

ATTACHMENT 1 FOR CONSIDERATION WITH ITEM 3B.

CITY OF TORONTO

SHAREHOLDER DIRECTION

BUILD TORONTO INC.

July xx, 2009

TABLE OF CONTENTS

ARTICLE 1 - INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Calculation of Time	3
1.3 Authority of Applicable Law	3
ARTICLE 2 - OBJECTIVES AND PRINCIPLES.....	4
2.1 Purpose of this Shareholder Direction	4
2.2 City Objectives.....	4
2.3 Mandate of Build Toronto	4
2.4 Donations	5
2.5 Operating Principles.....	5
2.6 Fiscal Year	6
2.7 City Services Corporations Regulation.....	6
2.8 Amendments to Regulation.....	7
2.9 Confidentiality	7
ARTICLE 3 - RELATIONSHIP TO THE CITY	8
3.1 Relationship of Build Toronto and the City.....	8
3.2 Not an Agent of City.....	8
3.3 Relationship to City Facilities and Real Estate Division	9
3.4 Waterfront Issues	9
3.5 Intergovernmental Relations.....	9
3.6 Not City Employees.....	9
ARTICLE 4 - BOARD OF DIRECTORS	9
4.1 Board Responsibilities	9
4.2 Composition of the Board.....	10
4.3 Term.....	11
4.4 Contact Information	11
4.5 Vacancies	11
4.6 Conflict of Interest	11
4.7 Remuneration.....	11
4.8 Meetings.....	12
ARTICLE 5 - SHAREHOLDER MATTERS	13
5.1 Decisions of the City.....	13
5.2 Governance Liaison	13
5.3 Financial Liaison.....	13
5.4 Matters Requiring Shareholder Approval under the OBCA.....	13
5.5 Other Matters Requiring City Approval	14

ARTICLE 6 - REPORTING.....	14
6.1 Business Plan	14
6.2 Financial Impact on the City.....	15
6.3 Quarterly Reports.....	15
6.4 Access to Records.....	15
6.5 Audit	16
6.6 Accounting.....	16
6.7 Annual Report.....	16
ARTICLE 7 - FINANCIAL PERFORMANCE.....	16
7.1 Debt Financing.....	16
7.2 Repayment of Seed Money Provided by the City.....	17
7.3 Dividend Policy	17
ARTICLE 8 - GENERAL	17
8.1 Interpretation.....	17
8.2 Amendments	17
SCHEDULE 1 - PROTOCOL FOR COOPERATION BETWEEN BUILD TORONTO AND F&RE	18

SHAREHOLDER DIRECTION

WHEREAS

- A. Build Toronto Inc. was incorporated on November 13, 2008 under the *Business Corporations Act* (Ontario) pursuant to s. 148 of *City of Toronto Act, 2006* and Ontario Regulation 609/06, City Services Corporations;
- B. The City of Toronto is the owner of all of the issued shares of Build Toronto Inc.;
- C. In very general terms Build Toronto Inc. is to provide development services to the City to unlock the value of under-utilized real estate holdings with a view to enhancing the economic competitiveness of Toronto and furthering the City's policy objectives; and
- D. The City of Toronto, as the sole shareholder of Build Toronto Inc., wishes to set out its expectations, establish certain operating principles, set out certain requirements to be met by Build Toronto Inc., and inform the residents of Toronto of the City's fundamental principles and accountability mechanisms regarding Build Toronto Inc..

NOW THEREFORE THIS DIRECTION WITNESSES:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Shareholder Direction, including the protocol attached as Schedule 1 the following terms will have the meanings set out below:

“**ABCs**” means all City agencies, boards, and commissions;

“**Applicable Law**” means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws;

“**Auditor**” means the external attest auditor of Build Toronto Inc.;

“**Auditor General**” means the City's Auditor General or his designate or any person acting in that capacity;

“**Authorized City Signatory**” means the individual or individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written approvals or decisions relating to Build Toronto Inc. on behalf of the City;

“**Board**” means the board of directors of Build Toronto Inc.;

“**Build Toronto**” means Build Toronto Inc.;

“**Business Day**” means a day other than a Saturday, a Sunday, or any day that is a statutory holiday in Ontario;

“**Business Plan**” means a rolling five year business plan and budget for Build Toronto prepared in accordance with Section 6.1;

“**City CCO**” means the Chief Corporate Officer of the City of Toronto or the person acting in that capacity or his designate;

“**CEO**” means the Chief Executive Officer of Build Toronto;

“**Chair**” means the Board member who is appointed by Council as chair of the Board or any director acting in that capacity;

“**City**” means the City of Toronto;

“**City CFO**” means the Deputy City Manager and Chief Financial Officer of the City or the person acting in that capacity or his designate;

“**City Manager**” means the City’s City Manager or the person acting in that capacity or his designate;

“**City Solicitor**” means the City’s City Solicitor or the person acting in that capacity or her designate;

“**City Staff**” means a member or members of the Toronto Public Service;

“**Corporate Governance Committee**” means the Corporate Governance Committee of the Board;

“**Council**” means the Council of the City;

“**Financial Statements**” means, for any particular period, audited or unaudited, comprehensive financial statements of Build Toronto consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited financial statements), and such other statements, reports, notes and information as are required in accordance with any Applicable Law, all prepared in accordance with generally accepted accounting principles consistently applied;

“**F&RE**” means the Facilities and Real Estate Division of the City or any successor division;

“**Governmental Authority**” means a federal, provincial, or municipal government, or any entity, person, court or other body or organization exercising one or more executive, legislative, judicial or regulatory functions;

“**Land**” means land and the buildings and fixtures thereon;

“**OBCA**” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“**Person**” means an individual, a corporation, a body corporate or a Governmental Authority;

“**Protocol**” means the protocol for cooperation between Build Toronto and F&RE which is attached as Schedule 1 to this Shareholder Direction or any successor protocol that is agreed between Build Toronto and the City;

“**Regulation**” means Ontario Regulation 609/06, the City Services Corporations Regulation, as it may be amended or replaced from time to time;

“**Sale Agreement**” means an agreement between Build Toronto and the City and/or one of its ABCs providing for a commitment to sell or otherwise dispose of Land, including a Transfer and a disposal by way of lease for a term of 21 years or more, and “**Sell**”, “**Sale**” and “**Sold**” have corresponding meanings;

“**Transfer Agreement**” means an agreement between Build Toronto and the City and/or one of its ABCs providing for the transfer of title to Land to Build Toronto, and “**Transfer**” and “**Transferred**” have corresponding meanings;

“**Turnover Agreement**” means an agreement between Build Toronto and the City and/or one of its ABCs which may include permission for Build Toronto to manage, market and initiate the development of Land, and “**Turnover**” and “**Turned Over**” have corresponding meanings. For greater certainty, Turnover Agreements may not provide for the Sale of Land to Build Toronto; and

“**Waterfront Toronto**” means Toronto Waterfront Revitalization Corporation.

1.2 Calculation of Time

In this Shareholder Direction, a period of days will be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Toronto time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period will terminate at 5:00 p.m. (Toronto time) on the next Business Day.

1.3 Authority of Applicable Law

In the event of any conflict between any approval, direction or requirement of Build Toronto under this Shareholder Direction and any Applicable Law, the Applicable Law shall govern. Build Toronto may seek an order from any Governmental Authority for any matter only in accordance with Article 5 of this Shareholder Direction.

ARTICLE 2 - OBJECTIVES AND PRINCIPLES

2.1 Purpose of this Shareholder Direction

This Shareholder Direction:

- (a) sets out for the Board the City's expectations of and objectives for Build Toronto and Build Toronto's mandate, scope of responsibility, and reporting requirements;
- (b) sets out the relationship between Build Toronto and the City; and
- (c) constitutes, where applicable, a declaration by the City, as the sole shareholder of Build Toronto, pursuant to subsection 108(3) of the OBCA.

2.2 City Objectives

- (a) The City is one of the largest Land managers in Toronto. The vast majority of this Land is used to deliver City programs. However, the City recognizes that there are opportunities to unlock the value of these Lands to further City priorities. It is the City's desire to use Lands to enhance Toronto's economic competitiveness by attracting new commercial development that creates desirable jobs and to improve the liveability of Toronto by rejuvenating neighbourhoods and providing improved infrastructure and amenities.
- (b) Build Toronto will play an integral role in achieving these objectives by providing specialized expertise, operating within a business environment, to develop or work with the private sector or other interests to commercially develop properties declared surplus by the City and its ABCs and to intensify use of properties used by City programs in order to attract targeted industries identified by the City, stimulate creation of desirable employment, and regenerate neighbourhoods.
- (c) By unlocking the value of Lands in its care, Build Toronto will generate a reasonable net financial return to the City. Financial return may include, but not be limited to, increased assessments on developed properties, reasonable revenues generated from development activities, proceeds of sale or lease of certain properties, and other benefits and dividends.

2.3 Mandate of Build Toronto

Build Toronto will strive to achieve the objectives set out in ss. 2.2. Specifically,

- (a) Build Toronto shall develop and/or facilitate private commercial development of Lands Sold or Turned Over to Build Toronto by the City and its ABCs by complying with the provisions and intent of Land Sale and Turnover Agreements and Build Toronto shall respect the City's program requirements on Lands where City programs continue to operate.

- (b) Build Toronto shall work with the City, investors or private partners as appropriate to maximize the value and economic development potential of Lands owned or managed by Build Toronto and act as a catalyst for the development of infrastructure and sustainable services in Toronto.
- (c) Build Toronto shall advise the City on the potential for private commercial development on properties of the City and its ABCs.

2.4 Donations

- (a) Build Toronto shall not make donations or similar contributions to any charity or charitable organization, or to any political campaign.
- (b) Nothing in this section prohibits Build Toronto from paying membership fees to join organizations that are relevant to Build Toronto's activities or from engaging in sponsorship activities that promote Build Toronto or its objectives.

2.5 Operating Principles

The directors and officers of all OBCA corporations have a duty to act honestly, in good faith and in the best interests of the corporation. Build Toronto is wholly owned by the City and the City has established the objectives for Build Toronto, aligned with the City's interests. The following principles govern the operations, services and activities of Build Toronto in that context:

- (a) Build Toronto shall conduct its business in a socially responsible manner that respects the public nature of its shareholder and the importance of the City's accountability to the general public;
- (b) Build Toronto shall conduct its affairs:
 - (i) on a commercially prudent basis, employing efficient cost structures;
 - (ii) in a fair, equitable, and inclusive manner;
 - (iii) in a manner that supports City goals and priorities; and
 - (iv) in accordance with industry best practices applicable to comparable activities;
- (c) Build Toronto shall develop and comply with procurement policies designed with the objective of providing good value;
- (d) Build Toronto shall establish access, equity, and human rights goals and implement human rights policies and procedures consistent with those established by City Council;
- (e) Build Toronto shall act in accordance with and be accountable for the financial performance and strategic objectives as set out in Build Toronto's Board-approved Business Plan;

- (f) Build Toronto shall act in an environmentally responsible manner and will promote environmentally sustainable development;
- (g) Build Toronto shall develop protocols for community involvement as appropriate and maintain standards for architecture, design and public open space with the intent of promoting urban design innovation and excellence that is acceptable to the community; and
- (h) Build Toronto shall act reasonably to mitigate financial risks to the City.

2.6 Fiscal Year

The fiscal year end for Build Toronto shall be December 31.

2.7 City Services Corporations Regulation

Build Toronto is responsible for adhering to the Regulation as it pertains to Build Toronto. The following highlights the sections of the Regulation that are most relevant to Build Toronto, and in certain instances sets out the City's specific direction regarding these requirements.

- (a) S. 20 of the Regulation provides that Build Toronto is deemed to be an institution for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (b) S. 19 of the Regulation provides that the directors and officers of Build Toronto are deemed to be members for the purposes of the *Municipal Conflict of Interest Act* which imposes certain obligations relating to declaring interests and avoiding conflicts of interest and establishes consequences for failing to comply with those obligations.

The directors and officers of Build Toronto also shall comply with the conflict of interest requirements in the *Business Corporations Act* (Ontario), and any conflict of interest policies imposed by the City. The City requires the Board to develop and maintain a conflict of interest policy for staff and a code of conduct for Board members that incorporate all of these requirements. (In the event of any conflict between the *Municipal Conflict of Interest Act* and the OBCA, the *Municipal Conflict of Interest Act* shall prevail.)

- (c) Ss. 18(1) of the Regulation provides that Build Toronto is prohibited from incorporating a corporation under any act.

The City has requested the Province of Ontario to amend the Regulation to permit Build Toronto to incorporate subsidiaries. If and when such amendment takes effect, Build Toronto may create subsidiaries in accordance with the amended Regulation with the following City conditions:

- (i) the Board of Directors of the subsidiary shall consist of all or a subset of the Board members of Build Toronto and may also include staff of Build Toronto;
 - (ii) the Board of Build Toronto shall approve a shareholder direction for the subsidiary that incorporates the requirements in this Shareholder Direction including any requirements for City approvals (where City approvals are required under this Shareholder Direction, City approvals are required under a shareholder direction to a subsidiary);
 - (iii) directors of any subsidiary shall receive no additional remuneration for serving on the subsidiary board; and
 - (iv) any proposal to create a subsidiary shall be first considered by the Corporate Governance Committee and Build Toronto shall notify the Governance liaison identified in s.5.2 prior to the Board's consideration of the proposal.
- (d) Ss. 18(2) of the Regulation provides that Build Toronto may only invest in securities prescribed under s.256 of the *City of Toronto Act 2006*, and any regulation made under s.256 applies to Build Toronto.

Build Toronto is not required to adhere to any additional restrictions that the City has approved or approves in the future for City investments.

- (e) S. 21 of the Regulation provides that Build Toronto is deemed to be a local board of the City for the purposes of ss. 212(2) of the *City of Toronto Act, 2006*, which requires that Build Toronto adopt and maintain policies with respect to:
- (i) sale and other disposition of Land;
 - (ii) hiring of employees; and
 - (iii) Procurement of goods and services.

For clarity, Build Toronto is not required to adopt City policies for such matters, but Build Toronto's policies shall be developed in accordance with the Operating Principles set out in s. 2.5 of this Shareholder Direction.

2.8 Amendments to Regulation

Section 2.7 sets out certain obligations under the Regulation as it reads on the date of this Shareholder Direction. Build Toronto shall comply with the Regulation as it is amended or replaced from time to time and it is the responsibility of Build Toronto to monitor any changes to the Regulation, and to comply with the Regulation as it is amended or replaced from time to time.

2.9 Confidentiality

Build Toronto shall use its best efforts to ensure that no confidential information of the City or Build Toronto or any subsidiaries of Build Toronto is disclosed or otherwise made available by Build Toronto or any of its directors, officers and employees to any person, except to the extent that:

- (a) disclosure to the City's or Build Toronto's officers, employees or agents is necessary for the performance of any of their duties or obligations under this Shareholder Direction, or in their jobs at the City or at Build Toronto, or for the performance of duties by other parties receiving confidential information; or
- (b) disclosure is required in the course of any legal or regulatory proceedings or actions or pursuant to any Applicable Law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by any party); or
- (d) disclosure is made in full compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and the conflict of interest provisions in the OBCA.

ARTICLE 3 - RELATIONSHIP TO THE CITY

3.1 Relationship of Build Toronto and the City

The City is the sole shareholder of Build Toronto, and requires that Build Toronto take responsibility for managing, developing, marketing and value optimization of Land that has been Sold, Transferred or Turned Over to it, subject to the terms and conditions of this Shareholder Direction and subject to the specific requirements set out in any Sale, Transfer or Turnover Agreements.

Build Toronto acts on its own behalf for Lands Transferred to it and Lands acquired by Build Toronto from other sources. Lands Transferred from the City through a Transfer Agreement may be Transferred with conditions, but Build Toronto may use or dispose of such Lands as it sees fit in compliance with such conditions. Subject to the terms of the Transfer Agreements, Build Toronto will assume responsibility for managing the property, receiving any revenues generated by the property, and paying all associated costs.

Build Toronto will act as a contractual partner with the City when providing and discharging services under a Turnover Agreement or a Sale Agreement that is not a Transfer Agreement, since the City will retain title.

3.2 Not an Agent of City

Build Toronto does not have the capacity to act as an agent of the City unless the City gives express written authorization to Build Toronto to do so, and Build Toronto shall not conduct itself so as to create, or purport to create, an agency relationship with the City except in accordance with such a written authorization.

3.3 Relationship to City Facilities and Real Estate Division

- (a) The City CCO is responsible for the development and implementation of a City-wide real estate strategy. Build Toronto will have opportunities to identify, for consideration by the City, Land that has the potential for private development and that may be suitable for Sale, Transfer or Turnover to Build Toronto.
- (b) Schedule 1 to this Shareholder Direction outlines a proposed Protocol for Cooperation Between Build Toronto and F&RE to identify Lands with the potential for development by Build Toronto. For each party, the Protocol sets out the relative roles and responsibilities and the principles of a City-wide real estate strategy.
- (c) The City CFO and the Build Toronto CEO shall work together to jointly propose amendments to the Protocol. The Board, on behalf of Build Toronto, and the City Manager, on behalf of the City, have the authority to make changes to this Protocol as jointly proposed.

3.4 Waterfront Issues

Waterfront Toronto has leadership responsibilities for public sector development of Lands in the central waterfront area. Where Land within the central waterfront area has been Sold, Transferred or Turned Over to Build Toronto, Build Toronto shall ensure that its plans are consistent with Waterfront Toronto's plans and that the City's Waterfront Secretariat is fully apprised of such development before Build Toronto makes any commitments in respect of such Land.

3.5 Intergovernmental Relations

Build Toronto shall ensure that all relationships with other orders of government in Canada and with foreign governments are co-ordinated with the Mayor's Office and the City Manager's Office and Build Toronto shall follow the protocols as established by those offices.

3.6 Not City Employees

Build Toronto staff are not employees of the City. This does not preclude any secondment or temporary engagement of City Staff by Build Toronto.

ARTICLE 4 - BOARD OF DIRECTORS

4.1 Board Responsibilities

Subject to this Shareholder Direction and the OBCA, the Board shall supervise the management of the business and affairs of Build Toronto. In particular, the Board, or

where delegation is permitted and deemed appropriate by the Board, a committee of the Board or Build Toronto staff, shall:

- (a) Establish a Corporate Governance Committee of the Board and such other committees of the Board as the Board determines are appropriate, and delegate to the committees such authority as the Board determines is appropriate, provided that the delegation of that authority is permitted under the OBCA and complies with, and is subject to, the provisions in s. 4.8 of this Shareholder Direction;
- (b) Through the recommendations of the Board's Corporate Governance Committee, appoint the CEO, approve the terms of his or her employment, establish performance objectives for the CEO, monitor the CEO's success in meeting those objectives, and hold the CEO accountable for meeting those objectives;
- (c) Adopt a human resources strategy for Build Toronto that includes a responsible compensation structure and an equal employment opportunity policy;
- (d) Appoint the officers of Build Toronto other than the Chair and Vice-Chair (who are appointed by Council);
- (e) Approve the Business Plan for Build Toronto as outlined in Article 6 and the annual budget and ensure that Build Toronto acts in accordance with these plans;
- (f) Establish policies for the management and protection of Build Toronto's assets and the assets of the City under its management, other policies including procurement and contracting policies that are in accordance with any Applicable Laws and this Shareholder Direction, and policies respecting signing authority limits;
- (g) Adopt a financial and risk management strategy for Build Toronto that includes developing revenue sources, establishing liquidity benchmarks, prudently managing debt and investments, establishing appropriate reserves consistent with sound financial principles, establishing financial performance objectives, and monitoring performance against objectives;
- (h) Approve and submit to the City, as Build Toronto's shareholder, the Annual Report outlined in s. 6.7;
- (i) Maintain adequate insurance coverage; and
- (j) Ensure that Build Toronto staff understand and act in accordance with this Shareholder Direction.

4.2 Composition of the Board

The City has the sole authority to amend the composition of the Board, subject to the provisions in Build Toronto's articles of incorporation and any articles of amendment,

appoint the Chair and Vice-Chair, and fill vacancies on the Board as they arise from time to time.

4.3 Term

Directors serve at the pleasure of Council for the term specified by Council at the time of their appointments or until their successors are appointed.

4.4 Contact Information

Build Toronto shall keep up-to-date records of every director's contact information and promptly inform the City of any changes to that information.

4.5 Vacancies

- (a) If a director ceases to be a director for any reason, the Board immediately shall so advise the City Manager, and request that the City, as the sole shareholder, appoint another director.
- (b) The Board shall declare a vacancy in any of the following situations:
 - (i) A director is absent from three consecutive Board meetings without the approval of the Board as recorded in the minutes of the meetings;
 - (ii) A municipally elected official serving on the Board is not re-elected;
 - (iii) A director who is a City staff person serving on the Board *ex officio* vacates that City position;
 - (iv) A director dies;
 - (v) A director is removed from that office by its shareholder, the City; or
 - (vi) A director resigns from the Board.

4.6 Conflict of Interest

Each director and officer of Build Toronto shall inform the Board immediately when he or she has an interest in a matter to be considered by the Board or a committee of the Board, and take appropriate action in accordance with the provisions of the *Municipal Conflict of Interest Act*, and any other Applicable Laws or City or Board policies.

4.7 Remuneration

- (a) The remuneration of the directors of Build Toronto will be determined by the City from time to time. The Board has no authority to alter the remuneration or provide any additional remuneration to directors. However, a director may elect to receive no or a reduced remuneration.
- (b) City Staff or members of Council will receive no additional remuneration for their service on the Board:

- (c) The Board shall establish an expense reimbursement policy to provide for the reimbursement of out-of-pocket expenses for Board members while conducting Board business. Such policy shall require that the Board pre-approve the amount and reason for all major business expenses for directors.
- (d) The Board shall report to the City the total remuneration and expenses paid for each member of the Board using the protocols established by the City CFO from time to time.

4.8 Meetings

- (a) Meetings of the Board and its committees shall be open to the public, except where matters may be considered in camera in accordance with s. 190 of the *City of Toronto Act, 2006*. Advance public notice of the agenda is required.
- (b) The Board may engage recording secretary services of an outside party which could be the City Clerk. The recording secretary shall attend all public and in camera portions of meetings. For clarity, the recording secretary is not required to attend briefings, orientation or other training sessions, or team building and planning meetings where no Board decisions are made.
- (c) The Auditor General is entitled to attend all Board meetings or any meetings of committees of the Board. Staff of the Mayor's Office, the City Manager, the City CFO and any other City official designated by the City from time to time or his or her designate shall be entitled to receive notice of and to attend all meetings of the Board. The Chair may, at his discretion, require City Staff, other than the recording secretary or members of the Board, in attendance during the in camera portion of the meeting to leave the meeting during discussion of sensitive personnel issues.
- (d) The Mayor or the director that is the Mayor's designate shall be the chair of the Corporate Governance Committee and shall determine the membership of the Committee. The Corporate Governance Committee shall have the responsibility of recruiting and recommending to the Board the appointment of the CEO, and shall evaluate the performance of the CEO and recommend any actions concerning the employment of the CEO to the Board. In addition, the mandate of the committee shall include recommending to the Board any changes to Build Toronto's constituting documents or by-laws and any structural changes including the establishment of subsidiaries, if permitted by law.
- (e) The Board may establish other committees of the Board for any purpose and delegate decision-making to those committees as permitted by Applicable Law except:
 - (i) The Board shall not delegate to a committee or an individual any material decisions relating to disposition of Lands;
 - (ii) The Board shall not delegate decision-making to any committee unless all members of that committee are current Board members; and

- (iii) The Board shall not delegate to a committee the power to commit Build Toronto resources unless the Board has stipulated in its by-laws monetary limits on the corporate resources that may be committed by the committee.

ARTICLE 5 - SHAREHOLDER MATTERS

5.1 Decisions of the City

Each time Build Toronto wishes to seek an approval or decision from the City, as the shareholder of Build Toronto, Build Toronto shall make a written request for the approval which includes all information necessary for the City to make an informed decision. Build Toronto shall submit its request and supporting information in a timely manner to the appropriate City liaison.

If the decision requested requires Council approval, Build Toronto shall make its request in a timely manner to enable City Staff to comply with deadlines for submission to committee and Council.

5.2 Governance Liaison

For matters requiring City approval or other action regarding governance matters set out in Article 4, s.5.4 and intergovernmental matters set out in ss.5.5 (a), the designated City liaison is the City Manager. The Mayor's Office shall also be consulted regarding any intergovernmental issues as set out in s. 3.5 of this Shareholder Direction.

5.3 Financial Liaison

For matters set out in Articles 6 and 7, the designated City liaison is the City CFO, who is also the Authorized City Signatory for matters set out in ss. 5.5 (b) to (d).

5.4 Matters Requiring Shareholder Approval under the OBCA

Build Toronto shall not take any of the following actions without the approval of its shareholder, the City:

- (a) Amend or repeal its articles of incorporation;
- (b) Amalgamate with another corporation (other than a wholly-owned subsidiary), apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) Take or institute proceedings for any winding up, arrangement, reorganization or dissolution;

- (d) Create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (e) Sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (f) Change the Auditor;
- (g) Make any changes to the number of directors comprising the Board; or
- (h) Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

The Board may make, amend, or repeal any of its by-laws and the changes take effect at such time as the Board approves. Such changes shall be submitted to the City, as shareholder, immediately upon approval by the Board for Council approval. If Council makes any amendments, the amendments take effect when approved by Council and are not retroactive.

5.5 Other Matters Requiring City Approval

Without the prior written approval of the City, Build Toronto shall not:

- (a) Seek financial support or any changes to legislation or regulation from any Governmental Authority other than the City;
- (b) Make representations or promises of any financial incentives or similar inducements that are binding on the City;
- (c) Issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from, the City or any borrowing that, in the opinion of the City CFO, will have a negative impact on the City's credit rating; or
- (d) Make or hold investments outside of Canada.

ARTICLE 6 - REPORTING

6.1 Business Plan

The Board shall approve a Business Plan and Build Toronto shall carry on its business and operations in accordance with the Business Plan which will include, in respect of the period covered by such plan:

- (a) The key objectives, priorities, and business initiatives that Build Toronto will undertake over the next 5 year period.

- (b) The metrics for monitoring accomplishments and financial performance including liquidity and debt coverage;
- (c) An operating and capital budget for the next fiscal year and an operating and capital budget projection for each subsequent fiscal year covered by the Business Plan, including the resources necessary to implement the Business Plan and any financial impact on the City;
- (d) Pro forma Financial Statements;
- (e) Any material variances in the projected ability of any business activity to meet or continue to meet Build Toronto's objectives;
- (f) Any material variances from the previous Business Plan; and
- (g) Any additional information that the City CFO may specify from time to time.

6.2 Financial Impact on the City

Prior to consideration of the Business Plan by the Board, the CEO shall brief the City CFO on the draft Business Plan and any potential financial consequences for the City.

6.3 Quarterly Reports

Within 45 days after the end of each fiscal quarter, the Board shall have prepared (on a consistent basis with the previous fiscal quarter) and shall submit to the City CFO a quarterly report. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- (a) Quarterly unaudited Financial Statements;
- (b) Such explanations, notes and information as is required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan, including any material variances in the projected ability of any business activity to meet or continue to meet Build Toronto's objectives;
- (c) Information that is likely to materially affect the City; and
- (d) Information regarding any matter, occurrence or other event which is a material breach or violation of any law.

6.4 Access to Records

The duly appointed representatives of the City (as approved by Council from time to time) shall have unrestricted access to Build Toronto's books and records during normal

business hours. Such representatives shall treat all information of Build Toronto with the same level of care and confidentiality as any confidential information of the City. The City Manager, the City CFO, the City Solicitor and the Auditor General are deemed duly appointed representatives of the City.

6.5 Audit

Build Toronto's consolidated and unconsolidated Financial Statements shall be audited annually. The first Auditor is Ernst & Young, Chartered Accountants.

The Auditor General also may conduct periodic operational audits. Any recommendations resulting from such audits will be presented to the Board for operational matters and to the City Executive Committee, with a copy to the Board, for any shareholder issues.

6.6 Accounting

Build Toronto shall keep detailed records of its transactions and, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

6.7 Annual Report

The Board shall approve the audited Financial Statements and submit an Annual Report to the City CFO within 120 days after the end of each fiscal year. The Annual Report shall include:

- (a) Audited Financial Statements;
- (b) Accomplishments during the fiscal year along with explanations, notes and information as is required to explain and account for any variances between the actual results and the Business Plan in effect for the year; and
- (c) The approved Business Plan for the next period.

ARTICLE 7 - FINANCIAL PERFORMANCE

7.1 Debt Financing

Build Toronto shall manage its corporate and development financing in a prudent manner, consistent with best practices within the real estate development industry, with due regard for liquidity and protection of the City's investment.

7.2 Repayment of Seed Money Provided by the City

In keeping with the objective set out in subsection 2.2 (c), Build Toronto will repay funds disbursed by the City CFO to start-up operations and initiate business development activities, including the development of a Business Plan. As soon as is practical, Build Toronto shall provide the City CFO with its plan to repay such funding, ideally within the next four (4) to six (6) years.

7.3 Dividend Policy

The City will specify a dividend policy once a firm plan, as outlined in s. 7.2, to repay the seed money has been agreed to by the City CFO. The dividend policy may be amended by the City from time to time.

ARTICLE 8 - GENERAL

8.1 Interpretation

Wherever there is a reference to a City official, that reference includes any person acting in that capacity, or any successor officer appointed or designated as being responsible for the service area included in that office.

8.2 Amendments

The City, in its sole discretion, may amend this Shareholder Direction from time to time. The City will provide a written amendment or the amended Shareholder Direction, as the case may be, to the Board. The amendment will come into effect on a date specified by the City.

Dated at Toronto as of the day of July, 2009

CITY OF TORONTO

By: _____
Deputy City Manager and
Chief Financial Officer

By: _____
City Clerk

SCHEDULE 1 - PROTOCOL FOR COOPERATION BETWEEN BUILD TORONTO AND F&RE

F&RE has primary responsibility for:

- 1) Developing the City's real estate strategy that includes properties owned by the City and all of its ABCs;
- 2) Organizing the City's Property Management Committee ("**PMC**");
- 3) Buying and leasing real estate for ABC and division programs and corporate use;
- 4) Keeping an inventory of all City corporate, division, and ABC properties;
- 5) Appraising City and ABC properties;
- 6) Declaring City Lands surplus;
- 7) Reallocating properties among City divisions and ABCs for program use;
- 8) Identifying properties for Sale or Turnover to Build Toronto;
- 9) Selling City and ABC properties declared surplus that are not suitable for Sale or Turnover to Build Toronto; and
- 10) Managing the sale of properties obtained for non-payment of municipal taxes.

Build Toronto has primary responsibility for:

- 1) Participating on the PMC as a member reviewing City and ABC properties;
- 2) Participating on the Interdivisional Facilities Project Review Team as part of the annual capital program review process to identify potential opportunities for commercial development on City and ABC properties;
- 3) Negotiating the terms of Sale and Turnover Agreements with F&RE, ABCs or City divisions that have a program presence on the property;
- 4) Working with the private sector to develop properties Sold or Turned Over from the City in order to further the City's objectives;
- 5) Buying properties needed to complete its development projects that meet the objectives; and
- 6) Selling or leasing properties that Build Toronto owns on title that are no longer required by Build Toronto.

Both Build Toronto and F&RE will operate using the Principles of a City Real Estate Strategy as follows:

Principles of a City Real Estate Strategy

1. *City real estate is a "corporate" asset that:*
 - *is aligned with Council's Strategic Plan*
 - *supports municipal functions and purposes of the City agencies, boards, commissions, and divisions ("ABCDs")*
 - *is subject to corporate review of the ABCD's continuing requirement for the asset.*

2. *ABCDs which manage corporate real estate assets must:*
 - *utilize the assets for on-going municipal purposes; or*
 - *plan to utilize the assets for municipal purposes (as set out in their approved 10 year Capital Program); or*
 - *comply with long-term City-approved programs;**failing which the asset will be released through the Property Management Committee (“PMC”) process, without credit or compensation to the ABCD, to be considered for other municipal purposes or be made available to Build Toronto.*
3. *ABCDs can release corporate real estate assets through the PMC as part of a business case, utilizing the “value in use” of the asset, to offset project costs in their 10 year Capital Program.*
4. *ABCDs will be required to budget the cost of additional corporate real estate assets, at fair market value, in their 10 year Capital Program.*
5. *In lieu of the Housing First Policy, the Deputy City Manager responsible for the Affordable Housing Office will negotiate with Build Toronto the number of affordable housing units and other opportunities for the delivery of affordable housing that Build Toronto may be required to provide on properties with residential potential.*
6. *When corporate real estate assets become available, as a first priority, they will be made available to ABCDs for program requirements:*
 - *subject to business case review through PMC*
 - *subject to funding by ABCDs.*
7. *Properties will be made available to Build Toronto on terms that allow it to unlock the value in corporate real estate assets and achieve the following objectives:*
 - *attract targeted industries*
 - *stimulate desirable employment*
 - *regenerate neighbourhoods*
 - *advance development opportunities*
 - *generate financial return to the City.*
8. *Properties that are transferred to Build Toronto will include: responsibility to manage the properties, revenue being generated and associated costs arising from the properties. If ABCD budgets are affected by such arrangements, appropriate adjustments will be made as part of the annual operating budget process.*
9. *The terms of Sale agreements (which may provide for a transfer of title to Build Toronto or a lease to Build Toronto for a term of 21 years or more) will be subject to the approval of Council, on the recommendation of the Chief Corporate*

Officer and Deputy City Manager and Chief Financial Officer. The terms of Turnover agreements will be subject to the approval of the City Manager, in accordance with the base terms for Turnover agreements previously approved by Council.

10. *Facilities and Real Estate (F&RE) will continue to acquire, appraise, manage, lease and dispose of properties for City purposes to achieve the optimization of corporate real estate assets and will facilitate making available to Build Toronto properties with potential for development.*
11. *Build Toronto will provide senior representation on the PMC and be included in the property circulation process.*
12. *Build Toronto will participate in an advisory capacity on the Interdivisional Facilities Project Review Team to evaluate all City facility capital and associated real estate property-related projects in order to ensure that Build Toronto's goals and strategies are considered when developing the City's 10-year capital plan and forecast.*
13. *F&RE will advise Build Toronto of properties that the City will advertise for the tax sale process so that Build Toronto may consider whether the properties present development opportunities.*