

**CITY OF TORONTO**

- and -

**XXXXXXXXXXXX**

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**TORONTO RENOVATES AND ROOMING HOUSE ACQUISITION**

**FUNDING AGREEMENT**

**[ADDRESS]**

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**BETWEEN:**

**CITY OF TORONTO**

(the "City")

- and -

**XXXXXXXXXX**

(the "Proponent")

**Background**

- A. The City has entered into an agreement, as Service Manager, to deliver the 2016 Social Infrastructure Fund under the CMHC – Ontario Agreement for Investment in Affordable Housing – 2014 Extension (the "Program");
- B. At its meeting held on July 23, 24, 25, 26, 27 and 30, 2018, City Council approved the provision of financial assistance and benefits to fund the acquire, renovate and operate of an available rooming house property in Ward 14 Parkdale- High Park and approved the City entering into a municipal capital facility agreement with the Proponent to be developed on property known as XXXXXXXXXXXX, Toronto; and
- C. The City issued Request for Proposals No. AHO2018-XX (the "RFP") on XXXXX, 2018 to secure a proponent to acquire, renovate and operate an licensed rooming house;
- D. The Proponent submitted a Proposal to purchase, renovate, repair and operate the licensed rooming house at XXXXXXXXXXXX, Toronto (the "Proposal") and has been selected to receive funding through the City and the Program; and
- E. 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 affordable housing located at XXXXXX, 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:

"Acquisition Funds" means the funding being provided by the City, to be used exclusively for the purchase of the Property;

"Affordability Period" means ninety-nine (99) years from the date of First Occupancy;

"Average Market Rents" or "Average Rents" or "AMR" means average monthly Toronto-wide rents by room 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 and the "Average Market Rents" for a "Dwelling Room" means sixty (60) percent of the "Average Market Rents" for one-bedroom units in the City of Toronto;

"Capital Budget" means the budget for the Funded Work, as amended and updated from time to time;

"City Charge" means the Charge/Mortgage of Land referred to in Section 4.4 hereof;

"City Funds" means collectively the Acquisition Funds and the Renovation Funds;

"CMHC" means the Canada Mortgage and Housing Corporation, and includes any successor organization;

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

"Dwelling Room" means a private room for the exclusive use of the occupant or occupants of the room, designed or intended for use for living accommodation and may include either but not both culinary or sanitary conveniences accommodation, where such living accommodation is provided in exchange for remuneration in the form of rent payable to the landlord;

"Dwelling Unit" means living accommodation comprising a single housekeeping unit, designed or intended for use by one person or by persons living together as a family, and consisting of a room or suite of two or more rooms in which both culinary and sanitary facilities are provided for the exclusive use of such person or persons, where such living accommodation is provided in exchange for remuneration in the form of rent payable to the landlord, and may include a bachelor unit or a one-bedroom unit.

"Escrow Agreement" means the Escrow Agreement to be entered into by the City, the Proponent and the Proponent's solicitor to govern the terms of the release of the Renovation Funds substantially in the form of the Escrow Agreement attached as Schedule "B";

"Escrow Agent" means the solicitor who enters into the Escrow Agreement with the City and the Proponent;

"Funded Work" means the work outlined in Schedule "A";

"Legally Recognized Rooming House" means a Rooming House which has a permit from the City to operate, is licensed by the City or the existence of which is allowed as a legal non-conforming use, as determined by the Director, in his sole discretion;

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56;

"MFIPPA Protected Information" means any "Personal Information" as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56;

"Monthly Occupancy Costs" means the total of the monthly remuneration in the form of rent payable to the landlord for a Dwelling Room or Dwelling Unit as defined in this agreement including hydro, heat, cold water and hot water; "Monthly Occupancy Costs" do not include charges for meals, parking, cable, internet, telephone or any other like charges;

"Project" means the Legally Recognized Rooming House to be purchased, located in Ward 4 Parkdale-High Park, to be renovated, repaired or rehabilitated and, subsequently operated by the Proponent in accordance with the terms and conditions of this Agreement, as more particularly described in Article 3;

"Project Manager" means a recognized professional, or a qualified person approved by the Director, who possesses the skills, knowledge and experience in construction, and is capable of monitoring the Funded Work to ensure conformance with accepted construction norms, standards, codes and regulations;

"Property" means the lands described in Article 3, together with any buildings or improvements thereon from time to time;

"Proposal" means the Proponent's response to the City's Request for Proposals, subsequently revised and approved by the Director that resulted in the signing of this Agreement;

"Renovation Funds" means the funding to be used exclusively for the renovation of the Property;

"Residential Care Home" means supervised living accommodation that may include associated support services, and: (a) is licensed or funded under Province of Ontario or Government of Canada legislation; (b) is for persons requiring semi-independent or supervised group living arrangements; and (c) is for more than ten persons, exclusive of staff. An apartment building used for the purpose of supportive housing or social housing is not a residential care home; and

"Rooming House" means a building in which living accommodation is provided for at least four (4) persons in separate rooms in exchange of remuneration, each of which may have food preparation facilities and/or sanitary facilities, and may include a lodging house, bachelorette, Dwelling Room, boarding home or similar accommodations with single room occupancy, however the definition does not include group homes, Residential Care Homes, tourist homes, hotels or personal care rooming houses, as defined in Article 1, Chapter 285 of the Toronto Municipal Code.

**1.2** The following schedules form part of this Agreement:

Schedule "A"	Funded Work
Schedule "B"	Escrow Agreement
Schedule "C"	Intentionally Deleted
Schedule "D"	Intentionally Deleted
Schedule "E"	Post-Repair Occupancy Report
Schedule "F"	Annual Occupancy Report
Schedule "G"	Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy
Schedule "H"	Charge/Mortgage of Land
Schedule "I"	Legal Opinion
Schedule "J"	Subsequent Opinion

and the parties agree that unless the context clearly indicates otherwise, all references in this Agreement to "this Agreement" shall be deemed to include said schedules.

**1.3** This Agreement, the Schedules incorporated into it by reference, the Proponent's Phase 2 proposal and the Request for Proposals leading to the entering into of this Agreement 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.

**1.4** 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.

**ARTICLE 2  
GENERAL**

**2.1** 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.

**2.2** 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 undertake the Funded Work in an efficient and workmanlike manner within three (3) months of the date of execution of this Agreement and to operate the Project, as set out below for the Affordability Period in accordance with the terms and conditions of this Agreement:

- The Property:** XXXXXXXXXXXXX  
XXXXXXXXXXXXX (the "Property")
- Affordable Housing:** XXXXXXXXXXXXX
- Monthly Occupancy Costs:** For the XX Dwelling Rooms, at or below 60% of Average Market Rents for a one-bedroom unit  
For the XX Dwelling Units, at or below 80% of Average Market Rents for each respective dwelling unit type.

**ARTICLE 4  
CITY BENEFITS**

**4.1 Acquisition Funds.** Subject to the conditions set out in Section 4.7 hereof being met or waived, the City will advance One Million Five Hundred Thousand Dollars (\$1,500,000.00) as a grant by way of forgivable loan, to be used solely for the purchase of the Property, at least five (5) days before the closing date set out in the agreement of purchase and sale for the Property, to the solicitor for the Proponent.

**4.2 Renovation Funds.** The City will advance up to Fifty Thousand Dollars (\$50,000.00) per Dwelling Unit, as a grant by way of forgivable loan, to be used solely for the Funded Work set out herein. The full amount of the Renovation Funds will be advanced to the Proponent's solicitor in accordance with the terms of the Escrow Agreement, within 30 days of the conditions set out in Section 4.8 hereof having been met or waived. Advances from the Escrow Agreement to the Proponent shall be made in accordance with Article 5

**4.3 City Incentives.** The City incentives to be provided to the Proponent will be comprised of the following:

- (a) **Planning Application Fees.** The City shall waive all planning application fees with respect to the Project, if not already paid; and
- (b) **Building Permit Fees.** The City shall waive all building permit fees with respect to the Project, if not already paid.

**4.4 Forgiveness.** Provided the Proponent is in good standing with the City under the terms of this Agreement, the principal balance of the Funds will be forgiven by one per cent (1%) on each anniversary of the last advance, made to the Proponent's solicitor, pursuant to the Escrow Agreement, until the loan is fully forgiven.

**4.5 Repayment.** If this Agreement is terminated before the Funds are fully forgiven, the Proponent shall repay to the City the outstanding balance of the Funds as of the date of demand for repayment.

**4.6 City Charge.** The Proponent shall register or cause to be registered a Charge/Mortgage of Land on the Property on the date the Property is acquired, to secure the obligations of the Proponent hereunder. The Charge/Mortgage of Land shall be in the amount of XXXXXXXXXXXX Dollars (\$XXXXX) **[total of City Funds and value of City Incentives]**, and shall be in the form set out in Schedule "H" and a legal opinion substantially in the form of the opinion set out in Schedule "I" will be provided to the City.

**4.7 Acquisition Funds Conditions Precedent.** The City will advance the Acquisition Funds to the Escrow Agent upon prior compliance by the Proponent with such of the following conditions that have not been waived in writing by the City:

- (a) the Proponent shall have provided certified copies of such corporate documents of the 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;
- (b) 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;
- (c) the Proponent has provided the City with a signed commitment for the first mortgage, satisfactory to the City;
- (d) 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

- (e) the Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy, attached as Schedule "G" has been executed by the Proponent and delivered to the City.

**4.8 Renovation Funds Conditions Precedent.** The City will advance the Escrow Funds to the Escrow Agent upon prior compliance by the Proponent with such of the following conditions that have not been waived in writing by the City:

- (a) an Escrow Agreement, substantially in the form of the Escrow Agreement attached as Schedule "B" has been executed by the Escrow Agent and the Proponent and delivered to the City;
- (b) the Proponent has provided the City with an up-to-date capital budget and operating budget satisfactory to it;
- (c) receipt by the City of an up-to-date and comprehensive development schedule including the construction start date and anticipated date of First Occupancy;
- (d) the Funded Work commenced within three (3) months of the date of execution of this Agreement;
- (e) Proponent shall have received all applicable permits for the Funded Work;
- (f) the Proponent shall have provided proof, with a copy to be provided upon the City's request, satisfactory to the City that all major contracts have been entered into in accordance with normal business practices, including using a competitive process, where appropriate. If normal business practices have not been followed, a business case for not following such practices must be submitted to and approved by the City;
- (g) the Proponent shall have provided proof of the insurance required pursuant to the terms of this Agreement, with the City as a mortgagee and joint loss payee;
- (h) for advances made by the Escrow Agent to the Proponent, the City shall have received a subsequent legal opinion updating the original legal opinion, substantially in the form of the subsequent opinion attached hereto as Schedule "J";
- (i) the Proponent shall have retained the services of a Project Manager, to the satisfaction of the Director, Affordable Housing Office.
- (j) for the purposes of the final advance from the Escrow Agent, the Proponent shall have provided the City with a Proponent's Post-Repair Occupancy Report, substantially in the form of the report attached hereto as Schedule "E",
- (k) 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 or operation of the Project, all of which shall be in full force and effect;
- (l) the obligations of the Proponent, as set out in Article 7 of this Agreement continue to be met to the satisfaction of the City;
- (m) 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



- (n) nothing shall have occurred which, in the sole opinion of the Director, could reasonably be expected to have a material adverse effect on the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

**4.9 No Waiver.** The making of an advance or advances, either to the Escrow Agent by the City or by the Escrow Agent to the Proponent, prior to the fulfillment 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.

**4.10 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  
REQUESTING AN ADVANCE OF RENOVATION FUNDS**

**5.1 Advance to Escrow Agent.** The City will advance all of the Renovation Funds to the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement within thirty (30) days of the conditions set out in section 4.8 having been met or waived.

**5.2 Requesting an Advance from Escrow to the Proponent.** The Escrow Agent will be instructed, by the City, to make the following advances of the Renovation Funds to the Proponent, within thirty (30) days of receipt by the City of the following:

<b>MILESTONE</b>	<b>PAYMENTS</b>
Receipt by the City of written confirmation that the Funded Work has commenced.	40%
Receipt by the City of evidence, satisfactory to the City that at least 50% of the Funded Work has been completed.	50%
Receipt by the City of evidence, satisfactory to the City that Substantial Completion has been achieved.	10%

**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, if applicable;
- (c) no member of the House of Commons, Senate, Provincial Legislature and 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
- (d) 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  
GENERAL OBLIGATIONS OF THE PROPONENT**

**7.1** The Proponent shall:

- (a) proceed diligently with the Funded Work in accordance with the Phase 2 Proposal, a work plan, the capital budget and cash flow expenditure plan, approved by the City and, in any event within three (3) months of the date of this Agreement;
- (b) ensure the Funded Work is completed no later than March 31, 2020, or such other date as determined by the Director, in his sole discretion;
- (c) comply with all applicable federal, provincial and municipal laws, regulations and by-laws, and, in particular with the *Construction Act*, R.S.O. 1990, c. C.30, and its requirement to maintain holdbacks;
- (d) ensure that the Project is kept free and clear of all liens and encumbrances, including but not limited to liens registered pursuant to the *Construction Act*. If a lien is registered against the Project, the Proponent will vacate the lien within ten (10) business days and provided that the lien has been vacated within ten (10) business days, the Proponent will not be considered to be in default of its obligations hereunder. Any orders associated with the Funded Work that are registered on title shall be discharged;
- (e) provide such information, within ten (10) days of such request, with information with respect to the Project, as requested or required by the City, from time to time;
- (f) if requested by the City, provide a report from an independent auditor verifying the Funds received to date have been expended to complete the Funded Work within ninety (90) days of a request for same by the City, if it has been determined that the Proponent will not complete the Funded Work; and
- (g) submit an independent report of a professional engineer, at the cost of the Proponent, should there be any dispute(s) in regard to the performance of the Funded Work.

**ARTICLE 8  
OBLIGATIONS OF THE PROPONENT  
DURING THE AFFORDABILITY PERIOD**

**8.1** The Proponent shall:

- (a) manage the Project so that the Monthly Occupancy Costs for the Project are maintained at or below the Average Market Rents by Room type for the Affordability Period;
- (b) provide, annually, on the anniversary of the last advance to the Escrow Agent an Annual Occupancy Report in the form of the report attached hereto as Schedule "F"
- (c) in any year the Proponent shall not increase the Monthly Occupancy Costs by more than the lower of any Average Market Rent increase, as a result of the CMHC Annual Rental Market Survey, if applicable and the annual rent increase guideline established pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 or any successor legislation to an amount not to exceed the Average Market Rent;
- (d) operate and maintain the Project described in Article 3, in accordance with the terms and conditions of this Agreement and in a good state of repair fit for occupancy, in a manner to maximize occupancy and as a prudent owner would do;
- (e) meet all of its obligations under the *Residential Tenancies Act, 2006*;
- (f) not rent a Room in the Project to a 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;
- (g) provide representatives of the City with access to its books, records, and to the Project, subject to any rights of the residential tenants;
- (i) upon the expiry of the Affordability Period, upon a Room becoming vacant, the Proponent may rent a Room to a new tenant at any Monthly Occupancy Cost mutually agreed; and
- (j) comply with the former City of Toronto Municipal Code, Chapter 285, Rooming Houses, as amended, or the former City of Etobicoke Municipal Code, Chapter 166, Lodging- Houses, as amended, where applicable.

**ARTICLE 9  
FINANCIAL RECORDS AND RIGHT TO AUDIT**

**9.1** 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 Funded Work 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.

**9.2** The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor of 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.

**9.3** The Proponent shall permit the City's representatives to make copies and take extracts from such books and records and shall furnish Canada and/or the City with such additional information as it may require with reference to such books and records.

**9.4** For the purposes of this article, audit includes any type of audit.

**9.5** This Article shall survive the termination of this Agreement.

## **ARTICLE 10 INDEMNITY**

**10.1** 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, including without limitation, environmental hazards;
- (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 Funded Work;
- (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 while carrying out the Funded Work; 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.

**10.2** The liability of the Proponent shall be limited to the amount of the City Funds advanced to the Proponent.

**10.3** For greater clarity, the resource of the City to recover principal, interest, premium, costs of realization, damages or any other monies secured by or owing under or in connection herewith, including under any indemnity (collectively for the purpose of this paragraph only the "Indebtedness" of the Proponent) shall be limited and restricted to the right of the City has in the Property (including insurance proceeds) and the City shall not be entitled to effect realization against any other property or assets of the Proponent (or any other person, corporation, partnership or entity) to cover any deficiency remaining outstanding after such realization. However, the City shall be entitled to name the Proponent in any action, enforcement or proceeding commenced to enforce its rights and to realize against the interest of the Proponent in the Property, but only for the purposes of being able to realize against the Property.

## ARTICLE 11 INSURANCE

**11.1 “All Risks” Property Insurance.** The Proponent shall, at all times during the Affordability Period, insure and keep insured the Project and all other insurable property belonging to the Proponent and from time to time located on the Project 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 Project). 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 joint loss payee on the insurance policies required in this Section 11.1.

**11.2 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 sub-lessees in, on or about the Project, indemnifying and insuring the City and 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 cross-liability 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 non-performance of the work or any other construction or related work and shall include non-owned 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.

**11.3 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.

**11.4 Copies of Policies and Approval of Policies.** 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.

**11.5 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 non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days’ prior written notice to the City.

**11.6 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.

**11.7 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 quasi-public 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 12 DEFAULT**

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

- (a) the Proponent has failed to proceed with the Funded Work within three (3) months of the signing of this Agreement, 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 complete the Project by June 30, 2020, or such other date as agreed to by the City;
- (c) the Proponent failed to meet its obligations under Articles 7 and 8 of this Agreement;
- (d) the Proponent, has made materially false or misleading representations or statements, or provided materially false or misleading information to the City, in its proposal submitted;
- (e) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;
- (f) the Proponent becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or fails any proposal or makes any assignment for creditors or any arrangement or compromise; or
- (g) a receiver or receiver-manager is appointed for the Project by a creditor other than the City.

**12.2** If an event of default occurs and:

- (a) the breach has not been remedied within thirty (30) days of receipt by the Proponent of written notice of the default or within such longer period as or is reasonably required provided the remedy is being diligently pursued; or
- (b) a plan satisfactory to the Director to remedy the default has not been implemented within the time period specified in the notice,

the City may, in its absolute discretion, without restricting any remedies otherwise available, immediately terminate the Agreement by giving written notice to the Proponent.

**12.3** 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 default is remedied.

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

### **ARTICLE 13 REMEDIES**

**13.1** If the Proponent is, during the Affordability Period, in breach of any part of this Agreement and the breach has not been remedied in accordance with Section 12.2 of this Agreement, in addition to the remedies set out in Article 12, the City may require the repayment of the City Funds.

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

### **ARTICLE 14 CONFIDENTIALITY**

**14.1** 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.

**14.2** Notwithstanding Section 14.1, the Proponent may disclose information to any mortgagee, its lawyers, accountants and other professionals, provided that such persons require the information in order to properly perform their duties.

**14.3** 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.

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

### **ARTICLE 15 PUBLIC ACKNOWLEDGEMENT OF FUNDS**

**15.1** 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 Government of Canada including the Canada Mortgage and Housing Corporation, the Government of Ontario including the Ministry of Housing and the City of Toronto including the Affordable Housing Office. The Proponent shall notify the City in advance of any and all communication activities, publications, advertising and press releases.

**15.2** The Proponent shall co-operate with representatives of all three levels of government during any official ceremonies relating to the promotion of the Project.

**ARTICLE 16  
DISPUTE RESOLUTION**

**16.1** 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.

**16.2** Notwithstanding Section 16.1, if the dispute is in regard to the performance of the Funded Work, Subsection 7.1(g) shall apply.

**16.3** 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 17  
NOTICES**

**17.1** 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  
55 John Street, 7<sup>th</sup> Floor, Metro Hall  
Toronto, ON M5V 3C6

Attention: Director, Affordable Housing Office  
Fax No: (416) 397-9155

**with a copy to the City Solicitor, at**

55 John Street  
Strn.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:

**17.2** 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 (3<sup>rd</sup>) 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.

**17.3** Any Notice permitted or required to be given by the City may be given by the Director. However, the Director 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.



**17.4** 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 18 CONTRACTUAL STATUS OF THE PARTIES**

**18.1** 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 Funded Work or otherwise assisting it in the discharge of its obligations under this Agreement.

**18.2** The Proponent shall ensure that any contract entered into by it in respect of the Funded Work is in its own name and is in no way purports to be binding upon the City.

**18.3** 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 Funded Work.

**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** The parties agree that, in respect of the Funded Work, the City is not an "Owner" within the meaning of the *Construction Act*.

## **ARTICLE 19 UNCONTROLLABLE CIRCUMSTANCES**

**19.1** Except as expressly provided for in this Agreement, neither party shall be liable to the other 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.

**19.2** 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 20 GENERAL PROVISIONS**

**20.1** This Agreement may be changed only by written amendment duly executed by authorized representatives of both parties.

**20.2** In this Agreement, words in or implying the singular include the plural and vice versa, and words having gender include all genders.

**20.3** 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.

**20.4** 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.

**20.5** 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.

**20.6** 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.

**20.7** 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.

**20.8** This Agreement shall not be assigned by the Proponent without the prior written consent of the Director, which consent may be withheld or given subject to such terms and conditions as the Director deems appropriate.

**20.9** 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.

**20.10** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**20.11** 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.

**20.12** The covenants, representations, warranties and indemnity of the Proponent set forth in this Agreement shall survive the expiry of the Affordability Period.

**20.13** 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.

**20.14** 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.

**20.15** 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.

**20.16** This Agreement shall enure 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.

**APPROVED AS TO FORM**

For Wendy Walberg, City Solicitor  
File #

DATED this      day of                      , 2019.

**CITY OF TORONTO**

Per: \_\_\_\_\_  
Name: Sean Gadon  
Title: Director, Affordable Housing Office

DATED this      day of                      , 2019.

**XXXXXXXXXXXXXXXXXX**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

Authorized by Executive Committee  
Item No. EX36.38 as adopted by City of  
Toronto Council on July 23, 24, 25, 26,  
27 and 30, 2018.

**SCHEDULE "A"**  
**FUNDED WORK**

**To be completed once the successful proponent is chosen.**

**SCHEDULE "B"**

**ESCROW AGREEMENT**

THIS AGREEMENT made as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

**A M O N G:**

**CITY OF TORONTO**  
(hereinafter referred to as the "City")

- and -

**XXXXXXXXXX**  
(hereinafter referred to as the "Proponent")

- and -

**XXXXXXXXXX**  
(hereinafter referred to as the "Escrow Agent")

**WHEREAS** the City and the Proponent have entered into an Toronto Renovates Funding Agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ , (the "TRFA"), under which the City has agreed to fund certain repairs, renovations and/or accessibility modifications to the building located at XXXXXXXX, Toronto (the "Funded Work").

**AND WHEREAS** it has been deemed expedient to have the Funds (as defined in the TRFA) disbursed, by the Proponent's solicitor on the terms and conditions established by the City; and

**AND WHEREAS** those terms and conditions are set out in this Escrow Agent.

**IN CONSIDERATION** of the mutual covenants and premises contained in this agreement the parties agree as follows:

**1. Delivery of Property – The "Escrow Funds"**

- (a) The City agrees to deposit with the Escrow Agent, in trust, XXXXXXXXX DOLLARS (\$XXXX), within thirty (30) days of all the conditions precedent in Section 4.8 of the TRFA to the advance of Renovation Funds being met or waived.
- (b) The Escrow Agent will acknowledge receipt of the Escrow Funds by providing the City with an Acknowledgement, in the form of the Escrow Agent's Acknowledgement of Receipt and Obligation attached hereto as Schedule "A".

- (d) The Escrow Fund shall not be released from escrow, transferred within escrow or dealt with in any other manner whatsoever except pursuant to the terms and conditions of the TRFA and this agreement.

## **2. Instructions to Escrow Agent**

- (a) The Escrow Agent, if so instructed by the Proponent, shall keep the Escrow Fund invested in an interest bearing account. All interest is to accrue to the benefit of the Proponent. The Escrow Agent may rely on instructions from the Proponent as to the terms and conditions of such investment with the Escrow Agent's bank.
- (b) The Proponent shall be entitled to advances from the Escrow Fund upon receipt by the Escrow Agent of written confirmation from the City that the Proponent's request for an advance under the terms of the TRFA entered into between the City and the Proponent with respect to the Funded Work has been approved by the City and the amount of the approved advance.
- (c) In the event a default pursuant to the terms of the TRFA occurs, and the default remains uncured past the date given in the notice of default served on the Proponent, the City shall be entitled to demand the return of the balance of the Escrow Fund, including any and all unpaid accrued interest, pursuant to the dispute resolution process set out below.

## **3. Dispute Resolution**

- (a) On receipt of a written demand for the Escrow Fund or a portion thereof (as applicable) made by the City or the Proponent pursuant to this Agreement, the Escrow Agent shall promptly mail a copy of it (by registered mail, return receipt requested) to the other party. The other party shall have the right to object to the delivery of the Escrow Fund or a portion thereof (as applicable), by delivery to the Escrow Agent of written notice of objection within 28 days after the date of the Escrow Agent's mailing of the copy to the other party, but not after. On receipt of the notice of objection, the Escrow Agent shall promptly mail a copy of it (by registered mail, return receipt requested) to the party who made the written demand.
- (b) In the event that the Escrow Agent shall have received a notice of objection as provided in this agreement within the time prescribed, or any disagreement or dispute shall arise among any of the parties, whether or not litigation has been instituted, then in any event, at the Escrow Agent's option:
  - (i) the Escrow Agent may refuse to comply with any claims or demands on it and continue to hold the Escrow Fund or a portion thereof (as applicable) until the Escrow Agent receives written notice signed by the City and the Proponent directing the disbursement of the Escrow Fund or a portion thereof (as applicable), in accordance with said direction;
  - (ii) in the event the Escrow Agent shall receive a written notice advising that litigation over entitlement to the Escrow Fund or a portion thereof (as applicable) has been commenced, the Escrow Agent may pay the Escrow Fund or a portion thereof (as applicable) into the court in which such litigation is pending; or
  - (iii) the Escrow Agent may (but shall not be required to) take such affirmative steps as it may, at its option, elect in order to substitute another impartial party to hold the Escrow Fund or to pay the Escrow Fund into a court of competent jurisdiction and/or to commence an action, the costs of it to be borne by whichever of the City or the Proponent is the losing party, and the Escrow Agent shall be released of any and all liability with respect to the Escrow Fund. The City and the Proponent jointly and severally agree to reimburse the Escrow Agent for any and all expenses incurred in the discharge of its duties under this

Section 3(b) including, but not limited to, solicitor's fees (either paid to retained solicitor or amounts representing the fair value of legal services rendered to itself).

- (c) All mailings and notices required hereunder shall be addressed to the party to receive the notice at the address set out below.

#### **4. Limitations on Duties and Liabilities of Escrow Agent**

- (a) The Escrow Agent shall not have any duties or responsibilities except those set forth in this paragraph and shall not incur any liability in acting on any signature, notice, request, waiver, consent, receipt or other paper or documents believed by the Escrow Agent to be genuine and the Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions of this agreement has been duly authorized to do so.
- (b) In the event of the death of any person who may be a party to this agreement, all parties shall deem and treat the legal representatives of the deceased party's estate as the successor in interest of the deceased person for all purposes of this paragraph.
- (c) The Escrow Agent shall not be responsible for any act or failure to act on its part except in the case of its own willful default or gross negligence. The Escrow Agent shall be automatically released from all responsibility and liability under this agreement on the Escrow Agent's delivery or deposit of the Escrow Fund, in accordance with the provisions of this Agreement.
- (d) The City and Proponent agree that if either shall, pursuant to this Agreement, deliver to the Escrow Agent a written demand for the Escrow Fund to be paid other than in accordance with Section 2(c) hereof, or the balance thereof remaining, the party making the demand shall, promptly after delivering the demand to the Escrow Agent, deliver a copy of the demand to the other party, together with a statement of the facts and circumstances underlying the demand, provided however, that nothing in this subsection shall have any effect on the Escrow Agent's rights, duties and obligations under the preceding parts of this paragraph.
- (e) The City acknowledges that the Escrow Agent is the solicitor for the Proponent and may continue to represent the Proponent even if there is a dispute between the City and the Proponent with respect to the Escrow Fund so long as the Escrow Agent continues to comply with the terms and conditions of this Agreement insofar as they relate to the Escrow Fund.

#### **5. Substitute for Escrow Agent**

In the event the Escrow Agent is no longer willing or able to carry on its duties hereunder, the parties hereto agree that the Proponent shall select a new Escrow Agent to act in the place and stead of the Escrow Agent hereunder. If the City approves the new Escrow Agent, the current Escrow Agent is hereby authorized and directed by the parties to deliver the Escrow Fund (or such part thereof then held by the Escrow Agent) and any notices and correspondence received or sent with respect to the Escrow Fund to the new Escrow Agent, within a reasonable time after it is determined that it cannot or is unable to continue acting as escrow agent and the Escrow Agent shall thereupon be released of any and all liability with respect to the Escrow Fund.

#### **6. Payment to Escrow Agent**

All Fees and disbursements of the Escrow Agent are payable by the Proponent.

#### **7. Addresses for Service**

Notice to the City shall be sent to:

City of Toronto

55 John Street, Metro Hall, 7<sup>th</sup> Floor  
Toronto, Ontario M5V 3C6

Attention:  
Fax No.:

Attention: Director, Affordable Housing Office  
Fax No.: (416) 397-9155

with a copy to:

Notice to the Proponent shall be sent to:

Attention:  
Fax No:

with a copy to:

Notice to Escrow Agent shall be sent to:

Attention:  
Fax No.:

**8. Counterpart**

This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

DATED at the City of Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 2019

**CITY OF TORONTO**

\_\_\_\_\_  
Name: Sean Gadon  
Title: Director, Affordable Housing Office

DATED at the City of Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 2019



**XXXXXXXXXXXX**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

DATED at the City of Toronto, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

**XXXXXXXXXXXX**

\_\_\_\_\_  
Name:  
Title:

I have authority to bind the Firm

**SCHEDULE "A"**

**Escrow Agent's Acknowledgment of Receipt and Obligation**

*(electronic version available on request)*

The Escrow Agent hereby acknowledges receipt of [50%, 40% or 10%] of the Escrow Funds in the amount of \$\_\_\_\_\_ for [name of proponent & project address] delivered to it on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ , and also acknowledges the instructions contained in the said Escrow Agreement and agrees with all parties to hold the Escrow Fund in escrow and to deliver them only pursuant to the terms and conditions of the Escrow Agreement.

\_\_\_\_\_

[name of escrow agent]

**SCHEDULE "C"**  
**INTENTIONALLY DELETED**

**SCHEDULE "D"**  
**INTENTIONALLY DELETED**

**SCHEDULE "E"**

**TORONTO RENOVATES POST REPAIR OCCUPANCY REPORT**

Room Type	Total Funded Rooms	Actual Rent to be Charged per Month	CMHC Average Market Rent (AMR)
Rooming House Bed			

\*\*Please provide details of your use of apprentices in the Project during the repair:

**Project Certification**

I certify, to the best of my knowledge, that the information provided 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 "F"**

**TORONTO RENOVATES ANNUAL OCCUPANCY REPORT**

Room Type	Total Funded Rooms	Actual Rent to be Charged per Month	CMHC Average Market Rent (AMR)
Rooming House Bed			

\*\*Please provide details of your use of apprentices in the Project during the year:

**Project Certification**

I certify, to the best of my knowledge, that the information provided 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 "G"



Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

For Office Use Only  
DECLARATION OF COMPLIANCE WITH ANTI-HARASSMENT/DISCRIMINATION LEGISLATION & CITY POLICY

Date:  
Group/Vendor/Individual Name:

Organizations/individuals in Ontario, including the City of Toronto, have obligations under the Ontario Human Rights Code, the Occupational Health and Safety Act, the Employment Standards Act, the Accessibility for Ontarians with Disabilities Act, the Criminal Code of Canada and the Charter of Rights and Freedoms. In addition, the City of Toronto also has policies that prohibit discrimination on the additional grounds of political affiliation or level of literacy, subject to the requirements of the Charter. Organizations are required to have and post policies, programs, information, instruction, plans and/or other supports, and an appropriate internal process available to their employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints under the applicable legislation and including the additional grounds of discrimination prohibited under City policy. Individuals are obliged to refrain from harassment/hate activity.

The City of Toronto requires all organizations and individuals that contract with the City to sign the following Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy. This Declaration must be signed by your organization and submitted with the contract or Letter of Understanding. The name of your organization and the fact that you have signed this declaration may be included in a public report to City Council.

Declaration:

I/we uphold our obligations under the above provincial and federal legislation. In addition, I/we uphold our obligations under City policies which prohibit harassment/discrimination on a number of grounds including political affiliation and level of literacy.

WHERE LEGALLY MANDATED I/we have in place the necessary policies, programs, information, instruction, plans and/or other supports that are consistent with our obligations, and I/we have an internal process available to my/our employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints. I/we agree that I/we shall, upon the request of the City, provide evidence of the policies, programs, information, instruction, plans and other supports and an appropriate internal complaint resolution process required under this Declaration which is sufficient to allow the City to determine compliance. I/We acknowledge that failure to demonstrate compliance with this declaration to the satisfaction of the operating Division, in consultation with the City Solicitor, may result in the termination of the contract.

Name of Vendor or Name of Grant Applicant (Organization or Individual):

\_\_\_\_\_

Complete Address: \_\_\_\_\_ Email \_\_\_\_\_

Tel. No. \_\_\_\_\_

Postal Code: \_\_\_\_\_ Fax No. \_\_\_\_\_

Name of Signing Officer or Name of Applicant (Name – please print): Position

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorised Signing Officer or Individual



**SCHEDULE "H" CHARGE/MORTGAGE**

LRO # 80 Charge/Mortgage

In preparation on 2016 07 18 at 15:12

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

**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 an individual  
*Address for Service* Proponents address for service

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

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

**Chargee(s)** Capacity Share

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

**Statements**

Schedule:

**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* 200033  
*Insurance Amount* full insurable value  
*Guarantor*

**Additional Provisions**

\*\*\*\*\* THIS IS AN EXAMPLE ONLY \*\*\*\*\*



**MORTGAGE/CHARGE OF LAND PROVISIONS**  
*(electronic version available on request)*

**Additional Provisions**

- (a) 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 Toronto Renovates Funding 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.
- (b) 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.
- (c) 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."
- (d) 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.
- (e) 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.

**SCHEDULE "I"**  
**LEGAL OPINION**

*(electronic version available on request)*

[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: City Solicitor

Re: City of Toronto (the "City") and [ ]  
(the "Proponent")  
[address of 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) Toronto Renovates Funding Agreement dated \_\_\_\_\_ between the City and the Proponent; and
- (b) Charge/Mortgage of Land in the principal amount of [ ] (the "City Charge"); and
- (c) 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 Titles 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 [ ] 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; and
6. 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 "I-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):

Charge registered on \_\_\_\_\_, 201\_\_ as Instrument No. \_\_\_\_\_.

**SCHEDULE "I-B"**

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

**SCHEDULE "J"**  
**SUBSEQUENT OPINION**

DATE

City of Toronto  
Legal Service  
55 John Street, Metro Hall  
Station 1260, 26<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3C6

Attention: Wendy Walberg, City Solicitor

Dear Sir/Madame,

**Re: City of Toronto and [Proponents name]**  
**Project's Address – # of advance**

Further to your letter dated [DATE], we wish to advise that we conducted a sub-search of the above noted property and confirm that there were no construction liens registered against the property as of [Date].

We confirm that there are no executions against the Borrower and the City's priority remains in place. We enclose a copy of the PIN report for your records and an execution certificate against the Borrower.

Yours very truly,

Solicitor

Enclosures