

## NON-DISCLOSURE AGREEMENT

This Agreement executed this \_\_\_ day of November, 2021 ("Effective Date").

B E T W E E N:

### THE CORPORATION OF THE CITY OF BRAMPTON

(the "City")

- AND -

**[Insert Company Name]**

("Proponent")

(referred to individually as a "Party" and collectively, the "Parties")

**WHEREAS** The Parties wish to exchange information for the purpose of exploring potential business transactions and examining the possibilities of potential relationships that would be to the mutual benefit of the Parties, as more fully described below (the "**Purpose**") and each Party desires to protect the confidentiality of certain information that may be provided by or on behalf of a Party or its respective representatives (a "**Discloser**") to the other Party or its representatives (a "**Recipient**") before or after the Effective Date.

**AND WHEREAS** The Discloser is willing to disclose certain Confidential information (as hereinafter defined) to the Recipient for the purpose of exploring a business relationship as outlined in City's Expression of Interest ("EOI") for the Potential Redevelopment and Revitalization of the Heritage Theatre Block, municipally known as 70-86 Main Street North (the "Purpose").

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

### 1. Confidential Information

1.1. In this Agreement, Confidential Information means any information and materials, whether such information has been provided to the Recipient verbally or in writing or other tangible form, and whether such information is received directly or indirectly, such as in the course of discussions or other communications by the Recipient. Without limiting the generality of the foregoing, Confidential Information shall include information or materials that:

- (a) are designated as confidential at the time of disclosure (in a manner reflecting the manner in which they are disclosed), but the absence of such marking shall not relieve the Recipient of the obligation to treat such information as Confidential if, under (b), it would be regarded as confidential; or
- (b) a reasonable person, having regard to the circumstances, would regard as confidential (including Personal Information. "Personal Information" means any

personal information which is required to be protected pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M 56 ("MFIPPA") or any laws (including regulations and common law) pertaining to the protection of personal, healthcare or insurance information. Personal Information shall remain in Canada.

1.2. For clarity, the Disclosing Party's Confidential Information does not include information that:

- (a) is known or subsequently becomes available to the public or becomes publicly known through no action or omission of the Recipient;
- (b) is independently developed by the Recipient without the use of any Confidential Information;
- (c) the Recipient rightfully obtained or obtains from a third party who has the right to disclose it; or
- (d) is approved for copying, disclosure, publication or dissemination by the Discloser either in this Agreement or by subsequent written permission.

The above listed exceptions do not apply in the case of Confidential Information that is also Personal Information.

## **2. Recipient's Obligations**

2.1. The Recipient agrees that:

- (a) The Confidential Information is and shall be the exclusive, valuable property of the Discloser and the Recipient will use the Confidential Information only in relation to the Purpose;
- (b) Use at least the same degree of care to protect the Confidential Information as the Recipient uses to protect its own Confidential Information of a like nature, but in any event will not use a standard of care that is less than a reasonable standard of care;
- (c) It will not disclose the Confidential Information to any person other than the Recipient's representatives who have a need to know for the purpose described in 2.1(a);
- (d) Upon becoming aware of any unauthorized copying, disclosure or use of the Confidential Information, it will notify the Discloser immediately and make a reasonable effort to minimize the effect of any such use or disclosure;
- (e) Notify the Discloser immediately upon becoming aware of any breach or threatened breach of this Agreement of which it is aware;
- (f) Subject to 2.1(g) of this Agreement, upon expiration or termination of this Agreement or at a Party's request, the Recipient will: (i) return all Confidential Information disclosed to it by the Disclosing Party and all copies thereof, regardless of form; and (ii) destroy any such Confidential Information that cannot be returned; and
- (g) To the extent that any of the following circumstances apply and the Recipient neither returns nor destroys any Confidential Information of the Disclosing Party as a result, the provisions of this Agreement pertaining to the protection of Confidential Information will extend until the Confidential Information is returned or destroyed: (i)

it is not reasonably feasible to return or destroy the Confidential Information; or (ii) the Confidential Information forms part of any Good or Service that the Recipient is entitled to in the future.

### 3. Applicable Law

- 3.1. The [insert company name] acknowledges that the City is bound by policies, by-laws and statutes, including but not limited to the City of Brampton's Records Retention By-law 272-2014 and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M 56 ("Applicable Law") and Confidential Information provided by the Discloser to the Recipient may be subject to disclosure in accordance with Applicable Law.
- 3.2. In the event that the [company] is required to disclose Confidential Information under Section 3.1, the [company] agrees to provide notice of such disclosure to the City in accordance with Section 6.

### 4. Equitable Relief

The Recipient acknowledges that the Confidential Information is of value to the Discloser and that any unauthorized copying, use, disclosure, access or disposition of the Confidential Information will cause irreparable injury to the Discloser. The Recipient agrees that in addition to any other remedies that the Discloser may have, the Discloser may be entitled to an injunction against any breach or threatened breach.

### 5. Survival

The Parties agree that the obligations herein shall remain in full force and effect effective January 1, 2022 for a period of three years of the date of this Agreement unless otherwise terminated by either Party to this Agreement by giving notice to the other Party of its desire to terminate this Agreement.

### 6. Notice

Unless otherwise expressly provided in this Agreement, any notice or other communication to be given under this Agreement (a "notice") shall be in writing addressed as follows:

In the case of the City, to:

Name, Title: Shahid Mahmood, Principal Planner/Supervisor  
Address: 2 Wellington Street West, Brampton, ON, L6Y 4R2  
Tel. 647.388.8732  
E-mail: shahid.mahmood@brampton.ca

In the case of the Proponent, to:

Name, Title: [INSERT]  
Address:  
Tel:  
E-mail:

### 7. General Provisions

- 7.1. In the event that any provision of this Agreement is held invalid, illegal or unenforceable, the remainder of this Agreement and its application to any person or circumstances shall not be affected thereby and the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein.
- 7.2. The laws of the Province of Ontario and the federal laws of Canada shall govern this Agreement.
- 7.3. Neither party shall assign this Agreement in whole or in part without the prior written consent of the other Party.
- 7.4. This Agreement shall not be varied, altered, amended or supplemented except in writing signed by the authorized representatives of both Parties.
- 7.5. No waiver of a breach by a Party under this Agreement shall constitute a consent to or waiver of any other different or subsequent breach.
- 7.6. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same agreement
- 7.7. The Parties understand and agree that nothing contained in this Agreement shall constitute or be deemed to create a partnership or joint venture between the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**[INSERT COMPANY NAME]**

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

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

I/We have authority to bind the corporation.

Approved as to  
 Form - Legal  
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Approved as to  
 Content  
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**THE CORPORATION OF THE CITY OF  
 BRAMPTON**

Authorizing By-Law No.  
 \_\_\_\_\_

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

I have authority to bind the corporation.