

**DEVELOPMENT CHARGES DEFERRAL AGREEMENT
ANCILLARY SECONDARY DWELLING UNIT**

THIS AGREEMENT made the _____ day of _____ 2019

B E T W E E N

XXXXXXXXXXXX
(the "Owner")

- and -

CITY OF TORONTO
(the "City")

WHEREAS the Development Charges Act, 1997, S.O. 1997, Chapter 27, as amended (the "**Act**") authorizes municipalities to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies;

AND WHEREAS the Council of the City ("**Council**"), pursuant to the Act, has enacted By-Law No. 515-2018 (the "**By-law**", which terms shall include any amendments or successors thereto), which imposes development charges and provides for the payment of development charges;

AND WHEREAS the City may, pursuant to section 27 of the Act, Article 415-7A(3) of the By-law, and on such terms as Council may require, enter into an agreement with an owner to require an owner to pay the applicable development charges at a date later than it would otherwise be payable, upon and in accordance with the terms of an agreement entered into by the owner with the City (a "**Deferral Agreement**");

AND WHEREAS, Council, as its meeting on April 24, 25, 26 and 27, 2018, adopted a Development Charges Deferral Program for Ancillary Secondary Dwelling Units which defers the payment of deferral charges for secondary dwelling units located in the rear yard of a lot, on the terms and conditions adopted by Council;

AND WHEREAS, Council, as its meeting on March 27 and 28, 2019, expanded the Development Charges Deferral Program for Ancillary Secondary Dwelling Units by lifting the restriction requiring the primary dwelling to be a single detached or semi-detached dwelling;

AND WHEREAS the Owner, by Reference Number [**insert deferral application reference #**] and dated [**insert date of application**] (the "**Application**"), has applied to the City for approval to defer the payment of the development charges to the City in respect of the said development pursuant to the terms of the City's Development Charges Deferral Program for Ancillary Secondary Dwelling Units and paid the applicable administrative fee to the City;

AND WHEREAS the Director, Affordable Housing Office has been authorized by Council to administer the Development Charges Deferral Program for Ancillary Secondary Dwelling Units, and to enter into Deferral Agreements, and has approved the Application;

AND WHEREAS the Owner is the registered owner of the property municipally known as [**insert address**] and legally described as set out in Schedule A to this Agreement (the "**Property**");

AND WHEREAS the Owner proposes to build an Ancillary Secondary Dwelling Unit on the Property and has submitted an application to the City for a building permit in connection therewith, which application is numbered [**insert building permit application number**];

NOW THEREFORE, in consideration of the sum of two dollars (\$2.00), the receipt and sufficiency of which are acknowledged, the premises and other good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

In this Agreement, unless the context expressly or by necessary implication requires otherwise, the following terms shall have the following meanings:

- (a) "**Agreement**" means this Development Charges Deferral Agreement - Ancillary Secondary Dwelling Unit, any schedules attached to it and any amendments made to it;
- (b) "**Ancillary Secondary Dwelling Unit**" means a Secondary Dwelling Unit in the rear yard of a lot with a primary dwelling unit, which is a structure separate from the primary dwelling unit;
- (c) "**Arm's Length**" means persons, corporations or other entities who are not "related persons" as defined in the *Income Tax Act* (Canada);
- (d) "**Assumption Agreement**" has the meaning ascribed to it in Section 5(d);
- (e) "**Board of Education**" has the meaning ascribed to it in the *Education Act*, R.S.O. 1990, c. E.2, as amended;
- (f) "**Building Permit**" means the building permit issued for the Ancillary Secondary Dwelling Unit described in the Recitals issued pursuant to the Building Code Act, S.O. 1992 c. 23 in respect of which development charges are required to be paid to the City;
- (g) "**Commencement Date**" means the date upon which the Building Permit in respect of the Ancillary Secondary Dwelling Unit is issued;
- (h) "**Condominium Act**" means the *Condominium Act, 1998*, S.O. 1998, c. 19 as amended;
- (i) "**Deferral Period**" has the meaning set out in Section 2;
- (j) "**Development Charge**" means the development charge as defined in Section 3(1);
- (k) "**Director, Affordable Housing Office**" means the Director responsible for the Affordable Housing Office and includes his or her designate or successor, if any;
- (l) "**Event of Default**" has the meaning ascribed to it in Section 6;
- (m) "**Land Titles Act**" means the *Land Titles Act*, R.S.O. 1990, c. L.5, as amended;
- (n) "**Owner**" means the Owner defined on Page 1 hereof and such Owner's heirs, administrators, successors and permitted assigns;
- (o) "**Parties**" means the Owner and the City;
- (p) "**Planning Act**" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended;
- (q) "**Property**" has the meaning ascribed to it in the Recitals;
- (r) "**Recitals**" means the recitals to this Agreement;
- (s) "**Restriction**" has the meaning set out in Section 7(1);

- (t) **"Secondary Dwelling Unit"** means a dwelling unit, whether contained within a proposed primary dwelling unit or ancillary to a primary dwelling unit including but not limited to a coach house, laneway suite or structure constructed above an existing garage or other structure separate from the primary dwelling unit, which:
 - (i) comprises an area less than the gross floor area of the primary dwelling unit; and
 - (ii) is not capable of being legally conveyed as a separate parcel of land from the primary dwelling unit;
- (u) **"Single Detached Dwelling"** means a residential building consisting of one dwelling unit and not attached to another structure used for residential uses or purposes and includes mobile homes;
- (v) **"Tax Roll"** has the meaning set out in Section 305 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A; and
- (w) **"Transfer"** means a sale, conveyance, transfer, foreclosure, exchange, assignment or other disposition of the Property or any part thereof or any interest therein, whether by the Owner or any other party (including without limitation a chargee/mortgagee in the exercise of its rights and remedies under its charge/mortgage) and includes any transaction or occurrence whatsoever, but does not include the entering into of a charge/mortgage.

2. DEFERRAL PERIOD

Subject to the terms and conditions of this Agreement, including without limitation, Subsection 7(2) hereof, the City agrees to defer the payment of the Development Charge for a period of Twenty (20) years from the Commencement Date (the "**Deferral Period**") or until an Event of Default occurs and the Development Charge becomes payable, as a result. Provided no Event of Default has occurred, the Owner's obligations under this Agreement shall end at the expiry of the Deferral Period and the Development Charge payable shall automatically be reduced to zero and shall no longer be payable. For clarity, the Owner acknowledges that if an Event of Default occurs during the Deferral Period, the Development Charge shall become immediately due and payable.

3. DEVELOPMENT CHARGE PAYABLE

- (1) The amount of the Development Charge owing upon an Event of Default is calculated based on the rate for a single detached dwelling as set out in the By-law and as applicable on the date of issuance of the Building Permit, currently \$XXXXX and indexed annually from the date of issuance of the Building Permit to the Event of Default (the "**Development Charge**"). The indexing rate shall be in accordance with the most recent change in the Statistics Canada Quarterly Construction Price Statistics, Catalogue Number 62-007-X. For greater certainty, Catalogue 62-007-X shall be referred to, and the Non-Residential Building Construction Price Index (Toronto) shall be used.
- (2) The Owner shall submit the Development Charge payment, payable to the City, to the Director, Affordable Housing Office.

4. ISSUANCE OF A BUILDING PERMIT

If the Owner fails to obtain the Building Permit within twelve (12) months of signing this Agreement, the Owner and the City agree this Agreement shall terminate, and the Owner's and the City's rights and obligations under this Agreement shall end.

5. DEFERRAL OF DEVELOPMENT CHARGE

The Owner acknowledges and agrees that:

- (a) this Agreement applies solely to the Ancillary Secondary Dwelling Unit authorized by the Building Permit, and does not apply to any other building or structure on the Property;
- (b) the Development Charge referred to herein applies only to development charges imposed pursuant to Subsection 3(1) of this Agreement and does not necessarily apply to all development charges that may be applicable in respect of the Ancillary Secondary Dwelling Unit, as there may be education development charges imposed by a Board of Education;
- (c) the Development Charge referred to herein is only payable upon an Event of Default during the Deferral Period;
- (d) it will not Transfer the Property or any part thereof or any interest therein to any other party (the "**Transferee**") unless the Transferee enters into an agreement with the City (an "**Assumption Agreement**") in a form and substance satisfactory to the City whereby the Transferee agrees to observe and perform all of the Owner's covenants, agreements and obligations under this Agreement as if the Transferee was an original party hereto; and
- (e) it shall notify the Director, Affordable Housing Office of any application made for consent to sever the Ancillary Secondary Dwelling Unit, including without limitation by way of subdivision or condominium approval.

6. EVENTS OF DEFAULT

Each of the following shall be considered an event of default (each, an "**Event of Default**") under this Agreement:

- (a) a subdivision agreement under Section 51 of the Planning Act is executed by the Owner and the City in respect of the Property or any part thereof;
- (b) a consent agreement under Section 53 of the Planning Act is executed by the Owner and the City in respect of the Property or any part thereof, or a consent under Section 53 of the Planning Act is granted by the Committee of Adjustment in respect of the Property or any part thereof;
- (c) a condominium agreement under the Condominium Act or Planning Act is executed by the Owner and the City in respect of the Property or any part thereof, or Council for the City of Toronto or the Local Planning Appeal Tribunal approves a condominium plan in respect of the Property or any part thereof; and
- (d) the Property or any part thereof is Transferred and the Transferee fails to enter into an Assumption Agreement for this Agreement as required by Subsection 5(d) of this Agreement, prior to the date of Transfer.

7. REMEDIES

- (1) The Owner shall register or cause to be registered a restriction pursuant to Section 118 of the *Land Titles Act* (the "**Restriction**"), requiring the prior written consent of the Director, Affordable Housing Office to any Transfer. Provided that no Event of Default has occurred and is continuing, this consent shall be provided if the Owner delivers to the City an Assumption Agreement executed by the Transferee, but shall be conditional upon the Restriction continuing to bind the Property after each such Transfer. The consent will be provided within

ten (10) days of a written request from the Owner, which shall include the Assumption Agreement executed by the Transferee. The City agrees to provide to a *bona fide* chargee/mortgagee dealing at Arm's Length (the "**Approved Chargee**"), an acknowledgement that the City will consent to a Transfer by an Approved Chargee, on the condition that the Restriction shall continue to bind the Property after any such Transfer and that the Transferee executes an Assumption Agreement. The City hereby confirms and agrees that any Approved Chargee may rely on the foregoing covenant to consent to a Transfer as if such Approved Chargee was a party to this Agreement, notwithstanding any rule of law to the contrary.

- (2) The Development Charge and any other monies owing hereunder shall become due and payable by the Owner immediately upon the occurrence of an Event of Default and the Owner shall pay the same to the City, all without notice, which is hereby expressly waived by the Owner.
- (3) The Owner hereby agrees to pay interest on account of the Development Charge at a rate which is the lesser of 1.25 per cent on the first day of default, and every thirty (30) days thereafter on the principal amount owing during such time as the default continues (15 per cent per annum), or the late payment charges interest rate as set out in Section 441-5 of Chapter 441, Fees and Charges, of the City of Toronto Municipal Code. This interest will accrue from the date upon which an Event of Default occurs until the date upon which the outstanding amount is added to the Tax Roll for the Property, at which time interest will be assessed at the rate in effect for amounts so entered thereon.
- (4) If the Development Charge remains unpaid for a period of ninety (90) days after it is due, pursuant to Section 32 of the Act, the amount of Development Charge together with all interest accrued thereon pursuant to Subsection 7(3) shall be added to the Tax Roll for the Property and collected in a like manner as municipal taxes all without notice, which is hereby expressly waived by the Owner. The Development Charge and all accrued interest thereon when added to the Tax Roll for the Property shall accrue interest and penalties, commencing on the date the Development Charge is placed on the Tax Roll, pursuant to Chapter 767, Taxation, Property Tax, of the City of Toronto Municipal Code.
- (5) If any Event of Default occurs, the City may, in its sole and unfettered discretion, exercise any right of recourse and/or proceed by any action, suit, remedy or proceeding against the Owner authorized or permitted by law for the recovery of the Development Charge and any other amounts payable to the City under this Agreement.
- (6) For greater certainty, it is expressly understood and agreed that the rights and remedies of the City under this Agreement are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by Law or by equity. No remedy for the enforcement of the rights of the City shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. No delay or omission by the City in exercising any such right or remedy shall operate as a waiver of them or any other right of remedy.

8. COSTS

(1) Additional Costs and Expenses

Without limiting any of its covenants and obligations set out elsewhere in this Agreement, the Owner agrees to pay all costs and expenses in connection with:

- (a) the preparation of consents to this Agreement;
- (b) the preparation of assumption agreements for this Agreement;
- (c) the applicable administrative fee in accordance with City Council policy; and

(d) without limiting the generality of the foregoing, all legal costs and expenses incurred by the City in the event that it takes any legal action in response to any Event of Default, or as it may otherwise take to enforce the City's rights under this Agreement.

(2) Indemnification by Owner

The Owner 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 obligations of the Owner hereunder; and

(c) death or economic loss, caused by or in any way related to any of the Owner's obligations under this Agreement;

provided that the Owner 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.

9. EARLY TERMINATION

At any time the Owner may elect to pay to the City the rate for a single detached dwelling as set out in the By-law and as applicable on the date of issuance of the Building Permit, currently \$XXXXX and indexed annually as set out in Section 3(1) of this Agreement, from the date of issuance of the Building Permit to the date of payment, and all other amounts outstanding under this Agreement (the "**Early Payment Amount**"). Upon receipt of the Early Payment Amount, and the written request of the Owner and payment of the City's then prevailing fee therefor, the City shall execute a consent to the discharge of the Restriction from title to the Property and this Agreement and the obligations of the parties hereunder will terminate.

10. REGISTRATION AND RELEASE

(1) Prior to the issuance of the Building Permit:

(a) The Restriction shall have been prepared and registered by the Owner against title to the Property, with the cost borne by the Owner; and

(b) the Owner shall have provided to the City written confirmation from the Owner's solicitor that the Restriction has been so registered, and a copy of the registered instrument.

(2) Upon the expiry of the Deferral Period, provided that no Event of Default has occurred and is continuing, and upon the written request of the Owner and payment of the City's then prevailing fee therefor, the City shall execute a consent to the discharge of the Restriction from title to the Property.

11. COLLECTION OF INFORMATION

The Owner agrees to provide information to the City, upon request from the City, regarding the cost to construct the Ancillary Secondary Dwelling Unit and information regarding rent amount if there is a third party renting the Ancillary Secondary Dwelling Unit. This information will be used to compile aggregate statistical data to evaluate the City's Development Charges Deferral Program for Ancillary Secondary Dwelling Units. This information is being collected under the authority of the City of Toronto Act, 2006 sections 8 and 136 and City of Toronto By-Law No 456-2018. Please note that over

the course of the Development Charges Deferral Program for Ancillary Secondary Dwelling Units additional information may be required for policy reasons, and the Owner may receive requests from the City to collect such additional information. Questions about this collection can be directed to the Director, Affordable Housing Office, 55 John Street, Metro Hall, 7th Floor, Toronto, ON M5V 3C6 or by telephone at 416-338-1143, or as otherwise directed by the City.

12. INDEPENDENT LEGAL ADVICE

The Owner acknowledges and confirms that the Owner has been advised by the City to consult a lawyer before executing this Agreement. The Owner further acknowledges and agrees that independent legal advice has been obtained with respect to the terms of this Agreement or independent legal advice has been declined. Nevertheless, the Owner herein acknowledges that the Owner has read this Agreement, understands the terms and conditions and the Owner's rights and obligations under this Agreement and agrees to be bound by same.

13. AGREEMENT NOT WAIVER

This Agreement is made entirely for the convenience and benefit of the Owner and is in no way to be construed as a waiver or surrender of any rights or remedies that the City may have to recover the Development Charge by any lawful means from present and future owners of the Property or as taxes upon the Property

14. OBLIGATIONS JOINT AND SEVERAL

The obligations and liabilities of the Owner, if more than one, under this Agreement shall be both joint and several.

15. NOTICE

(1) Notice

Any notice under this Agreement shall be deemed to have been given if delivered personally or mailed by registered mail to:

City of Toronto
55 John Street, Metro Hall, 7th Floor
Toronto, ON M5V 3C6
Attention: Director, Affordable Housing Office
Reference: **[insert deferral application reference #]**

to the Owner:

or to such other address which the Parties to be notified shall have given written notice to the other Parties.

(2) Time

Any notice given or delivered pursuant to this paragraph shall be deemed to have been given and received on the day on which it was delivered (or if such day is not a business day, on the next following business day) or three (3) days following the date of mailing, as the case may be.

16. ENTIRE AGREEMENT

This Agreement contains the entire and only understanding between the Parties relating to the deferral of the Development Charge in respect of the Ancillary Secondary Dwelling Unit authorized by the Building Permit, and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral.

17. AMENDMENT

No provisions of this Agreement shall be amended or altered except by further written agreement between the City and the Owner. No covenant or condition in this Agreement shall be deemed waived or consented to by the City, unless such waiver or consent is in writing and signed by the authorized representative of the City.

18. SEVERABILITY

If any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained in it.

19. GOVERNING LAW

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada.

20. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall enure to the benefit of the City and the Owner and their respective successors, executors, heirs and assigns. The Owner may not assign or transfer its rights and obligations under this Agreement without the prior written consent of the City.

21. FAMILY LAW ACT

The Owner represents and warrants to the City that spousal consent to this Agreement and the Restriction is not required under the provisions of the *Family Law Act*, R.S.O. 1990, unless the Owner's spouse has executed the consent set out herein.

22. FREEDOM OF INFORMATION AND PROTECTING PRIVACY

The Owner acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, and that this Agreement and any information provided to the City in connection with the Ancillary Secondary Dwelling Unit or in connection with this Agreement may be subject to disclosure in accordance with such Act.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts (including counterparts delivered electronically) and all such counterparts taken together will be deemed to constitute one and the same instrument.

IN WITNESS of which the parties to this Agreement have affixed their signatures.

SIGNED AND DELIVERED

Witness
Print Name:

[Insert Name of Person]
Owner

Witness
Print Name:

[Insert Name of Person]
Owner

CITY OF TORONTO

Sean Gadon
Director, Affordable Housing Office

SCHEDULE "A"

Legal Description:

PIN XXXXXXXX (LT)

[Insert description]