

1555-1575 Queen Street East – Authority to Amend Section 37 and 111 Agreements to Exempt CMHC, CMHC Approved Lenders and Subsequent Transferees from Certain Obligations

Date: July 6, 2022

To: City Council

From: City Solicitor

Wards: Ward 14 - Toronto-Danforth

SUMMARY

In July of 2020, City Council approved the revitalization of a Toronto Community Housing (TCHC) site located at 1555-1575 Queen Street East (the "Subject Site") including a 10 storey residential building (the "TCHC Building"), a 17 storey (the "Western Market Building") and 16 storey mixed-use building (the "Eastern Market Building"). The project includes 50 new affordable rental units in the Eastern Building (the "New Affordable Units"), 32 affordable housing and rent geared to income units that are to be transferred to the City (the "City Units") 26 of which are to be constructed in the Eastern Market Building and 6 are to be constructed in the Western Market Building, and 35 new TCHC units (the "New TCHC Units") to be located in the TCHC Building. The project also includes the provision of 120 replacement social housing units to be located in the TCHC Building ("Rental Replacement Units").

Subsequent to City Council's approval of the applications, TCHC and RC Ashbridge Inc. (Context Summerville) entered into a section 37 agreement with the City dated October 26, 2020 (the "Section 37 Agreement") and an agreement pursuant to section 111 of the *City of Toronto Act, 2006* dated July 21, 2021 (the "Section 111 Agreement"). These agreements secured obligations relating to the provision of the New Affordable Units, the City Units and the Rental Replacement Units.

This report seeks authority to amend the Section 37 Agreement and Section 111 Agreement for the Subject Site to exempt Canada Mortgage and Housing Corporation (CMHC), CMHC approved lenders and subsequent transferees from Section 37 and Section 111 obligations relating to the TCHC Building and City Units as proposed on the Subject Site. The obligations relating to the TCHC building and City Units in the Section 37 Agreement and Section 111 Agreement will remain obligations of the owners of the TCHC lands and the owners of the market lands.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council authorize the appropriate City officials to enter into and register on title an agreement to amend the Section 37 Agreement dated October 26, 2020, registered as Instrument No. AT5558406 on October 29, 2020 and the Section 111 Agreement dated July 21, 2021, registered as Instrument No. AT5814429 on July 29, 2021 in a form satisfactory to the City Solicitor, as follows:

a. Add the following definitions to the Section 37 Agreement and the Section 111 Agreement:

"Approved Lender" means a lender designated as an approved lender by CMHC in accordance with the National Housing Act (Canada) and the regulations thereunder that is a mortgagee of the CMHC Financed Lands pursuant to a certificate of insurance issued by CMHC.

"CMHC" means Canada Mortgage and Housing Corporation established by the Canada Mortgage and Housing Corporation Act, R.S.C. 1985, c. C-7, as amended.

"CMHC Financed Lands" means the lands financed by CMHC including the construction and operation of the Eastern Market Building, which includes the Developer-owned Affordable Rental Units, certain ground floor commercial space and related facilities in the building.

b. Add the following paragraph to the Section 37 Agreement and the Section 111 Agreement:

"Notwithstanding anything in this Agreement to the contrary, CMHC, an Approved Lender, any transferee from CMHC or an Approved Lender, or any subsequent successors in title to the CMHC Financed Lands will not be responsible for any obligations pertaining to the City/TCHC Units and the Replacement Social Housing Units. For clarity, for the purpose of this paragraph, subsequent successors in title to the CMHC Financed Lands only pertains to owners that follow CMHC, an Approved Lender or their transferees on title."

2. City Council direct the City Solicitor to prepare such amendments to the registered Section 37 Agreement and Section 111 Agreement and any other such amendments determined necessary to implement City Council's decision on this matter, on terms satisfactory to the Chief Planner and Executive Director, City Planning and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

A Preliminary Report on the application was adopted by the Toronto and East York Community Council on February 25, 2020. The Preliminary Report may be found at the following link:

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-146569.pdf>

On July 28, 2020, City Council adopted the recommendations of Community Planning staff to approve the Official Plan and Zoning Amendment, Part Lot Control, and Rental Housing Demolition and Conversion applications to permit the development of a 10 storey residential building and a 17 storey and 16 storey mixed-use building, collectively containing approximately 771 residential units with a variety of housing tenures including rent geared-to-income, affordable rental, market rental, and condominiums. City Council's decision may be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE16.5>

COMMENTS

Context Summerville is seeking financing from CMHC for the construction and operation of the Eastern Market Building, which would include 183 new rental residential units in addition to the New Affordable Units, certain ground floor commercial space and related facilities in the building. CMHC's participation as a lender is important because of the preferential financial terms offered through its Rental Construction Financing Initiative, which is focused specifically on supporting the construction of rental apartments.

In connection with potential financing of the Eastern Market Building, CMHC has raised concerns with certain obligations contained in the Section 37 Agreement and Section 111 Agreement. Specifically, the agreements include obligations relating to the New TCHC Units and Rental Replacement Units in the TCHC Building and City Units that are not proposed to be financed by CMHC. For this reason, CMHC has requested amendments to the Section 37 Agreement and the Section 111 Agreement to clarify that CMHC, its approved lenders or a successor in title to the portion of the Subject Property upon which the Eastern Market Building is to be situated, would only be responsible for obligations set out in the Section 37 Agreement and Section 111 Agreement that specifically pertain to the Eastern Market Building. CMHC's request may be found in a letter submitted by legal counsel for Context Summerville in Attachment 1.

City staff, Legal Services, and TCHC staff have reviewed CMHC financing conditions and advise that they do not have any concerns with releasing CMHC from the obligations relating to the TCHC Building and City Units. The obligations related to the TCHC building and City Units secured under the Section 37 Agreement and the Section 111 Agreement will continue to bind the owners of the other portions of the Subject Site in the event CMHC takes possession of the Eastern Market Building or in the event of default by the developer of the Eastern Market Building. Further, the value of the TCHC Building is secured by a mortgage on the remaining lands to ensure that the TCHC Building and the Rental Replacement Units are provided in accordance with the agreed upon terms. CMHC and its successors will continue to be bound by obligations relating to the Eastern Market Building including the provision of the New Affordable Units.

CONTACT

Lorna Lennox, Lawyer, Municipal Law, Tel: (416) 392-6614, Fax: (416) 397-5624,
Email: Lorna.Lennox@toronto.ca

Sara Amini, Solicitor, Planning & Administrative Law, Tel: 416-392-2723, Fax: 416-397-5624, E-mail: Sara.Amini@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Attachment 1 - Letter from Goodmans LLP dated June 30, 2022