

CITY OF TORONTO

- and -

PROPONENT

CONTRIBUTION AGREEMENT

218 Carlton Street, Toronto

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BETWEEN:

CITY OF TORONTO

(the “City”)

- and -

PROPONENT

(the “Proponent”)

Background

- A. Section 252 of the *City of Toronto Act, 2006*, S.O. 2006 c. 11, Sch. A (the “Act”), provides that the City may enter into agreements for the provision of a municipal capital facility by any person and that the City may exempt from taxation for municipal and school purpose land or a portion of land on which municipal capital facilities are located;
- B. Ontario Regulation No. 598/06, as amended, prescribes municipal facilities used for the provision of affordable housing as eligible municipal capital facilities for the purpose of Section 252 of the Act;
- C. The City of Toronto passed By-law No. 124-2016 pursuant to the provisions of Section 252 of the Act and Ontario Regulation 598/06 to set out a definition for affordable housing and policies regarding eligibility for new affordable housing;
- D. At its meeting held on July 16, 17 and 18, 2019, City Council approved the provision of financial assistance and benefits for affordable rental units and approved the City entering into a municipal capital facility agreement with the Proponent to be developed on property known as 218 Carlton Street, Toronto; 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 new affordable housing.

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

ARTICLE 1 INTERPRETATION

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

“Access Plan” means a policy established by the Proponent and approved by the City of Toronto's Director, Housing Stability Services, which specifies how tenants are to be selected and how information about such process is disseminated to the public.

“Affiliate” of any Person means, at the time the determination is being made, any other Person Controlling, Controlled by or under common Control with, that Person, whether directly or indirectly;

“Affordability Period” means 50 years from the date of First Occupancy;

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

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

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

“City Incentives” means the tax exemption set out in 4.1 (a);

“Control” means, with respect to any Person at any time, the possession, directly or indirectly of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract, by virtue of being (or Controlling) the general partner, manager, managing partner, board of managers, board of trustees or board of directors of such Person, or by virtue of the beneficial ownership of or control over a majority of the economic interest of such Person or otherwise; and each of "Controlled by" or "Controlling" has a corresponding meaning;

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

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

“First Occupancy” means the first day of the first month immediately following the month in which the Unit is rented for the first rental period for the term of the Lease;

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

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

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

“Housing Benefits” means a financial benefit provided for or on behalf of a tenant to make up the difference between the rent payable by a tenant and the rent payable to the Proponent for a Unit;

“Initial Income Limit” means Household Income at or below four (4) times the annualized Monthly Occupancy Costs;

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

“Lease” means the lease for the Lands entered into between the City and the Proponent;

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

“Monthly Occupancy Costs” means the total of the monthly rent payable to the Proponent for a Unit including the cost of hydro, heat, water and hot water; and Monthly Occupancy Costs do not include charges for applicable taxes, parking, cable, internet, telephone or any other like charges. If heat, water or hydro costs are separately metered and paid directly by the household, then the Proponent shall deliver the Utility Allowance by way of setting off the amount of the Utility Allowance against the monthly rental payable;

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

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

“Person” means any individual, partnership, corporation, trust, unincorporated organization, municipality, government, or governmental agency or any combination thereof;

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

“Restriction” means the security to be registered pursuant to section 4.2 of this Agreement;

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

“Utility Allowance” means the average amount of separately metered utility costs, determined by the City and published on the City's web site.

1.2 This Agreement, the Schedules incorporated into it by reference and any documents entered into pursuant to this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and all other prior agreements, representations, statements, negotiations and undertakings with respect to such subject matter are superseded hereby.

1.3 Any reference in this Agreement to a statute shall be deemed to include any regulations made under the statute, any amendments made from time to time and any successor legislation.

1.4 The following schedules form part of this Agreement:

Schedule “A”	Depth of Affordability Report
Schedule “B”	Annual Occupancy Report

ARTICLE 2 GENERAL

2.1 It is understood and agreed that this is a municipal capital facility agreement pursuant to Section 252 of the *City of Toronto Act, 2006*, S.O. 2006 c. 11, Schedule A and the City's By-law No. 124-2016 “To enact a new Municipal Facility Housing By-Law and to repeal By-law No. 282-2002.”

2.2 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

2.3 All references in this Agreement to section numbers are references to sections of this Agreement unless otherwise stated.

**ARTICLE 3
THE PROJECT**

3.1 The Proponent agrees to operate the Project as Affordable Housing for the Affordability Period, as detailed below:

Location:	218 Carlton Street, Toronto PIN 21087-0318 Part of Lot 5, Plan 31 and Part of Lot 9, Plan D190 as in CA679515
Affordable Housing:	XX units
Rent:	XX% of Average Market Rent No one unit over 100% Average Market Rent

**ARTICLE 4
CITY BENEFITS**

4.1 City Benefits. The City Benefits provided to the Proponent and that have been provided for the Project are set out below:

- (a) **Lease.** The Lease shall be provided, for the Affordability Period at below market rent;
- (b) **Development Charges.** The City exempted the developer of the Project from the payment of the development charges with respect to the Project;
- (c) **Planning Application Fees.** The City waived the all planning application fees with respect to the Project,
- (d) **Building Permit Fees.** The City waived all building permit fees with respect to the Project,
- (e) **Toronto District School Board Levies.** The City waived payment of Toronto District School Board levies with respect to the Project,
- (f) **Property Tax Exemption.** The City shall exempt the Project from taxation for municipal and school purposes for a term of fifty (50) years;

4.2 Security. The Proponent shall register or cause to be registered a restriction pursuant to Section 118 of the *Land Titles Act*, requiring the prior written consent of the Executive Director, Housing Secretariat to any transfer or encumbering of the Lands, as specified in Sections 4.2 to 4.4 and 5.1 of the Lease.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 The Proponent represents and warrants that,

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

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 6 OBLIGATIONS OF THE PROPONENT

6.1 The Proponent shall:

- (a) take commercially reasonable steps, when entering into a tenancy agreement for a Unit, to confirm that the tenant has a Household Income that does not exceed the Initial Income Limit determined in accordance with the City's Affordable Rental Housing Eligibility and Income Verification Guide and in a form acceptable to the Director, Housing Stability Services;
- (b) participate in the City's Housing Access System in accordance with the

terms of the Proponent's Access Plan to be approved by the Director, Housing Stability Services no later than six (6) months prior to First Occupancy;

- (c) no later than sixty (60) days prior to First Occupancy, provide the City with a Depth of Affordability Report, in the form of the report attached as Schedule "A"; or in a form designated by the Director, Housing Stability Services;
- (d) ensure that no Unit will be rented to the Proponent or shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent unless the Proponent is a non-profit co-operative, as defined in the Co-operative Corporations Act, R.S.O. 1990, c. C.35, as amended, or is a not-for-profit corporation
- (e) ensure that up to twenty percent (20%) of the Units are available to tenants in receipt of Housing Benefits, as available;
- (f) establish a capital asset replacement reserve fund for the Project and pay into the reserve fund in each year of the Affordability Period the amount of six (6%) per cent of the gross revenues for the Project or such lesser amount as agreed to by the Director in his absolute discretion, acting reasonably. Annual contributions to the reserve fund shall be in addition to any interest earned by the reserve fund. Interest earned in the fund is to accrue in the fund;
- (g) manage the Project in a fiscally responsible manner including ensuring that:
 - (i) a deficit is not incurred in any year without the approval of the Director, Housing Stability Services, which approval shall not be unreasonably withheld; and
 - (ii) no expenditure is made which is of a material and excessive nature having regard to the normal practice for a similar housing project;
- (h) in each year of the Affordability Period and at least ninety (90) days prior to the start of each year, provide the Director, Housing Stability Services with its annual budget for the Project for the next following year;
- (i) manage the Project so that the following occupancy standards are observed when entering into a tenancy agreement for a Unit:
 - (i) a minimum of one and a maximum of two adult persons per bedroom; and
 - (ii) a minimum of one and a maximum of two children under the age of

18 per bedroom.

- (j) operate and maintain the Project in accordance with the terms and conditions of this Agreement and the Lease and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do;
- (k) manage the Project so that the average Monthly Occupancy Costs for the Project do not exceed 100% of Average Market Rent and that the Monthly Occupancy Cost for any one Unit during the Affordability Period does not exceed XX% Average Market Rent, and manage the Project so that occupancy is maximized;
- (l) later than ninety (90) days after the end of the calendar year in which First Occupancy occurs, provide to the City:
 - (i) the Proponent's Annual Occupancy Report in the form of the report attached as Schedule "B", or in a form designated by the Director, Housing Stability Services;
 - (ii) a management representation report, in a form designated by the Director, Housing Stability Services including management declarations and a report on compliance with the provisions of this Agreement;
 - (iii) the Proponent's audited financial statements, for the Project in a form acceptable to the Director, Housing Stability Services; and
 - (iv) information on the Household Income and household composition of the Units rented to new tenants during the year, in a form acceptable to the Director, Housing Stability Services;)

when the calendar year end occurs less than six (6) months after First Occupancy, the first calendar year to which the provisions of this section apply shall be not less than twelve (12) months;
- (m) provide representatives of the City, with access to its books and records, with respect to the Project and to the Project, subject to the rights of the residential tenants, if any, of the Project; and
- (n) ensure that each lease for a Unit shall provide the following:
 - (i) for the disclosure to the Director, Housing Stability Services of the tenant's personal information including household income and household composition, has been consented to by the tenant;
 - (ii) that no Unit may be sublet by the residential tenant under any

circumstances;

- (iii) a statement that the lease is exempt from section 8, paragraphs 6, 7 and 8 of subsection 30(1), sections 51, 52, 54, 55, 56 and 95 to 99, subsection 100 (2) and sections 101, 102, 104, 111 to 115, 117, 120, 121, 122, 126 to 133, 140, 143, 149, 150, 151, 159, 165 and 167 of the *Residential Tenancies Act, 2006*, S.O. 2006, C.17, as amended that the unit is identified as a subsidized unit that was developed or acquired under a municipal capital facility by-law for housing and is subject this Agreement;
- (o) ensure that the City will be provided with access to all information obtained from the tenant concerning the Household Income and family composition of each Unit, which information the City may verify;
- (p) ensure compliance with the provisions of MFIPPA, in its collection and sharing of any MFIPPA Protected Information, collected and shared, in accordance with the terms of this Agreement; and
- (q) comply with all applicable federal, provincial and municipal laws, regulations and by-laws.

ARTICLE 7 TENANT SELECTION AND MONTHLY OCCUPANCY COSTS

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

7.2 Source of Tenants. The Proponent will be required, at the City's option, to participate in the City's Housing Access System or any similar process to be approved by the Director.

7.3 Monthly Occupancy Costs

- (a) The Monthly Occupancy Costs of each Unit in the Project shall not exceed XXXX per cent (XX%) of Average Market Rent, or such other percentage of Average Market Rent, as determined by the Director, in his sole discretion, for any year of the Affordability Period;
- (b) While Monthly Occupancy Costs include the cost of heat, water and hydro, if these services are to be paid directly by the tenant, the Monthly Occupancy Costs must be adjusted in accordance with the Utility Allowance policy to be published annually by the City.

7.4 Monthly Occupancy Costs Increases

- (a) Proponent may adjust the Monthly Occupancy Costs, with respect to a Unit, if at least twelve (12) months have elapsed;
 - (i) since the day the Unit was first rented after the commencement date of the Lease; or
 - (ii) since the day of the last rent increase with respect to the Unit, if there has been an increase.
- (b) Subject to 7.4(a), the Proponent shall not increase the Monthly Occupancy Costs during the Affordability Period by more than the prevailing rent increase guideline established each calendar year pursuant to the *Residential Tenancies Act, 2006* S.O.2006, c.17 or any successor legislation (the "Acts"), with any increase to be to an amount not to exceed the amount stipulated under this agreement. The Proponent acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* may not apply to the Project and agrees that the rent increase guideline applies by virtue of the contractual terms of this Agreement.

7.5 Tenant Provisions

The Proponent shall ensure that each lease with a residential tenant shall provide that:

- (a) the Unit may not be sublet by the residential tenant of that Unit under any circumstances;
- (b) the disclosure to the City by the Proponent of the tenant's personal information including Household Income, has been consented to by the tenant;
- (c) the lease is exempt from paragraphs 6, 7 and 8 of subsection 30(1), Part VII of the *Residential Tenancies Act, 2006*;
- (d) the City will have access to all information obtained from the tenant concerning the Household Income and family composition of each Unit, which information the City may verify; and

the Proponent will ensure that it complies with the provisions of MFIPPA, in its collection and sharing of any MFIPPA Protected Information, collected and shared, in accordance with the terms of this Agreement.

ARTICLE 8 FINANCIAL RECORDS AND RIGHT TO AUDIT

8.1 The Proponent shall keep proper books of account and records of the financial management of the Project, in accordance with generally accepted business and accounting practices. The accounts and records shall include all invoices, receipts, vouchers and other documents relating to Project expenditures and revenues, including funding from all other sources.

8.2 The Proponent shall retain all books, accounts, records (including records related to rent collection and tenant income and eligibility verification), receipts, vouchers and other documents, that pertain to the Project for a period of not less than seven (7) years from the end of each fiscal year of the Proponent to which the records relate.

8.3 The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor for the City or anyone designated in writing by the auditor to ensure compliance with the terms and conditions of this Agreement and verify costs claimed by the Proponent.

8.4 The Proponent acknowledges and agrees that all accounts and records pertaining to payments of fees or other compensation for the solicitation, negotiating or obtaining of this Agreement shall be subject to the accounts and audit provisions of this Agreement, as they pertain to the Project.

8.5 The Proponent shall permit the City's representatives to make copies and take extracts from such books and records and shall furnish the City with such additional information as it may require with reference to such books and records, as they pertain to the Project.

8.6 This Article shall survive the termination of this Agreement.

ARTICLE 9 INDEMNITY

9.1 The Proponent hereby agrees that it shall, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City, and its elected and appointed officials, officers, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the Indemnified Parties and against any and all loss, liability, claims, judgments, costs, demands or expenses whatsoever which the Indemnified Parties may sustain, suffer or be put to resulting from or arising out of or in connection with:

- (a) this Agreement;

- (b) the Project;
- (c) the obligations of the Proponent hereunder;
- (d) the failure of the Proponent, its officers, consultants, contractors, agents, servants or employees to exercise reasonable care, skill or diligence in carrying out any work in respect of the Project;
- (e) any act or omission of the Proponent, its officers, agents, servants, consultants, contractors, employees or by anyone for whom the Proponent is at law responsible relating to any work or any other thing required to be performed or rendered hereunder by the Proponents;
- (f) all insured and uninsured damage to property installed, property in transit and contractors' tools and equipment during the course of the construction/renovation work to the Project; and/or
- (g) death or economic loss, caused by or in any way related to any of the Proponent's obligations under this Agreement;

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

9.2 The liability of the Proponent, in respect of the indemnity in Section 11.1 shall be limited to the Principal Amount at such time.

ARTICLE 10 INSURANCE

10.1 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 accordance with the terms of the Lease.

ARTICLE 11 RESTRICTIONS ON CHANGES

11.1 The City may consent to a Transfer, as that term is defined in the Lease, if that Transfer is made pursuant to the terms of 4.2 to 4.4 of the Lease.

11.2 Notwithstanding any other statement in this Article 11, the Proponent may lease any unit to an individual tenant.

ARTICLE 12
DEFAULT AND REMEDIES

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

- (a) the Proponent has failed to proceed with the operation or ceases to operate the Project pursuant to the terms and conditions of this Agreement and/or the Lease;
- (b) the Proponent is in default under the Lease, which default has gone uncured in the time given by the City;
- (c) the Proponent knows or ought reasonably to have known, in the opinion of the City, acting reasonably that a Unit is being provided to a tenant whose Household Income exceeded the Initial Income Limit, or has not been verified under the terms of this Agreement or that the household composition has been misrepresented;
- (d) the Proponent has breached Articles 6 or 7 in whole or in part of this Agreement;
- (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 legislation now or hereafter in force for bankrupt or insolvent debtors or fails under any proposal or makes any assignment for creditors or any arrangement or compromise;
- (g) receiver or receiver-manager is appointed for the Project by a creditor; or
- (h) there is, in the opinion of the City, acting reasonably, a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement with respect to the implementation and/or the operation of the Project.

12.2 During the Affordability Period, if there is an event of default by the Proponent and default has not been remedied within thirty (30) days of receipt by the Proponent of written notice of an event of default or within such longer period as is required and the City may allow the City may, in its absolute discretion, without restricting any remedies otherwise available:

- (a) require the Proponent to provide additional information or documents to the City, including but not limited to a plan, satisfactory to the Director, to remedy the default and time frame in which that plan will be implemented;

- (b) rescind the property tax exemption by-law passed with respect to the Project;
- (c) correct the breach itself or by retaining a third party and the reasonable cost of so doing shall be payable forthwith by the Proponent to the City and may be retained from any unpaid portion of the funding being provided pursuant to this Agreement or may be recovered in any court of competent jurisdiction as a debt due to the City;
- (d) appoint or seek the appointment of a manager and/or receiver for the Project, whether an officer, employee or agent of the City or not if the City has determined that there are serious financial matters that could result or have resulted in the Proponent being unable to pay its debts as they become due.
- (e) terminate the Lease and this Agreement by giving written notice to the Proponent as provided for in this Agreement and the Lease;
- (f) terminate the Lease; and/or
- (g) seek any additional remedy available to the City at law or in equity.

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

ARTICLE 13 RECEIVERSHIP

13.1 Where a Receiver is appointed by the City pursuant to Subsection 12.2 (d) the Receiver shall have the power to:

- (a) take control, direction and possession, or any of them, of the Project, the revenue and the assets of the Proponent, the operation and books, records and accounts of the Proponent or any part of them;
- (b) take control and direction of the employees and agents of the Proponent;
- (c) receive and recover and use all revenues and assets of the Proponent;
- (d) incur and pay liabilities;
- (e) complete the construction of the Project and maintain, operate and repair the Project; and

- (f) execute and prosecute all suits, proceedings and actions which the Receiver considers necessary for the proper protection of the Project, to defend all suits, proceedings and actions against the Proponent or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action, then pending or thereafter instituted and to appeal any suit, proceeding or action.

13.2 The City may at any time and from time to time change, terminate or renew the mandate of the Receiver or replace or reinstate the Receiver and fix the reasonable remuneration of the Receiver who may deduct the same out of the revenues of the Project.

13.3 Without limiting any rights of the City under this Agreement, the City acknowledges that it is the intention of the City to reinstate the Proponent whenever feasible, as determined by the City, as a self-governed entity retaining substantial control of the management of the Project within sixty days after the receivership becomes effective.

13.4 The Receiver shall be deemed to be the agent or attorney of the Proponent and the City shall not be responsible for the Receiver's acts or omissions.

13.5 The Proponent undertakes to ratify and confirm whatever the Receiver may do pursuant to the Receiver's mandate.

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 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.

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

ARTICLE 15 PUBLIC ACKNOWLEDGEMENT OF CITY BENEFITS

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 City. The Proponent shall notify the City in advance of any and all communication activities, including media and fundraising events, publications, advertising and press releases.

**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 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
Metro Hall, 55 John Street, 7th Floor
Toronto, ON M5V 3C6

Attention: Executive Director, Housing Secretariat
Fax No: (416) 397-9155

E-Mail:

with a copy to the City Solicitor, at

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

Attention: City Solicitor

Fax No: (416) 397-5624

E-Mail:

(b) if to the Proponent, at:

Attention:

Fax No: ()

E-Mail:

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 (3rd) business day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the business day next following the day on which it was sent.

17.3 Any Notice permitted or required to be given by the City may be given by the Deputy City Manager. However, the Deputy City Manager specifically reserves the right to submit the issue of the giving of any Notice, or of the contents of any Notice, to City Council for its determination.

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 Project 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 Project 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 Project.

18.4 The parties agree that, in respect of the Project, 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, no party shall be in default under this Agreement or liable to the other party for any loss, damage or delay to the extent it results from an uncontrollable circumstance if such circumstance is not caused by the default or act of commission or omission of such party or 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 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.

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

20.10 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.

20.11 The covenants, representations, warranties and indemnity of the Proponent set forth in this Agreement shall survive for a period of six (6) months following the expiry of the Affordability Period.

20.12 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.

20.13 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.

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 may be executed in any or more counterparts and by email signature each of which when delivered and so executed will be deemed to be an original and all of which together will constitute one and the same document.

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

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

DATED this day of , 202

Authorized by Toronto and East York Community Council Item No. TE7.15, as adopted by City of Toronto Council on July 16, 17 and 18, 2019

CITY OF TORONTO

Per: _____
Name: Abigail Bond, Executive Director
Housing Secretariat

APPROVED AS TO FORM

.....
For Wendy Walberg, City Solicitor
File # 4318-203-1791.19

DATED this day of , 202

PROponent:

Per : _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE "A"

DEPTH OF AFFORDABILITY REPORT

A. Project Information

Project Name	
Project Address	
Occupancy Date	
Contribution Agreement Expiry Date	

B. Number of Units in Project

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

C. Depth of Affordability: Rents at Occupancy

Unit Type	Unit Size	Number of Units (A)	Total Actual Rent to be charged per month (B)	CMHC Average Market Rent (AMR – 2020) (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or Alternate (E)=(A)X(C)
Bachelor						
1BR						
2 BR						
3 BR						
Other (specify)						
TOTAL						

Notes:

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

Weighted Average Rents	Project Weighted Average Rent Total of (D)÷Total of (A) =	CMHC or City published Weighted Average Rent Total of (E)÷Total of (A) =
Depth of Affordability	(Project Weighted Average Rent ÷ CMHC (or City Published) Weighted Average Rent) x100 =	

D. Project Certification

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

Name of Proponent:

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

City of Toronto

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE "B"
PROPONENT'S ANNUAL OCCUPANCY REPORT
For the Year Ended December 31, 20XX

A. Project Information

Corporation Name:	Contact:
Project Name:	Position:
Project Address:	Email:
Affordability Period:	Phone:
C.A. Expiry Date:	

B. Project Units - Occupancy Costs - Average Market Rents at December 31

	A	B	C	D	E
Unit Type	Total Units	Average Actual Occupancy Costs	CMHC (City of Toronto) Average Market Rents	Occupancy Costs by Unit Type (AxB)	CMHC AMR by Unit Type (AxC)
Bachelor		-			
One Bedroom					
Two Bedroom					
Three Bedroom		-			
Four Bedroom		-			
Total	-			-	-

C. Depth of Affordability

Weighted Average Rents	Project Weighted Average Rent (PWAR) Total of (D) ÷ Total of (A)	CMHC Weighted Average Rent (CMHCWAR) Total of (E) ÷ Total of (A)
	0	0
Depth of Affordability: % of AMR Achieved for Overall Project (PWAR ÷ CMCHWAR) x 100 (not greater than 100% of CMHC AMR)		0.00%

D. Project Certification

I certify, to the best of my knowledge, that the information provided above is true and correct.

I certify that the household income for all new occupants in the reporting year was below the Initial Income Limit (48 x the monthly occupancy costs for the relevant housing unit).

I hereby authorize the City of Toronto to review the rent roll, if deemed necessary.

Name of
Proponent

by:

Name:

Date

Title:

I have authority to bind the Corporation

E. City of Toronto

We have performed the necessary review and tests on the records of the Property pertaining to the rent levels for the reporting period. Our results confirm the information as provided above is true and correct.

by:

Name:

Date

Title: