



MEMORANDUM OF UNDERSTANDING

BETWEEN:

MABELLEarts
("Mabelle")

- and -

TORONTO COMMUNITY HOUSING CORPORATION
("TCHC")

This Memorandum of Understanding ("**MOU**") sets out the proposed terms and conditions for the lease from TCHC to Mabelle of part of the lands known municipally as 49 Mabelle Avenue, Toronto, Ontario, commonly known as "Mabelle Park", and shown outlined in blue on Schedule A to this MOU ("**Mabelle Park**"). Mabelle intends to construct a multi-purpose arts and culture building which will include washrooms, indoor/outdoor multi-purpose art and performance spaces, and office space (the "**Project**") as shown on Schedules A and B hereto and the Preliminary Project Review prepared by Levitt Goodman Architectural Partners ("**LGA**") on the Leased Premises as hereinafter defined and to offer programs to the public, including TCH Tenants, as hereinafter defined, in the Park. In consideration of the mutual covenants herein set out, the parties agree as follows:

1. Binding Nature of this MOU

This MOU creates binding obligations between the parties hereto subject to satisfaction of the conditions contained in this MOU, and the execution of the formal Lease and Operating Agreement defined below.

In this MOU, the "Effective Date" shall mean the date when this agreement has been executed by all parties hereto as indicated in the signature lines at the end of this MOU.

2. The Parties

Mabelle is an award-winning charitable arts and culture organization that has been operating on Mabelle Avenue since 2007.

Toronto Community Housing is the largest social housing provider in Canada and is a wholly owned subsidiary of the City of Toronto.

3. Lease

Mabelle shall lease the Leased Premises from TCHC and will construct and operate the Project on the Leased Premises. Mabelle will be responsible for all costs in connection with financing, constructing, maintaining, managing and operating the Project.

4. Leased Premises

The leased premises shall be comprised of the area shown outlined in red on the plans attached as Schedule B (the "**Leased Premises**"). The Project will be located on the Leased Premises. The parties may make minor adjustments to the size and location of the Leased Premises prior to execution of the Lease, if requested by either party and consented to by the other acting reasonably. The balance of Mabelle Park (other than the Leased Premises) is hereinafter referred to as the "**Open Area**."

5. Term

The term of the Lease shall be Twenty (20) years (the "**Term**") commencing on the Commencement Date as hereinafter defined. Mabelle shall have no right to renew the Lease unless agreed to by TCHC in its sole discretion and any renewals shall be discussed between Mabelle and TCHC no earlier than the last two years of the Term.

6. Open Area

- (a) The Open Area is intended to be available to tenants of buildings owned by TCHC ("**TCH Tenants**") and Mabelle's rights to use the Open Area shall be permitted only as set out herein, or by further agreement with TCHC, the intention being that some of the Open Area shall always be available for use by TCH Tenants. Mabelle's use of the Open Area for its programming shall be governed by an operating agreement (the "**Operating Agreement**"), which shall reflect the terms of this MOU.
- (b) In the event that TCHC has to incur additional costs, including but not limited to additional utilities, maintenance, capital and non-capital repair, insurance, and operating costs (the "**Additional Costs**"), arising as a result of Mabelle Regular Programming or Community Events or otherwise resulting from Mabelle's use of the Open Area, Mabelle shall reimburse TCHC for the Additional Costs.
- (c) TCHC shall maintain the Open Area in the same manner as similar areas in the balance of its properties assuming normal usage by TCH tenants only (the "**TCH Standard**"). Except for the Mabelle Regular Programming or Community Events, TCHC shall not be obliged to make the Open Area available to the public. Mabelle shall be responsible for keeping Mabelle Park clean and tidy after conducting Mabelle Regular Programming and Community Events in Mabelle Park to the TCH Standard.
- (d) In the event TCHC elects in its sole discretion to provide additional maintenance to keep Mabelle Park clean and tidy in excess of its obligation in 6(c), then, where such activity is a result of a breach of Mabelle's obligations, such costs shall be an

Additional Cost and be charged as such to Mabelle. However, under no circumstances shall Mabelle be entitled to charge any costs in connection with its maintenance activities to TCHC.

7. Programming

Mabelle shall be permitted to use the Open Area for its programming, as follows, subject to all other provisions of this MOU:

- (a) Mabelle shall have the right to provide programming in the Open Area, which programming is comprised of the following program types:
 - i. “drop in”, which is open to the public, including TCH Tenants, at any time (“**Drop In Programming**”),
 - ii. programs which are open to the public, including TCH Tenants, which require advance enrolment (“**Subscriber Programming**”, and collectively with Drop In Programming, “**Mabelle Regular Programming**”);
 - iii. community programming, which are large signature events open the public, , including TCH Tenants, (“**Community Events**”)
- (b) Mabelle shall have the right to provide up to 50 hours per week of Mabelle Regular Programming, being approximately half Drop-In Programming and half Subscriber Programming. In no event will Mabelle Regular Programming utilize more than 25% of the Open Area at any time.
- (c) Mabelle shall have the right to organize and provide a maximum of ten (10) Community Events per year, provided it first provides at least five (5) business days’ notice to TCHC. In no event shall a Community Event utilize more than 75% of the Open Area at any time.
- (d) Mabelle Regular Programming and Community Events may be held in such areas of Mabelle Park as may be determined by Mabelle from time to time and as approved by the Park Committee as hereinafter set out, provided that Mabelle shall not locate its programming in a manner that will impact the use of park benches located in the southern one third of Mabelle Park.
- (e) Mabelle shall make all Mabelle Regular Programming and Community Events available to TCH Tenants at no cost to TCH Tenants or to TCHC.
- (f) Mabelle shall make available, at minimum, an average of fifty (50) hours of Mabelle Regular Programming to TCH Tenants (and the public) per month, averaged annually (“**Program Delivery Obligations**”) and shall provide annual reports to TCHC outlining the Program Delivery Obligations provided in the previous year with such supporting materials reasonably requested by TCHC (a “**Program Delivery Report**”). Mabelle’s

obligation to provide programming shall be subject to a reasonable Force Majeure clause.

8. Park Committee

(a) Mabelle shall establish a committee of seven members, comprised of at least two TCH Tenants, one selected by Mabelle, one selected by TCH, two members of Mabelle staff, two staff appointed by TCHC, and one member to be appointed by the office of the City of Toronto Councillor representing the ward within which Mabelle Park is located (the "**Park Committee**"). The Park Committee shall:

- i. meet at least three times a year;
- ii. conduct at least one public meeting a year inviting TCH Tenants and other users of Mabelle Park to discuss Mabelle's and the Park Committee's plans for Mabelle Park and solicit input and feedback of TCH Tenants.
- iii. provide advice to Mabelle with respect to its use of Mabelle Park including requiring Mabelle to post the hours and locations of Mabelle Regular Programming and Community Events;
- iv. consider and approve or reject any request from Mabelle to use Mabelle Park in excess of the permitted hours or number of events for Mabelle Regular Programming or Community Events or in excess of the parts of the Open Area, all as stipulated in Paragraphs 7 (b) and (c) above;
- v. consider and approve the location of the parts of the Open Area where Mabelle Regular Programming and Community Events may occur;
- vi. receive any complaints from TCH Tenants relating to the use of the Open Area and, unless a resolution is obtained to the satisfaction of the Park Committee, immediately report same to TCHC in its capacity as landlord of the Leased Premises and owner of the Open Area, provided notwithstanding the decision of the Park Committee, such TCH Tenant shall be entitled to further report such complaint to TCH and TCH shall address such complaint in accordance with its usual complaint procedure;
- vii. receive any concerns of TCHC that the use of the Open Space does not meet the needs of the local tenant community or otherwise fulfill TCHC's mandate of serving and supporting its tenants; and
- viii. consider any other issues relating to the use of the Open Area or the Leased Premises by Mabelle which the members of the Park Committee or others may bring to the Park Committee's attention.

(b) All decisions of the Park Committee shall be by majority vote, provided that, with respect to any decision under paragraph 8 (a) (iii), (iv), (v), (vi) and (vii) above, if

requested by any TCH tenant or a TCHC representative on the Park Committee, TCHC shall make any final determination in its sole discretion having regard to TCHC's mandate to serve and support its tenants, including without limitation how such mandate may be set out in its various constating, organizational or internal documents or policies from time to time, such as its Shareholder Direction, internal strategic plans or the like (the "TCHC Mandate"). TCHC shall provide its reasons for any determination under this Agreement to Mabelle and other affected parties. In the event TCHC makes a decision that requires Mabelle to cease a program, then the Program Delivery Obligations shall be reduced by an equivalent number of hours for at least one your from the date that TCHC makes such determination.

- (c) Any member of the Park Committee may request a meeting on ten days' notice in addition to the meetings provided for in Paragraph 8 (a) ii above. The Park Committee shall establish reasonable rules relating to meetings of the Park Committee including notice requirements, location and format.
- (d) For clarity, the Park Committee is not intended to establish, determine or approve programming provided by Mabelle, except as otherwise set out in this MOU. Final determination of program content shall be the responsibility of Mabelle unless any issues are brought to the Park Committee's attention pursuant to Paragraph 8 (b) above, and the dispute persists, in which case the issue shall be determined by TCHC in its sole discretion, having regard to the TCHC Mandate.
- (e) The Park Committee shall be entitled to make decisions only with respect to Mabelle's use of the Open Area and shall not infringe on TCHC's rights as owner of Mabelle Park to make decisions with respect to the Open Area, subject only to Mabelle's rights under Section 7 hereof. Except as set out herein, TCHC shall retain all rights as owner of the Open Area and shall be entitled to repair, operate and maintain the Open Area in accordance with its usual policies and processes.

9. Capital Improvements

- (a) Mabelle may make capital improvements or install art installations (any of the foregoing being a "**Capital Improvement**") in the Open Area with the consent of TCHC in its sole discretion. In connection therewith, Mabelle shall provide notice to TCHC identifying (1) the nature of the Capital Improvement and whether or not it is an art installation (an "**Art Installation**") and (2) the proposed plans and specifications for the Capital Improvement. Further:
 - i. All such Capital Improvements shall be professionally installed, shall be maintained by Mabelle in first class condition and repair for the term of the Lease and the provisions of the Lease relating to Tenant's Work shall apply thereto mutatis mutandis;
 - ii. All Capital Improvement shall become the property of TCHC immediately upon being installed or made to the Open Area except that title to any Art

Installation shall remain with Mabelle or the artist, as the case may be, and may be removed by Mabelle at any time on notice to TCH and provided Mabelle repairs any damage to Mabelle Park arising from such removal.

10. Insurance and Indemnity

(a) *Indemnity of TCH by Mabelle* - Mabelle shall indemnify and save harmless TCHC and others for whom TCHC is at law responsible against and from any and all expenses, costs, damages, suits, actions or liabilities and from all costs, counsel fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon (collectively, "**Damages**") arising out of any default by Mabelle hereunder, and from all claims and demands of every kind and nature made by any person or persons to or against TCHC, for all and every manner of costs, damages or expenses incurred by or injury or damage to such person or persons or his, her or their property, which claims or demands may arise howsoever out of:

- i. the use or occupation of the Leased Premises by Mabelle, its employees or invitees; or
- ii. the use or occupation of the Open Area by Mabelle, or its employees and invitees;

including to the extent that such Damages are caused by the negligence or wilful misconduct of TCHC.

(b) *Risk of Property Damage* –With respect to Property Damage:

- i. The Leased Premises shall be entirely at the risk of Mabelle during the term of the Lease,
- ii. Capital Improvements including Art Installations shall be entirely at the risk of Mabelle during the period of the Operating Agreement;

Mabelle Insurance - Mabelle shall carry and maintain property and liability insurance throughout the construction of the Project and the Term of the Lease and Operating Agreement, as may be reasonably required by TCHC. Mabelle shall maintain liability insurance in the amount of Ten Million Dollars (\$10,000,000) naming TCHC as an additional insured and providing a waiver of subrogation. Mabelle shall provide an insurance certificate confirming the foregoing to TCHC. The insurance policies required to be obtained and maintained by Mabelle shall be primary and shall not call into contribution any insurance available to TCHC to the extent of the coverage contemplated in this agreement. Mabelle may purchase and carry property insurance relating to the Art Installations at its expense, but shall not be obligated to do so but shall carry liability insurance with respect to the Art Installations.

11. Conditions

The obligations of the parties hereunder shall be conditional on:

(a) Mabelle providing a budget for all capital construction costs for the Project, with which it is satisfied, to TCHC for its review and approval together with confirmation

- from a reputable cost consultant confirming such budget is reasonable, within one (1) year from the Effective Date. In the event that the funding does not permit the construction of the Project, the parties will in good faith consider a reduction in the size of the Project with commensurate changes to the size of the Leased Premises;
- (b) TCHC being satisfied in its sole discretion within one (1) year from the Effective Date that the existing water feature presently located within the area of the Leased Premises can be relocated, the full expense of which shall be borne by Mabelle as part of the construction of the Project, or otherwise replaced in a manner satisfactory to TCH, in its sole discretion;
 - (c) Mabelle providing firm and binding commitments from governmental or other parties to evidence sufficient funding is in place to construct the Project and to operate the Project for at least one (1) year and Mabelle shall have provided copies of all such firm and binding commitments to TCHC for TCHC's approval, acting reasonably, within one (1) year from the Effective Date;
 - (d) Mabelle shall have provided to TCHC plans and specification for the Project (the "**Plans and Specifications**") prepared by LGA and the Plans and Specifications shall have been approved by TCHC, acting reasonably within eighteen (18) months from the Effective Date;
 - (e) Mabelle shall have obtained all building permits and development approvals required to construct the Project and Mabelle shall have provided copies of all such building permits and development approvals to TCHC within two (2) years from the Effective Date;
 - (f) Mabelle achieving substantial completion of the Project as evidenced by a Certificate of Substantial Completion issued by a duly qualified person pursuant to the *Construction Act* (Ontario) RSO 1990, c. C.30 (the "**Act**") as same may be amended, modified, or replaced from time to time within three (3) years from the Effective Date, such other evidence of completion as may be satisfactory to TCHC, acting reasonably;
 - (g) Mabelle and TCHC agreeing to the form of Operating Agreement for the Open Area in accordance with the provisions of this MOU, which agreement shall be prepared by TCHC in its standard form subject to reasonable comments from Mabelle provided the final form of Operating Agreement shall be satisfactory to TCHC in its sole discretion, within four (4) months from the Effective Date; and
 - (h) Mabelle and TCHC agreeing to the form of Lease for the Leased Premises in accordance with the provisions of this MOU, which lease shall be prepared by TCHC in its standard form subject to reasonable comments from Mabelle provided the final form of lease shall be satisfactory to TCHC in its sole discretion, within four (4) months from the Effective Date.

In the event the Lease and Operating Agreement have not been entered into within the periods of four (4) months referred to in Paragraphs 10 (g) and (h), such periods may be extended by either party by a further period of two (2) months on notice to the other. In the event any of the conditions referred to in this Paragraph 10 have not been satisfied within the periods hereinbefore set out, this MOU shall be null and void and of no further force or effect. The foregoing conditions are true conditions precedent and may not be waived by either party

12. Commencement Date

The Lease shall commence on the date when the Project has been substantially completed as provided under Section 4(e) hereof (the “**Commencement Date**”). Mabelle shall execute the Lease and the Operating Agreement and comply with all provisions thereof prior to being entitled to occupy the Leased Premises or prior to being entitled to use the Open Area as herein set out.

13. Basic Rent

Mabelle shall pay Basic Rent in the amount of One (\$1.00) Dollar per year payable in advance for the entire term.

14. Use

Mabelle shall use the Leased Premises to provide multi-purpose arts and culture programming services of the nature provided at the time of execution of this MOU and office services in support of its operations at the Leased Premises only and for no other purpose. Mabelle shall maintain in good standing its status as a charitable and not for profit corporation. Mabelle shall not permit any filming or other for profit enterprises on the Leased Premises without TCHC’s prior written consent, in its sole discretion.

15. Additional Rent

Mabelle shall be solely responsible for payment of all realty taxes; utilities, maintenance, capital and non-capital repairs, insurance, operating and all other costs, expenses and charges incurred with respect to the Leased Premises, of any kind whatsoever (collectively “**Additional Rent**”).

16. Net Lease

The Lease shall be absolutely net and carefree to TCHC.

17. Tenant’s Work

Mabelle shall be responsible, at its sole cost and expense, for constructing the Project (the “**Tenant’s Work**”) and in particular, shall:

- (a) submit the final plans and specifications for the Tenant’s Work to TCHC and any amendments thereto from time to time;

- (b) engage LGA to design the Project and to act as construction manager throughout the development of the Project;
- (c) obtain all development approvals (building permit, zoning applications, severance consents etc.) required for the Tenant's Work;
- (d) complete the Tenant's Work in a timely, diligent and efficient manner;
- (e) comply in all respects with the Construction Act;
- (f) complete all work in accordance with all laws, statutes, by-laws, regulations, codes and rules of any entity having jurisdiction over such matters, including all applicable health and safety rules and regulations and all changes to said work shall first be approved by TCHC;

The Lease shall contain TCHC's standard requirements relating to the Tenant's Work including utilizing labour compatible with TCHC's Labour Affiliations and complying with TCHC's Vendor Code of Conduct and Fair Wage Policy. Provided the Lease and Operating Agreement have been executed and all provisions of this MOU, the Operating Agreement and the Lease have been complied with, Mabelle shall be entitled to occupy the Leased Premises prior to the Commencement Date for the purposes of the Tenant's Work. The provisions contained in this Paragraph 16 relating to Tenants Work shall also apply to any capital improvements made to the Open Area.

18. Default

A default under the Lease shall constitute a default under the Operating Agreement and vice versa, and upon any such default, both agreements shall be terminable by TCHC on thirty (30) days' notice or if such default cannot be cured within thirty (30) days, such longer period as is necessary to cure the default, so long as Mabelle commences to cure the default within such thirty (30) day period and is diligently proceeding.

19. Compliance with Laws

Mabelle shall comply with all applicable laws, statutes, by-laws, regulations, codes and rules of any entity having jurisdiction over Mabelle's use and occupation of the Lands and building thereon, as well as the rights granted thereto and any and all matters attendant thereto.

20. Licences, Approvals

Mabelle shall have, at all times during the Term, all permits, licences, approvals, consents, or authorizations (including but not limited for construction, use and zoning) necessary to carry on their respective operations in respect of the Lands and improvements.

21. Reporting

In an annual basis and no later than 120 days after Mabelle’s fiscal year end, Mabelle shall provide TCHC with a copy of its annual statements, which shall include a social impact statement respecting the Project.

IN WITNESS WHEREOF, the undersigned have duly executed this Memorandum of Understanding on the dates set out below.

MABELLEarts

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation

Date: _____

TORONTO COMMUNITY AND HOUSING CORPORATION

Per: _____
Name: _____
Title: _____

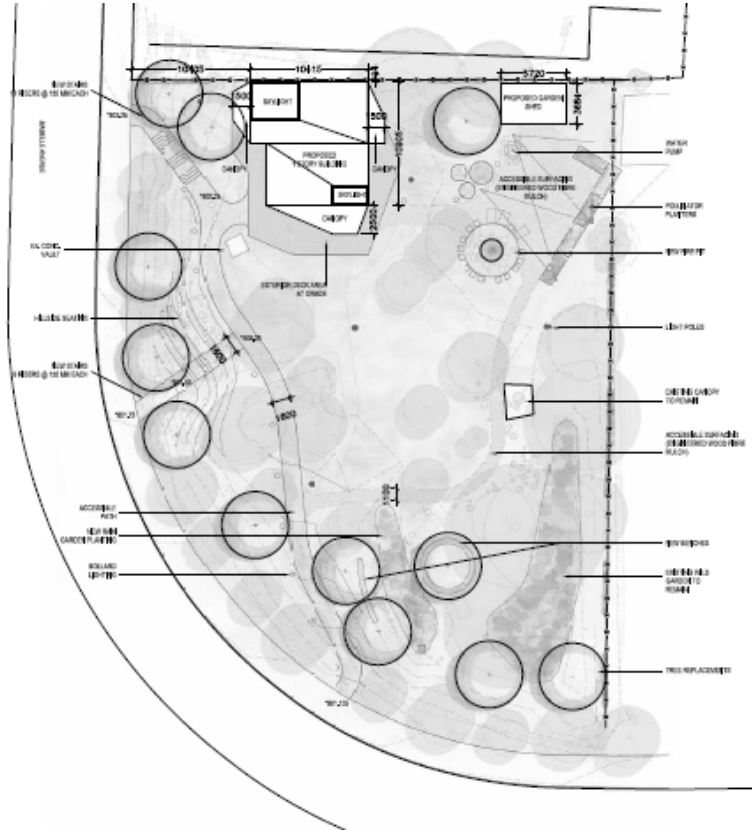
Per: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation

Date: _____

SCHEDULE A

MABELLE PARK



SCHEDULE B

THE LEASED PREMISES

