

APPENDIX 1

CONTRIBUTION AGREEMENT TEMPLATE

CITY OF TORONTO

- and -

PROPONENT

CONTRIBUTION AGREEMENT

Address, Toronto

CONTENTS

Background	1
ARTICLE 1 Interpretation	2
ARTICLE 2 General	4
ARTICLE 3 The Project	4
ARTICLE 4 City Funding	5
ARTICLE 5 Disbursement of Funds and Assistance	7
ARTICLE 6 Representations and Warranties	7
ARTICLE 7 Obligations of the Proponent	8
ARTICLE 8 Obligations of the Proponent during the Affordability Period	9
ARTICLE 9 Monthly Occupancy Costs	10
ARTICLE 10 Financial Records and Right to Audit	11
ARTICLE 11 Indemnity	12
ARTICLE 12 Insurance	13
ARTICLE 13 Restrictions on Changes	15
ARTICLE 14 Default and Remedies	17
ARTICLE 15 Confidentiality	18
ARTICLE 16 Public Acknowledgement of Funds	19
ARTICLE 17 Dispute Resolution	19
ARTICLE 18 Notices	19
ARTICLE 19 Contractual Status of the Parties	20
ARTICLE 20 Uncontrollable Circumstances	21
ARTICLE 21 General Provisions	21
Schedule "A" Proponent's Initial Occupancy Report	24
Schedule "B" Proponent's Annual Occupancy Report	27
Schedule "C" Mortgage/Charge of Land Provisions	30
Schedule "D" Legal Opinion	33
Schedule "D-A"	36
Schedule "D-B"	37

BETWEEN:
CITY OF TORONTO
(the “City”)

- and -

PROPONENT
(the “Proponent”)

Background

- A. The City issued a Call for Applications under the City’s Open Door Program on XXXXXXX, and the Proponent applied for assistance with the development of affordable rental housing located at ADDRESS, Toronto, Ontario;
- B. Section 252 of the *City of Toronto Act, 2006*, S.O 2006 c. 11, Sch A (the “Act”), provides that the City may enter into agreements for the provision of a municipal capital facility by any person and that the City may exempt from taxation for municipal and school purpose land or a portion of land on which municipal capital facilities are located;
- C. Ontario Regulation No. 598/06, as amended, prescribes municipal facilities used for the provision of affordable housing as eligible municipal capital facilities for the purpose of Section 252 of the Act; and
- D. The City of Toronto passed By-law No. 124-2016 pursuant to the provisions of Section 252 of the Act and Ontario Regulation 598/06 to set out a definition for affordable housing and policies regarding eligibility for new affordable housing;
- E. At its meeting held on XXXXXXX, City Council approved the provision of financial assistance and benefits to fund XX (XX) affordable rental units and approved the City entering into a municipal capital facility agreement with the Proponent to be developed on property known as XXXXXXXXXXXX, Toronto; and
- F. The parties wish to enter into this agreement to set out the terms and conditions of the financial assistance to be provided to the Proponent for new affordable housing located at ADDRESS, Toronto.

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions in this Agreement and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties to the other (the receipt and sufficiency whereof are acknowledged), the parties agree as follows:

ARTICLE 1

Interpretation

1.1 In this Agreement and Schedules attached hereto, the following terms shall have the following respective meanings:

“Access Plan” means a policy established by the Proponent and approved by the Director, Housing Stability Services, which policy shall specify how tenants are to be selected and how information about such process is disseminated to the public;

“Affordability Period” means the term of this Agreement, as set out in Article 3 hereof;

“Affordable Housing” means rental housing that is developed and operated in accordance with the terms of this Agreement;

“Average Market Rents” or “Average Rents” or “AMR” means average monthly Toronto-wide rents by unit type as determined in the end-of-year survey of City-wide rents for the prior calendar year published by CMHC; if CMHC does not publish a survey of City-wide rents, then “average market rents” for the calendar year shall be City-wide average rents as determined by the City acting reasonably;

“City Charge” means the charge/mortgage of land referred to in Section 4.2 hereof;

“City Funding” has the meaning ascribed thereto in Subsection 4.1(a) (i);

“Deputy City Manager” means the Deputy City Manager, Internal Corporate Services for the City of Toronto;

“Development” means the Lands, together with the [building/building(s)] to be developed on the Lands;

“Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property;

“Director, Affordable Housing” means the Director responsible for the Affordable Housing Office and includes his or her designate or successor, if any;

“Director, Housing Stability Services” means the Director responsible for the Housing Stability Services unit and includes his or her designate or successor, if any;

“First Occupancy” means the first day of the month immediately following the month in which a Unit was rented for the first rental period following the completion of the development for which assistance is being provided by the City;

“Household Income” means total household income from all sources of all persons who reside in a Unit or who will reside in a Unit if it is rented to them as defined in the City’s Affordable Rental Housing – Income Verification Guide;

“Housing” means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation other than those services described in Article 3 hereof;

“Housing Access System” means the City’s centralized housing access system; which includes the allocation and administration of Housing Benefit

“Housing Benefits” means an income supplement provided to tenants by the City of Toronto;

“Initial Income Limit” means Household Income at or below four (4) times the annualized Monthly Occupancy Costs, as determined annually by the Director, Housing Stability Services;

“Initial Occupancy” means when a new tenant occupies a Unit regardless of whether it was previously rented;

“Lands” means the lands described in Article 3, together with any buildings or improvements thereon from time to time;

“Monthly Occupancy Costs” means the total of the monthly rent payable to the Proponent for a Unit including the cost of hydro, heat, water and hot water and; Monthly Occupancy Costs do not include charges for applicable taxes, parking, cable, internet, telephone or any other like charges. If heat, water or hydro costs are separately metered and paid directly by the household, the Monthly Occupancy Costs will be reduced by a Utility Allowance determined by the City and published on the City’s web site;

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M. 56;

“MFIPPA Protected Information” means any “Personal Information” as defined in MFIPPA

“Project” means the Affordable Housing to be developed and operated by or on behalf of the Proponent in accordance with the terms and conditions of this Agreement, as outlined in Article 3;

“Service Manager” means a service manager designated under Subsection 11 (1) of the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1; and

“Substantial Completion” means the Development has achieved Substantial Performance as contemplated in the *Construction Lien Act*, R.S.O. 1990, c. C.30;

“Unit” means an Affordable Housing unit in the Project; and

“Utility Allowance” means a utility allowance determined by the City and published on the City’s web site.

- 1.2 This Agreement, the Schedules incorporated into it by reference and any documents entered into pursuant to this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and all other prior agreements, representations, statements, negotiations and undertakings with respect to such subject matter are superseded hereby.
- 1.3 Any reference in this Agreement to a statute shall be deemed to include any regulations made under the statute, any amendments made from time to time and any successor legislation.
- 1.4 This is a municipal capital facility agreement for the purposes of the City's By-law No. 124-2016 "To enact a new Municipal Facility Housing By-Law and to repeal By-law No. 282-2002".
- 1.5 The following schedules form part of this Agreement:

Schedule "A"	Proponent's Initial Occupancy Report
Schedule "B"	Proponent's Annual Occupancy Report
Schedule "C"	Charge/Mortgage of Land
Schedule "D"	Legal Opinion

ARTICLE 2 General

- 2.1 It is understood and agreed that this is a municipal capital facility agreement pursuant to Section 252 of the *City of Toronto Act, 2006*, S.O. 2006 c. 11, Sch A.
- 2.2 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.
- 2.3 All references in this Agreement to section numbers are references to sections of this Agreement unless otherwise stated.

ARTICLE 3 The Project

- 3.1 The Proponent agrees to operate the Project as Affordable Housing for a period of XXXXXXXXX (XX) years from the date of First Occupancy (the "Affordability Period"), as detailed below:

Location:	XXXXXXXXXX PIN XXXXXXXXXXXX [Insert Legal Description]
Affordable Housing:	XX units 10% of the units shall be allocated to tenants in receipt of Housing Benefits
Monthly Occupancy Costs:	Project average at or below XX% of Average Market Rents

ARTICLE 4

City Funding

4.1 Funding Assistance. The assistance to be provided to the Proponent shall be comprised of the following:

- (a) **Funding.** Subject to the provisions hereof, the City will advance the amount of **XXXXXXXX Dollars (\$XXXXX)** (the “City Funds”), as a grant by way of forgivable loan, from the City’s Development Charges Reserve Fund for Subsidized Housing. The City Funding will be advanced upon the conditions set out in section 4.4, either being satisfied or waived and in accordance with Article 5 and which funds are to be used solely to fund the Development Activities of the Project and to enhance the affordability of the Affordable Housing funded hereunder;
- (b) **Property Tax Exemption.** Subject to Council approval being obtained, the City shall exempt the Project from taxation for municipal and school purposes for a term of XX years;
- (c) **Development Charges.** The City shall exempt the Proponent from the payment of the development charges with respect to the Project;
- (d) **Planning Application Fees.** The City shall waive the all planning application fees with respect to the Project, if not already paid;
- (e) **Building Permit Fees.** The City shall waive all building permit fees with respect to the Project, if not already paid;
- (f) **Parkland Dedication Payment Requirements.** The City shall waive parkland dedication payment requirement with respect to the Project, if not already paid; and
- (g) **Toronto District School Board Levies.** The City shall waive payment of Toronto District School Board levies with respect to the Project if not already paid. (Please note: Toronto Catholic School Board levies are payable).

4.2 Security. The Proponent shall register or cause to be registered a Charge/Mortgage of Land (the “City Charge”), on the Lands, for the total of the City Funds, Development Charges, Planning Application Fees, Building Permit Fees, and the Parkland Dedication Payment exempted and/or waived by the City, to secure the obligations of the Proponent hereunder. The City Charge shall be:

- (a) endorsed in favour of the City;
- (b) in the principal amount of XXXXXX Dollars (\$XXXXXX); and (the “Principal Amount”)
- (c) shall include the terms set out in Schedule “C”.

4.3 Forgiveness. The principal balance of the City Funds will be reduced by the amount that is equal to the Principal Amount multiplied by four per cent (4%) on each anniversary of First Occupancy, until fully forgiven, if the Proponent is in good standing under the terms of this Agreement. [**NOTE:** this timing is based on a 25 year Affordability Period]

4.4 Incentives Conditions Precedent. The obligation of the City to release the City's letter confirming that Building Permit Fees, Planning Application Fees, Parkland Dedication Payment Requirements, Toronto District School Board levies and/or Development Charges are waived, or to provide any other assistance listed in Section 4.1 is conditional upon the Proponent satisfying the following conditions unless waived in writing by the City:

- (a) the City Charge has been registered;
- (b) the Proponent shall have provided certified copies of such corporate documents the of Proponent as the City may reasonably require including, without limitation, letters patent or articles of incorporation, and a certified copy of the directors' resolution authorizing the execution of this Agreement;
- (c) the City has received certificates of incumbency of the persons signing on behalf the of Proponent;
- (d) the Proponent shall have provided an opinion from a solicitor satisfactory to the City Solicitor, substantially in the form of the Legal Opinion attached hereto as Schedule "D";
- (e) the Proponent shall have provided proof of the insurance required pursuant to the terms of this Agreement, if applicable;
- (f) the Proponent shall not be in default (or being in default, the time provided for curing such default has not yet elapsed) under any of the terms and conditions of this Agreement, or any agreement with respect to the construction, development or operation of the Project, all of which shall be in full force and effect;
- (g) the Proponent has provided the City with an up-to-date capital budget and operating budget satisfactory to it;
- (h) receipt by the City of an up to date and comprehensive development schedule including the construction start date and anticipated occupancy date;
- (i) the representations and warranties of the Proponent set out in Article 6 hereof shall be true and correct and, if requested by the City, the Proponent shall have delivered a certificate or certificates to such effect; and
- (j) nothing shall have occurred which, in the sole opinion of the Director, Affordable Housing could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

- 4.5 Funding Conditions Precedent.** The obligation of the City to make the advance of the City Funds is conditional upon the Proponent satisfying the following conditions unless waived in writing by the City:
- (a) the Proponent shall have received and provided the City with a copy of the first building permit for the Development; and
 - (b) the Proponent shall have provided a copy of the final design set of drawings and specifications for the Project incorporating all compliance requirements of the City's Building Division and following the City's Accessibility Design Guidelines, where appropriate. The City acknowledges that this condition shall be waived with respect to the first advance.
- 4.6 No Waiver.** The making of an advance or advances prior to the fulfilment of one or more of the conditions set forth herein shall not constitute a waiver by the City of any such condition, and the City reserves the right to require the fulfillment of each condition prior to the making of any subsequent advance.
- 4.7 Conditions Solely for the Benefit of the City.** All conditions to the obligation of the City to make any advance are solely for the benefit of the City, its successors and assigns, and no other person shall have standing to require satisfaction of any condition and no other person shall be deemed to be a beneficiary of any such condition, any and all of which may be freely waived in whole or in part by the City at any time the City deems it advisable to do so.

ARTICLE 5

Disbursement of Funds and Assistance

- 5.1 General.** The City shall make the advance of the City Funds provided that the conditions in Article 4 have been met or waived in writing, representations and warranties set forth in Article 6 remain true and correct and the obligations of the Proponent set out in Article 7 have been met, where applicable.

[Note to reader: the distribution of City Funds will be determined by City staff on a project by project basis]

ARTICLE 6

Representations and Warranties

- 6.1** The Proponent represents and warrants that,
- (a) it is duly incorporated under the laws of Ontario or Canada;
 - (b) the Board of Directors of the Proponent has authorized the Proponent to enter into this Agreement and such authorization has not been withdrawn;

- (c) it shall not alter, supersede or cancel its articles of incorporation, letters patent or other constating document in any way which would affect its ability to perform its obligations under this Agreement without the prior written consent of the City;
- (d) no member of the Council of the City or members of any of its agencies, boards or commissions shall be entitled to any share or part of this Agreement or to any benefit to arise therefrom; and
- (e) no individual to whom the City's Code of Conduct for Members of Council, the City's Re-Employment of Former City Employees' Policy or the Employee Conflict of Interest Policy apply, shall derive a direct benefit from this Agreement.

6.2 The Proponent agrees that the City shall be entitled to rely at all times on the representations and warranties set out in this Article.

ARTICLE 7

Obligations of the Proponent

7.1 The Proponent shall:

- (a) proceed diligently with the development of the Project;
- (b) ensure Substantial Completion of the Project is reached by no later than XXXXXXXX, or such other date as determined by the Director, Affordable Housing acting reasonably;
- (c) comply with all applicable federal, provincial and municipal laws, regulations and by-laws;
- (d) no later than six (6) months prior to First Occupancy, provide the Director, Housing Stability Services with an Access Plan for review and approval
- (e) no later than sixty (60) days prior to First Occupancy, provide the Director, Housing Stability Services with a Proponent's Initial Occupancy Report, in the form of the report attached as Schedule "A"; or in a form designated by the Director, Housing Stability Services; and
- (f) provide such information, within ten (10) days of such request, with respect to the Project, such as construction progress, projected first occupancy date, as requested or required by the City, acting reasonably, from time to time.

ARTICLE 8

Obligations of the Proponent during the Affordability Period

- 8.1** At all times during the Affordability Period, the Proponent shall:
- (a) ensure that, when entering into a tenancy agreement for a Unit, the tenant has a Household Income that does not exceed four times the annual equivalent of the Monthly Occupancy Cost for the Unit to be rented;
 - (b) ensure that no Unit will be rented to the Proponent or shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent unless the Proponent is a non-profit co-operative, as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, as amended, or is a not-for-profit corporation
 - (c) operate and maintain the Project in accordance with the Proponent's Access Plan and the terms and conditions of this Agreement and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do;
 - (d) manage the Project so the average of the Monthly Occupancy Costs for the Units in the Project do not exceed XX% of Average Market Rent and so that occupancy is maximized;
 - (e) after the year following First Occupancy no later than ninety (90) days after the end of the calendar year, provide to the City, in conjunction with any reporting required by other agreements entered into with the City with respect to ADDRESS:
 - (i) an annual targeting report in a form designated by the Director, Housing Stability Services;
 - (ii) the Proponent's Annual Occupancy Report in the form of the report attached as Schedule "B", or in a form designated by the Director, Housing Stability Services;
 - (iii) a management representation report, in a form designated by the Director, Housing Stability Services including management declarations and a report on compliance with the provisions of this Agreement;
 - (iv) the Proponent's audited financial statement , for the Project in a form acceptable to the Director, Housing Stability Services; and
 - (v) information on the Household Income and household composition of the Units rented to new tenants during the year, in a form acceptable to the Director, Housing Stability Services;
when the calendar year end occurs less than six (6) months after First Occupancy, the first calendar year to which the provisions of this section apply shall be not less than twelve (12) months;
 - (f) provide representatives of the City, with access to its books, and records, with respect to the Project and to the Project, subject to the rights of the residential tenants, if any, of the Project.

ARTICLE 9

Monthly Occupancy Costs

9.1 Income Verification

The Proponent shall take such steps as are necessary to verify Household Income does not exceed the Initial Income Limit for each Unit prior to that Unit's Initial Occupancy, determined in accordance with the City's Affordable Rental Housing Eligibility and Income Verification Guide and in a form acceptable to the Director, Housing Stability Services.

9.2 Source of Tenants

The Proponent will be required to participate in the City's Housing Access System in accordance with the terms of the Proponent's Access Plan to be approved by the Director, Housing Stability Services.

9.3 Monthly Occupancy Costs

The total average Monthly Occupancy Costs shall not exceed XXXXXXXX percent cent (XX%) of Average Market Rents.

9.4 Monthly Occupancy Costs Increases

Proponent may adjust the Monthly Occupancy Costs, with respect to a Unit, if at least twelve (12) months have elapsed:

- (i) since the day the Unit was rented for the first rental period following the completion of the Development Activities in connection with the Project; or
- (ii) since the day of the last rent increase with respect to the Unit, if there has been an increase,

by no more than the prevailing rent increase guideline established each calendar year pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 or any successor legislation, to an amount not to exceed Average Market Rent. The Proponent acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* does not apply to the Project and agrees that the rent increase guideline applies by virtue of the contractual terms of this Agreement.

9.5 Tenant Provisions

The Proponent shall ensure that:

- (a) each lease for a Unit shall provide the following:
 - (i) for the disclosure to the City, by the Proponent, of the tenant's personal information including Household Income, has been consented to by the tenant;
 - (ii) that no Unit may be sublet by the residential tenant under any circumstances;
 - (iii) a statement identifying the Unit as being developed under a City approved municipal housing program, and being subject to an agreement between the Proponent and the City as Service Manager and therefore eligible for certain exemptions from the *Residential Tenancies Act* (RTA) under O.Reg. 516/06 (the "Regulation"); and
 - (iv) each lease with a residential tenant shall provide that the lease is exempt from paragraphs 6, 7 and 8 of subsection 30(1), Part VII of the Residential Tenancies Act, 2006; and
 - (v) pursuant to the Regulation, paragraph 2 of subsection 58 (1) and subsection 60 (1) of the RTA apply to the Unit;
- (b) that the City will be provided with access to all information obtained from the tenant concerning the Household Income and family composition of each Unit, which information the City may verify; and
- (c) for compliance with the provisions of MFIPPA, in its collection and sharing of any MFIPPA Protected Information, collected and shared, in accordance with the terms of this Agreement.

ARTICLE 10 Financial Records and Right to Audit

- 10.1** The Proponent shall keep proper books of account and records of the financial management of the City Funds and the Project, in accordance with generally accepted business and accounting practices. The accounts and records shall include all invoices, receipts, vouchers and other documents relating to Project expenditures and revenues, including funding from all other sources.
- 10.2** The Proponent shall retain all books, accounts, records (including records related to rent collection and tenant income and eligibility verification), receipts, vouchers and other documents, that pertain to the Project for a period of not less than seven (7) years from the end of each fiscal year of the Proponent to which the records relate.

- 10.3** The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor for the City or anyone designated in writing by the auditor to ensure compliance with the terms and conditions of this Agreement and verify costs claimed by the Proponent. It is acknowledged that the books and records for the Project may be contained within records relating to the Development and the Proponent may fulfill its obligations hereunder by providing such extracts as are necessary to satisfy the auditor appointed by the City.
- 10.4** The Proponent acknowledges and agrees that all accounts and records pertaining to payments of fees or other compensation for the solicitation, negotiating or obtaining of this agreement shall be subject to the accounts and audit provisions of this Agreement, as they pertain to the Project.
- 10.5** The Proponent shall permit the City’s representatives to make copies and take extracts from such books and records and shall furnish the City with such additional information as it may require with reference to such books and records, as they pertain to the Project.

ARTICLE 11

Indemnity

- 11.1** The Proponent hereby agrees that it shall, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City, and its elected and appointed officials, officers, employees, agents, representatives, successors and assigns (collectively, the “Indemnified Parties”), from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the Indemnified Parties and against any and all loss, liability, claims, judgments, costs, demands or expenses whatsoever which the Indemnified Parties may sustain, suffer or be put to resulting from or arising out of or in connection with:
- (a) this Agreement;
 - (b) the Project;
 - (c) the obligations of the Proponent hereunder;
 - (d) the failure of the Proponent, its officers, consultants, contractors, agents, servants or employees to exercise reasonable care, skill or diligence in carrying out any work in respect of the Project;
 - (e) any act or omission of the Proponent, its officers, agents, servants, consultants, contractors, employees or by anyone for whom the Proponent is at law responsible relating to any work or any other thing required to be performed or rendered hereunder by the Proponents;

- (f) all insured and uninsured damage to property installed, property in transit and contractors' tools and equipment during the course of the construction/renovation work to the Project; and/or
- (g) death or economic loss, caused by or in any way related to any of the Proponent's obligations under this Agreement.

provided that the Proponent shall not be liable for any loss, liability, claims, judgements, costs, demands or expenses which result from negligent or wrongful acts of the Indemnified Parties.

11.2 The liability of the Proponent, in respect of the indemnity in Section 11.1 shall be limited to the outstanding balance of the City Charge advanced to the Proponent.

ARTICLE 12

Insurance

12.1 Building-in-Course-of-Construction Insurance. During the period of construction including demolition or construction on the Development, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the Proponent and their employees and all those for whom they are at law responsible from damage to the Development from time to time during the work including demolition and construction (which may be by policies effective from time to time covering the risks during different phases of the work, demolition and construction) by a Builders' Insurance Policy including resultant damage from error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Development, to the replacement cost thereof. The City will be included as a mortgagee and joint loss payee, according to its interest, on the insurance policies required in this Section 12.1.

12.2 "All Risks" Property Insurance. Except as to any portion of the Development under construction which is insured by the insurance coverage provided pursuant to Section 12.1, the Proponent shall, at all times during the Affordability Period, insure and keep insured the Development and all other insurable property belonging to the Proponent and from time to time located on the Development in an amount not less than the replacement cost thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risks" policy and to the extent available and as would be obtained by a prudent owner of such a Development). If a separate policy of insurance is maintained for the boiler and pressure vessels, the policies will include a Joint Loss Agreement between insurers. The boiler and machinery coverage shall be on a repair and replacement basis, in an amount to reflect the replacement cost of the building and the contents and equipment located on the premises. The City will be included as a joint loss payee, according to its interest, on the insurance policies required in this Section 12.2.

12.3 Public Liability Insurance. The Proponent shall, at all times during the Affordability Period, maintain or cause to be maintained comprehensive Commercial General Liability insurance

including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Project or out of the operations of the Proponent or its sublessees in, on or about the Project, indemnifying and insuring the Proponent and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Project would, from time to time, carry (which amount shall initially be not less than Five Million Dollars (\$5,000,000.00) and be written on Wrap Up form during any period of construction and thereafter not less than Five Million Dollars (\$5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for crossliability and severability of interests. During the course of the work or any other construction, the liability insurance required under this Article shall relate to property damage, death or injury arising out of the performance or nonperformance of the work or any other construction or related work and shall include nonowned automobile liability insurance. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies. The City will be included as an additional named insured on the Commercial General Liability insurance policy which is to be maintained by the proponent following the completion of construction.

- 12.4 Automobile Liability Insurance.** The proponent will maintain and keep in force or cause to be maintained during the period of construction Automobile Liability insurance in an amount of at least One Million Dollars (\$1,000,000.00) for all licensed motorized vehicles used in the performance of work.
- 12.5 Other Insurance.** The Proponent shall maintain, or cause to be maintained, and shall keep in force during the Affordability Period such other insurance as may be reasonably required from time to time.
- 12.6 Certificates.** The Proponent shall deliver certificates of insurance to the City, including the renewal or the replacement of the insurance policies, without request or demand by the City.
- 12.7 City Approval.** The City, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the Proponent including the limits of coverage and the provisions thereof.
- 12.8 Non-Cancellation.** Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change policy, whether by reason of nonpayment of premium, nonfulfilment of condition or otherwise, except after thirty (30) clear days' prior written notice to the City.
- 12.9 Premiums and Evidence of Payment Thereof.** The Proponent shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article. The Proponent will produce to the City as soon as reasonably feasible, and in any event within ten (10) clear days prior to the expiry of any policy of insurance placed pursuant to this Article, evidence of the renewal or replacement of such insurance.

12.10 City's Right to Insure. The Proponent shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Proponent fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Article, the City shall have the right, upon notice to the Proponent and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Proponent and all outlays by the City shall be payable by the Proponent to the City forthwith upon demand without prejudice to any other rights and recourses of the City hereunder. No such insurance taken out by the City shall relieve the Proponent of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Proponent in connection therewith.

12.11 Loss or Damage. The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project or damage to property of the Proponent or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the Proponent or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence or wrongful acts of the City, its agents, employees, contractors, or others for whom it may, in law, be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, failing fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other persons on the Project or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasipublic work. All property of the Proponent kept or stored on the Project shall be so kept or stored at the risk of the Proponent only and the Proponent releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Proponent's insurers.

ARTICLE 13

Restriction on Changes

13.1 Neither the lands on which the Project is located, nor any part of the building in which the Project is located shall be sold or transferred by the Proponent unless the purchaser or transferee has first entered into an agreement with the City assuming the covenants set forth herein, and the City Charge, which agreement shall be duly executed by the purchaser or the transferee and delivered to the City prior to sale or transfer.

13.2 Provided there is no event of default by the Proponent under this Agreement, that is continuing, it is understood and agreed that the City shall subordinate and postpone the City Charge to other charges and all prior and subsequent advances thereunder and enter into any standstill agreement(s) (pursuant to which it agrees, among other things, to take

no enforcement action under the City Charge, pending repayment of such prior charge) which may be requested by the Proponent or the holder of a charge on the Land, provided that, in the opinion of the City, sufficient equity remains in the Land to secure the City Charge. The City reserves the right to request, at the Proponent's expense, such appraisals, financial statements, mortgage statement or other information as it deems appropriate prior to executing the postponement.

13.3 Upon the Proponent's request, the City shall provide a status certificate to the Proponent, confirming that there is no outstanding event of default and setting out the unforgiven balance of the City Funds. Each of the foregoing shall be delivered within fifteen (15) days of a written request being made by the Proponent.

13.4 Provided the Proponent is in good standing under this Agreement, it is understood and agreed that the City will consent to an assignment of this Agreement to secure a mortgage.

Please note: The City requires a minimum of three (3) weeks to process requests for the execution of postponements and forbearance documents.

13.5 The City consents to the postponement of this Agreement, the City Charge and all related security to any easements agreed to by the Proponent and neighbouring developments and any shared facilities or cost sharing agreement between the Proponent and neighbouring developments required for the proper operation of the Project and the neighbouring developments. Prior to executing any postponement, the City will be entitled to review the easements and shared facilities or cost sharing agreement.

13.6 The City consents to the postponement of the City Charge to any service or utility easement required by the City, in its capacity as a municipality or other supplier of a utility being provided to the Development.

13.7 The Proponent shall not sell or lease the Project unless (i) the purchaser or lessee enters into an agreement with the City and under that agreement assumes all of the Proponent's obligations and liabilities under this Agreement in respect of the Project; and (ii) the sale or lease will not decrease the number of Units in the Project

13.8 Notwithstanding anything herein contained, the Proponent may lease individual Units in the Project to tenants.

13.9 The provisions of this Article 13 shall not apply to any sale, lease, foreclosure or other disposition which is pursuant to the exercise of any remedy by a mortgagee where such mortgage and security related thereto is in priority to and security related thereto in favour of the City.

13.10 Upon the entirety of the City Funding being forgiven under Section 4.3 of this Agreement and provided the Proponent has otherwise satisfied its obligations under this Agreement in favour of the City, the City shall promptly execute and deliver to the Proponent, a full and final discharge of the City Charge together with such documentation that will permit the Proponent to register the discharge on title to the Lands.

ARTICLE 14

Default and Remedies

14.1 The following shall be considered events of default under this Agreement:

- (a) the Proponent has, in the opinion of the City, acting reasonably, failed to proceed with the implementation, construction and/or the operation of the Project in a timely manner, except where such failure is due to causes which, in the opinion of the City, are beyond the control of the Proponent;
- (b) the Proponent has failed to achieve Substantial Completion of the Project by XXXXXXX, or such other date which is three months after the date contemplated by Subsection 7.1(b) as such date may be extended from time to time;
- (c) the Proponent ceases to construct and/or operate the Project pursuant to the terms and conditions of this Agreement;
- (d) the Proponent knows or ought reasonably to have known, in the opinion of the City, acting reasonably that a Unit is being provided to a tenant whose Household Income exceeded the Initial Income Limit, or has not been verified under the terms of this agreement or that the household composition has been misrepresented;
- (e) the Proponent knows or ought reasonably to have known if in the opinion of the City, acting reasonably that the average Monthly Occupancy Costs for the Project exceed XX% of Average Market Rent;
- (f) the Proponent has breached Article 6, 8 and 9 in whole or in part of this Agreement;
- (g) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;
- (h) the Proponent becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors or fails under any proposal or makes any assignment for creditors or any arrangement or compromise;
- (i) receiver or receiver-manager is appointed for the Project by a creditor; or
- (j) there is, in the opinion of the City, acting reasonably, a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement with respect to the implementation and/or the operation of the Project.

14.2 During the Affordability Period, if there is an event of default by the Proponent that is continuing, and:

- (i) the default has not been remedied within thirty (30) days of receipt by the Proponent of written notice of an event of default or within such longer period as the City may allow; or
- (ii) the event of default is ongoing and material,

The City may, in its absolute discretion, without restricting any remedies otherwise available:

- (a) require repayment of the remaining, unforgiven balance secured by the City Charge;
- (b) require the Proponent to provide additional information or documents to the City;
- (c) rescind the tax exemption by-law passed with respect to the Project;
- (d) correct the breach itself or by retaining a third party and the reasonable cost of so doing shall be payable forthwith by the Proponent to the City and may be retained from any unpaid portion of the funding being provided pursuant to this Agreement or may be recovered in any court of competent jurisdiction as a debt due to the City;
- (e) terminate the Agreement by giving written notice to the Proponent;
- (f) enforce its rights pursuant to the City Charge; and/or
- (g) seek any additional remedy available to the City at law or in equity.

14.3 For the purposes of this Section, the Proponent will be found to have remedied the default if, for the purposes of Subsection 14.1 (d), the Proponent submits a plan satisfactory to the Director, Housing Stability Services or his successor attempting to prevent future defaults.

14.4 If the City gives the Proponent written notice of an event of default, the City may suspend any further payment under this Agreement until the breach is remedied.

14.5 Upon providing a notice of termination, the City shall have no obligation to make any further advances to the Proponent.

14.6 All rights and remedies of the City under this Agreement shall be cumulative and not alternative.

ARTICLE 15

Confidentiality

15.1 The Proponent, its officers, agents and employees shall treat all information which is obtained by the Proponent through its performance of this Agreement, as confidential and shall not disclose same, unless required by law, other than in accordance with this Agreement, without the prior written approval of the City.

15.2 Notwithstanding Section 16.1, the Proponent may disclose information to the grantor of a mortgage in priority to the City Charge, its lawyers, accountants and other professionals, provided that such persons require the information in order to properly perform their duties.

15.3 The Proponent shall not, unless required by law, release information pertaining to tenants and applicants for tenancy at the Project to third parties without first obtaining the written consent of the affected tenant or applicant.

15.4 The collection, use and disclosure of information by the City shall be governed by MFIPPA.

ARTICLE 16

Public Acknowledgements of Funds

- 16.1** The Proponent shall ensure that in any and all communication activities, internet web site information, publications, advertising, signs and press releases referring to the Project, there is included an appropriate acknowledgement, in accordance with the guidelines and instructions provided by the City to the Proponent, of the contributions made by the City. The Proponent shall notify the City in advance of any and all communication activities, publications, advertising and press releases.

ARTICLE 17

Dispute Resolution

- 17.1** The City and Proponent agree that alternate dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration may be preferable to litigation as a way to resolve disputes that may arise under this Agreement and they agree to give good faith consideration to having resort to an alternate dispute resolution process before initiating legal or other proceedings to deal with any such disputes.
- 17.2** In the event the parties agree to arbitration, the arbitration shall be governed by the provisions of the *Arbitration Act, 1991*, S.O. 1991 c.17.

ARTICLE 18

Notices

- 18.1** Unless otherwise provided in this Agreement, any notice, approval or other communication required or permitted to be given (“Notice”) shall be in writing and shall be personally delivered, sent by prepaid registered mail, or sent by telecopier and, in the case of Notice to the City, addressed as follows:
- (a) if to the City, at:
- City of Toronto
Metro Hall, 55 John Street, 7th Floor
Toronto, ON M5V 3C6
Attention: Director, Affordable Housing Office
Fax No: (416) 392-8492

with a copy to the City Solicitor, at

City of Toronto
55 John Street, Stn.1260
26th Floor, Metro Hall
Toronto, ON M5V 3C6

Attention: City Solicitor
Fax No: (416) 397-5624

(b) if to the Proponent, at:

Attention:
Fax No: ()

- 18.2** Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3rd) business day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the business day next following the day on which it was sent.
- 18.3** Any Notice permitted or required to be given by the City may be given by the Deputy City Manager. However, the Deputy City Manager specifically reserves the right to submit the issue of the giving of any Notice, or of the contents of any Notice, to City Council for its determination.
- 18.4** Notwithstanding any consent or approval given by the City with respect to any plans, specifications or other construction-related matter, the City will not be in any way liable for the design or construction of any proposed structure, and the party that has obtained the consent or approval of the City shall be wholly liable for such design and construction.
- 18.5** Either party under this Agreement may from time to time by Notice to the other party change its address for service under this Agreement.

ARTICLE 19

Contractual Status of the Parties

- 19.1** The Proponent shall be solely responsible for the payment of any person or entity employed, engaged or retained by the Proponent for the purpose of carrying out the Project or otherwise assisting it in the discharge of its obligations under this Agreement.
- 19.2** The Proponent shall ensure that any contract entered into by it in respect of the Project is in its own name and is in no way purports to be binding upon the City.
- 19.3** The Proponent acknowledges that it is not the agent or representative of the City and has no authority to make a promise, agreement or contract on behalf of the City in respect of the Project.

- 19.4** The parties agree that, in respect of the Project, the City is not an “Owner” within the meaning of the Construction Lien Act.

ARTICLE 20

Uncontrollable Circumstances

- 20.1** Except as expressly provided for in this Agreement, no party shall be liable to the others party for any loss, damage or delay to the extent it results from an uncontrollable circumstance if such circumstance is neither caused by the default or act of commission or omission of such party nor avoidable by the exercise of reasonable effort or foresight provided that nothing excuses a delay caused by lack of funds or other financial circumstances or excuses a party from payment of any amount payable hereunder when due.
- 20.2** For the purpose of this article, the words “uncontrollable circumstance” means any force majeure, strike, walkout, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, change in laws, government regulations or controls, court order, or any cause beyond the reasonable control of the party, unless any such lack of control results from deficiency in financial resources.

ARTICLE 21

General Provisions

- 21.1** This Agreement may be changed only by written amendment duly executed by authorized representatives of both parties.
- 21.2** In this Agreement, words in or implying the singular include the plural and vice versa, and words having gender include all genders.
- 21.3** The insertion of headings and the division of this Agreement into articles and subdivisions thereof is for convenience of reference only and shall not affect the interpretation hereof.
- 21.4** Any reference in this Agreement to an “article” or any subdivision thereof shall, unless the context otherwise requires, be taken as a reference to the correspondingly-labelled provision of this Agreement.
- 21.5** Time shall in all respects be of the essence of all matters provided for in this Agreement, provided that the time for the doing or completing of any matter may be extended or abridged by an agreement, in writing, executed by the City and the Proponent, or by their respective solicitors, who are expressly appointed for that purpose.
- 21.6** The waiver by a party of strict compliance or performance of any of the terms and conditions of this Agreement or of any breach on the part of any other party shall not be held or deemed

to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of this Agreement or of any breach thereof.

- 21.7** No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by an authorized representative of the party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.
- 21.8** This Agreement shall not be assigned by the Proponent without the prior written consent of the Director, Affordable Housing which consent may be withheld or given subject to such terms and conditions as the Director, Affordable Housing deems appropriate.
- 21.9** Should any provision of this Agreement be declared or found to be illegal, unenforceable, legally ineffective or void, then each party shall be relieved of any obligation arising from such provision, but the balance of this Agreement, if capable of performance, shall remain in full force and effect.
- 21.10** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 21.11** Each obligation of the City or of the Proponent expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.
- 21.12** The covenants, representations, warranties and indemnity of the Proponent set forth in this Agreement shall survive for a period of six months following the expiry of the Affordability Period.
- 21.13** Wherever any consent, agreement or approval of the City is required under the terms of this Agreement, unless otherwise provided and subject to any specific provision respecting such consent, agreement or approval, the City shall not unreasonably or arbitrarily withhold its consent, agreement or approval.
- 21.14** Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities. Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.
- 21.15** No communication or dealing between the Proponent and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City will be deemed to be a communication or dealing under the provisions of this Agreement between the Proponent and the City as parties to this Agreement, or to affect the City with notice of any such communication or dealings. It is intended and agreed that the City acts solely in a private capacity under this Agreement and any communication or dealing between the City and the Proponent as parties to this Agreement will only be effective if delivered in accordance with the notice provisions set out in this Agreement. No communication or dealing between the City as a party to this Agreement and the Proponent as a party to this Agreement will

relieve the Proponent from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or in any other lawful manner separate and apart from the obligations of the Proponent imposed by this Agreement.

21.16 This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals attested to by the hands of their proper signing officers in that behalf duly authorized.

DATED this _____ day of _____, 201 ____ .

Authorized by Committee Item No. XXXXXX
as adopted by the Council
of the City of Toronto on XXXXXXXX.

CITY OF TORONTO

Per: _____

Name: _____

Title: Director Affordable Housing Office

I have authority to bind the Corporation

DATED this _____ day of _____, 201 ____ .

PROPONENT

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation

APPROVED AS TO FORM
For Wendy Wallberg, City Solicitor
File #

SCHEDULE "A"

Proponent's Initial Occupancy Report

A. Project Information

Project Name	
Project Address	
Occupancy Date	
Contribution Agreement Expiry Date	

B. Number of Units in Project

Unit Type	Total Number of Units
Bachelor	
1 BR	
2 BR	
3 BR	
Other (specify)	
Total	

C. Depth of Affordability: Rents at Occupancy

Unit Type	Unit Size	Number of Units (A)	Actual Rent to be charged per month (B)	CMHC Average Market Rent (AMR - 20XX) or City published AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or Alternate (E)=(A)X(C)
Bachelor						
1BR						
2 BR						
3 BR						
Other (specify)						
TOTAL						

Notes:

1. For Column (B), actual rent is the net to occupants after all subsidies
2. For Column (C), Alternate e.g. modified Ontario Works Shelter Allowance, ODSP (in the event CMHC AMR does not apply)

Weighted Average Rents	Project Weighted Average Rent Total of (D) ÷ Total of (A) =	CMHC or City published Weighted Average Rent Total of (E) ÷ Total of (A) =
Depth of Affordability	(Project Weighted Average Rent ÷ CMHC (or City Published) Weighted Average Rent) x 100 =	

D. Project Certification

I certify, to the best of my knowledge, that the information provided in Sections B and C above is true and correct. I hereby authorize the City of Toronto to review the rent roll from appropriate source(s) if deemed necessary.

Name of Proponent:

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

City of Toronto

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE "B"

Proponent's Annual Occupancy Report

For the Year Ended December 31, 20XX

A. Project Information

Project Name	
Property Address	
Occupancy Date	
Contribution Date	
Contribution Agreement Expiry Date	

B. Average Rents at Year End

Unit Type	Number of Units	Previous year		Current Year		(E) CMHC or City published AMR	Rationale (if D>B)
		Actual Rent per Unit per Month (A)	RTA Permitted Increase per Unit per month X % (specify) (B)	Actual Rent per Unit per Month (\$) (C)	Rent Increase (D) = (A) - (C)		
Bachelor							
1 BR							
2 BR							
3 BR							
4 BR							
Other (specify)							
TOTAL							

C. Depth of Affordability: Rents during year of reporting

Unit Type	Unit Size	Number of Units (A)	Actual Rent to be charged per month (B)	CMHC Average market Rent (AMR – 20XX) or City published AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or City published (E)=(A)X(C)
Bachelor						
1 BR						
2 BR						
3BR						
Others (specify)						
TOTAL						

Notes:

1. For Column (B), actual rent is the net to occupants after all subsidies
2. For Column (C), Alternate e.g. modified Ontario Works Shelter Allowance, ODSP (in the event CMHC AMR does not apply)

Weighted Average Rents	Project Weighted Average Rent Total of (D) = Total of (A) =	CMHC or Alternate Weighted Average Rent Total of (E) = total of () =
Depth of Affordability	(Project Weighted Average Rent + CMHC (or City published) Weighted Average Rent) X 100 =	

D. Project Certification

I certify, to the best of my knowledge, that the information provided in Section B above is true and correct. I hereby authorize the City of Toronto to review the rent roll from appropriate source(s) if deemed necessary.

Name of Proponent:

by: _____

Date: _____

Name:

Title:

I have authority to bind the corporation

City of Toronto

by: _____

Date: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE “C”

Mortgage/Charge of Land Provisions

Additional Provisions

1. It is agreed by the Chargor and the Chargee that this Charge is given as collateral security for the Chargor’s performance of its obligations under a Contribution Agreement on, 201_, (herein called the “Agreement”), which Agreement has been entered into with the Chargee and default under the terms of the Agreement, shall constitute default under the terms of this Charge.
2. It is agreed that the Chargee’s rights hereunder shall in no way merge or be affected by any proceedings which the Chargee may take under the Agreement and/or under any other collateral security securing the performance of obligations under the Agreement and that the Chargee shall not be required to take proceedings under the Agreement, before proceeding under this Charge and conversely, no proceedings under this Charge or other collateral security or any of them shall in any way affect the rights of the Chargee under the Agreement and the Chargee shall not be required to take proceedings under this Charge or any other collateral security before proceeding under the Agreement.
3. Paragraph 14 of the set of Standard Charge Terms filed as number 200033 on November 3,2000 and forming part of this Charge is hereby deleted and the following substituted therefor:

“14. If the Chargor offers, lists, advertises, sells, transfers, disposes of, leases, licenses, mortgages, charges, encumbers or holds out or offers for sale, lease, licence, or disposal the land or any part, or permits any mortgage, charge or other encumbrances to remain outstanding in respect of the Land or any part or revises, alters, renews or amends any mortgage, charge or encumbrance or otherwise deals with the Land or any part other than in accordance with the Agreement, the principal amount secured by this Charge, or such lesser amount as may be outstanding pursuant to the provisions of the Agreement shall, at the option of the Chargee, immediately become due and payable. PROVIDED that no permitted sale or other dealing by the Chargor with the Land or any part shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any person liable for payment of the monies hereby secured.”
4. Paragraph 16 of the set of Standard Charge Terms filed as number 200033 on November 3, 2000 and forming part of this Charge is hereby deleted and the provisions of section 12 of the Agreement are substituted therefor.
5. It is understood an agreed that notwithstanding anything in the standard charge terms made part of this Charge or any provisions of any other document or certificate or security provided in connection with this Charge, the Chargor shall not be obligated or liable to repay all or any portion of the indebtedness hereunder including principal, interest, premium, costs of realization, damages or any other monies secured by owing under or in connection herewith, including under any indemnity (collectively for the purpose of this paragraph only

the “Indebtedness”) and that the recourse of the Chargee to recover the Indebtedness shall be limited and restricted to the right of the Chargee to enforce its security solely against the charged property and the rents, chattels and proceeds (including insurance proceeds) relating to the charged property and to realize against the interest of the Charge or in the charged property and the proceeds thereof, and that the Chargee shall not be entitled to effect realization against any other property of assets or the Chargor (or any other person, corporation, partnership or entity) any deficiency remaining outstanding after such realization.

Properties

PIN Interest/Estate Fee Simple
Description
Address

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name PROPONENTS NAME
Acting as a company
Address for Service Proponents address for service

I, xxxxxxxxxx, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Name CITY OF TORONTO
Acting as a company
Address for Service

Chargee(s) Capacity Share

Name CITY OF TORONTO
Acting as a company
Address for Service 55 John Street , Metro Hall, 26th Floor
Toronto, Ontario
M5V 3C6
Attention: City Solicitor & Affordable Housing Office

Provisions

Principal \$ 500,000.00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount full insurable value
Guarantor

Additional Provisions

***** THIS IS AND EXAMPLE *****

SCHEDULE “D” Legal Opinion

[TO BE ON LETTERHEAD OF SOLICITOR FOR PROPONENT]

DATE

City of Toronto
Legal Division
Station 1260
26th Floor, Metro Hall
55 John Street
Toronto, Ontario M5V 3C6
Attention: Wendy Walberg, City Solicitor

Re: City of Toronto (the “City”) and []
(the “Proponent”) property located at []
Ontario (the “Property”)

We have acted as solicitors to the Proponent in connection with the giving of this opinion and all matters herein described.

We have participated in the preparation of and acted in connection with the authorization, execution, issuance and delivery by the Proponent of the following documents:

- (a) Contribution Agreement dated _____ between the City and the Proponent (“the Agreement”); and
- (b) a Charge/Mortgage of Land in the principal amount of [] (the “Charge”); and
- (d) the giving of this opinion and on all matters herein described.

The Charge has been given in favour of the City for the obligations of the Proponent from time to time under the Agreement. All other capitalized terms used herein, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Agreement, unless otherwise specified.

We have examined such corporate records and have made such other searches and enquiries and considered such questions of law as we have considered necessary or desirable for the purposes of the opinions hereinafter expressed. In our examination of all documents, we have assumed:

- (a) the genuineness of all signatures, the requisite legal capacity of all individuals, the authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as photocopies, facsimile, certified or notarial copies thereof and that all facts set forth in the official public records, indices and filing systems and all

certificates supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;

- (b) that each party to the Agreement and the Charge was in existence when the Agreement and Charge were executed and delivered and had the power and capacity to enter into the Agreement and Charge;
- (c) that each of the Agreement and the Charge has been duly authorized, executed and delivered by each party thereto (whether or not a signatory thereto); and
- (d) that each of the Agreement and the Charge is a legal, valid and binding obligation of each party thereto other than the Proponent.

We have examined title to the Property and attended to the registration of the [leasehold] Charge, in the Land Registry Division of the Toronto Land Titles Office (No. 66) (the “Land Titles Office”). The detail of all such registration is set out in Schedule “A” attached to this letter and the duplicate registered copy of the Charge is enclosed.

We are solicitors qualified to carry on the practice of law in the Province of Ontario and we express no opinion as to any laws other than the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario in force on the date of this opinion.

Based upon the foregoing and subject to the qualifications set out below, we are of the opinion that as of the date of registration of the Charge:

1. the Proponent is a subsisting body corporate under the laws of the Province of Ontario, with the necessary powers to borrow the monies secured by the Charge;
2. the Proponent has good and valid marketable title to the Property, free from all encumbrances or claims of any nature whatsoever, subject only to the qualifications and the Permitted Encumbrances set out in Schedule “B” attached to this letter (the “Permitted Encumbrances”);
3. the Charge constitutes a good and valid second charge of the Proponent’s interest in the Property and all right, title and interest of the Proponent therein, enforceable by the City in accordance with its terms, subject only to the Proponent’s right of redemption thereunder and otherwise at law and equity, the Permitted Encumbrances;
4. there are no executions outstanding in the hands of the Sheriff of the City of Toronto which affect the Proponent or the leasehold title to the Property and, to the best of our knowledge, without having made independent enquiry, there are no actions or proceedings pending or threatened against the Proponent, before any court or administrative agency;
5. there are no arrears in the payment of taxes with respect to the leasehold Property;
6. there are no outstanding accounts for the supply of hydro, gas, water or sewage services to the Property; and.
7. the Property has not escheated to the Crown.

The opinions expressed above are subject to the following qualifications:

1. the enforceability of the Agreement and the Charge may be limited by applicable bankruptcy, winding up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditor's rights;
2. the enforceability of the Agreement and the Charge may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance, injunction and relief from forfeiture) which remedies are only available in the discretion of a court of competent jurisdiction;
3. we express no opinion as to whether a security interest may be created in permits, quotes, licences or other property which is neither personal property or an interest in land;
4. a court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive;
5. no opinion is given as to the enforceability of any provision of the Agreement and the Charge providing for the severance of illegal or unenforceable provisions from the remaining provisions of the Agreement and the Charge;
6. whenever an obligation, act, agreement or instrument is expressed to be "enforceable" or "legal, valid and binding" or words of like effect, we mean that such obligation, act, agreement or instrument is capable of being given legal effect; we express no opinion as to any factors such as financial capacity or title to assets which may make such obligation, act, agreement or instrument unenforceable in fact;
7. the enforceability of any of the Charge entitling the Lender to exercise rights or remedies as a result of a default thereunder may be limited by applicable laws requiring creditors and secured parties to give obligors a reasonable time to raise money to pay the indebtedness owing by the obligors prior to taking any action to exercise such rights or remedies;

Notwithstanding that our fee for this opinion will be paid by the Proponent, and that we have acted for the Proponent in this transaction, we acknowledge that the City is relying upon this opinion letter and the opinions expressed herein and consent and agree to such reliance

Yours truly,

Solicitor

SCHEDULE "D-A"

The Agreement and the Charge registered on title to the Property in the Land Titles Office for the Toronto Land Titles Office (No. 66):

1. Charge registered on _____, 200__ as Instrument No. _____.

SCHEDULE “D-B”

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

