

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

TERMS AND CONDITIONS OF THE AGREEMENT:

1. Loan.

- (a) Upon approval of the Property Owner for the CECRA Program based on the Application 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 (the “**Loan**”).
- (b) CMHC will make the Loan by way of one or more advances during the Program Period equal in aggregate to the Loan Amount.
- (c) The loan amount (“**Loan Amount**”) will be equal to:
 - (i) up to fifty per cent (50%) of the Rent owed to the Property Owner by the Impacted Tenant(s) during the Eligible Period;
minus
 - (ii) a *pro rata* portion of any insurance proceeds available to it in respect of any impairment of the rental revenue from the Property or any non-repayable proceeds of any federal or provincial government programs (other than the CECRA Program) targeted at commercial rent assistance instituted in response to the COVID-19 emergency, received or receivable by the Property Owner and/or any Impacted Tenant in respect of the Eligible Period.

2. Purpose of Loan.

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

- (a) FIRST, to reimburse Impacted Tenants in respect of any Rent paid by them during the Eligible Period above twenty-five per cent (25%) of the Rent due and payable during the Eligible Period, as set out in the Rent Reduction Agreement(s), unless the Impacted Tenant elects to apply the previously paid rent against rent next coming due; and
- (b) SECOND, towards any costs and expenses relating directly to the 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 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) The 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.

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5. Representations and Warranties.

The Property Owner represents and warrants, as at the date of the Agreement and on the date of the Loan advance, that all information provided to CMHC in the Application (including the Attestations) and otherwise is true, accurate and complete and that 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, the 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. The Property Owner must promptly notify each relevant Impacted Tenant of its exclusion from the Application.
- (b) If, following any advance under the Loan, the 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 Audit.

- (a) The 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 the Property Owner representations and obligations under the CECRA Program requirements.

8. Covenants.

The 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 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 by it with each Impacted Tenant prior to and as a condition to the Loan being advanced by CMHC, and comply with the terms of such Rent Reduction Agreement;
- (f) not serve any default notices nor take steps to evict an Impacted Tenant during the period from the date of the Application until the later of (A) three months thereafter; or (B) the date on which the Impacted Tenant is no longer receiving any rent reduction or forgiveness or rent credit under the Rent Reduction Agreement, where the basis for such default notice or eviction is a lease default due to the COVID-19 emergency;
- (g) not require any Impacted Tenant to pay or have paid more than twenty-five per cent (25%) of its Rent during the Eligible Period;
- (h) subject only to sub-Section 6(b), the Property Owner shall 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, during or after the Program Period;
- (i) promptly notify CMHC of the occurrence of any actual or potential Event of Default (as described under Section 9 of the Agreement); and
- (j) promptly (i) notify CMHC of the receipt by it or, to its knowledge, by any Impacted Tenant, of any insurance proceeds available to it in respect of any impairment of the rental revenue from the Property or any non-repayable proceeds of any federal or provincial government programs (other than the CECRA Program) targeted at commercial rent assistance instituted in response to the COVID-19 emergency, in respect of the Eligible Period, but that were not already deducted in the calculation of the Loan Amount,

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provided that the obligations in sub-Sections 8(e),(f),(g),(h) and (j) 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) the 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) the 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 the Property Owner or its representatives; and
- (d) the Property Owner (i) avails itself of a law governing its bankruptcy, restructuring, reorganization, dissolution, winding-up, arrangement; (ii) a third party initiates proceedings towards the Property Owner under such law, including to dissolve, liquidate, or wind up the Property Owner or to suspend any of its operations; or (iii) a receiver, interim receiver or trustee is appointed with respect to the 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 Property Owner for the full amount of the Loan. The CECRA Program and the Loan made to the 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 the 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.

The 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.

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.

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15. Conflict of Interest.

The 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 this 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 the 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 the Property Owner, to the notice information provided in the Application.

22. Electronic Communications and Documents.

The 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, the 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 the Property. Outside Quebec, the Property Owner may be the registered owner (including a ground lessor) or

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a ground lessee. In Quebec, the Property Owner is the registered owner, and may include an emphyteuta, superficiary or usufructuary. The 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.

"Impacted Tenant" means a for-profit, not-for-profit, charitable entity or individual carrying on activities at the Property, pursuant to a lease, who or which: (a) typically (i) pay no more than \$50,000 in monthly Rent payments in respect of the relevant Property; and (ii) generate no more than \$20,000,000 in gross annual revenues; 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 in gross monthly revenues of at least seventy per cent (70%) from pre-COVID-19 emergency revenues (determined by comparing the gross monthly revenues in April, May or June 2020 to: (i) the corresponding month in 2019; or (ii) average revenues for January and February 2020, and provided that revenue is calculated using recognized accounting standards (and, in the case of an Impacted Tenant that is not an individual, on a consolidated entity level) and excluding revenue from extraordinary items), as a result of the COVID-19 emergency.

"Program Period" means April 1, 2020 to August 31, 2020.

"Property" means the 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 pursuant to the terms of a lease (or sub-lease) in respect of the Eligible Period by the Impacted Tenant(s) to the 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 the 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.