

CITY OF TORONTO

- and -

[•]

CONTRIBUTION AGREEMENT

140 Merton Street, Toronto

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BETWEEN:

CITY OF TORONTO

(the “City”)

- and -

[●]

(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 January 30 and 31, 2019, City Council approved the provision of financial assistance and benefits to fund [●] affordable rental units and approved the City entering into a municipal capital facility agreement with the Proponent to be developed on property known as 140 Merton 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.

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:

“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 the period from First Occupancy until the end of the term of the Lease;

“Affordable Housing” means the 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 Incentives” means the fees and charges exemptions outlined in Subsections 4.1(b) to 4.1(g);

“Community Spaces” has the meaning given in the Project Agreement;

“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;

“Deputy City Manager” means the Deputy City Manager, Corporate Services for the City of Toronto, and includes his or her designate or successor, if any;

“Development” means the Lands, together with the building, to be developed on the Lands;

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

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

“First Occupancy” means the first day of the month immediately following the month in which a Unit is rented for the first rental period following Substantial Performance, which day shall be no later for the Units than for the units to be rented at market rent, by the Proponent in the building;

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

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

“Housing Access System” means the City's centralized housing access system; which includes the allocation and administration of Housing 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 landlord for a residential unit;

“Incentives Letter” means the letter issued to the Proponent by the Executive Director, and addressed to City Divisions confirming the exemptions and waivers set out in Subsections 4.1 (c) to (g);

“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;

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

“Lease” means the ground lease for the Lands to be entered into by the Proponent and the City and on which the Project is to be developed;

“Leasehold Mortgage” means a mortgage or charge of the Project permitted under the terms hereof or of the Lease;

“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.

“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 developed and operated by or on behalf of the Proponent in accordance with the terms and conditions of this Agreement, as outlined in Article 3;

“Project Agreement” means the agreement to be entered into with respect to the Development, entered into between the Proponent and the City and all schedules attached thereto;

“Substantial Performance” has the meaning given in the Project Agreement.

“Transfer” means a sale or lease of the Project or Lands or any transaction whereby the rights of the Proponent under this Agreement or any part, are transferred, and includes any transaction or occurrence whatsoever (including, but not limited to, receivership proceedings, seizure by legal process and transfer by operation of law), but does not include the entering into of a mortgage. In addition, it does not include a transfer to another entity associated with and controlled by the Proponent and of which the City has received notice;

“Transferee” means the Person or Persons to whom a Transfer is or is to be made;

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

“Utility Allowance” is 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”	Proponent's Depth of Affordability Report
Schedule “B”	Proponent's 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, Sch. 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:	140 Merton Street
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PINS 21124-0080 -0081-8802
 21124-0026 – 0078 and 0079
 All of Lot 28 and Part of Lot 26, Plan M-5

Affordable Housing:

[●] Units
 [●] one bedroom
 [●] two bedroom

a minimum of 50% of the total residential unit count and gross floor area is to be dedicated to Affordable Housing.

Monthly Occupancy Costs:

a maximum average of 80% of Average Market Rent for 90% of the Units, with no Unit to be rented at over 100% AMR; and

□

A maximum average of 40% of Average Market Rent for 10% of the Units.

ARTICLE 4 CITY BENEFITS

4.1 City Benefits. The City Benefits to be provided or which have been provided to or for the benefit the Proponent are:

- (a) **Lease.** The City will enter into, concurrently with the execution of this Agreement and pursuant to the Offer to Lease, signed by the Proponent on [●], a lease for 140 Merton Street for a period of ninety-nine (99) years at below market rent;
- (b) **City Funding.** Subject to the provisions City will advance the amount of [●] (the “City Funding”), the City Funding will be advanced in accordance with the Funding Schedule set out in Section 4.3 upon the conditions set out in Section 4.4, either being satisfied or waived and in accordance with the terms and conditions of Article 5.
- (c) **Property Tax Exemption.** Subject to Council approval being obtained, the City shall exempt the Project from taxation for municipal and school purposes for a term of ninety-nine (99) years;
- (d) **Development Charges.** The Project will be exempt from the payment of the development charges with respect to the Project;

- (e) **Planning Application Fees.** The Proponent will be exempt from the payment of planning application fees with respect to the Project;
- (f) **Building Permit Fees.** All building permit fees with respect to the Project, will be waived
- (g) **Parkland Dedication Payment Requirements.** The City shall waive parkland dedication payment requirement with respect to the Project, if not already paid; and
- (h) **Toronto District School Board Levies.** The City shall waive payment of Toronto District School Board levies with respect to the Project if not already paid. (Please note: Toronto Catholic School Board levies are payable).

4.3 Funding Schedule. City Funding will be paid as follows, in accordance with Article 5:

MILESTONE	PAYMENTS
Within 45 days of the signing of this Agreement and the conditions set out in section 4.4 below have either been fulfilled or have been waived by the City	50%
Within 45 days of receipt by the City of a report from the Proponent's quantity surveyor or cost consultant confirming that the 50% of the exterior construction of the ground and second floors has been completed and the conditions set out in section 4.4 have either been fulfilled or have been waived by the City	50%

4.4 City Funding Conditions Precedent. The City will provide the City Funding, at the milestones set out in 4.3 above, conditional upon the Proponent satisfying the following conditions, unless waived in writing by the City:

- (a) 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;
- (b) the Proponent shall have provided the City with an up-to-date capital budget, cash flow chart and operating budget satisfactory to it;
- (c) the Proponent shall have provided a copy of current set of drawings and specifications for the Project incorporating all compliance requirements of the City's Building Division and following the City's Accessibility Design Guidelines, where appropriate;
- (d) the Proponent shall have provided the City with an up-to-date and comprehensive development schedule including the construction start date and anticipated date of First Occupancy;
- (e) the Proponent shall have received and provided the City with a copy of the first building permit for the Development; and

- (f) 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;
- (i) nothing shall have occurred which, in the sole opinion of the Executive Director; could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities of the Proponent.

4.5 No Waiver. The City providing any City Funding 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 providing of any further City Funding.

4.6 Conditions Solely for the Benefit of the City. All conditions precedent are solely for the benefit of the City, its successors and assigns, and no other person shall have standing to require satisfaction of any condition and no other person shall be deemed to be a beneficiary of any such condition, any and all of which may be freely waived in whole or in part by the City at any time the City deems it advisable to do so.

ARTICLE 5 DISBURSEMENT OF CITY FUNDING

5.1 General. The City shall make the advances of the City Funding provided that the conditions in Article 4.4 have been met or waived in writing, the representations and warranties set forth in Article 6 remain true and correct and the obligations of the Proponent set out in Article 7 have been met, where applicable

5.2 Requesting an Advance. A written request must be made for an advance, on the Proponent's letterhead and the request must:

- (a) specify the amount of the advance being requested and which milestone has been reached in accordance with the Funding Schedule set out above;
- (b) for the second advance, provide the required report from a cost consultant or quantity surveyor; and
- (c) include a statement that all insurance coverage remains in place.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 The Proponent represents and warrants that,

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

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

ARTICLE 7 OBLIGATIONS OF THE PROPONENT

7.1 The Proponent shall:

- (a) proceed diligently with the construction and operation of the Project and, in any event, no later than six (6) months from the commencement date of the Lease;
- (b) ensure Substantial Performance of the Project is reached by no later than [to be determined], or such other date as determined by the Executive Director, acting reasonably;
- (c) comply with all applicable federal, provincial and municipal laws, regulations and by-laws;
- (d) no later than six (6) months prior to First Occupancy, provide the Director with an Access Plan for review and approval;
- (e) no later than sixty (60) days prior to First Occupancy, provide the Director, with the Proponent's Depth of Affordability Report, in the form of the report attached as Schedule "A"; or in a form designated by the Director;

- (f) notify the City of any potential increase in the capital budget that is likely to exceed fifteen (15%) of the current capital budget, together with an updated capital budget and cash flow projection, and documentation substantiating the potential increase, satisfactory to the Executive Director, within thirty (30) days of the date the Proponent becomes aware that such an increase may be possible;
- (g) provide such information, within ten (10) days of such request, with respect to the Project, such as construction progress, projected date of First Occupancy, as requested or required by the City, acting reasonably, from time to time.

ARTICLE 8

OBLIGATIONS OF THE PROPONENT DURING THE AFFORDABILITY PERIOD

8.1 At all times during the Affordability Period, the Proponent shall:

- (a) 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;
- (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 Executive Director;
- (c) make all of the Units available to tenants who are the recipients of Housing Benefits, in accordance with the terms and conditions of this agreement or any other agreement entered into with the City with respect to those Units;
- (c) 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;
- (d) 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 persons per bedroom for adult household members;

- (ii) a minimum of one and a maximum of two children per bedroom under the age of 18;
- (e) operate and maintain the Project and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do and in accordance with the terms and conditions of this Agreement and the Lease;
- (f) manage the Project so that:
 - (i) the Monthly Occupancy Costs for the Project are maintained as set out in Article 3;
 - (ii) if heat, water or hydro costs are separately metered and paid directly by the household of any Unit, the Proponent shall deliver the Utility Allowance to the tenant by way of setting off the amount of the Utility Allowance against the monthly rent payable, such that the Monthly Occupancy Costs for any such Unit(s) shall not exceed the limits set out in Article 3; and
 - (iii) occupancy is maximized;
- (g) no 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 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; 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;

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;

- (h) provide representatives of the City, with access to its books and records, with respect to the Project, subject to the rights of the residential tenants of

the Project; and

- (i) ensure that each lease for a Unit shall provide that:
 - (i) the City will have access to all information obtained from the tenant concerning the Household Income and household composition, which information the City may verify;
 - (ii) no Unit may be sublet by the residential tenant under any circumstances;
 - (iii) 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, 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; and
 - (iv) 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 this Agreement.
- (j) establish a capital asset replacement reserve fund for the Project, in accordance with the terms of the Lease.

ARTICLE 9 MONTHLY OCCUPANCY COSTS CHANGES

9.1 Monthly Occupancy Costs Increases

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

- (a) since First Occupancy of the Unit; or
- (b) since the day of the last rent increase with respect to the Unit, if there has been an increase,

by no more than the prevailing rent increase guideline established each calendar year pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 or any successor legislation, to an amount not to exceed Average Market Rent. The Proponent

acknowledges that, if the rent increase guideline of the *Residential Tenancies Act, 2006* does not apply to the Project, the Proponent agrees that the rent increase guideline applies by virtue of the contractual terms of this Agreement.

ARTICLE 10 FINANCIAL RECORDS AND RIGHT TO AUDIT

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

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

10.3 The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor for the City or anyone designated in writing by the auditor to ensure compliance with the terms and conditions of this Agreement and verify costs claimed by the Proponent. It is acknowledged that the books and records for the Project may be contained within records relating to the Development and the Proponent may fulfill its obligations hereunder by providing such extracts as are necessary to satisfy the auditor appointed by the City.

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

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

10.6 This Article shall survive the termination of this Agreement.

ARTICLE 11 RESTRICTIONS ON CHANGES

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

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

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

11.3 The Proponent shall not Transfer the Project without obtaining the prior written consent of the City, which consent will not be unreasonably or arbitrarily withheld, conditioned or delayed. In determining whether the City is prepared to grant its consent to a Transfer, the City may consider the following factors:

- (a) whether the financial standing of the proposed Transferee is sufficient to satisfy the obligations of the Proponent under the Agreement;
- (b) the reputation and experience of the Transferee or its related corporation, its management and investors in the operation of affordable residential housing developments; and
- (c) whether the Transfer will decrease the number of Units in the Project.

The City may, in its sole discretion, charge a commercially reasonable administration fee for such request.

11.4 The Project shall not be the subject of a Transfer unless the Transferee has first entered into an agreement with the City assuming the covenants set forth herein, which agreement shall be duly executed by the Transferee and delivered to the City prior to the Transfer.

11.5 Notwithstanding Section 11.7, the Proponent may effect a Transfer to or with any of the following, without the City's consent, but with notice of same to the City:

- (a) an Affiliate of the Proponent;
- (b) a transfer, whether voluntary or involuntary, by operation of law or otherwise to a corporation or other entity which is a successor of the Tenant, by way of amalgamation, merger, consolidation or other bona fide reorganization;

- (c) any Person directly or indirectly Controlled by, Controlling or under common Control with the Tenant or any other Person described in this Section 11.8;
- (d) where the Transfer forms part of (i) a going public or going private transaction or where a transfer occurs as a result of the sale or issuance of shares; or (ii) any other form of equity or debt issuance of the Proponent or any other person or entity referred to in subparagraph 2(a) or (c) above, including, on any public stock exchange; and
- (e) any mortgagee .

11.6 Notwithstanding anything herein contained, the Proponent may lease Units in the Project to residential tenants, without complying with Section 11.1, 11.4 and Section 11.5.

11.7 The provisions of this Article 11 shall not apply to any sale, lease, foreclosure or other disposition which is pursuant to the exercise of any remedy by a mortgagee.

ARTICLE 12 DEFAULT AND REMEDIES

12.1 Upon the expiration of any cure periods contemplated in Section 12.2, the following shall be considered events of default under this Agreement:

- (a) if in the opinion of the City, acting reasonably, the Proponent knows or ought reasonably to have known at Initial Occupancy that a Unit is being provided to a tenant whose Household Income exceeds the Initial Income Limit or that the household composition has been misrepresented or has not been verified on Initial Occupancy as set out in Section 8.1 hereof and such violation is part of a consistent and persistent series of several and material violations over time such that the Proponent has failed to consistently operate the Project principally for the purposes of Affordable Housing as required by the provisions of this Agreement and the Lease;
- (b) the Proponent ceases to construct and/or operate the Project pursuant to the terms and conditions of this Agreement;
- (c) the Proponent is in default under the terms of the Lease or the Project Agreement;
- (d) the Proponent knows or ought reasonably to have known if in the opinion of the City, acting reasonably that the average Monthly Occupancy Costs for the Project has exceeded the limits set out in Article 3;
- (e) the Proponent has breached Article 5, 7 and 8 in whole or in part of this

Agreement;

- (f) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;
- (g) 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;
- (h) a receiver or receiver-manager is appointed for the Project by a creditor; or
- (i) 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 If there is an event of default by the Proponent that is continuing, and the default has not been remedied within thirty (30) days of receipt by the Proponent of written notice of an event of default or within such longer period as 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;
- (b) rescind the 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) terminate the Agreement by giving written notice to the Proponent; and/or
- (e) seek any additional remedy available to the City at law or in equity.

12.3 For the purposes of this Section, the Proponent will be found to have remedied the default if, for the purposes of Subsection 13.1(e), the Proponent submits a plan satisfactory to the Director, attempting to prevent future defaults.

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

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

ARTICLE 13 CONFIDENTIALITY

13.1 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.

13.2 Notwithstanding Section 13.1, the Proponent may disclose information to a mortgagee, and the Proponent's or such mortgagee's lawyers, accountants and other professionals, provided that such persons require the information in order to properly perform their duties.

13.3 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.

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

ARTICLE 14 PUBLIC ACKNOWLEDGEMENT OF CITY BENEFITS

14.1 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 15 DISPUTE RESOLUTION

15.1 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.

15.2 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 16 NOTICES

16.1 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 fax 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

with a copy to the City Solicitor, at

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

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

(b) if to the Proponent, at:

Attention:
Fax No.:

16.2 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 fax, on the business day next following the day on which it was sent.

16.3 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.

16.4 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 17 CONTRACTUAL STATUS OF THE PARTIES

17.1 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.

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

17.3 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.

17.4 The parties agree that, in respect of the Project, the City is not an “Owner” within the meaning of the *Construction Act*, R.S.O.1990 c. C.30.

ARTICLE 18 UNCONTROLLABLE CIRCUMSTANCES

18.1 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.

18.2 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 19 GENERAL PROVISIONS

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

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

19.3 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.

19.4 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.

19.5 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.

19.6 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.

19.7 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.

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

19.9 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.

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

19.11 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.

19.12 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.

19.13 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.

19.14 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.

19.15 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.

19.16 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.

19.17 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. This Agreement may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

19.18 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.

DATED this day of , 20__.

CITY OF TORONTO

APPROVED AS TO FORM

For Wendy Walberg, City Solicitor
File #

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

DATED this day of , 20__.

$$[\bullet]$$

per : _____
 Name: _____
 Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation

SCHEDULE "A"**PROPONENT'S 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)	Actual Rent to be charged per month (B)	CMHC Average Market Rent (AMR – 20XX) or City published AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or Alternate (E)=(A)X(C)
Bachelor							
1BR							
2 BR							
3 BR							
Other (specify)							
TOTAL							

Notes:

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

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

Date

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: