3 OTHER MATTERS

1. Conveyance of a minimum of 261.47 square metres of land for parkland purposes. The lands are located at the northern limit of the property line, and will be free and clear, above and below grade, of all physical obstruction and easements, encumbrances and encroachments, including surface and subsurface easement, unless the easement, encumbrance or encroachment is otherwise approved by the General Manager, Parks, Forestry and Recreation.
2. For the land that is proposed to be conveyed to the City, the owner will be responsible for an environmental assessment of the lands and any associated costs or remediation works required as a result of that assessment to the satisfaction of the General Manager, Parks, Forestry and Recreation, in consultation with the Executive Director of Technical Services.
3. Matters to be secured as a Legal convenience including, but not limited to :
  - (i) Street Tree Irrigation
  - (ii) Crash Mitigation Measures
  - (iii) Noise and Vibration
  - (iv) Wind Mitigation Measures
  - (v) Servicing Requirement
  - (vi) Soil remediation
  - (vii) Abell Street Construction Costs
  - (viii) Building Materials and Details
  - (ix) Parkland Dedication
  - (x) Additional Arts and Culture Space

4. As part of the Site Plan Approval process, the owner shall provide 1:50 scale drawings for the first 4 storeys of all elevations of the building with building materials labelled;
5. The owner shall incorporate in the construction of the building, and thereafter maintain, exterior building and landscape materials to the satisfaction of the Chief Planner and Executive Director, City Planning Division;
6. The owner shall develop and implement a Construction Mitigation Plan and Communication Strategy, approved by the Director of Community Planning, Toronto and East York District, prior to the issuance of the first building permit (including excavation permit);
7. The owner shall agree to provide and maintain an irrigation system for the proposed trees within the public road allowances, including an automatic timer designed to be water efficient by a Certified Landscape Irrigation Auditor (CLIA) and construct with backflow preventer to the satisfaction of the General Manager of Parks, Forestry and Recreation; and
8. The owner shall agree to provide any necessary improvements to the municipal infrastructure in connection with the site servicing review, if it is determined that upgrades are required to the infrastructure to support this development, according to the site servicing review accepted by the Executive Director of Technical Services.
9. Building materials and details shall be incorporated in the construction of the building, of exterior materials to the satisfaction of the Chief Planner and Executive Director, City Planning Division. The Owner shall include 1:50 scale drawings for the materials used to screen the mechanical equipment, the first to fourth storey portions of the elevations with building materials labelled. The drawings will have a sufficient level of detail to illustrate how the building will be perceived by the pedestrian.
10. The payments required herein, shall increase in accordance with the increase in the Non-Residential Construction Price Index for the Toronto CMA, reported quarterly by Statistics Canada in Construction Price Statistics Publication No. 62-007-XPB, or its successor, calculated from the date of execution of the Section 37 Agreement or, if the site specific by-laws for the project are appealed to the Ontario Municipal Board, from the date of the Board order approving the by-laws, to the date of submission of the funds by the owner to the City.
11. The payments herein shall be paid prior to the issuance of the first above-grade building permit to permit construction of a building or a portion of a building on the lot.
12. The Owner of the lands shall enter into an agreement with the City of Toronto pursuant to Section 37 of the Planning Act, to secure the facilities, services and matters required herein and register such agreement against title to the site as a first charge, all to the satisfaction of the City Solicitor.

**4. LEGAL AUTHORITY**

- 4.1 The City represents that it has the legal authority to adopt and pass a Zoning By-law Amendment substantially in the form attached as Schedules "B", and to enter into this Agreement with the Owner.
- 4.2 The Owner on behalf of itself and its successors and assigns, acknowledges and agrees that it shall be estopped from contesting, before any court of competent jurisdiction, the power or authority of the City to adopt or enact a Zoning By-law Amendment and to enter into this Agreement.

**5. ENUREMENT**

- 5.1 This Agreement shall enure to the benefit of, and be correspondingly binding upon, the Parties and their respective successors and assigns with respect to all or any portion of the Site.
- 5.2 Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Site for any municipal purpose, including the road widening lands and the road extensions, the City shall not be bound by this Agreement as an owner.

**6. REGISTRATION OF AGREEMENT**

- 6.1 The Owner hereby consents, at its sole expense, to the registration of the Agreement against title to the Site.

**7. TITLE/POSTPONEMENTS**

- 7.1 The Owner hereby agrees to procure and provide to the City any postponement agreements that the City Solicitor considers necessary to ensure that this Agreement shall have priority over any other interest, other than the fee simple interest, on the Site.
- 7.2 The Owner shall provide the City with a Title Opinion for the Site to the satisfaction of the City Solicitor, prior to registration of this agreement. The Owner acknowledges that any contributions or payments made to the City pursuant to this Agreement are separate and distinct from any other payments the Owner may be liable for pursuant to the *Planning Act* or any other applicable legislation, including, but not limited to, parks levy payments pursuant to Section 42 of the *Planning Act* and Development Charges pursuant to the *Development Charges Act*. The Owner further acknowledges that the Owner may be required to make such other payments or pay such other charges as may be applicable in addition to the contributions made pursuant to this Agreement.

**8. FURTHER ASSURANCES**

- 8.1 The Parties covenant and agree that at all times and from time to time hereafter upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done,

executed and delivered, all such further acts so as to effectively implement and carry out the true intent and meaning of this Agreement.

**9. NOTICES**

- 9.1 Any notices required or desired to be given to any of the Parties in connection with this Agreement, or arising therefrom, shall be in writing and shall be personally delivered or sent by facsimile transmission or other means of instantaneous transmission in regular commercial usage at such time, verified by a transmission report as follows:

i) To the Owner at:

120 Lynn Williams St.

Suite 2A

Toronto, ON

M6K 3N6

Attention: Alan Saskin

Fax: 416-928-9501

And to the Owner's solicitors at:

Andrew Paton, Q.C.

1100-120 Eglinton Ave., East

Toronto, ON

M4P 1E2

Fax: 1-866-496-7589

ii) To the City at:

City Clerk

Toronto City Hall

13<sup>th</sup> Floor, 100 Queen St. W.

Toronto ON M5V 2N2

Fax: 416.397.4900

9.2 Any notice shall be deemed to have been given and received on the date that same is given and received, or if not a business date, on the next business day.

9.3 Any Party may, from time to time, by written notice sent to the other Parties, in accordance with the foregoing provisions, change the address or facsimile number to which its notices are to be delivered or transmitted (as the case may be).

#### 10. SEVERABILITY

10.1 If any covenant or provision of this Agreement, including all or any part of this Section, is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions hereof shall continue in full force and effect.

10.2 Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable in order to effectively implement and carry out the true intent and meaning of this Agreement.

#### 11. JURISDICTION OF ONTARIO MUNICIPAL BOARD

11.1 Nothing herein shall be construed as purporting to limit the authority of the Ontario Municipal Board to make amendments to the Zoning By-law governing the Site or to limit the Owner's ability to appeal such Zoning By-law passed by Council of the City with respect to the Development contemplated, to the Ontario Municipal Board, or to make future applications pursuant to the *Planning Act* in respect of the Site.

#### 12. JURISDICTION TO ENTER INTO AGREEMENT

12.1 This Agreement is entered into pursuant to subsection 37(3) of the *Planning Act*. If this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the power and jurisdiction of the City, and appeals from such decision have been exhausted, the Owner and the City agree that the Amending By-law may be repealed by the City, and the Owner covenants and agrees not to oppose or question or cause to be opposed or questioned, the repeal thereof.

12.2 Notwithstanding Section 11.1, if any individual provision(s) of this Agreement is or are determined by a Court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision(s) shall be severed from this Agreement if both the Owner and the City agree, and the remainder of the Agreement shall continue in full force and effect, *mutatis mutandis*; and in such case, the Owner and the City agree to negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. If the Owner and the City cannot agree that such provision or provisions shall be severed, the City may repeal the Amending By-laws and the provisions of Section 11.1 shall apply to such repeal.

12.3 It is agreed and acknowledged by the Parties hereto that each is satisfied as to the jurisdiction of the City to pass the Amending By-law and each Party hereto is satisfied as to the jurisdiction of

the other to enter into this Agreement. The Owner therefore covenants and agrees that it shall not question the jurisdiction of the City to enter into this Agreement, nor question the legality of any portion thereof, and likewise the City agrees it shall not question the jurisdiction of the Owner to enter into this Agreement nor question the legality of any portion hereof. The Parties hereto, their successors, assigns, lessees and sub-lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

**13. INTERPRETATION**

- 13.1 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.
- 13.2 This Agreement shall be construed with all changes in number and gender as may be required by the context.

**14. FORCE MAJEURE**

- 14.1 Notwithstanding anything in this Agreement to the contrary, if the Owner or the City are *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, material shortage, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, then the performance of such obligation is excused for so long as such cause exists, and the party so delayed shall be and is entitled, without being in breach of this Agreement, to carry out such obligations within the appropriate time period after the cessation of such cause.

**15. SALES**

- 15.1 Notwithstanding anything in this Agreement to the contrary, if the Owner is *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of deteriorating economic conditions that may detrimentally affect the marketing of units in the Development to the level of feasibility for obtaining the necessary financial support for the construction of the Development, then the performance of such obligation is excused for so long as such economic conditions exist, and the Owner shall be and is entitled, without being in breach of this Agreement, to carry out such obligations within the appropriate time period after cessation of such economic conditions.

**16. GOVERNING LAW**

- 16.1 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties submit to the jurisdiction of the courts of the Province of Ontario.
- 16.2 Any reference in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time, or as a reference to any successor thereto.



**17. APPLICABLE LAW**

- 17.1 The Parties agree that for the purposes of Section 8(2) of the *Building Code Act* this Agreement shall be considered to be "other applicable law". The Parties also agree that wherever the provisions of this Agreement permit the City to refuse to process a Building Permit such provisions shall apply equally to the City's chief building official.

**18. SPECIFIC PERFORMANCE**

- 18.1 The Owner agrees that the facilities, works and matters required by this Agreement shall be provided and maintained by the Owner at its sole risk and expense and to the satisfaction of the City, unless and until any such facilities, works and matters are assumed by TMAC, or the City. In addition, the Owner agrees that upon failure by it to do any act that is required by this Agreement, the City may, in addition to any other remedy under this Agreement, enter upon the Site if necessary and do the said act at the Owner's expense and collect the cost in like manner as municipal taxes as provided for in Section 386 of the *City of Toronto Act, 2006*.
- 18.2 The Owner acknowledges that any breach of this Agreement by the Owner would not be adequately compensated by payment of damages and, accordingly, the Owner admits that specific performance is an appropriate form or remedy in the event of default by the Owner.

**19. TAXES**

- 19.1 The Owner covenants and agrees to pay, and fully indemnify the City in respect of any taxes, including the *Excise Tax Act* (goods and services tax) associated with the benefit to the City of any facility, service, matter or thing referenced in this Agreement and provided to the City for the benefit of the City by the Owner, including any service, matter or thing required under Section 114 of the *City of Toronto Act, 2006* provided:
- (i) such indemnity shall be net of any rebate available to the City; and
  - (ii) the Owner may defend against the imposition of such taxes in the name of the City provided that the Owner may, in such event, elect to pay and satisfy any such claim for taxes in such event the City shall inform the Owner fully of such claim for taxes and shall offer the Owner every co-operation in the defence of said claim for taxes.
- 19.2 For clarity, the Parties acknowledge and agree that as at the date of execution of this Agreement the Parties have not determined whether goods and services tax will be exigible upon the said facilities, services, matters and things and agree that in the event the goods and services tax is exigible the Owner will be responsible for the payment thereof and will fully indemnify and save harmless the City with respect thereto.
- 19.3 Upon the request of the Owner, the City agrees that it shall provide the relevant, if any, GST registration number for a particular department or agency of the City.

20. TIME OF THE ESSENCE

20.1 Time is of the essence of this Agreement and every part of this Agreement, and no extension or variation of this Agreement shall operate as a waiver of this provision.

21. EFFECTIVE DATE

21.1 This Agreement shall be effective from and after the signing of the Amending By-laws by the Mayor and the City Clerk for the City, or by their duly authorized delegates.

IN WITNESS WHEREOF the Parties have affixed their corporate seals under the hands of their officers duly authorized in that regard.

EXECUTED at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

EDGE ON TRIANGLE PARK INC.

Per: \_\_\_\_\_

Name: Alan Saskin

Title: President

Per: \_\_\_\_\_

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

Title: \_\_\_\_\_

Authorized by Toronto and East York Community Council,  
Item No. M124-35  
as adopted by City of Toronto  
Council on June 6, 2012

I/We have authority to bind the corporation.

CITY OF TORONTO

Per: \_\_\_\_\_

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

Title: Marilyn M. Toft  
for Ulli S. Watkiss  
City Clerk

Marilyn M. Toft  
for Ulli S. Watkiss  
City Clerk

Per: \_\_\_\_\_

Name: G. CARBONE  
Title: TREASURER

I/We have authority to bind the corporation.

APPROVED AS TO FORM

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF SITE**

**Firstly**

**PIN 21298-0424 (LT)**

**Part of Lots 5 & 7; All of Lot 6 on Plan 960 City Plan West, and Part of Block 5 on Plan  
Ordinance Reserve, Toronto, and designated as Parts 7 & 8 on Plan 66R23686,  
City of Toronto;**

**Secondly**

**PIN 21298-0004 (LT)**

**PCL Street – 1 SEC A-Ordinance Reserve, part of Abell Street Plan A Ordinance Reserve  
Toronto, as closed by By-Law D33202, and designated as Parts 13 & 14 on Plan  
66R17443; Toronto, City of Toronto;**

**Thirdly**

**PIN 21298-0197 (LT)**

**All of Lot 8, and part of Lots 7 & 9 on Plan 960 City West; part of Block 5 on Plan  
Ordinance Reserve Toronto, AS IN CT682964; Toronto, City of Toronto;**

**Fourthly**

**PIN 21298-0198 (LT)**

**All of Lots 10-12, and part of Lot 9 on Plan 960 City West; and part of Block 5 on Plan  
Ordinance Reserve Toronto AS IN WF61410; Toronto, City of Toronto;**

Authority: MM 24.35 as adopted by City of Toronto Council on June 6 and 7, 2012 and Toronto and East York Community Council Item 15.3, adopted as amended, by City of Toronto Council on May 8 and 9, 2012  
Enacted by Council:

**CITY OF TORONTO**

**Bill No. 834**

**BY-LAW No. --2012**

**To amend Site Specific Zoning By-law 1431-2011 (OMB) respecting lands known municipally in the year 2012 as 2 - 6 Lisgar Street.**

**WHEREAS** the Ontario Municipal Board, by way of an Order issued on May 6, 2011, Case No. P1081527, determined to amend the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to lands known municipally, in the year 2012, as 2 - 6 Lisgar Street, and

**WHEREAS** pursuant to Section 37 of the *Planning Act*, a By-law passed under Section 34 of the *Planning Act* may authorize increases in the height or density of development beyond that otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law, and

**WHEREAS** subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, a municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters, and

**WHEREAS** the owner of the lands known at the date of enactment of this By-law as 2 - 6 Lisgar Street (the "Lands") has elected to provide the facilities, services or matters as are set out in this By-law, and

**WHEREAS** the increase in height and density of development permitted under this By-law beyond that otherwise permitted on the Lands by Zoning By-law 1431-2011 (OMB), is to be permitted in return for the provision of the facilities, services and matters set out in this By-law and to be secured by one or more agreements between the owner of the Lands and the City of Toronto, and

**THEREFORE** Site Specific Zoning By-law No. 1431-2011 (OMB) is replaced in its entirety with the following:

- 1. By-law 1431-2011 (OMB) is replaced by the following:**
  - (1) Replacing Map 1 from By-law 1431-2011 (OMB) with Map 1 contained within this exception.**
  - (2) Replacing Map 2 from By-law 1431-2011 (OMB) with Map 2 contained within this exception.**
- (3) Replacing Section 1(2) from By-law 1431-2011 (OMB) and adding the following Section and the following exception to Section 12(2) of By-law 438-86, as amended:**

**Section 12(2) 353:**

On the lands outlined by heavy lines and identified as 2 - 6 Lisgar Street on Map I to this By-law, no person shall use any land or erect or use any building or structure that does not comply with the following:

**1. EXCEPTIONS FROM ZONING BY-LAW 438-86**

1. The following sections of Zoning By-law 438-86 do not apply to any building or structure to be erected or used within the lands indicated on Map I to this By-law:

- Section 4 (2)
- Section 4 (16)
- Section 7 (2)
- Section 7 (3) Part I
- Section 7 (3) Part II 1
- Section 7 (3) Part II 3 through 7
- Section 7 (3) Part IV

2. The following definitions in Section 2 of Zoning By-law 438-86 shall be replaced by the definitions in Section 12 of this exception:

- (i) *artist live/work studio*;
- (ii) *grade*;
- (iii) *height*; and
- (iv) *obstruction*.

**2. PERMITTED USES**

Notwithstanding the uses permitted in the RA zone by Section 7(1)(f) of Zoning By-law 438-86, as amended, only the uses listed in subsection (d) below and accessory uses thereto are permitted within the lands zoned RA and located within the heavy lines on Map I to this exception, subject to the following qualifications:

- (a) A use is permitted by the chart below when the letter "P" is set in the line opposite the use.
- (b) A use is permitted by the chart below when the letter "Q" followed by a number or numbers is set in the line opposite the use but only subject to the qualification or qualifications bearing the number or numbers that follow the letter "Q" forming part of this subsection.
- (c) Uses accessory to a use that is permitted by the chart are themselves permitted by the chart as accessory uses when an asterisk is set in the line opposite the designation of the use and in the column under the heading "Acc.".
- (d) The following is the chart:

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(a) RESIDENTIAL USES		Acc.	RA
(i)	HOUSING COMPRISING DWELLING UNITS		
	Any of the uses permitted in a RA district in section 7(1)(a)(i)	*	Q1
	Artist live/work studio	*	Q1
(ii)	ASSOCIATED / ACCESSORY RESIDENTIAL USES		
	Any of the uses permitted in a RA district in section 7(1)(d)(ii)	*	P
(iii)	RETAIL AND SERVICE SHOPS		
	Any of the uses permitted in a RA district in section 7(1)(b)(iv) except A. an entertainment facility is not permitted; and B. a courier service is not permitted		Q1, Q2, Q3
(iv)	WORKSHOPS AND STUDIOS		
	Artist's or photographer's studio	*	Q4
	custom workshop	*	Q4
	designer's studio	*	Q4
	performing arts studio	*	Q4
	software, design and development establishment	*	Q4
(v)	OFFICES		
	Any of the uses permitted in a RA district in section 7(1)(b)(vi)	*	Q4
	Charitable institution, non-profit institution, cultural and arts facility, community services and facilities, or other community or social agency	*	Q6
(vi)	AUTOMOBILE RELATED USES		
	Parking area	*	P
	Parking garage	*	P
	Parking stacker	*	Q3
	Commercial Parking Garage	*	Q5
	Private garage	*	P
	Taxicab stand or station	*	P
	Car-share parking space	*	P

Qualifications to be complied with before certain uses are permitted within the Reinvestment Area (RA) District:

1. No person shall erect or use a building or structure having more than one basement or floor level below or partly below grade containing dwelling units.
2. A bake-shop, caterer's shop, restaurant, take-out restaurant, concert hall, place of amusement or places of assembly are permitted uses and a patio may be provided in connection therewith except:
  - (i) no person shall use for the purposes of a patio:



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- (a) any portion of the building above the first storey;
    - (b) any part of the roof of a building containing one of those uses; or
    - (c) outdoor areas which are more than 3 metres from a building façade;
  - (ii) no person shall use any building or portion of a building for the purpose of a *bake-shop, caterer's shop, restaurant, take-out restaurant* or combination thereof where the *non-residential gross floor area* of the building or portion thereof of any single establishment used for one of these purposes exceeds 300 square metres.
3. A *parking stacker* is permitted, provided:
- (i) it is *accessory*; and
  - (ii) it is located within a building.
4. No uses or combination of uses permitted by Section 2(d)(a) (iii) and (iv) of this by-law, with the exception of *affordable artist's or photographer's studio, affordable performing arts studio, affordable designer's studios*, shall exceed a total *non-residential gross floor area* of 300 square metres.
5. The *commercial parking garage* shall be operated by the Toronto Parking Authority.
6. The premises of a *charitable institution, non-profit institution, cultural and arts facility, community services and facilities*, or other community or social agency are permitted uses provided that they have been deemed as acceptable by the City of Toronto.
3. **RESIDENTIAL USES**
- The residential gross floor area shall not exceed 38,000 square metres.
1. A maximum of 665 residential *dwelling units* shall be permitted on the lot.
4. **NON-RESIDENTIAL USES**
1. A minimum *non-residential gross floor area* of 0.7 times the area of the lot, net of all conveyances, shall be provided in accordance with the following:

- i. For the purpose of calculating the minimum *non-residential gross floor area*, non-residential uses are as set out in Section 2 (d)(a)(iii), (iv) and (v) of this by-law, and the above-grade portions of a *commercial parking garage*; and
  - ii. *Residential gross floor area* of a *live-work unit* shall be permitted to be counted as *non-residential gross floor area* solely for the purpose of meeting the minimum *non-residential gross floor area* requirement of this section.
2. Of the minimum *non-residential gross floor area* listed in 4(1) above, a minimum of 2,800 square meters of that *non-residential gross floor area* shall be provided for use by a *charitable institution, non-profit institution, cultural and arts facility, community services and facilities*, or other community or social agency acceptable to the City of Toronto.

5. **USES AT GRADE**

1. No person shall erect or use a building or structure fronting onto Abell Street and Lisgar Street for any purpose unless:
  - (i) at least 60 percent of the aggregate width of any building facade facing onto Abell Street and Lisgar Street is used for the purpose of an *a live-work unit, artist live/work studio, artist's or photographer's studio, custom workshop, performing arts studio or public art gallery* at the main floor level of the building; and
  - (ii) there shall be at least one entry door every 15 metres at grade along the portion of the building described in 5(1)(i) above; and
  - (iii) 80% of the main floor is located no more than 0.2 metre below and no more than 1.2 metres above the level of the sidewalk or publicly accessible area directly opposite the entry to the unit;
  - (iv) all exterior entrance doors, other than service entrance doors, which provide access to a non-residential use within the building, shall be directly accessible from the public sidewalk opposite the door by a level surface or a ramp not exceeding a gradient of 1 in 25 (4%).

6. **BUILDING ENVELOPES AND MAXIMUM HEIGHTS**

1. Notwithstanding the "Height and Minimum Lot Frontage" Map 49G-321 contained in Appendix 'B' of Zoning By-law 438-86, as amended, no person shall erect or use a building or structure on the lands shown on Map 1 attached to this By-law, unless any portion of such building or structure located at or above ground is erected within the heavy lines and/or dashed lines shown on Map 2, attached to and forming part of this By-law, and provided the following paragraphs are complied with:

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- (i) No person shall erect or use a building or structure having a greater height than the height limit specified by the numbers following the symbol "H" as shown on Map 2, attached to this By-law.
  - (ii) For clarity, where either no height limit or a height limit "H 0" is specified, no buildings or structures are permitted.
    - 1. Despite paragraph (i) above, no building elements shall exceed the height limits on Map 2 except:
      - a. a stair tower and/or elevator overrun and/or machine room enclosure, provided:
        - (i) the maximum height of the top of such elements is no higher than the sum of 4.0 metres and the applicable height limit;
        - (ii) No person shall erect or use a building or structure any part of which is located closer than 1.1 metres to a wall of a building on the same lot, excluding exterior walls which form an angle of 90 degrees or greater to each other on a horizontal plane, excluding recesses up to 1.5 m deep for doors.
2. Notwithstanding paragraph 6 (1) above, no person shall erect a building or structure above finished ground level closer to a lot line than the heavy lines indicated on Map 1 except:
- (i) landscape features, and wheelchair ramps; and
  - (ii) the permitted projections outlined in the chart below:

PROJECTING STRUCTURES	LOCATION OF PROJECTION	MAXIMUM PERMITTED PROJECTION	ADDITIONAL QUALIFICATIONS
A. eaves, cornices, ornamental elements, architectural details,	Beyond the heavy lines shown on Map 2 at that height	0.45 metres from the wall to which it is attached	
B. uncovered platform that is landscaped open space and is less than 1.2m above finished ground level	Beyond the heavy lines on the Map 2 at that height	2.5 metres from the wall to which it is attached	
C. porch (covered platform) that is	Beyond the heavy lines on	2.5 metres from the wall	

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<i>landscaped open space and is less than 1.2 m above finished ground level</i>	the Map 2 at that height	to which it is attached	
D. canopy	Beyond the heavy lines on Map 2 at that height	2.5 metres from the wall to which it is attached	
E. fences, safety railings, balustrades and wind mitigation structures	Beyond the heavy lines shown on Map 2 at that height	2.5 metres from the wall or the extent of the roof of the storey immediately below, whichever is greater	(1) height of fence or safety railing not to exceed 1.2 metres.
F. balconies	Beyond the heavy lines on Map 2 at that height	not more than 0.75 m from the wall to which it is attached	(1) combined width of all projecting balconies on a façade at a given storey not to exceed 50% of the length of that façade at that storey

7. PARKING

1. Notwithstanding the provisions of Section 4(4)(b) of Zoning By-law 438-86, as amended:

- (i) a minimum number of *parking spaces* for residents shall be provided and maintained on the *lot* for residential uses according to the following table:

Unit type	Minimum <i>parking spaces</i>
Bachelor Unit	0.3 per unit
1 <i>bedroom</i> Unit	0.7 per unit
2 <i>bedroom</i> Unit	1.0 per unit
3 or more <i>bedroom</i> Unit	1.2 per unit
<i>live/work unit</i>	1.0 per unit
<i>artist live/work studio</i>	0.1 per unit

- (ii) notwithstanding (i) above, only 0.1 *parking spaces* per unit shall be required for the first twenty (20) *artists live/work studio*.
- (iii) a minimum of 0.12 *parking spaces* per dwelling unit, excluding

*affordable artists live-work studio and the first 20 live-work units shall be provided for visitors. The visitor parking spaces may be provided within the commercial parking garage operated by the Toronto Parking Authority.*

- (iv) pursuant to (i) above, up to 10% of the parking spaces required by subsection (i) may be small-car parking spaces;
  - (v) of the 10% of small-car parking spaces identified in (iv) above, a maximum of 42 spaces shall be permitted to have a length of 5.5 metres, and a maximum of 3 spaces shall be permitted to have a width of 2.6 metres when obstructed on one side by a wall, column or bollard; and
  - (vi) for each car-share parking space provided on the lot, the minimum resident parking required by (i) above shall be reduced by 5 parking spaces. The maximum reduction permitted by this means shall be limited to no more than 4 resident parking spaces. If after a period of not less than 3 years following the date of registration of the last condominium or the date of occupancy of the last rental unit, the car-share operation fails to be sustainable, to the satisfaction of the Chief Planner, such spaces shall be provided and maintained as parking spaces forming part of the commercial parking garage operated by the Toronto Parking Authority.
2. No parking spaces shall be required for non-residential uses, *charitable institution, non-profit institution, cultural and arts facility, community services and facilities*, or other community or social agency unless the *non-residential gross floor area* cumulatively exceeds 3,600 square metres, in which case parking for non-residential uses shall be required at a rate of 1 parking space per 100 square metres of *non-residential gross floor area* and shall be located on the lot.
3. Notwithstanding paragraph 7 (1) (i) through (v) above the following shall be permitted:
- a. A maximum of 101 parking spaces may be provided off-site on the lands municipally known as 48 Abell Street in the year 2012.
  - b. Of the 101 parking spaces provided off-site at 48 Abell Street, the spaces shall be located within Level P1 of the underground parking structure; and
  - c. The off-site parking spaces located at 48 Abell Street must be explicitly identified as being for the sole and exclusive use of residents at 2-6 Lisgar Street.

4. Only the *commercial parking garage* operated by the Toronto Parking Authority shall be subject to the definition of *parking space within a commercial parking garage* and *small-car parking space within a commercial parking garage* in Section 13 of this By-law. All other *parking spaces* provided on the lot shall comply with Section 4(17) of By-law 438-86.
5. The minimum requirement for *bicycle parking spaces* be as follows:
  - (i) A minimum of 396 *bicycle parking spaces* shall be provided and maintained for the exclusive use of residents of the building;
  - (ii) The residential *bicycle parking spaces* shall be located within the parking levels below grade in the building located on the lot;
  - (iii) A minimum of 99 *bicycle parking spaces* shall be provided and maintained for the exclusive use of visitors;
  - (iv) The *bicycle parking spaces* provided and maintained for the exclusive use of visitors shall be located on the lot; and
  - (v) In the instance that visitor *bicycle parking spaces* are located within the building, they shall be accessed via the building vestibule or lobby and shall only be permitted on the ground floor of the building.

8. AMENITY SPACE

1. A minimum of 1,000 square metres of indoor *residential amenity space* shall be provided and maintained, on the fourth and fifth floors of the *mixed-use building* located on the lot.
2. A minimum of 1,400 square metres of outdoor *residential amenity space* shall be provided and maintained, within the *mixed-use building* located on the lot, and subject to the following:
  - a. A minimum of 900 square meters of outdoor *residential amenity space*, located on the fourth, fifth, and/or sixth floor of the *mixed-use building* located on the lot shall be contiguous with the indoor *residential amenity space* referenced in 8 (1) above; and
  - b. A minimum of 400 square metres of outdoor *residential amenity space* shall be provided and maintained on the eighth floor of the *mixed-use building* located on the lot.
3. Passive or inaccessible green roofs shall not be counted as outdoor *residential amenity space*.

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9. **LOADING**

1. The provisions of Section 4(6) of Zoning By-law 438-86, as amended, shall be satisfied by *one loading space – type G* being provided.

10. **SITE SPECIFIC EXCEPTIONS**

1. The following site specific exceptions shall be deleted from the Index of Exceptions for 2 – 6 Ligar Street:
  - i. Section 12 (1) 287;
  - ii. Section 12 (1) 290; and
  - iii. Section 12 (2) 270.
2. This exception will prevail over any provision of any other exception included in Section 12(2) of By-law 438-86, as amended.

11. **IMPLEMENTATION**

1. No person shall erect or use any building or structure above grade prior to satisfying the following conditions:
  - (i) The owner shall enter into an agreement with the City of Toronto pursuant to Section 37 of the *Planning Act*, to secure the facilities, services and matters required in Section 12 herein, the said agreement to include provisions relating to indemnity, insurance, GST, termination, unwinding, registration and priority of agreement, and the indexing of any financial contributions and registered against the title to the lot as a first charge;
  - (ii) The owner shall provide the parkland contribution as required and set out in Section 12 herein;
  - (iii) The owner shall convey for nominal consideration and at no cost to the City any lands that are required for the extension of Abell Street to the satisfaction of the Executive Director of Technical Services;
  - (iv) All water mains, sanitary and storm sewers and appropriate appurtenances required for the development of this site have been built or secured via a letter of credit to the satisfaction of the Executive Director of Technical Services;
  - (v) The owner shall register on title of the lot the Agreement(s)



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outlined in Section 12 of this by-law.

12. **SECTION 37 OF THE PLANNING ACT**

Pursuant to Section 37 of the Planning Act, the heights and density of the development contemplated by this By-law are permitted subject to compliance with all of the conditions set out in this By-law and in return for the provision by the owner of the lot, of the following facilities, services and matters to the City at the owner's sole expense and in accordance with and subject to the agreement referred to herein:

**Cash Contribution**

1. The owner shall pay \$1,000,000 to the City of Toronto prior to the issuance of any above grade building permits for the development of the lot, the amount to be used for one or more of the following:
  - a. affordable live/work studios and/or affordable artist work studios for artists owned and operated by the City or by a not-for-profit arts management organization approved by the Chief Planner in consultation with the Executive Director, Toronto Culture;
  - b. the design and/or construction of Lisgar Park;
  - c. the renovation and restoration of the Carnegie Library building at 1115 Queen Street West for use as a performing arts hub and community meeting space;
  - d. public art in the immediate vicinity of this site;

2. **Non-profit Arts and Culture Space**

- a. The owner shall convey, at no cost to the City, a minimum of 2,800 square meters of gross floor area to:
  - i. a non-profit arts and culture organization acceptable to the City of Toronto; or
  - ii. the City for use as a non-profit community use or City Division.
- b. If a suitable non-profit arts and culture, community, or City use cannot be identified, the space may be sold by the City and the proceeds of the sale shall be used for community services and facilities, and/or parkland/open space, or streetscape improvements in the immediate vicinity of the subject lands.

- c. The space to be conveyed shall be to a finished commercial standard ready for occupancy of the intended user, to the satisfaction of the Director, Real Estate Services.

3. Parkland Contribution

The owner shall convey a minimum of 260m<sup>2</sup> of land for parkland dedication purposes. The lands are located at the northern limit of the property line, and will be free and clear, above and below grade, of all physical obstructions and easements, encumbrances and encroachments, including surface and subsurface easement, unless the easement, encumbrance or encroachment is otherwise approved by the General Manager, Parks, Forestry and Recreation

For the land that is proposed to be conveyed to the City, the owner will be responsible for an environmental assessment of the lands and any associated costs or remediation works required as a result of that assessment to the satisfaction of the General Manager, Parks, Forestry and Recreation, in consultation with the Executive Director of Technical Services.

To fully meet the parkland dedication requirements, a cash-in-lieu contribution for parkland dedication will be required for the shortfall in dedication.

4. The following matters are also to be secured in the Section 37 agreement as a matter of Legal convenience:

(i) Street Tree Irrigation

the owner shall, at its own expense, install and maintain in good working order and operation, an irrigation system for all street trees in the public right-of-way that includes an automatic timer which is designed as being water efficient by a Certified Landscape Irrigation Auditor (CLIA) and is constructed with a back flow preventer to the satisfaction of the City, if required.

(ii) Crash Mitigation Measures

prior to the registration of the condominium, the owner shall construct, or cause another party to construct, crash mitigation measures, if required, related to the rail corridor, as set out in an agreement between the owner of the lot and the Greater Toronto Transit Authority (Metrolinx) and Canadian National Railway Company;

(iii) Noise and Vibration

prior to the registration of the condominium, the owner shall construct, or cause another party to construct, any works required by the agreement between the owner of the lot and the Greater Toronto Transit Authority and Canadian National Railway Company;

(iv) Wind Mitigation Measures

the owner shall construct, or cause another party to construct, any wind mitigation measures required pursuant to site plan approval, to the satisfaction of the Chief Planner;

(v) Servicing Requirements

the owner shall provide all matters required to service the lands outlined in heavy lines on Map 1 attached hereto, including but not limited to, the construction of services for water services, sanitary and storm sewer systems, roads, streetscaping and landscaping, street trees and tree irrigation systems and utilities;

(vi) Soil remediation

the owner shall remediate the lands for the Abell Street extension, if required, prior to conveyance and in accordance with City and Ministry of Environment Standards; and

(vii) Abell Street Construction Costs

the owner shall pay the construction costs of that portion of the Abell Street extension which is adjacent to the 2 - 6 Lisgar Street site.

(viii) Building Materials and Details

the incorporation, in the construction of the building, of exterior materials to the satisfaction of the Chief Planner and Executive Director, City Planning Division. The Owner shall include 1:50 scale drawings for the materials used to screen the mechanical equipment, the first to fourth storey portions of the elevations with building materials labelled. The drawings will have a sufficient level of detail to illustrate how the building will be perceived by the pedestrian.

(ix) Additional Arts and Culture Space

The owner shall convey to the City, an additional 670 square metres of non-profit arts and cultural space, should the non-profit arts and culture organization not occupy the space or choose to vacate the space.

5. The payments required in clause 12 (1) herein, shall increase in accordance with the increase in the Non-Residential Construction Price Index for the Toronto CMA, reported quarterly by Statistics Canada in Construction Price Statistics Publication No. 62-007-XPB, or its successor, calculated from the date of execution of the Section 37 Agreement or, if the site specific by-laws for the project are appealed to the Ontario Municipal Board, from the date of the Board order approving the by-laws, to the date of submission of the funds by the owner to the City.
6. The payments required in clause 12 (1) herein shall be paid prior to the issuance of the first above-grade building permit to permit construction of a building or a portion of a building on the lot.
7. The owner of the lands enters into an agreement with the City of Toronto pursuant to Section 37 of the Planning Act, to secure the facilities, services and matters required in Section 12 herein and registers such agreement against title to the lot as a first charge, all to the satisfaction of the City Solicitor.

13. **DEFINITIONS**

All italicized words and expressions in this exception have the same meanings as defined in By-law No. 438-86 with the exception of the following definitions which either replace the definitions or provide definitions for new terms:

- |                                |  |
|--------------------------------|--|
| <i>artist live/work studio</i> | shall mean a dwelling unit containing a studio space for the production of art and which is the subject of an agreement between the City and the housing provider, registered on title, that it will be rented at no more than 0.8 times the CMHC average market rent for dwelling units of similar size in the City of Toronto and inhabited only by a working artist and his or her household.   |
| <i>car-share</i>               | shall mean the practice where a number of people share the use of one or more cars that are owned by a profit or non-profit car-sharing organization and to use a car-share vehicle, a person must meet the membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable. Cars are reserved in advance and fees for use are normally based on time and/or kilometres driven and do include use of cars on an hourly basis. |

<i>car-share parking space</i>	shall mean a <i>parking space</i> exclusively reserved and signed for a car used only for <i>car-share</i> purposes and such <i>car-share</i> is for the use of carshare members, including non-residents.
<i>grade</i>	shall mean the average elevation of the sidewalk or planned elevation of the sidewalk on Sudbury Street adjacent to the lot.
<i>height</i>	shall mean the vertical distance between <i>grade</i> and the highest point of the roof or, where there is no roof, the highest point of the structure.
<i>parking space within a commercial parking garage</i>	<p>shall mean a clear area that:</p> <ol style="list-style-type: none"><li>has minimum dimensions of 5.2 m in length and 2.6m in width, except that the width of a <i>parking space</i> and shall be increased 0.3m when one or both sides of the parking space is obstructed.</li><li>is accessed by a drive aisle that has a minimum width of 7.0 m; and</li><li>is readily accessible at all times for the parking and removal of a motor vehicle without the necessity of moving another vehicle.</li></ol>
<i>small-car parking space within a commercial parking garage</i>	<p>shall mean a clear area that:</p> <ol style="list-style-type: none"><li>has a minimum dimension of 5.2 m in length by 2.6m in width, and where one or both sides of the parking space is obstructed by a column or bollard, no increase in stall width would be required;</li><li>is accessed by a drive aisle that has a minimum width of 7.0m; and</li><li>is readily accessible at all times for the parking and removal of a motor vehicle without the necessity of moving another vehicle.</li></ol>
<i>obstruction</i>	shall mean any part of a fixed object such as a wall, column, bollard, fence, or pipe situated within 0.3m of the side of the <i>parking space</i> , measured at right angles, and more than 1.0 metres from the front or rear of the <i>parking</i>

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*space.*

14. Within the lands shown on Map 1 attached to this By-law, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway, and
  - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
15. Despite any future severance, partition or division of the lands as shown on Map 1, the provisions of this exception shall apply as if no severance, partition or division has occurred.

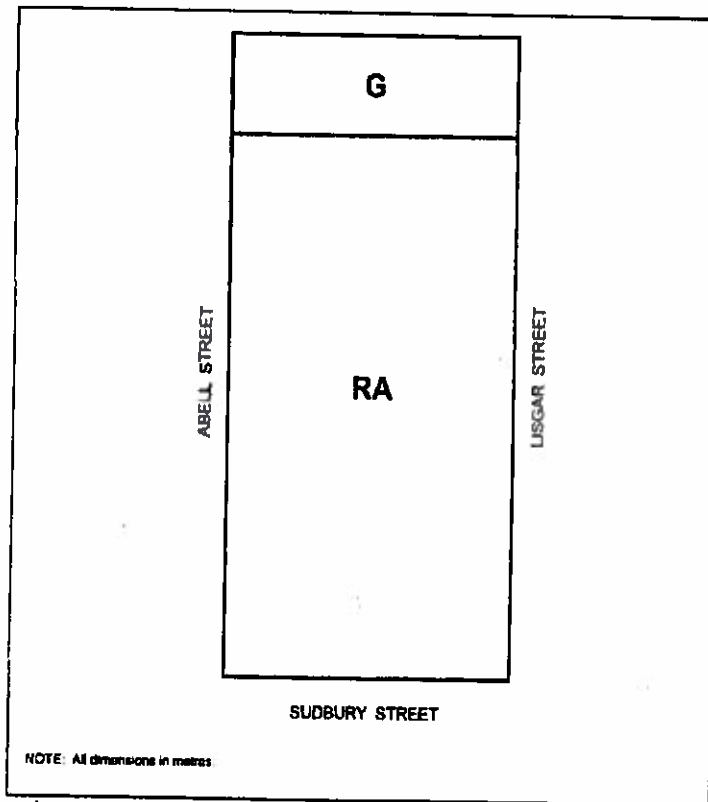
ENACTED AND PASSED this      th day of June, 2012.

FRANCES NUNZIATA,  
Speaker

ULLI S. WATKISS  
City Clerk

(Corporate Seal)

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**CITY OF TORONTO** City Planning  
Map 1

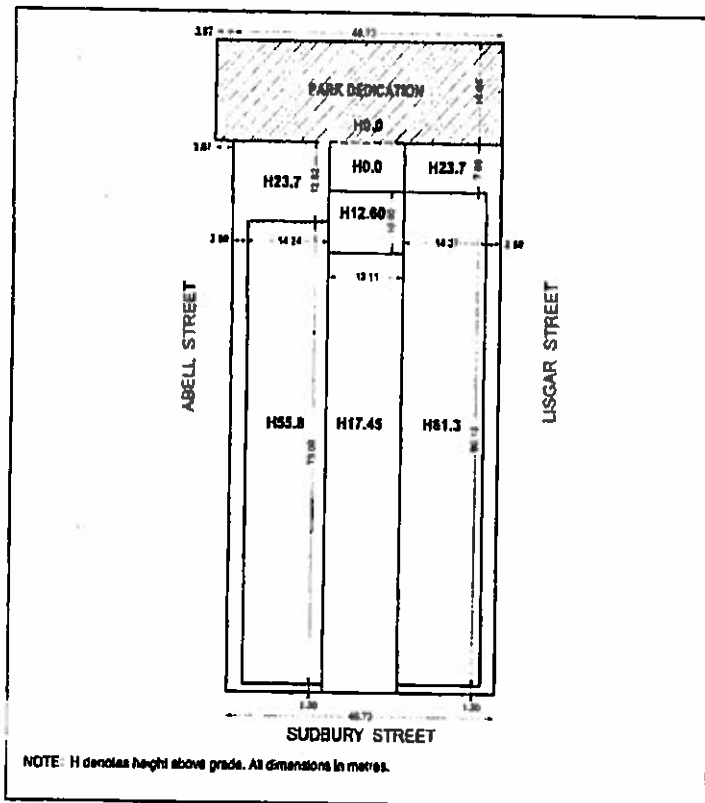
2-6 Lisgar Street

File # 11.315860.02

↑  
Not to Scale  
04/02/2012



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**Toronto** City Planning  
Map 2

2-6 Lisgar Street

File # 11315960 02

↑  
Not to Scale  
03/28/2012

**SCHEDULE B**  
**SKETCH OF THE ARTS AND CULTURAL SPACE**

**SCHEDULE C**  
**TMAC/EDGE PURCHASE AGREEMENT**

**SCHEDULE D  
OPTION TO PURCHASE**

**OPTION TO PURCHASE**

**THIS AGREEMENT** made this ● day of ●, 2014

**BETWEEN:**

**TORONTO MEDIA ARTS CLUSTER**

("TMAC")

OF THE FIRST PART

- and -

OF THE SECOND PART

**CITY OF TORONTO**

("City")

**WHEREAS** on June 7<sup>th</sup>, 2012 the City and Edge on Triangle Park Inc. (the "Edge") entered into a Section 37 Agreement pursuant to Section 37 of the *Planning Act* in which Council or the Ontario Municipal Board on appeal may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the density or height of development beyond that otherwise permitted by the applicable zoning, that will be permitted in return for the provision of such facilities, services and matters as are set out in such by-law (the "Section 37 Agreement") attached as Schedule A to the Land Use Agreement (as hereinafter defined);

**AND WHEREAS** pursuant to such by-law, the City required that the Edge provide certain facilities, services and matters in return for the authorized increases in height and density including, the provision of approximately 2,800 square metres of stratified finished commercial fee simple space in the Development as shown in the sketch attached as Schedule B to the Land Use Agreement (the "Cultural Space");

**AND WHEREAS** the Edge has agreed to transfer an additional 670 square meters of space in the Development as shown in the sketch attached as Schedule B to the Land Use Agreement to TMAC on such terms, including compensation, as agreed between those parties (the "TMAC Space") (the Cultural Space and the TMAC space shall be referred to hereafter as the "Arts and Cultural Space", the legal description of which is described in Schedule A attached hereto);

**AND WHEREAS**, pursuant to the Section 37 Agreement the City agreed that the Edge is to enter into a purchase agreement with TMAC for the conveyance of the Arts and Cultural Space to TMAC, or, in the event that TMAC and the Edge do not enter into a purchase agreement, before March 31, 2014 (or such other date as may be approved by the parties), then the Edge shall enter into a purchase agreement for the conveyance of the Arts and Cultural Space to the

City, or such other non-profit arts and cultural organization selected by the City at nominal consideration;

**AND WHEREAS** pursuant to section 3.2(1)(a) of the Section 37 Agreement, the City has agreed that the Edge shall enter into a purchase agreement with TMAC for the conveyance of the Arts and Cultural Space to TMAC;

**AND WHEREAS** the Cultural Space constitutes a Section 37 *Planning Act* public benefit received exchange for increase height and development in the Development and shall be so used by TMAC;

**AND WHEREAS** in order to secure the Cultural Space as a public benefit pursuant to the Section 37 Agreement, TMAC entered into a land use agreement with the City dated as of the date of this Agreement (the "**Land Use Agreement**") providing for the following: (i) restrictions on the use of the Cultural Space by TMAC; (ii) the registration of a Section 118 Certificate in favour of the City on title to the Cultural Space; and (iii) the grant of an option in favour of the City to purchase the site for nominal consideration exercisable by the City upon an Event of Default (defined in the Land Use Agreement) ("**Restrictions and Security**");

**AND WHEREAS** TMAC has agreed that the TMAC Space shall be subject to the same Restrictions and Security as the Cultural Space, and that this Agreement shall apply to the Cultural Space and the TMAC Space;

**AND WHEREAS** as noted above, pursuant to the Land Use Agreement and the Section 37 Agreement, TMAC is required to grant the City an option to purchase the Arts and Cultural Space, on the terms and conditions set forth herein;

**AND WHEREAS** capitalized terms used herein and not otherwise defined herein, have the meanings assigned to them in the Land Use Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of TWO (\$2.00) DOLLARS of lawful money of Canada (the "**Option Payment**") paid by the City to TMAC and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), the Parties hereto agree as follows:

1. TMAC hereby grants to the City the sole, exclusive and irrevocable option to purchase the Arts and Cultural Space (the "**Option**") for TWO (\$2.00) DOLLARS of lawful money of Canada, exclusive of HST (the "**Purchase Price**") on the following terms and conditions:
  - (a) The Option may, upon and subject to the conditions herein, be exercised by the City at any time during the following time period (the "**Option Period**"): commencing upon the date of the registration of the transfer of the Arts and Cultural Space to TMAC from Edge, and ending on the day that is nineteen (19) years and three hundred and sixty-four (364) days after the date of the registration of the said conveyance (the "**Expiration of the Option**").

- (b) The Option shall be exercisable by the City delivering a notice in writing (the "**Option Notice**") to TMAC at any time during the Option Period upon an Event of Default that is continuing under the Land Use Agreement;
2. In the event that the Option is not exercised by the City within the Option Period, this Agreement shall be automatically null and void and no longer binding upon either of the Parties hereto and TMAC shall be entitled to retain the Option Payment in full, as consideration for the granting of the Option.
  3. Upon due exercise of the Option as contemplated herein, there shall come into effect a binding agreement of purchase and sale between the City and TMAC with respect to the Arts and Cultural Space at the Purchase Price and on the other terms and conditions more particularly set forth herein.
  4. For the purposes of this Agreement, "Business Day" shall mean any day of the week upon which the Land Registry Office in which the Arts and Cultural Space is registered and the offices of the City of Toronto are both open to the public for business, excluding in any event, Saturdays, Sundays and holidays observed in the City of Toronto. The "Closing Time" for the purposes of this Agreement shall be 4:00 p.m. Toronto time. The transaction of purchase and sale shall be completed ("**Closing**") forty-five (45) days after receipt by TMAC of the Option Notice (the "**Closing Date**") on or before the Closing Time. TMAC and, if applicable, TMAC's solicitor shall provide the City's solicitor with fully executed original copies of final and irrevocable directions and re-directions regarding payment of the balance of the Purchase Price (as defined in Section 6 hereof), as TMAC may require (collectively, the "**Direction re: Funds**"), by no later than 4:00 p.m. on the 7th Business Day that precedes the Closing Date, failing which, at the option of the City, the Closing Date may be extended to the 5th Business Day after receipt by the City's solicitor of the Direction re: Funds. For purposes of this Section, receipt by the City's solicitor of a faxed copy of such executed Direction re: Funds, shall be deemed to be an original executed copy. TMAC shall deliver to the City an original executed copy of the Direction re: Funds on Closing. In the event that Closing falls on a day which is not a Business Day, Closing shall be deemed to be on the next Business Day thereafter.
  5. The Option Payment shall be credited to the City and allowed as part of the Purchase Price, and the balance of the Purchase Price shall be paid to TMAC or its solicitors, in trust, on Closing by certified cheque, bank draft or wire transfer in immediately available funds, subject to the usual adjustments, save as otherwise stipulated herein.
  6. The Purchase Price shall be subject to adjustment on account of taxes, local improvement rates and charges, water and assessment rates and utilities, to the extent applicable, and all other items normally adjusted as between a vendor and a purchaser on the purchase of commercial space similar to the Arts and Cultural Space. TMAC covenants and agrees to pay all realty taxes and utility charges relating to the Arts and Cultural Space to the Closing Date. TMAC further covenants and agrees to pay any and all current charges, rates, and fees owing to the Closing Date in respect of any and all maintenance and/or reciprocal agreements with the condominium corporation or owner of the development in which the Arts and Cultural Space is situate. The Closing Date shall be for the account of

the City. Each party agrees to readjust after Closing all items to be adjusted in accordance with the terms of this Agreement or that reasonably ought to be the subject of readjustment in order to fulfill, in good faith, the terms of this Agreement.

7. The City and TMAC agree that there are no chattels included in the Purchase Price and there are no fixtures forming part of the Arts and Cultural Space which are excluded from the Purchase Price.
8. From and after the date of this Agreement, in the event that the City exercises its Option hereunder, the City and its agents, employees, consultants, contractors and other persons as the City considers necessary, shall have the right to enter upon the Arts and Cultural Space at all reasonable times as often as the City may deem desirable, for purposes of carrying out appraisals, inspections, due diligence enquiries and other investigations relating to the Arts and Cultural Space and preparing surveys or other plans with respect thereto. All such activities shall be done at the sole cost and risk of the City and the City shall restore the Arts and Cultural Space as nearly as reasonably possible to the state in which it was before the commencement of any such activities.
9.
  - (1) For the purposes of this Agreement, "Governmental Body" means a municipal, provincial or federal government, including any agency, board, commission and department thereof, including without limitation, the City of Toronto, the Toronto Region Conservation Authority and the Ministry of Environment. The City shall have the right to give notice of this Agreement to any Governmental Body and to obtain any and all information within the records of such Governmental Body relating to the regulatory and compliance status of the Arts and Cultural Space and TMAC's use thereof (including without limitation, information regarding environmental matters, building standards, zoning, work orders, approvals, permits and compliance orders) and as to any other matter that might affect the City's enjoyment, use, possession and ownership of the Arts and Cultural Space after Closing.
  - (2) TMAC hereby consents to any Governmental Body releasing to the City details of all outstanding work orders, Arts and Cultural Space standards and status files and information on any studies, plans or proposals affecting the Arts and Cultural Space. TMAC agrees to promptly execute and deliver such further authorizations in this regard as the City's solicitor may reasonably require to ensure the release of such details provided that in no event shall a Government Body other than the City in its capacity as purchaser have a right of inspection of the Arts and Cultural Space.
  - (3) TMAC shall at the request of the City, acting reasonably, promptly release to the City, all written or computer generated correspondence, information, material, working papers, reports and other documentation in the possession or control of TMAC pertaining to the Arts and Cultural Space, TMAC's use of the Arts and Cultural Space and the proposed use of the Arts and Cultural Space,
10.
  - (1) For purposes hereof, "Excluded Goods" shall mean, without limitation all chattels, rubbish, waste materials, refuse and debris now on the Arts and Cultural



Space. TMAC covenants to remove (the "**Removal Obligation**") from the Arts and Cultural Space no later than the 2<sup>nd</sup> Business Day before the Closing Date, at TMAC's sole expense, all Excluded Goods and to leave the Arts and Cultural Space in a neat, tidy and wholesome condition, reasonable wear and tear excepted. For purposes of this Agreement, "Removal Costs" means cumulatively: (1) the cost estimated by the City of having the Removal Obligation performed by an independent contractor; plus (2) the estimated costs of storing and/or disposing of the Excluded Goods; plus (3) an administrative fee calculated as fifteen percent (15.0%) of (1) and (2). If on the Business Day before the Closing Date, the City shall determine that TMAC has not performed the Removal Obligation, then the City shall be entitled to complete this Agreement after holding back from the balance due on Closing (the "**Removal Holdback**"), an amount which shall be the greater of \$1,000.00 or the amount estimated by the City, acting reasonably, to be the Removal Costs.

- (2) Provided that nothing herein, including receipt by the City of the Removal Holdback relieves TMAC from, or obligates the City to, the performance of the Removal Obligation. If the City elects to remove the Excluded Goods from the Arts and Cultural Space, it may apply the Removal Holdback to any Removal Costs and any and all manner of claims, demands, damages (including indirect and consequential damages), losses, liabilities, costs, charges, fines, penalties, orders, expenses, fees (including legal fees) actions, other proceedings, or any of them ("**Claims**"), including without limitation, the costs of remediating the Arts and Cultural Space, resulting from the failure of TMAC to perform the Removal Obligation. Despite receipt of the Removal Holdback by the City, TMAC covenants that TMAC will, at all times and from time to time, indemnify and save harmless the City from and against all Removal Costs and related Claims.

11. (1) TMAC represents and warrants (the "**Warranties**");

- (a) that the Arts and Cultural Space has not been, as at Closing, insulated with asbestos or a Urea Formaldehyde foam type of insulation. Provided that if the Arts and Cultural Space is part of a multiple unit building, this representation and warranty shall only extend to that portion of the building which is the subject of this transaction;
- (b) that prior to Closing, no work, construction or alterations have been done on the Arts and Cultural Space, or material supplied thereto, in each case, on behalf of TMAC, or its permitted tenants, licencees or occupants, which could result in the registration of a lien against the interest of TMAC in the Arts and Cultural Space under the *Construction Lien Act* (Ontario), after Closing;
- (c) that there are no work orders, deficiency notices or orders to comply affecting the Arts and Cultural Space;
- (d) that all fixtures included in the Purchase Price (including, without limiting the generality of the foregoing, all heating, electrical, plumbing and

mechanical systems), whether owned or leased, are and shall be on Closing in good repair and working order;

- (e) that TMAC has made complete disclosure of all material facts and circumstances, relating to the presence of any Hazardous Substance. (For purposes hereof, the term "Hazardous Substance" means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, biological materials and organisms (Including, without limitation, viral agents, mould, fungus and bacteria), flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, radiation and any other substance, materials, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or a pollutant in or pursuant to any applicable federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives) or other environmental condition, which to the knowledge of TMAC exists now or in the past, did exist on the Arts and Cultural Space or on any adjoining or approximate lands, which in any manner may affect the Arts and Cultural Space or its proposed use;
- (f) that, except in compliance with applicable Environmental Laws (for the purpose hereof, "Environmental Laws" means all applicable federal, provincial, local, municipal, governmental or quasi-governmental laws, rules, regulations, policies, guidelines or requirements concerning Hazardous Substances), no part of the Arts and Cultural Space contains any Hazardous Substance nor has it ever been if as a Waste Site (and for purposes of this Agreement the term "Waste Site" means a site for the storage, transportation, burial, disposal or processing of any Hazardous Substance);
- (g) that there are not now, and will not on Closing be, any outstanding, pending or threatened orders, directives or other requirements (collectively the "Environmental Orders") of the Ministry of the Environment or of any other body having jurisdiction relating to the Arts and Cultural Space (collectively the "Environmental Authorities") which in any manner may affect the Arts and Cultural Space or its proposed use; and
- (h) that TMAC is not now, and will not on Closing be, negotiating or in any manner dealing with any Environmental Orders or Environmental Authorities.

All representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months, after the Closing Date (the "Survival Period").

- (2) On Closing, TMAC shall provide to the City, a statutory declaration that the Warranties and any other representation and warranties contained in this Agreement, are correct and true in all material respects, as of Closing; provided that in the case where TMAC is a corporation, such declaration shall be made by an authorized director or officer of TMAC, after reasonable investigation, and

provided further that if on or before Closing, TMAC or the City becomes aware that any of the Warranties or any other representation or warranty contained in this Agreement is not true and correct in any material respect, such Party shall notify the other Party of the same and TMAC shall use best efforts to cause such Warranty or other representation or warranty contained in this Agreement to be true and correct as at Closing and, in the event it is unable to do so, the City shall have the option of not completing the purchase of the Arts or Cultural Space and this Agreement shall be at end and the Parties shall have no further obligation to another, or the City may elect to complete the purchase of the Arts and Cultural Space and TMAC shall amend the statutory declaration to identify the exception to the Warranty or the other representation or warranty contained in this Agreement.

- (3) On Closing, TMAC shall deliver to the City, TMAC's written covenant to indemnify and save harmless the City from and against any and all manner of Claims incurred by, suffered by or brought against the City resulting, directly or indirectly from any breach of the Warranties, notice of which is delivered by TMAC prior to the expiry of the Survival Period. TMAC shall deliver on Closing, TMAC's Indemnity, as set out in Schedule C attached hereto.
12. On Closing, the Arts and Cultural Space shall be subject only to those mortgages, charges, liens, work orders, easements, restrictions, leases, licences or other encumbrances or title defects, so long as such mortgages, charges, liens, work orders, easements, restrictions, leases, licences, or other encumbrances or title defects are complied with in all material respects and which do not materially impact the use and enjoyment of the Arts and Cultural Space ("**Permitted Encumbrances**") set forth on Schedule B attached to this Agreement. TMAC shall on or before Closing, at its own expense, obtain and register a discharge of all mortgages, licenses, work orders, easements, restrictions, leases, licenses and other encumbrances of every nature and kind affecting the Arts and Cultural Space and shall remedy any title defects, in each case, save for the Permitted Encumbrances. If a discharge of any mortgage or charge held by a mortgagee who is a Canadian Chartered Bank, Canadian Trust Company or Insurance Company, is not available in registrable form on Closing, the City agrees to accept TMAC's solicitor's personal undertaking prepared in a form satisfactory to the City's solicitor, acting reasonably: (1) to forward to the mortgagee, out of the sales proceeds, the amount specified in the mortgage discharge statement issued by such mortgagee; (2) to obtain from such mortgagee a discharge of charge/mortgage in registrable form; (3) to register same on title within 40 Business Days after Closing; and (4) to forthwith following such registration, provide written particulars of such registration to the City's solicitor. Provided however and despite the foregoing, the City shall not be obligated to accept such undertaking unless the same is accompanied by an unqualified mortgage statement prepared by the mortgagee addressed to the City setting out the balance required to obtain the discharge, together with evidence, satisfactory to the City Solicitor, or certified funds sufficient to pay the mortgagee the amount required to obtain the discharge.
13. The City shall be allowed until Closing to examine title at its own expense, to satisfy itself that title is subject only to the Permitted Encumbrances and that there are no

outstanding municipal work orders or deficiency notices affecting the Arts and Cultural Space and to make any requisitions in connection therewith.

14. INTENTIONALLY DELETED
15. On Closing, TMAC shall deliver vacant possession, free and clear of all encumbrances except the Permitted Encumbrances, of the Arts and Cultural Space to the City
16. The Transfer shall be prepared in registrable form at the expense of TMAC. TMAC covenants that the Transfer to be delivered on Closing shall contain the statements contemplated by Subsection 50(22) of the *Planning Act* (Ontario), as may be amended from time to time.
17. All buildings on the Arts and Cultural Space and all other things being purchased and all risks, hazards and liabilities associated with the Arts and Cultural Space or the use thereof shall be and remain until Closing at the risk of TMAC. Pending Closing, TMAC shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, as determined by the City in its sole and absolute discretion, the City may, at its sole option either: (i) terminate this Agreement and have all monies theretofore paid returned without interest or deduction; or (ii) take the proceeds of any insurance and complete the purchase of the Arts and Cultural Space; or (iii) complete the purchase of the Arts and Cultural Space. No insurance will be transferred on Closing.
18. Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by TMAC and the City or by their respective solicitors who are specifically authorized in that regard.
19. (1) The parties waive personal tender, and agree (subject to Subsection 19(1)(b), next following) that:
  - (a) if they have not agreed otherwise prior to Closing, tender may be effectively made if the party wishing to tender attends at the Registry Office at or before 4:00 p.m. Toronto time on Closing and remains ready, willing and able to complete the transaction until 4:30 p.m. Toronto time. In the event TMAC or TMAC's solicitor falls to appear or appears and fails to close, such attendance by the City's representative shall be deemed satisfactory evidence that the City is ready, willing and able to complete this Agreement at such time; and
  - (b) alternatively, tender may be validly and effectively made on the lawyer acting for TMAC or the City Solicitor, as the case may be. If either party or either party's lawyer provides notice to the other party or the other party's lawyer prior to Closing that it is unwilling or unable to complete the transaction, the other party will be relieved of any obligation to tender upon the party providing such notice or its lawyer, and the other party may



immediately begin to exercise all of its rights under this Agreement in respect of breach by the notifying party.

- (2) TMAC agrees to retain a lawyer who is both an authorized user of the Teraview Electronic Registration System ("TERS") and in good standing with the Law Society of Upper Canada to represent TMAC in connection with the completion of this transaction, and shall authorize such lawyer to enter into an escrow closing agreement with the City Solicitor in the form recommended from time to time by the Law Society of Upper Canada (hereinafter referred to as the "**Document Registration Agreement**" or "**DRA**") establishing the procedures and timing for completing this transaction and to be executed by TMAC's lawyer and returned to the City Solicitor at least ten (10) days prior to Closing.
  - (3) TMAC and the City agree that the delivery and exchange of documents and monies and the release thereof to the City and TMAC, as the case may be: (i) shall not occur contemporaneously with the registration of the transfers (and other registrable documents); and (ii) shall be governed by the DRA, pursuant to which the lawyer receiving the documents, and/or funds, will be required to hold them in strict accordance with the DRA.
  - (4) If TMAC's lawyer is unwilling or unable to complete the transaction using TERS, in accordance with the provisions of the DRA, then TMAC's lawyer (or its agent) shall be obliged to personally attend at the office of the City Solicitor, at such time on the day scheduled for Closing as the City Solicitor may direct, in order to complete this transaction using TERS on the computer facilities in the City Solicitor's office, and shall pay a fee as determined by the City Solicitor, acting reasonably, for the use of the City's computer facilities.
  - (5) Notwithstanding anything contained in this Agreement to the contrary, it is agreed by the parties that an effective tender shall be deemed to have been validly made by one party upon the other party when the tendering party's lawyer has (i) caused all closing documents to be delivered to the other party's lawyer in accordance with the provisions of the DRA; (ii) advised the other party's lawyer by notice that the tendering party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and (iii) has completed steps required by TERS in order to complete this transaction that can be performed or undertaken by one party's lawyer without the cooperation or participation of the other party's lawyer, and specifically when the "completeness signatory" for the transfer(s) has been electronically "signed" by or on behalf of the tendering party's lawyer, without personally attending upon the other party or its lawyer with the documents or funds required to be delivered by the tendering party for Closing, and without any requirement to have an independent witness to confirm any of (i), (ii) or (iii), immediately preceding. Money may be tendered by ordinary (non-certified) cheque drawn on a Canadian Chartered Bank or Canadian Trust Company.
20. TMAC represents and warrants that spousal consent is not necessary to the transaction under the provisions of the *Family Law Act* (Ontario) the Arts and Cultural Space has

never been occupied by any of the directors, officers or shareholders of TMAC or their spouses, as a family residence.

21. The City shall be credited towards the Purchase Price with the amount, if any, which shall be necessary for the City to pay to the Minister of National Revenue in order to satisfy the City's liability in respect of tax payable by TMAC under the non-residency provisions of the *Income Tax Act* (Canada) by reason of this sale. The City shall not claim such credit if TMAC delivers on Closing the prescribed certificate or a statutory declaration establishing to the satisfaction of the City's solicitor that TMAC is not then a non-resident of Canada; provided that in the case where TMAC is a corporation, such declaration shall be made by an authorized director or officer of TMAC, after reasonable investigation.
22. This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada. Any legal proceeding arising in connection with this Agreement shall be commenced and heard in a court (or, if applicable, a tribunal of competent jurisdiction) sitting in Toronto, Ontario, which it is agreed will be the appropriate location. If the court (or, if applicable, tribunal of competent jurisdiction) does not sit in Toronto, the legal proceedings shall be commenced and heard in the jurisdiction nearest to the City of Toronto within the Province of Ontario in which such court (or, if applicable, tribunal of competent jurisdiction) convenes.
23.
  - (1) The City represents that it is a "registrant" within the meaning of the *Excise Tax Act* (Canada) (the "ETA") and that its registration number is 86740 2299 RT0001 (the "City's HST Number").
  - (2) The Purchase Price shall be deemed to be exclusive of any goods and services tax ("HST") that may apply to the sale of the Arts and Cultural Space pursuant to the ETA.
  - (3) TMAC represents and warrants that the sale of the Arts and Cultural Space is a "taxable supply" for the purposes of the ETA. As such, the parties agree that the provisions of paragraph 221(2)(b) of the ETA shall apply and TMAC shall not collect HST from the City on Closing but rather, the City agrees that it shall self-assess and remit all HST following Closing in accordance with the requirements of the ETA.
  - (4) The City represents and covenants that it is acquiring the Arts and Cultural Space on its own account and not as agent, that the City's HST Number is, and will be on Closing, valid and the City agrees that TMAC may rely on this representation and covenant, which shall not merge on Closing. The City agrees to deliver to TMAC on the Closing Date a certificate re-confirming the matters contained in this Section 23 as at the Closing Date.
  - (5) The City shall indemnify TMAC and hold TMAC harmless from any liability under the ETA (and/or under any legislation applicable to the collection and remittance of the HST) arising because of breach of the obligations of the City or any such other party set out in this Section or arising under the ETA (and/or under

any legislation applicable to the collection and remittance of the HST) with respect to the acquisition by the City of the Arts and Cultural Space, together with all losses, costs, penalties, interest and expenses resulting from such breach, and the City acknowledges and agrees that TMAC may rely on this indemnity following Closing, which will not merge on Closing.

24. Unless otherwise provided in this Agreement, any notice, approval or other communication required or permitted to be given ("Notice") shall be in writing and shall be delivered: (1) by personal delivery; (2) by prepaid registered mail; or (3) by fax and; in the case of Notice to the City, addressed to it as follows:

Director of Real Estate Services  
Facilities and Real Estate Division  
City of Toronto  
Metro Hall, 2nd Floor  
55 John Street Toronto ON M5V 3C6  
Fax No.: (416) 392-1880

With a copy to:

City Solicitor  
Attention: Director, Real Estate Law  
City of Toronto  
Station 1260, 26<sup>th</sup> Floor  
Metro Hall  
55 John Street Toronto ON M5V 3C6  
Fax No.: (416) 397-5624

And in the case of Notice to TMAC, addressed to it as follows:

c/o Toronto Media Arts Cluster  
Attention: Laura Berazadi  
9 Ossington Avenue  
Toronto, Ontario  
M6J 2Y8  
Fax No.:

With a copy to TMAC's solicitor:

Goodmans LLP  
Attention: Bram Green  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Fax No.: (416) 979-1234



TMAC hereby appoints TMAC's solicitor named above as its agent with full authority to give, receive and bind TMAC by any Notice to be delivered under this Agreement, until such time as TMAC shall otherwise notify the City In writing.

Any Notice so given shall be deemed conclusively to have been given and received on the date of delivery if personally delivered or faxed, or on the third (3rd) Business Day following the date of mailing if sent by prepaid registered mail, provided that if there is any anticipated or existing postal dispute, Notice shall be personally delivered or faxed. Either party may from time to time change the address for service of such party or its solicitor, by Notice to the other party hereto.

25. TMAC acknowledges that all information, documents and correspondence provided by TMAC to the City in connection with this Agreement and the transaction provided for in this Agreement (collectively, "TMAC's Information") will become subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) as amended ("MFIPPA") and subject to any other obligations of the City to disclose information in its possession or control. Therefore, TMAC acknowledges that all or some of TMAC's Information may be reproduced or otherwise copied by the City, may become part of the public record of the transaction provided for in this Agreement, and consents to the disclosure of TMAC's Information by the City pursuant to MFIPPA or otherwise. TMAC should assume that the name of TMAC will be, in every case, a matter of public record,
26.
  - (1) Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities. Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.
  - (2) No communication or dealing between TMAC and the City or TMAC and any agency, board, commission, department, committee, body, commissioner, elected official, appointed official, officer, employee, agent or representative of the City will be deemed to be a communication or dealing under the provisions of this Agreement between TMAC and the City In its capacity as a party to this Agreement or to affect the City with notice of any such communication or dealing; it being intended and agreed that the City acts solely as a purchaser of the Arts and Cultural Space and as such, any communication or dealing between the City and TMAC as parties to this Agreement will only be effective if delivered in accordance with the notice provisions set out herein. No communication or dealing between the City as a party to this Agreement and TMAC as a party to this Agreement pursuant to the provisions of this Agreement will relieve TMAC from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, a by-law or by any other lawful manner separate and apart from the obligations of TMAC Imposed by this Agreement.

27. TMAC's covenants, representations and warranties herein, shall survive Closing until the expiry of the Survival Period.
28. Any rights and obligations of the City under this Agreement may be exercised and performed by the CCO. For the purposes of this Agreement "CCO" means the City's Chief Corporate Officer and anyone designated by the Chief Corporate Officer or by the Council of the City to act in that capacity.
29. Unless expressly stated otherwise herein; (1) references to all dollar amounts in this Agreement shall be references to Canadian dollars; and (2) payments to be made by the City shall be made by ordinary (non-certified) cheque.
30. Any references in this Agreement to any law, by-law, rule, statute, regulation, order or act of any government, Governmental Body or other regulatory body shall unless otherwise stated, be construed as a reference thereto as amended, replaced or re-enacted from time to time or as a reference to any successor thereto.
31. The City shall be entitled to register a notice of the Option on title to the Arts and Cultural Space. Upon the expiration of the Option, the City shall proceed forthwith to remove any notice thereof from title to the Arts and Cultural Space at its own expense.
32. Each of the parties hereto shall execute and deliver all such further documents and do all such other things as the other party may reasonably request in order to give full effect to the terms of this Agreement.
33. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.
34. This Agreement shall be effective to create an interest in the Arts and Cultural Space only if the subdivision control provisions of the *Planning Act*, R.S.O. 1990, as same may be amended from time to time, or any successor or replacement legislation, are complied with.

**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first above written.

**TORONTO MEDIA ARTS CLUSTER**

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

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

I/We have authority to bind the corporation.

**CITY OF TORONTO**

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

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

I/We have authority to bind the corporation.

**SCHEDULE A To the Option**  
**DESCRIPTION OF THE DEVELOPMENT**

Firstly

PIN 21298-0424 (LT)

Part of Lots 5 & 7; All of Lot 6 on Plan 960 City Plan West, and Part of Block 5 on Plan Ordinance Reserve, Toronto, and designated as Parts 7 & 8 on Plan 66R23686, City of Toronto;

Secondly

PIN 21298-0004 (LT)

PCL Street-1 SEC A-Ordinance Reserve; part of Abell Street Plan A Ordinance Reserve Toronto, as closed by By-Law D33202, and designated as Parts 13 & 14 on Plan 66R17443; Toronto, City of Toronto;

Thirdly

PIN 21298-0197 (LT)

All of Lot 8, and part of Lots 7 & 9 on Plan 960 City West; part of Block 5 on Plan Ordinance Reserve Toronto, AS IN CT682964; Toronto, City of Toronto;

Fourthly

PIN 21298-0198 (LT)

All of Lots 10-12, and part of Lot 9 on Plan 960 City West; and part of Block 5 on Plan Ordinance Reserve Toronto AS IN W F61410; Toronto, City of Toronto;

**SCHEDULE B To the Option  
PERMITTED ENCUMBRANCES**

1. The Reciprocal and Easement Agreements (as defined in the Land Use Agreement).
2. Registered restrictions or covenants that run with the Arts and Cultural Space, including any encroachment agreement(s) with any governmental authorities.
3. Instrument No. E4939AZ registered the 14th day of May, 1996 being Restrictive Covenants, providing for an easement from Queen Street West to the CN tracks south of Sudbury.
4. Instrument No. AT2660956 registered the 7<sup>th</sup> day of April, 2011 being an Application to Change the name of the owner,
5. Instrument No. AT2724294 registered the 17<sup>th</sup> day of June, 2011 being a Section 37 Agreement with the City of Toronto.
6. Registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto).
7. Together with and subject to a right-of-way set out in Instrument No. WF27767.
8. Easements along the east side of the closed portion of Abell Street to Sudbury Street and north.
9. Crane swing, shoring, underpinning and tie back agreements with adjoining owners.
10. The dedication of land from the closed portion of Abell Street plus additional lands to eventually create a public street.
11. Mutual easement for support and maintenance between the Arts and Cultural Space and the proposed condominium to be constructed, above, below and, in certain locations, adjoining the Arts and Cultural Space (the "Adjoining Condominium") and/or the Toronto Parking Authority parking garage.
12. Restrictive covenant in favour of the Toronto Parking Authority.
13. An Agreement with the City of Toronto with respect to setbacks and/or a limiting distance agreement with respect to the park lands.
14. Easements, rights of way and/or licences now registered (or to be registered hereafter) for the purposes of discharging, emitting, releasing or venting thereon or otherwise affecting the Arts and Cultural Space at any time during the day or night with noise, vibration and other sounds, excluding spills, and other emissions of every nature and kind whatsoever

arising from, out of or in connection with any and all present and future railway facilities and operations upon the railway lands located in proximity to the Arts and Cultural Space.

15. Easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Adjoining Condominium or the lands owned by the Toronto Parking Authority (or any successor thereto), including any easement(s) which may be required by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners.
16. Zoning by-laws and ordinances and municipal by-laws, regulations, building and development laws and regulations, land use restrictions and access reserves that are applicable to the Arts and Cultural Space.
17. Any reservations and exceptions expressed in the original grant from the Crown.

**SCHEDULE C To the Option  
TMAC'S INDEMNITY**

TO: City of Toronto ("the City")

AND TO: Anna Kinastowski, City Solicitor

RE: Sale of [insert brief legal description of Arts and Cultural Space], known municipally as, to the City by (the "Owner")

**1. Recitals**

Whereas for the purposes of this Indemnity:

- (a) "Agreement" means the option to purchase agreement between TMAC and the City, dated ●.
- (b) "Claims" means any and all manner of claims, demands, damages (including indirect and consequential damages), losses, liabilities, costs, charges, fines, penalties, orders, expenses, fees (including legal fees) actions, other proceedings, or any of them.
- (c) "Indemnified Persons" means the City, its officers, directors, shareholders, employees, servants and agents.
- (d) "Owner" means each of the undersigned; provided that where "Owner" refers to more than one person, "Owner" means all of such person, acting jointly and severally.
- (e) "Survival Period" has the meaning ascribed thereto in this Agreement.

**2. Consideration**

In consideration of the completion of the transactions contemplated by the Agreement, Two Dollars (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which TMAC hereby acknowledges, TMAC hereby covenants as set out herein.

**3. Covenants**

TMAC releases and covenants that it shall at all times indemnify and save, defend and hold harmless the *Indemnified Persons*, of and from any Claims whatsoever, made or brought against, suffered by or imposed on the *Indemnified Persons*, or any of them, or their Arts and Cultural Space, in respect of any loss, damage or injury to any person or any Arts and Cultural Space directly or indirectly arising out of or resulting from or sustained by reason or on account of the breach of any warranty by TMAC set out in the Agreement, notice of which breach is delivered to TMAC on or before the expiry of the Survival Period.

**DATED** the ● day of ● 2014.

**[OWNER]**

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

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

I/We have authority to bind the corporation.



**SCHEDULE E  
SECTION 118 CERTIFICATE**

**APPLICATION TO REGISTER RESTRICTION.**

*(Section 118 of the Land Titles Act)*

TO:           The Land Registrar for the Land Titles Division of the Toronto Registry Office  
              No. 66

**WHEREAS** Toronto Media Arts Cluster ("TMAC") acquired PIN ● (LT) being Part Lot ● Plan ● as in a save and except Part I, 64R-●, City of Toronto (the "Property") on condition that the following Restriction under s.118 of the *Land Titles Act* is noted on title to the Property;

**AND WHEREAS** on ● the City and Edge on Triangle Park Inc. (the "Edge") entered into a Section 37 Agreement pursuant to Section 37 of the *Planning Act*, registered as Instrument No. in which City Council or the Ontario Municipal Board on appeal may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the density or height of development beyond that otherwise permitted by the applicable zoning, that will be permitted in return for the provision of such facilities, services and matters as are set out in such by-law;

**AND WHEREAS** Pursuant to such by-law, the City required that the Edge provided certain facilities services and matters in return for the authorized increases in height and density including, the transfer of the Property to TMAC, a not-for-profit arts and culture organization, or to the City or such other not-for-profit group as selected by the City;

**AND WHEREAS** the Arts and Cultural Space constitutes a Section 37 *Planning Act* public benefit received in exchange for increase height and development in the Development and shall be so used;

**AND WHEREAS** in order to secure the Arts and Cultural Space as a public benefit pursuant to the Section 37 Agreement, TMAC has agreed to register a Section 118 Certificate in favour of the City on title to the Arts and Cultural Space such that the Property may not be transferred or charged without the consent of the City.

**NOW THEREFORE** TMAC hereby requests you make an entry on the register for the Property of the restrictions set out below:

No land transfer shall be made or charge created against the Property unless the prior consent of the City of Toronto is given to such transfer or charge in accordance with the terms and conditions of this Restriction. In the event that the City consents or approves of any action requiring a release of this Restriction, TMAC agrees that after the completion of any action requiring the release of this Restriction, that a new restriction in this form, shall be registered on title to the Property at its cost and expense.

**SCHEDULE F  
LEGAL DESCRIPTION OF SITE**

Firstly

PIN 21298-0424(LT)

Part of Lots 5 & 7; All of Lot 6 on Plan 960 City Plan West, and Part of Block 5 on Plan Ordnance Reserve, Toronto, and designated as Parts 7 & 8 on Plan 66R23686, City of Toronto;

Secondly

PIN 21298-0004 (LT)

PCL Street — 1 SEG A-Ordnance Reserve; part of Abell Street Plan A Ordnance Reserve Toronto, as closed by By-Law D33202, and designated as Parts 13 & 14 on Plan 66R17443; Toronto, City of Toronto;

Thirdly

PIN 21298-0197 (LT)

All of Lot 8, and part of Lots 7 & 9 on Plan 960 City West; part of Block 5 on Plan Ordnance Reserve Toronto, AS IN CT682964; Toronto, City of Toronto;

Fourthly

PIN 21298-0198 (LT)

All of Lots 10-12, and part of Lot 9 on Plan 960 City West; and part of Block 5 on Plan Ordnance Reserve Toronto AS IN WF61410; Toronto, City of Toronto;

**SCHEDULE G**  
**TERMS OF THE CONVEYANCE OF THE ARTS AND CULTURAL SPACE**

1. Upon TMAC delivering to the City the Notice of Conveyance as contemplated herein, there shall come into effect a binding agreement of purchase and sale between the City and TMAC with respect to the Arts and Cultural Space for the Conveyance Payment and otherwise on the other terms and conditions more particularly set forth herein.
2. For the purposes of this Agreement, "**Business Day**" shall mean any day of the week upon which the Land Registry Office in which the Arts and Cultural Space is registered and the offices of the City of Toronto are both open to the public for business, excluding in any event, Saturdays, Sundays and holidays observed in the City of Toronto. The "**Conveyance Closing Time**" for the purposes of this Agreement shall be 4:00 p.m. Toronto time. The transaction of purchase and sale shall be completed ("**Conveyance Closing**") forty-five (45) days after receipt by the City of the Notice of the Conveyance (the "**Conveyance Closing Date**") on or before the Conveyance Closing Time. TMAC and, if applicable, TMAC's solicitor shall provide the City's solicitor with fully executed original copies of final and irrevocable directions and re-directions regarding payment of the balance of the Conveyance Payment), as TMAC may require (collectively, the "**Conveyance Direction re: Funds**"), by no later than 4:00 p.m. on the 7<sup>th</sup> Business Day that precedes the Conveyance Closing Date, failing which, at the option of the City, the Conveyance Closing Date may be extended to the 5<sup>th</sup> Business Day after receipt by the City's solicitor of the Conveyance Direction re: Funds. For purposes of this Section, receipt by the City's solicitor of a faxed copy of such executed Conveyance Direction re: Funds, shall be deemed to be an original executed copy. TMAC shall deliver to the City an original executed copy of the Conveyance Direction re: Funds on Closing. In the event that Conveyance Closing falls on a day which is not a Business Day, Conveyance Closing shall be deemed to be on the next Business Day thereafter.
3. The Conveyance Payment shall be paid to TMAC or its solicitors, in trust, on the Conveyance Closing by certified cheque, bank draft or wire transfer in immediately available funds, subject to the usual adjustments, save as otherwise stipulated herein.
4. The Conveyance Payment shall be subject to adjustment on account of taxes, local improvement rates and charges, water and assessment rates and utilities, to the extent applicable, and all other items normally adjusted as between a vendor and a purchaser on the purchase of commercial space similar to the Arts and Cultural Space. TMAC covenants and agrees to pay all realty taxes and utility charges relating to the Arts and Cultural Space to the Conveyance Closing Date. TMAC further covenants and agrees to pay any and all current charges, rates, and fees owing to the Conveyance Closing Date in respect of any and all maintenance and/or reciprocal agreements with the condominium corporation or owner of the development in which the Arts and Cultural Space is situate. The Conveyance Closing Date shall be for the account of the City. Each party agrees to readjust after Conveyance Closing all items to be adjusted in accordance with the terms of this Agreement or that reasonably ought to be the subject of readjustment in order to fulfill, in good faith, the terms of this Agreement.

5. The City and TMAC agree that there are no chattels included in the Conveyance Payment and there are no fixtures forming part of the Arts and Cultural Space which are excluded from the Conveyance Payment.
6. From and after the date of this Agreement, in the event that TMAC elects for the Conveyance of the Arts and Cultural Space, the City and its agents, employees, consultants, contractors and other persons as the City considers necessary, shall have the right to enter upon the Arts and Cultural Space at all reasonable times as often as the City may deem desirable, for purposes of carrying out appraisals, inspections, due diligence enquiries and other investigations relating to the Arts and Cultural Space and preparing surveys or other plans with respect thereto. All such activities shall be done at the sole cost and risk of the City and the City shall restore the Arts and Cultural Space as nearly as reasonably possible to the state in which it was before the commencement of any such activities.
7.
  - (1) For the purposes of this Agreement, "**Governmental Body**" means a municipal, provincial or federal government, including any agency, board, commission and department thereof, including without limitation, the City of Toronto, the Toronto Region Conservation Authority and the Ministry of Environment. The City shall have the right to give notice of this Agreement to any Governmental Body and to obtain any and all information within the records of such Governmental Body relating to the regulatory and compliance status of the Arts and Cultural Space and TMAC's use thereof (including without limitation, information regarding environmental matters, building standards, zoning, work orders, approvals, permits and compliance orders) and as to any other matter that might affect the City's enjoyment, use, possession and ownership of the Arts and Cultural Space after Conveyance Closing.
  - (2) TMAC hereby consents to any Governmental Body releasing to the City details of all outstanding work orders, Arts and Cultural Space standards and status files and information on any studies, plans or proposals affecting the Arts and Cultural Space. TMAC agrees to promptly execute and deliver such further authorizations in this regard as the City's solicitor may reasonably require to ensure the release of such details provided that in no event shall a Government Body other than the City in its capacity as purchaser have a right of inspection of the Arts and Cultural Space.
  - (3) TMAC shall at the request of the City, acting reasonably, promptly release to the City, all written or computer generated correspondence, information, material, working papers, reports and other documentation in the possession or control of TMAC pertaining to the Arts and Cultural Space, TMAC's use of the Arts and Cultural Space and the proposed use of the Arts and Cultural Space,
8.
  - (1) For purposes hereof, "**Excluded Goods**" shall mean, without limitation all chattels, rubbish, waste materials, refuse and debris now on the Arts and Cultural Space. TMAC covenants to remove (the "**Removal Obligation**") from the Arts and Cultural Space no later than the 2nd Business Day before the Conveyance Closing Date, at TMAC's sole expense, all Excluded Goods and to leave the Arts

and Cultural Space in a neat, tidy and wholesome condition, reasonable wear and tear excepted. For purposes of this Agreement, "**Removal Costs**" means cumulatively: (1) the cost estimated by the City of having the Removal Obligation performed by an independent contractor; plus (2) the estimated costs of storing and/or disposing of the Excluded Goods; plus (3) an administrative fee calculated as fifteen percent (15.0%) of (1) and (2). If on the Business Day before the Conveyance Closing Date, the City shall determine that TMAC has not performed the Removal Obligation, then the City shall be entitled to complete this Agreement after holding back from the balance due on Conveyance Closing (the "Removal Holdback"), an amount which shall be the greater of \$1,000.00 or the amount estimated by the City, acting reasonably, to be the Removal Costs.

- (2) Provided that nothing herein, including receipt by the City of the Removal Holdback relieves TMAC from, or obligates the City to, the performance of the Removal Obligation. If the City elects to remove the Excluded Goods from the Arts and Cultural Space, it may apply the Removal Holdback to any Removal Costs and any and all manner of claims, demands, damages (including indirect and consequential damages), losses, liabilities, costs, charges, fines, penalties, orders, expenses, fees (including legal fees) actions, other proceedings, or any of them ("**Claims**"), including without limitation, the costs of remediating the Arts and Cultural Space, resulting from the failure of TMAC to perform the Removal Obligation. Despite receipt of the Removal Holdback by the City, TMAC covenants that TMAC will, at all times and from time to time, indemnify and save harmless the City from and against all Removal Costs and related Claims.

9. (1) TMAC represents and warrants (the "**Warranties**");
- (a) that the Arts and Cultural Space has not been, as at Conveyance Closing, insulated with asbestos or a Urea Formaldehyde foam type of insulation. Provided that if the Arts and Cultural Space is part of a multiple unit building, this representation and warranty shall only extend to that portion of the building which is the subject of this transaction;
  - (b) that prior to Conveyance Closing, no work, construction or alterations have been done on the Arts and Cultural Space, or material supplied thereto, in each case, on behalf of TMAC, or its permitted tenants, licencees or occupants, which could result in the registration of a lien against the interest of TMAC in the Arts and Cultural Space under the *Construction Lien Act* (Ontario), after Conveyance Closing;
  - (c) that there are no work orders, deficiency notices or orders to comply affecting the Arts and Cultural Space;
  - (d) that all fixtures included in the Conveyance Payment (including, without limiting the generality of the foregoing, all heating, electrical, plumbing and mechanical systems), whether owned or leased, are and shall be on Conveyance Closing in good repair and working order;



- (c) that TMAC has made complete disclosure of all material facts and circumstances, relating to the presence of any Hazardous Substance. (For purposes hereof, the term "Hazardous Substance" means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, biological materials and organisms (including, without limitation, viral agents, mould, fungus and bacteria), flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, radiation and any other substance, materials, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or a pollutant in or pursuant to any applicable federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives) or other environmental condition, which to the knowledge of TMAC exists now or in the past, did exist on the Arts and Cultural Space or on any adjoining or approximate lands, which in any manner may affect the Arts and Cultural Space or its proposed use;
- (f) that, except in compliance with applicable Environmental Laws (for the purpose hereof, "Environmental Laws" means all applicable federal, provincial, local, municipal, governmental or quasi-governmental laws, rules, regulations, policies, guidelines or requirements concerning Hazardous Substances), no part of the Arts and Cultural Space contains any Hazardous Substance nor has it ever been if as a Waste Site (and for purposes of this Agreement the term "Waste Site" means a site for the storage, transportation, burial, disposal or processing of any Hazardous Substance);
- (g) that there are not now, and will not on Conveyance Closing be, any outstanding, pending or threatened orders, directives or other requirements (collectively the "Environmental Orders") of the Ministry of the Environment or of any other body having jurisdiction relating to the Arts and Cultural Space (collectively the "Environmental Authorities") which in any manner may affect the Arts and Cultural Space or its proposed use; and
- (h) that TMAC is not now, and will not on Conveyance Closing be, negotiating or in any manner dealing with any Environmental Orders or Environmental Authorities.

All representations and warranties in this Agreement shall survive the Conveyance Closing for a period of twelve (12) months after the Conveyance Closing Date (the "Survival Period").

- (2) On Conveyance Closing, TMAC shall provide to the City, a statutory declaration that the Warranties and any other representation and warranties contained in this Agreement, are correct and true in all material respects, as of Conveyance Closing; provided that in the case where TMAC is a corporation, such declaration shall be made by an authorized director or officer of TMAC, after reasonable investigation, and provided further that if on or before Conveyance Closing,

TMAC or the City becomes aware that any of the Warranties or any other representation or warranty contained in this Agreement is not true and correct in any material respect, such Party shall notify the other Party of the same and TMAC shall use best efforts to cause such Warranty or other representation or warranty contained in this Agreement to be true and correct as at Conveyance Closing and, in the event it is unable to do so, the City shall have the option of not completing the purchase of the Arts or Cultural Space and this Agreement shall be at end and the Parties shall have no further obligation to another, or the City may elect to complete the purchase of the Arts and Cultural Space and TMAC shall amend the statutory declaration to identify the exception to the Warranty or the other representation or warranty contained in this Agreement.

- (3) On Conveyance Closing, TMAC shall deliver to the City, TMAC's written covenant to indemnify and save harmless the City from and against any and all manner of Claims incurred by, suffered by or brought against the City resulting, directly or indirectly from any breach of the Warranties, notice of which is delivered by TMAC prior to the expiry of the Survival Period. TMAC shall deliver on Closing, TMAC's Indemnity, substantially in the form set out in Schedule C, to the Option, attached hereto.
10. On Conveyance Closing, the Arts and Cultural Space shall be subject only to those mortgages, charges, liens, work orders, easements, restrictions, leases, licences or other encumbrances or title defects, so long as such, mortgages, charges, liens, work orders, easements, restrictions, leases, licences, or other encumbrances or title defects are complied with in all material respects and which do not materially impact the use and enjoyment of the Arts and Cultural Space ("**Permitted Encumbrances**") set forth on Schedule B attached to the Option. TMAC shall on or before Conveyance Closing, at its own expense, obtain and register a discharge of all mortgages, licenses, work orders, easements, restrictions, leases, licenses and other encumbrances of every nature and kind affecting the Arts and Cultural Space and shall remedy any title defects, in each case, save for the Permitted Encumbrances. If a discharge of any mortgage or charge held by a mortgagee who is a Canadian Chartered Bank, Canadian Trust Company or Insurance Company, is not available in registrable form on Conveyance Closing, the City agrees to accept TMAC's solicitor's personal undertaking prepared in a form satisfactory to the City's solicitor, acting reasonably: (1) to forward to the mortgagee, out of the sales proceeds, the amount specified in the mortgage discharge statement issued by such mortgagee; (2) to obtain from such mortgagee a discharge of charge/mortgage in registrable form; (3) to register same on title within 40 Business Days after Conveyance Closing; and (4) to forthwith following such registration, provide written particulars of such registration to the City's solicitor. Provided however and despite the foregoing, the City shall not be obligated to accept such undertaking unless the same is accompanied by an unqualified mortgage statement prepared by the mortgagee addressed to the City setting out the balance required to obtain the discharge, together with evidence, satisfactory to the City Solicitor, or certified funds sufficient to pay the mortgagee the amount required to obtain the discharge.
11. The City shall be allowed until Conveyance Closing to examine title at its own expense, to satisfy itself that title is subject only to the Permitted Encumbrances and that there are

no outstanding municipal work orders or deficiency notices affecting the Arts and Cultural Space and to make any requisitions in connection therewith.

12. On Conveyance Closing, TMAC shall deliver vacant possession, free and clear of all encumbrances except the Permitted Encumbrances, of the Arts and Cultural Space to the City
13. The Transfer shall be prepared in registrable form at the expense of TMAC. TMAC covenants that the Transfer to be delivered on Conveyance Closing shall contain the statements contemplated by Subsection 50(22) of the *Planning Act* (Ontario), as may be amended from time to time.
14. All buildings on the Arts and Cultural Space and all other things being purchased and all risks, hazards and liabilities associated with the Arts and Cultural Space or the use thereof shall be and remain until Conveyance Closing at the risk of TMAC. Pending Conveyance Closing, TMAC shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, as determined by the City in its sole and absolute discretion, the City may, at its sole option either: (i) terminate this Agreement and have all monies theretofore paid returned without interest or deduction; or (ii) take the proceeds of any insurance and complete the purchase of the Arts and Cultural Space; or (iii) complete the purchase of the Arts and Cultural Space. No insurance will be transferred on Conveyance Closing.
15. Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by TMAC and the City or by their respective solicitors who are specifically authorized in that regard.
16. (1) The parties waive personal tender, and agree (subject to Subsection 16(1)(b), next following) that:
  - (a) if they have not agreed otherwise prior to Conveyance Closing, tender may be effectively made if the party wishing to tender attends at the Registry Office at or before 4:00 p.m. Toronto time on Conveyance Closing and remains ready, willing and able to complete the transaction until 4:30 p.m. Toronto time. In the event TMAC or TMAC's solicitor fails to appear or appears and fails to close, such attendance by the City's representative shall be deemed satisfactory evidence that the City is ready, willing and able to complete this Agreement at such time; and
  - (b) alternatively, tender may be validly and effectively made on the lawyer acting for TMAC or the City Solicitor, as the case may be. If either party or either party's lawyer provides notice to the other party or the other party's lawyer prior to Conveyance Closing that it is unwilling or unable to complete the transaction, the other party will be relieved of any obligation to tender upon the party providing such notice or its lawyer, and the other party may immediately begin to exercise all of its rights under this Agreement in respect of breach by the notifying party.



- (2) TMAC agrees to retain a lawyer who is both an authorized user of the Teraview Electronic Registration System ("TERS") and in good standing with the Law Society of Upper Canada to represent TMAC in connection with the completion of this transaction, and shall authorize such lawyer to enter into an escrow closing agreement with the City Solicitor in the form recommended from time to time by the Law Society of Upper Canada (hereinafter referred to as the "**Document Registration Agreement**" or "**DRA**") establishing the procedures and timing for completing this transaction and to be executed by TMAC's lawyer and returned to the City Solicitor at least ten (10) days prior to Conveyance Closing.
  - (3) TMAC and the City agree that the delivery and exchange of documents and monies and the release thereof to the City and TMAC, as the case may be: (i) shall not occur contemporaneously with the registration of the transfers (and other registrable documents); and (ii) shall be governed by the DRA, pursuant to which the lawyer receiving the documents, and/or funds, will be required to hold them in strict accordance with the DRA.
  - (4) If TMAC's lawyer is unwilling or unable to complete the transaction using TERS, in accordance with the provisions of the DRA, then TMAC's lawyer (or its agent) shall be obliged to personally attend at the office of the City Solicitor, at such time on the day scheduled for Conveyance Closing as the City Solicitor may direct, in order to complete this transaction using TERS on the computer facilities in the City Solicitor's office, and shall pay a fee as determined by the City Solicitor, acting reasonably, for the use of the City's computer facilities.
  - (5) Notwithstanding anything contained in this Agreement to the contrary, it is agreed by the parties that an effective tender shall be deemed to have been validly made by one party upon the other party when the tendering party's lawyer has (i) caused all closing documents to be delivered to the other party's lawyer in accordance with the provisions of the DRA; (ii) advised the other party's lawyer by notice that the tendering party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and (iii) has completed steps required by TERS in order to complete this transaction that can be performed or undertaken by one party's lawyer without the cooperation or participation of the other party's lawyer, and specifically when the "completeness signatory" for the transfer(s) has been electronically "signed" by or on behalf of the tendering party's lawyer, without personally attending upon the other party or its lawyer with the documents or funds required to be delivered by the tendering party for Closing, and without any requirement to have an independent witness to confirm any of (i), (ii) or (iii), immediately preceding. Money may be tendered by ordinary (non-certified) cheque drawn on a Canadian Chartered Bank or Canadian Trust Company.
17. TMAC represents and warrants that spousal consent is not necessary to the transaction under the provisions of the *Family Law Act* (Ontario) the Arts and Cultural Space has never been occupied by any of the directors, officers or shareholders of TMAC or their spouses, as a family residence.

18. The City shall be credited towards the Conveyance Payment with the amount, if any, which shall be necessary for the City to pay to the Minister of National Revenue in order to satisfy the City's liability in respect of tax payable by TMAC under the non-residency provisions of the *Income Tax Act* (Canada) by reason of this sale. The City shall not claim such credit if TMAC delivers on Conveyance Closing the prescribed certificate or a statutory declaration establishing to the satisfaction of the City's solicitor that TMAC is not then a non-resident of Canada; provided that in the case where TMAC is a corporation, such declaration shall be made by an authorized director or officer of TMAC, after reasonable investigation.
19. This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada. Any legal proceeding arising in connection with this Agreement shall be commenced and heard in a court (or, if applicable, a tribunal of competent jurisdiction) sitting in Toronto, Ontario, which it is agreed will be the appropriate location. If the court (or, if applicable, tribunal of competent jurisdiction) does not sit in Toronto, the legal proceedings shall be commenced and heard in the jurisdiction nearest to the City of Toronto within the Province of Ontario in which such court (or, if applicable, tribunal of competent jurisdiction) convenes.
20.
  - (1) The City represents that it is a "registrant" within the meaning of the *Excise Tax Act* (Canada) (the "ETA") and that its registration number is 86740 2299 RT0001 (the "City's HST Number").
  - (2) The Conveyance Purchase Price shall be deemed to be exclusive of any goods and services tax ("HST") that may apply to the sale of the Arts and Cultural Space pursuant to the ETA.
  - (3) TMAC represents and warrants that the sale of the Arts and Cultural Space is a "taxable supply" for the purposes of the ETA. As such, the parties agree that the provisions of paragraph 221(2)(b) of the ETA shall apply and TMAC shall not collect HST from the City on Conveyance Closing but rather, the City agrees that it shall self-assess and remit all HST following Conveyance Closing in accordance with the requirements of the ETA.
  - (4) The City represents and covenants that it is acquiring the Arts and Cultural Space on its own account and not as agent, that the City's HST Number is, and will be on Conveyance Closing, valid and the City agrees that TMAC may rely on this representation and covenant, which shall not merge on Conveyance Closing. The City agrees to deliver to TMAC on the Conveyance Closing Date a certificate re-confirming the matters contained in this Section 20 as at the Conveyance Closing Date.
  - (5) The City shall indemnify TMAC and hold TMAC harmless from any liability under the ETA (and/or under any legislation applicable to the collection and remittance of the HST) arising because of breach of the obligations of the City or any such other party set out in this Section or arising under the ETA (and/or under any legislation applicable to the collection and remittance of the HST) with respect to the acquisition by the City of the Arts and Cultural Space, together with

all losses, costs, penalties, interest and expenses resulting from such breach, and the City acknowledges and agrees that TMAC may rely on this indemnity following Conveyance Closing, which will not merge on Closing."

21. TMAC's covenants, representations and warranties herein, shall survive Closing until the expiry of the Survival Period.