

**PERMISSION, RELEASE, COVENANT
AND INDEMNIFICATION**
(IN QUADRUPLICATE)

TO: CITY OF TORONTO ("Toronto")

Attention: Fire Chief

FROM: THE CORPORATION OF THE TOWN OF MARKHAM ("Markham")

**RE: TRAINING OF MARKHAM'S FIREFIGHTERS IN LIVE
FIREFIGHTING TECHNIQUES**

DATE: March 13, 2006

WHEREAS Markham's Fire and Emergency Services Department wishes to use the firefighting training facility owned by Toronto and known as "East Training Centre" and located at 4562 Sheppard Avenue East, in the City of Toronto (the "Premises") for the purposes of training Markham's firefighters in live firefighting techniques at the East Training Tower situated on the Premises;

WHEREAS Toronto's Fire Services Division is agreeable to permitting Markham's Fire and Emergency Services Department to do this, but only on the terms and conditions set out in this Permission, Release, Covenant and Indemnification;

WHEREAS Markham's Council, in adopting the Report entitled "Use of Toronto Fire Training Facilities" to the General Committee/Community and Fire Services at its meeting held on April 3rd 2006, authorized Markham to provide Toronto and execute in Toronto's favour this Permission, Release, Covenant and Indemnification on the terms and conditions set out herein,

ACCORDINGLY, IN CONSIDERATION of being permitted by Toronto's Fire Services to be on the Premises, on May 8th, 9th, 10th, 11th, 12th and October 23rd, 24th, 25th, 26th, 27th, 30th, 31st and November 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th, 2006, and being permitted by Toronto's Fire Services Division to use the Premises on those dates for the purposes of enabling Markham's Fire and Emergency Services Department to train Markham's firefighters in live firefighting techniques at the East Training Tower situated on the Premises and allowing Markham's Fire and Emergency Services and those

firefighters to engage in activities on the Premises necessarily ancillary thereto (the "Training"), **AND IN CONSIDERATION** of the payment by Markham to Toronto upset limit of \$71,000.00 for use of the Premises for Training, plus the payment by Markham to Toronto of the cost of supplies provided by Toronto to Markham for such use, the sufficiency of which payment is accepted and acknowledged by Toronto, Markham covenants and agrees as follows:

1. Markham HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASES, WAIVES AND FOREVER DISCHARGES Toronto (including without limitation, for all purposes in this Permission, Release, Covenant and Indemnification, any and all of its councillors, officials, officers, employees, servants, contractors, representatives, successors, agents and assigns) FROM AND AGAINST any and all claims, demands, suits, actions, causes of action and proceedings AND OTHERWISE FROM AND AGAINST any and all liability of any kind or nature whatsoever, for damages, losses, costs or expenses (including legal fees and disbursements) or otherwise, in respect of death, injury, loss or damage to person or property or otherwise HOWSOEVER CAUSED, that Markham may have against Toronto or that may be brought against or made upon Toronto arising now or in the future as a direct or indirect result of the use of the Premises or of the Training or any activities in connection therewith.
2. Markham hereby acknowledges that it is fully aware of the risks inherent in training firefighters in live firefighting techniques on a tower or otherwise and associated activities and Markham covenants and agrees that it shall assume all such risks. Markham also covenants and agrees that it shall ensure that all Markham firefighters, employees, agents, contractors, trainees and users of the Premises and, in particular, the East Training Tower will have been instructed to read and understand any safety guidelines and precautions provided by Toronto or Markham and that Markham will undertake to have all Markham firefighters, employees, agents, contractors, trainees and users of the Premises and, in particular, the East Training Tower strictly comply and abide by such guidelines and precautions; and Markham covenants and agrees that it shall be fully responsible for any failure or neglect by such individual to do so and any consequences arising therefrom. Markham also covenants and agrees that it shall ensure that all Markham firefighters, employees, agents, contractors, trainees and users of the Premises and, in particular, the East Training Tower will strictly observe all lawful requests, orders, demands and instructions of Toronto, in particular, those of Toronto's Fire Services Division, relating to their use. Markham also covenants and agrees that it shall ensure that all Markham firefighters, employees, agents, contractors, trainees and users of the Premises and, in particular, the East Training Tower will wear clothing, apparel and equipment that is suitable for

participating in the Training. Markham also covenants and agrees that it shall ensure that, if it is determined by any medical personnel at any time that any Markham firefighter, employee, agent, contractor, trainee and user is not physically fit to participate or to continue participating in the Training, Markham will take all necessary actions to prevent such individual from participating or continuing participating in the Training and will take all necessary measures to ensure that such individual receives proper and timely medical treatment if his or her condition warrants it. Markham accepts the Premises and, in particular, the East Training Tower in the condition that exists at any time during the Training, and Markham covenants and agrees not to call upon Toronto to take any action to prepare, repair or improve the Premises and, in particular, the East Training Tower for Markham's use, in particular, the Training. Markham also covenants and agrees not to call upon Toronto to assist it in the Training.

3. Markham hereby covenants and agrees that neither the East Training Tower nor any other part of the Premises will be damaged or otherwise impaired during or as a result of Markham use of the Premises, including the Training, and the Premises shall be returned to Toronto in the same condition in which it was provided to Markham, reasonable wear and tear excepted, and that Markham will promptly and fully reimburse Toronto for any costs and expenses incurred by Toronto to restore the East Training Tower or any other part of the Premises to that condition upon receipt of an invoice from Toronto for that purpose.
4. Markham covenants and agrees that Markham shall be FULLY LIABLE FOR and shall FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS Toronto FROM AND AGAINST any and all claims, demands, suits, actions, causes of action and proceedings AND FROM AND AGAINST any and all liability of any kind or nature whatsoever, for damages, losses, costs or expenses (including legal fees and disbursements) or otherwise, arising out of or relating to personal injury, death, property damage or loss, or other damages or losses or otherwise incurred by Toronto or any Markham firefighter, employee, agent, contractor, trainee and user of the Premises and, in particular, the East Training Tower or any third party arising out of the negligence, wrongful acts or omissions, or willful misconduct of Markham or any person for which it is responsible in law in connection with the use of the Premises or of the Training or of any activities in connection therewith.
5. Without limiting the generality of the foregoing, Markham hereby covenants and agrees to obtain, no later than March 25, 2006, and maintain in full force and effect, at its own cost, Commercial General

Liability insurance issued by an insurance company authorized by law to carry on business in the Province of Ontario, providing for, without limitation, coverage for third party bodily injury, property damage and personal injury. Such policy shall:

- (a) have inclusive limits of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence;
 - (b) contain a cross-liability clause endorsement of standard wording;
 - (c) add the City of Toronto as an additional insured;
 - (d) not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material alteration is given to the other party at least thirty (30) clear days before the effective date thereof;
 - (e) provide that Markham's liability insurance shall apply as primary insurance and not in excess to any liability insurance available to the Toronto; and
 - (f) require that Markham, upon the request of Toronto, shall provide proof of insurance in a form satisfactory to Toronto's Manager of Insurance and Risk Manager.
6. Markham acknowledges and accepts that Toronto's permission to Markham to use the Premises for Training given hereunder may be terminated, in whole or in part (including, without limitation, on or for a specific date or dates or otherwise), by Toronto's Fire Services Division, acting through the Fire Chief, immediately for Markham's breach of any term or condition of this Permission, Release, Covenant and Indemnification by Markham or any person for which it is responsible in law or for any emergency, construction, repair, renovation, health, safety or other bona fide reason, without liability, cost or penalty to Toronto and without prejudice to any other rights or remedies available to Toronto under this Permission, Release, Covenant and Indemnification or at law or in equity or by statute.
7. In the event of any expiration or termination of this Permission, Release, Covenant and Indemnification for any reason whatsoever, Markham acknowledges and accepts that Sections 1, 3, 4 and 7 shall survive such expiration or termination. Further, and despite the foregoing, the provisions of this Permission, Release, Covenant and Indemnification that by their nature extend beyond the expiration or termination of this

Permission, Release, Covenant and Indemnification shall survive and remain in effect until all obligations of Markham hereunder are satisfied.

SIGNED, SEALED & DELIVERED

THE CORPORATION OF THE TOWN OF MARKHAM

Name: Don Cousens
Title: Mayor

Name: Sheila Birrell
Title: Clerk

We have authority to bind the corporation.