

CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE
SMALL BUSINESS
PROPERTY OWNER FORGIVABLE LOAN AGREEMENT

TERMS AND CONDITIONS OF THE AGREEMENT:

1. Loan.

- (a) Upon approval of any Property Owner for the CECRA Program based on an Application made during the Program Period and subject to these Terms and Conditions, Canada Mortgage and Housing Corporation on behalf of the Government of Canada (“**CMHC**”) agrees to provide an unsecured, interest-free, forgivable term loan to the Property Owner in respect of any Property (the “**Loan**”, which refers to the aggregate of any advances to any Property Owner in respect of any Property under the CECRA Program). Final approval of any Application in respect of any Property Owner and any relevant Property is considered to occur upon the initial advance of the Loan to the Property Owner under the CECRA Program.
- (b) CMHC will make the Loan by way of one or more advances equal in aggregate to the Loan Amount.
- (c) The loan amount (“**Loan Amount**”) will be equal to fifty per cent (50%) of the Rent.

2. Purpose of Loan.

Each Property Owner agrees that the Loan will solely be used by it as follows:

- (a) FIRST, to reimburse each Impacted Tenant in respect of any Rent paid by them for the Eligible Period in excess of the rent amount agreed to be paid by the Impacted Tenant pursuant to the applicable Rent Reduction Agreement, unless the Impacted Tenant elects to apply such excess against rent next coming due, in accordance with the Rent Reduction Agreement(s); and
- (b) SECOND, towards (i) any costs and expenses relating directly to the relevant Property, including any debt service (principal and interest) payments in connection with any financing held by the Property Owner, operation, maintenance and repair obligations (such as costs of common area maintenance, property taxes, insurance and utilities) and (ii) general business purposes of the Property Owner, other than payment of dividends to shareholders, shareholder loans, and any exceptional or increased compensation to directors, executives or officers or other similar distributions,

and the Property Owner will maintain proper and detailed records and statements of account, including receipts, invoices and other documents related to such uses.

3. Forgiveness.

- (a) Each Property Owner agrees to repay the Loan on December 31, 2020, unless the Loan is forgiven by CMHC on that date. The Loan will be forgiven by CMHC and so will not be repayable on December 31, 2020, unless an Event of Default has occurred.
- (b) If an Event of Default occurs, the Loan will not be forgiven and the repayment in full of the principal balance of the Loan will be due and payable immediately upon demand by CMHC together with interest in accordance with Section 9.

4. Interest.

The Loan is interest-free for so long as no Event of Default has occurred. Post-default interest is chargeable in accordance with Section 10.

5. Representations and Warranties.

Each Property Owner represents and warrants, as at the date of the Agreement and on the date of each Loan advance, that all information of the Property Owner provided to CMHC in the Application (including the Property Owner's

Attestation) and otherwise is true, accurate and complete and that it is in compliance with all of the eligibility conditions for the CECRA Program.

6. Impacted Tenant Attestations.

- (a) If prior to any advance under the Loan, any Property Owner becomes aware that the Attestation of any Impacted Tenant is false or misleading in any material respect, the Property Owner must promptly report the same in reasonable detail to the Administrator and provide the Administrator with an updated Application removing such Impacted Tenant from the Loan Amount calculation. Any Property Owner must promptly notify each relevant Impacted Tenant of its exclusion from the Application.
- (b) If, following any advance under the Loan, any Property Owner becomes aware that the Attestation of any Impacted Tenant is false or misleading in any material respect, the Property Owner must promptly report the same in reasonable detail to CMHC and will make commercially reasonable efforts to recover rent amounts previously forgiven under the applicable Rent Reduction Agreement and shall use such rent amounts collected to repay to CMHC the portion (which may be all) of the Loan advance allocated or allocable to such Impacted Tenant.

7. Additional Information and Review of Property Owner Records.

- (a) Each Property Owner will provide, or cause to be provided, updated information and/or additional supporting information as CMHC or its representatives, including the Administrator, may require (if any).
- (b) CMHC may review any documents, records or information pertaining to any Property Owner representations and obligations under the CECRA Program requirements.

8. Covenants.

Each Property Owner agrees to:

- (a) comply with the terms and conditions of the Agreement and the CECRA Program;
- (b) ensure that all representations and warranties of the Property Owner set out in the Agreement remain true and accurate in all material respects;
- (c) carry on, maintain and conduct its business in accordance with good business practices and prudent cash flow measures;
- (d) promptly notify the Administrator of any change to any of the information provided by it in the Application, including any change to the list or eligibility status of the Impacted Tenants;
- (e) ensure that a written, legally binding Rent Reduction Agreement complying with the terms of the CECRA Program is entered into with each Impacted Tenant (and with the sub-landlord of each Impacted Tenant which is a sub-tenant) prior to and as a condition to the Loan being advanced by CMHC and comply with the terms of such Rent Reduction Agreement to which it is a party;
- (f) not serve any default notices nor take steps to evict its Impacted Tenant during the period from the date of the Application until the date on which the Impacted Tenant is no longer receiving any rent reduction or forgiveness or rent credit under the applicable Rent Reduction Agreement, where the basis for such default notice or eviction is a lease default due to the COVID-19 emergency (other than a failure to pay the reduced rent);
- (g) subject only to sub-Section 6(b), not require any Impacted Tenant to pay or have paid more than twenty-five per cent (25%) of its Rent for the Eligible Period;
- (h) subject only to sub-Section 6(b), not attempt to use any means or mechanisms whatsoever, direct or indirect, to recover the forgiven amounts that were agreed to in the Rent Reduction Agreement(s), during or after the Program Period; and
- (i) promptly notify CMHC of the occurrence of any actual or potential Event of Default (as described under Section 9 of the Agreement),

provided that the obligations in sub-Sections 8(e), (f), (g) and (h) shall survive and remain in full force and effect in accordance with their terms, notwithstanding the performance or termination of the Agreement or the repayment, satisfaction or discharge of all obligations under the Agreement and the CECRA Program.

9. Events of Default.

If any one or more of the following events of default (each, an “**Event of Default**”) has occurred or is occurring:

- (a) any Property Owner fails to comply with the terms and conditions of the CECRA Program or breaches the Agreement or its Rent Reduction Agreement(s);
- (b) any Property Owner makes, or its representatives make, any false or misleading representation to CMHC or its representatives including the Administrator, including in the Application and any Attestation made by it;
- (c) CMHC determines in its sole discretion that fraud or misconduct has occurred on the part of any Property Owner or its representatives; and
- (d) (i) any Property Owner avails itself of a law governing its bankruptcy, restructuring, reorganization, dissolution, winding-up or arrangement; (ii) a third party initiates proceedings towards any Property Owner under such law, including to dissolve, liquidate, or wind up the Property Owner or to suspend any of its operations; and/ or (iii) a receiver, interim receiver or trustee is appointed with respect to any Property Owner or its property,

then CMHC may:

- (i) terminate the Loan and require immediate repayment in full of the principal balance of the Loan and any interest payable hereunder without further notice or demand; and
- (ii) exercise any rights and remedies available to it under any documents or conferred by law, including assigning the Loan to the Canada Revenue Agency or taking any recourse made available to it through the Canada Revenue Agency or other form of collection.

10. Post-Default Interest

If the Loan becomes repayable, the Loan shall bear interest at the rate of five (5)% *per annum* on the unpaid principal amount thereof from the date of the notice of default until the date on which the Loan is repaid in full, accruing monthly not in advance, commencing on the first day of the month following the month in which such notice was made. Interest payments will be due and payable in arrears monthly on the 1st day of the month until and including the date on which the Loan is repaid in full.

11. Remedies.

Where an Event of Default has occurred, CMHC and the Administrator shall have full recourse to the relevant Property Owner for the full amount of the Loan. The CECRA Program and the Loan made to any Property Owner are intended to further the public interest by achieving certain social and economic outcomes which are of fundamental importance to the Government of Canada, the provinces and territories and their respective agencies, including CMHC. CMHC would not have made the Loan to any Property Owner without receiving the commitment of the Property Owner to comply with the covenants and make the representations set forth in the Agreement.

12. Termination.

CMHC may terminate the Agreement should funding no longer be available due to no or insufficient appropriations by the Government of Canada or otherwise.

13. Release.

Each Property Owner hereby releases and forever discharges the Government of Canada, CMHC, any funding partners including their agents and representatives and the Administrator, from any and all actions, causes of action, allegations, suits, debts, costs, claims and demands of whatsoever kind or nature arising out of or in connection with the CECRA Program, including without limitation the Rent Reduction Agreement(s).

14. Costs and Expenses.

Each party will bear its own costs and expenses in connection with participating in the CECRA Program, the Agreement and the Loan.

15. Conflict of Interest.

Each Property Owner shall avoid any conflict of interest during the life of the Agreement and shall immediately declare any existing, potential or apparent conflict of interest and shall, upon direction of CMHC or the Administrator as its agent, take steps to eliminate any conflict of interest, or perception that a conflict of interest exists. In the event that a conflict of interest, real or perceived, cannot be resolved to the satisfaction of CMHC, CMHC shall have the right to immediately terminate the Agreement and the repayment requirements under Section 9 of the Agreement shall apply.

16. Miscellaneous.

- (a) If any provision of the Agreement is held by a competent authority to be invalid, illegal or unenforceable for any reason, the remaining provisions of the Agreement will continue to be in full force and effect.
- (b) The failure of CMHC to insist on strict compliance with one or more of the terms of the Agreement shall not constitute a waiver of CMHC's right to enforce those terms at a later date. No provision of the Agreement shall be deemed to have been waived unless such waiver is in writing and signed by CMHC and any waiver by CMHC of any breach shall not be considered to be a waiver of any subsequent breach.
- (c) In addition and notwithstanding anything in the Agreement to the contrary, the parties acknowledge and agree that nothing herein creates a joint venture or partnership between the parties.

17. Extension.

CMHC may in its sole and absolute discretion extend the CECRA Program on the terms and conditions as CMHC may then specify.

18. Amendments and No Assignment.

The Agreement may not be assigned by any Property Owner without the prior written consent of CMHC. Any amendment to the Agreement must be provided and approved by CMHC in writing.

19. Governing Law.

The Agreement shall be governed by the law of the province or territory in which the Property is located and the laws of Canada applicable therein.

20. English Language.

The parties hereto agree that the Agreement and all transaction documents related thereto will be in the English language. *Les parties aux présentes conviennent que la présente entente de prêt ainsi que tout document qui s'y rapporte sera rédigé en langue anglaise.*

21. Notice.

Delivery of notice under the Agreement shall be effective three (3) business days after posting by regular mail, or on the day following transmission by any electronic or facsimile communication to the parties at the following addresses:

- (a) If to CMHC, to the notice information for the CECRA Program provided on its website.
- (b) If to the Administrator, to the notice information for the CECRA Program provided on its website.
- (c) If to any Property Owner, to the notice information provided in the Application.

22. Electronic Communications and Documents.

Each Property Owner acknowledges, consents and agrees that CMHC may provide all documentation relating to the Application, the advance and the Agreement through any communication method permitted by CMHC (including any electronic or facsimile communication). Any documents sent through electronic or facsimile communication will be considered "in writing" and to have been signed and delivered by, and binding on, any party as though it were an original document. In communicating with CMHC or its Administrator by electronic or facsimile communication, each Property Owner agrees to comply with security protocols and to take all reasonable steps to prevent unauthorized access to any documents so exchanged.

23. Terminology.

In the Agreement and for purposes of the CECRA Program, (a) "lease" includes "licence"; "sub-lease" includes "sub-licence"; "tenant" includes "licensee"; "sub-tenant" includes "sub-licensee"; "landlord" includes "licensor", "sub-landlord" includes "sub-licensor"; (b) "sub-landlord" includes a sub-sub-landlord and lessor parties under further inferior leases, if applicable; (c) "sub-lease" includes a sub-sub-lease and further inferior leases if applicable; (d) "sub-tenant" includes a sub-sub-tenant and lessee parties under further inferior leases if applicable; (e) "Property Owner" refers to the registered owner or head landlord of any Property. Outside Quebec, a Property Owner may be the registered owner (including a ground lessor) or a ground lessee. In Quebec, a Property Owner is the registered owner and may include an emphyteuta, superficiary or usufructuary. A Property Owner may not be a sub-landlord nor a beneficial owner with an unregistered interest. Where there are two or more of such co-owners/ co-holders of a property interest, "Property Owner" includes all co-owners/ co-holders; and (f) "registered" ownership means registered in the applicable land titles registry in the relevant jurisdiction, including registries maintained by federal government in respect of Crown lands, lands in a reserve governed by the *Indian Act* (Canada) or the *First Nation Land Management Act* (Canada), as well as registries maintained in an

Indigenous Peoples' land registry established in accordance with applicable laws or treaties. "Registered" in respect of a lease also means a leasehold interest in lands in a reserve governed by the *Indian Act* (Canada) that are not registered in a particular registry, provided that it is authorized and granted expressly in accordance with the terms and conditions of the *Indian Act* (Canada).

24. Defined Terms.

In the Agreement, the capitalized terms are as set out in the Application. The other capitalized terms in the Agreement mean:

"Administrator" means MCAP Service Limited Partnership or any replacement administrator, which has been retained by CMHC to administer the CECRA Program on CMHC's behalf.

"Eligible Period" means April 1, 2020 to June 30, 2020, or such longer period as may be designated from time to time by CMHC in its sole and absolute discretion and for which any Property Owner has opted under the CECRA Program.

"Impacted Tenant" means a for-profit, not-for-profit, charitable entity or individual carrying on activities at any Property pursuant to a lease and included in the Application, who or which:

- (a) typically
 - (i) pays no more than \$50,000 in monthly Rent payments in respect of the relevant Property; and
 - (ii) generates no more than \$20,000,000 in gross annual revenues (which calculation, in the case of an Impacted Tenant that is not an individual and is part of a corporate group, is made at the consolidated entity level at the highest corporate organizational level); and
- (b) taking into account both declines that have already been experienced to date and any additional forecasted declines during the period from April 1 to June 30, 2020, will experience a decline (as a result of the COVID-19 emergency) in the gross monthly revenues of the Impacted Tenant (at the entity level) of at least seventy per cent (70%) (or such other percentage threshold as may be designated from time to time by CMHC in its sole and absolute discretion) from pre-COVID-19 emergency revenues, determined by comparing its average gross monthly revenues in April, May and June 2020 to:
 - (i) its average gross monthly revenues in the corresponding months of 2019; or
 - (ii) where the Impacted Tenant is a new business which commenced operations after June 30, 2019, its average gross monthly revenues for January and February 2020,

provided that, in the case of an Impacted Tenant that is a registered charity or not-for-profit organization, the calculations must exclude revenues from persons who are not at arm's length from the Impacted Tenant, and such registered charity or not-for-profit organization may elect whether or not to include revenue from government sources as part of the calculations, and further provided that revenue is calculated using recognized accounting standards (excluding revenue from extraordinary items).

"Program Period" means April 1, 2020 to August 31, 2020, or such longer period as may be designated from time to time by CMHC in its sole and absolute discretion.

"Property" means any relevant commercial real or immovable property used for retail, industrial, office or mixed use including at least one of the above uses, as specified in the Application.

"Rent" means the aggregate of all recurring amounts payable, before applicable sales taxes, pursuant to the terms of a lease (or sub-lease) in respect of the Eligible Period by the Impacted Tenant(s) to any Property Owner, as landlord, (or, in the case of a sub-lease, to the sub-landlord party to such sub-lease) as set out under a valid and enforceable lease or sub-lease agreement, without considering any rent deferral or reduction agreement.

"Rent Reduction Agreement" means a rent reduction agreement entered into between any Property Owner and each of its Impacted Tenants (or, where an Impacted Tenant is a sub-tenant, between the applicable sub-landlord and such sub-tenant, and between the Property Owner and such sub-landlord), substantially containing the terms required by the CECRA Program.