

CITY OF TORONTO

- and -

PROPONENT

CONTRIBUTION AGREEMENT

Address, Toronto

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
ARTICLE 2 GENERAL	5
ARTICLE 3 THE PROJECT.....	6
ARTICLE 4 CITY BENEFITS.....	6
ARTICLE 5 ADVANCE OF CITY FUNDS.....	10
ARTICLE 6 REPRESENTATIONS AND WARRANTIES	10
ARTICLE 7 OBLIGATIONS OF THE PROPONENT	11
ARTICLE 8 OBLIGATIONS OF THE PROPONENT DURING THE AFFORDABILITY PERIOD	12
ARTICLE 9 MONTHLY OCCUPANCY COSTS CHANGES.....	14
ARTICLE 10 FINANCIAL RECORDS AND RIGHT TO AUDIT	15
ARTICLE 11 INDEMNITY	15
ARTICLE 12 INSURANCE	16
ARTICLE 13 RESTRICTIONS ON CHANGES.....	19
ARTICLE 14 DEFAULT AND REMEDIES.....	21
ARTICLE 15 CONFIDENTIALITY.....	23
ARTICLE 16 PUBLIC ACKNOWLEDGEMENT OF FUNDS	23
ARTICLE 17 DISPUTE RESOLUTION.....	24
ARTICLE 18 NOTICES.....	24
ARTICLE 19 CONTRACTUAL STATUS OF THE PARTIES	25
ARTICLE 20 UNCONTROLLABLE CIRCUMSTANCES.....	25
ARTICLE 21 GENERAL PROVISIONS.....	26

This Agreement is made effective XXXXXXXXXXXX, 2021.

BETWEEN:

CITY OF TORONTO

(the "City")

- and -

PROPONENT

(the "Proponent")

Background

- A. The City issued a Call for Applications under the City's Open Door Program on DATE, 2021, and the Proponent applied for assistance with the development of affordable rental housing located at ADDRESS, Toronto, Ontario;
- B. Section 252 of the *City of Toronto Act, 2006*, S.O. 2006 c. 11, Sch. A (the "Act"), provides that the City may enter into agreements for the provision of a municipal capital facility by any person and that the City may exempt from taxation for municipal and school purposes land or a portion of land on which municipal capital facilities are located;
- C. Ontario Regulation No. 598/06, as amended, prescribes municipal facilities used for the provision of affordable housing as eligible municipal capital facilities for the purpose of Section 252 of the Act;
- D. The City of Toronto passed By-law No. 1756-2019 pursuant to the provisions of Section 252 of the Act and Ontario Regulation 598/06 to set out a definition for affordable housing and policies regarding eligibility for new affordable housing;
- E. At its meeting held on XXXXXX, 202X, City Council approved the provision of financial assistance and benefits to fund XX (XX) affordable rental units and approved the City entering into a municipal capital facility agreement with the Proponent to be developed on the property municipally known in 2021 as XXXXXXXXXXXX, Toronto; and

- F. The Parties wish to enter into this Agreement to set out the terms and conditions of the financial assistance to be provided to the Proponent.

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

ARTICLE 1 INTERPRETATION

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

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

“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 XXXX (XX) years from the date of First Occupancy, including a five (5) year Phase-Out Period;

“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;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

“City Benefits” has the meaning ascribed thereto in Section 4.1;

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

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

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

“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 the Deputy City Manager's designate or successor, if any;

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

"Director, Housing Stability Services" means the Director responsible for the Housing Stability Services unit and includes the Director's designate or successor, if any;

"Executive Director, Housing Secretariat" means the Executive Director responsible for the administration of the City's Housing Secretariat and includes the Executive Director's designate or successor, if any;

"First Occupancy" means the first day of the month immediately following the month in which a Unit was rented for the first rental period following Substantial Completion;

"Governmental Authority" means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any Court or other law, regulation or rule-making entity, or any arbitrator, each having or reasonably purporting to have jurisdiction in the relevant circumstances, including, for greater certainty, any Person acting or reasonably purporting to act under the authority of any Governmental Authority;

"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 – Eligibility and 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, Housing Secretariat and addressed to City Divisions confirming the exemptions and waivers set out in Subsections 4.1(c) to (g);

“Indemnified Parties” has the meaning given to it in Section 11.1;

“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;

“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;

“Notice” has the meaning given to it in Section 16.1;

“Parties” means the City and the Proponent and their respective successors and permitted assigns; and “Party” means any one of the Parties;

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

“Phase-Out Period” means the last five (5) years of the Affordability Period;

“Principal Amount” has the meaning given to it in Section 4.2;

“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;

“Start of Construction” means when the Proponent is in a position to have the Start of Construction Affidavit sworn and delivered to the City;

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

“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;

“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” 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”	Proponent's Initial Depth of Affordability Report
Schedule “B”	Proponent's Annual Occupancy Report
Schedule “C”	Charge/Mortgage of Land
Schedule “D”	Legal Opinion
Schedule “E”	Start of Construction Affidavit

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. 1756-2019 “To enact a new Municipal Housing Facility By-law and to repeal By-law No. 124-2016.”

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:	ADDRESS PIN XXXXXXXXXXXX [Insert Legal Description]
Affordable Housing:	XX Units
Monthly Occupancy Costs:	XXXXX

**ARTICLE 4
CITY BENEFITS**

4.1 City Benefits. The City Benefits to be provided to the Proponent shall be comprised of the following (collectively, the "**City Benefits**"):

Funding

(a) **City Funds.** Subject to the provisions hereof, the City will advance the amount of XXXXXXXX Dollars (\$XXXXXX), as a grant by way of forgivable loan, from the City's Development Charges Reserve Fund for Subsidized Housing. The City Funds will be advanced upon the conditions set out in Section 4.6, either being satisfied or waived and in accordance with Article 5 and which funds are to be used solely to fund the development of the Project and to enhance the affordability of the Affordable Housing funded hereunder;

City Incentives

- (b) **Property Tax Exemption.** Subject to Council approval being obtained, the City shall exempt the Project from taxation for municipal and school purposes for a term of XX years from First Occupancy;
- (c) **Development Charges.** The City shall exempt the Proponent from the payment of the development charges with respect to the Project, if not already paid;
- (d) **Planning Application Fees.** The City shall waive all planning application fees with respect to the Project, if not already paid;
- (e) **Building Permit Fees.** The City shall waive all building permit fees with respect to the Project, if not already paid;

- (f) **Parkland Dedication Payment Requirements.** The City shall waive parkland dedication payment requirement with respect to the Project, if not already paid; and
- (g) **Toronto District School Board Levies.** The City shall waive payment of Toronto District School Board levies with respect to the Project if not already paid. (Please note: Toronto Catholic School Board levies are payable.)

4.2 Security. The Proponent shall register or cause to be registered a Charge/Mortgage of Land (the "City Charge"), on the Lands, for the total of the City Benefits (excluding the value of the Property Tax Exemption), to secure the obligations of the Proponent hereunder. The City Charge shall be:

- (a) endorsed in favour of the City;
- (b) in the amount equal to the total value of the City Benefits (excluding the value of the Property Tax Exemption) determined as of the date the City Incentives would otherwise be required to be paid to the City (but which as of the date of this Agreement is estimated at XXXXXX Dollars (\$XXXXXX)) (the "Principal Amount"); and
- (c) shall include the terms set out in Schedule "C".

In the event the City Charge has been registered prior to the date the City Incentives would otherwise be required to be paid to the City and there is a subsequent increase or decrease to any one or more of the amounts making up the City Incentives, the Proponent shall advise the City, and, upon the City's request, shall increase or decrease the amount of the City Charge to reflect the correct Principal Amount, forthwith.

4.3 Forgiveness. The balance of the Principal Amount will be reduced by the amount that is equal to the original Principal Amount multiplied by two and a half per cent (2.5%) on each anniversary of First Occupancy, until fully forgiven, if the Proponent is in good standing under the terms of this Agreement. Once the Principal Amount has been fully forgiven, the City shall discharge the City Charge and this Agreement and the obligations of the Parties hereunder will terminate. **[NOTE: this timing is based on a 40 year Affordability Period]**

4.4 Payment. City Funds will be paid as follows, in accordance with Article 5:

MILESTONE	PAYMENTS
Within 45 days of the later of the signing of this Agreement and the date all conditions precedent that have not been met, have been waived	30%
Within 45 days of receipt by the City of written confirmation that structural framing is complete	50%

MILESTONE	PAYMENTS
Within 45 days of receipt by the City of confirmation of First Occupancy and an approved Initial Depth of Affordability Report	20%

4.5 City Incentives Conditions Precedent. Upon receipt of a letter from the Proponent to the Executive Director, Housing Secretariat, the City will provide the Incentives Letter to the Proponent, conditional upon the Proponent satisfying the following conditions, unless waived in writing by the City:

- (a) the City Charge has been registered and an opinion satisfactory to the City Solicitor, substantially in the form of the Legal Opinion attached hereto as Schedule "D" is provided from the Proponent's solicitor;
- (b) the Proponent shall have provided certified copies of such corporate documents of the Proponent as the City may reasonably require including, without limitation, letters patent or articles of incorporation, and a certified copy of the directors' resolution authorizing the execution of this Agreement;
- (c) the Proponent shall have provided proof of the insurance required pursuant to the terms of this Agreement, with the City as a mortgagee and joint loss payee;
- (d) 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;
- (e) the Proponent shall have provided the City with an up-to-date capital budget and operating budget satisfactory to it;
- (f) 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;
- (g) the Proponent shall have provided the City with a signed commitment for the first mortgage, satisfactory to the City;
- (h) 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) the proposed location and sizes of the Units have been approved by the Executive Director, Housing Secretariat;
- (j) nothing shall have occurred which, in the sole opinion of the Executive

Director, Housing Secretariat could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

4.6 City Funds Conditions Precedent. The City will make the advances of the City Funds as set out in Section 4.4, upon the Proponent satisfying the following conditions unless waived in writing by the City:

- (a) a sworn Start of Construction Affidavit, substantially in the form of the affidavit attached hereto as Schedule "E" will have been provided to the City;
- (b) the Proponent shall have received and provided the City with a copy of the first building permit for the Development; and
- (c) the Proponent shall have provided a copy of the final design set of drawings and specifications for the Project incorporating all compliance requirements of the City's Building Division and following the City's Affordable Rental Housing Design Guidelines, where appropriate. The City acknowledges that this condition shall be waived with respect to the first advance.

4.7 Tax Exemption Conditions Precedent. The Executive Director, Housing Secretariat, will submit the tax exemption by-law for enactment by Council, conditional upon the Proponent satisfying the following conditions, unless waived in writing by the City:

- (a) a letter to the Executive Director, Housing Secretariat providing ninety (90) days' notice of anticipated First Occupancy, which shall include the following information: **[NTD: Erik, this will be updated/refined based on the ongoing discussions with MPAC]**
 - (i) the number of units in the building;
 - (ii) the number of affordable Units;
 - (iii) the anticipated rents for the all of the units;
 - (iv) details of unit types for all of the units;
 - (v) a description of the unit type;
 - (vi) the gross leasable area;
 - (vii) a copy of a typical lease/occupancy agreement;
 - (viii) information about auxiliary income, i.e. laundry, convenience store located on the property;
 - (ix) confirmation as to whether the rents include heat, hydro and water;

and

- (b) any other documentation or information the City may reasonably require to satisfy the requirements of any Governmental Authority.

The Proponent acknowledges that failure to provide the information required in this Section could result in the effective date of the tax exemption, being later than the date of First Occupancy. The City is not responsible for any costs incurred by the Proponent as a result of a delay in the enactment of the tax exemption by-law.

4.8 No Waiver. The City providing any City Benefits 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 Benefits.

4.9 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 ADVANCE OF CITY FUNDS

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

- (a) specify the amount of the advance being requested and which milestone has been reached in accordance with the Funding schedule set out in Section 4.4;
- (b) include documentation to substantiate the achievement of the milestone (example: copy of the building permit); 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 development of the Project;
- (b) ensure Substantial Completion of the Project is reached by no later than XXXXXXXX, or such other date as determined by the Executive Director, Housing Secretariat 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, have an Access Plan approved by the Director, Housing Stability Services;
- (e) no later than sixty (60) days prior to First Occupancy, have the Proponent's Initial 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, approved by the Director, Housing Stability Services; **[NTD: Erik, is the initial depth of affordability report still needed, or should it be removed from all CAs and replaced with the Access Plan? We received those instructions for RHI]**
- (f) ensure all Units meet the size requirements of the Affordable Housing Design Guidelines, unless otherwise approved in writing by the Executive Director, Housing Secretariat;
- (g) provide quarterly reports to the Executive Director, Housing Secretariat, from the date this Agreement is signed until First Occupancy, setting out construction progress, projected date of First Occupancy, and such other

information requested or required by the City, acting reasonably; and

- (h) provide such information, within ten (10) days of such written 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) if required by the City at any time during the Affordability Period, the Proponent will make up to 20% 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;
- (b) 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;
- (c) 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;
- (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) 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;
- (f) operate and maintain the Project in accordance with the terms and conditions of this Agreement and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do;
- (g) manage the Project so that:

- (i) the average of the Monthly Occupancy Costs for the Project are maintained at a maximum of XX% of Average Market Rents for the duration of the Affordability Period;
 - (ii) the Monthly Occupancy Costs for any one Unit during the Affordability Period does not exceed 100% of Average Market Rent;
 - (iii) 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 (ii) above; and
 - (iv) occupancy is maximized in accordance with Subsection 7.1(d);
- (h) 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, 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;

- (i) 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;
- (j) ensure that each lease for a Unit shall provide the following:
 - (i) that the disclosure to the City, by the Proponent, 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 or assigned 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, 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 to Agreement;
- (k) 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;
- (l) 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
- (m) ensure each Unit meets the size requirement of the Affordable Housing Design Guidelines, unless otherwise approved in writing by the Executive Director, Housing Secretariat.

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. In the event the rent increase guideline of the *Residential Tenancies Act, 2006* or any successor legislation is repealed and not replaced with similar legislation, Monthly Occupancy Costs may be adjusted based on annual changes to the Consumer Price Index - not seasonally adjusted, for all items - in January of each year for the Toronto Census Metropolitan Area (or, where

available, the City of Toronto) as reported by Statistics Canada, to an amount not to exceed Average Market Rent.

9.2 Phase-Out Period

Upon a Unit becoming vacant during the Phase-Out Period, the Proponent may rent the Unit to a new tenant at any rent agreed to by the Proponent and the new tenant and that is in compliance with then existing rent legislation.

ARTICLE 10 FINANCIAL RECORDS AND RIGHT TO AUDIT

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

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

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

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

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

10.6 This Article shall survive the termination of this Agreement.

ARTICLE 11 INDEMNITY

11.1 The Proponent hereby agrees that it shall, from time to time, and at all times

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

- (a) this Agreement;
- (b) the Project;
- (c) the obligations of the Proponent hereunder;
- (d) the failure of the Proponent, its officers, consultants, contractors, agents, servants or employees to exercise reasonable care, skill or diligence in carrying out any work in respect of the Project;
- (e) any act or omission of the Proponent, its officers, agents, servants, consultants, contractors, employees or by anyone for whom the Proponent is at law responsible relating to any work or any other thing required to be performed or rendered hereunder by the Proponent;
- (f) all insured and uninsured loss or 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, judgments, costs, demands or expenses which result from negligent or wrongful acts of the Indemnified Parties or for those whom in law the Indemnified Parties are responsible.

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

ARTICLE 12 INSURANCE

12.1 Building in Course of Construction Insurance. During the period of construction including demolition or construction on the Project, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the Proponent and their employees and all those for whom they are at law responsible from damage to the Project from time to time during the work including demolition and construction (which may be by policies effective from time to time covering

the risks during different phases of the work, demolition and construction) by a Builders' Insurance Policy including resultant damage from error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Project, to the replacement cost thereof. The City will be included as a mortgagee and joint loss payee, according to its interest, on the insurance policies required in this Section 12.1.

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

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

12.4 Automobile Liability Insurance. The proponent will maintain and keep in force or cause to be maintained during the period of construction Automobile Liability insurance in an amount of at least One Million Dollars (\$1,000,000.00) for all licensed motorized vehicles used in the performance of work.

12.5 Other Insurance. The Proponent shall maintain, or cause to be maintained, and shall keep in force during the Affordability Period such other insurance as may be reasonably required from time to time.

12.6 Certificates. The Proponent shall deliver certificates of insurance to the City, including the renewal or the replacement of the insurance policies, without request or demand by the City.

12.7 City Approval. The City, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the Proponent including the limits of coverage and the provisions thereof.

12.8 Non-Cancellation. Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change policy, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days' prior written notice to the City.

12.9 Premiums and Evidence of Payment Thereof. The Proponent shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article. The Proponent will produce to the City as soon as reasonably feasible, and in any event within ten (10) clear days prior to the expiry of any policy of insurance placed pursuant to this Article, evidence of the renewal or replacement of such insurance.

12.10 City's Right to Insure. The Proponent shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Proponent fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Article, the City shall have the right, upon notice to the Proponent and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Proponent and all outlays by the City, plus a sum equal to fifteen percent (15%) of the cost for the City's overhead shall be payable by the Proponent to the City forthwith upon demand without prejudice to any other rights and recourses of the City hereunder. No such insurance taken out by the City shall relieve the Proponent of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Proponent in connection therewith.

12.11 Loss or Damage. The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project or damage to property of the Proponent or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the Proponent or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence or wrongful acts of the City, its agents, employees, contractors, or others for whom it may, in law, be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, failing fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other Persons on the Project or by

occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Proponent kept or stored on the Project shall be so kept or stored at the risk of the Proponent only and the Proponent releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Proponent's insurers.

ARTICLE 13 RESTRICTIONS ON CHANGES

13.1 Provided there is no event of default by the Proponent under this Agreement, that is continuing, it is understood and agreed that the City shall subordinate and postpone the City Charge to other charges and all prior and subsequent advances thereunder and enter into any standstill agreement(s) (pursuant to which it agrees, among other things, to take no enforcement action under the City Charge, pending repayment of such prior charge) which may be requested by the Proponent or the holder of a charge on the Land, provided that, in the opinion of the City, sufficient equity remains in the Lands to secure the City Charge. The City reserves the right to request, at the Proponent's expense, such appraisals, financial statements, mortgage statements or other information as it deems appropriate prior to executing the postponement.

13.2 Upon the Proponent's request, the City shall provide a status certificate to the Proponent, a certificate in writing stating (if such be the case) that this Agreement is unmodified and in full force and effect or if there had been any modifications, stating the modifications and stating whether there are any outstanding events of default under this Agreement and the City Charge and, if so, the nature of the default. Each of the foregoing shall be delivered within fifteen (15) days of a written Notice being made by the Proponent.

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

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

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

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

13.6 The City consents to the postponement of this Agreement and the City Charge to any municipal site plan, development or related agreement required by the City or any

other Governmental Authority. Prior to executing any postponement, the City will be entitled to review the form of agreement to ensure same is satisfactory, as well as the postponement required so that same is in a form satisfactory to the City.

13.7 The City consents to partially release this Agreement and to partially discharge the City Charge to the extent that the foregoing encumber any lands required to be transferred and conveyed to the City or any other Governmental Authority for the creation of any roads, parkland dedication and the like, subject to the City being entitled to review the proposed transfers to which the release and partial discharge is being requested and same being in a form satisfactory to the City.

13.8 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.

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

13.10 Notwithstanding Sections 13.8 and 13.9, 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 Proponent, 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 Proponent or any other Person described in this Section 13.10;
- (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.

13.11 Notwithstanding anything herein contained, the Proponent may lease Units in the Project to residential tenants, without complying with Section 13.1 and Section 13.9.

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

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

ARTICLE 14 DEFAULT AND REMEDIES

14.1 Upon the expiration of any cure periods contemplated in Section 14.2, the following shall be considered events of default under this Agreement:

- (a) the Proponent has, in the opinion of the City, acting reasonably, failed to proceed with the implementation, construction and/or the operation of the Project in a timely manner, except where such failure is due to causes which, in the opinion of the City, acting reasonably, are beyond the control of the Proponent;
- (b) the Proponent has failed to provide the City the Start of Construction Affidavit within XXXX (XX) days of execution of this Agreement;
- (c) the Proponent has failed to achieve Substantial Completion of the Project by XXXXXXXX, or such other date which is three months after the date contemplated by Subsection 7.1(b) as such date may be extended from time to time;
- (d) the Proponent ceases to construct and/or operate the Project pursuant to the terms and conditions of this Agreement;
- (e) 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 7,1 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;

- (f) the Proponent knows or ought reasonably to have known in the opinion of the City, acting reasonably that the average Monthly Occupancy Costs for the Project exceed XX% of Average Market Rent, or that the average Monthly Occupancy Costs for any one Unit exceed 100% of Average Market Rent;
- (g) the Proponent has breached Article 6, 8 and 9 in whole or in part of this Agreement;
- (h) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;
- (i) 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;
- (j) a receiver or receiver-manager is appointed for the Project by a creditor; or
- (k) there is, in the opinion of the City, acting reasonably, a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement with respect to the implementation and/or the operation of the Project.

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

- (f) enforce its rights pursuant to the City Charge; and/or
- (g) seek any additional remedy available to the City at law or in equity.

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

14.4 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.

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

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

ARTICLE 15 CONFIDENTIALITY

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

15.2 Notwithstanding Section 15.1, the Proponent may disclose information to a mortgagee in priority to the City Charge, 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.

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

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

ARTICLE 16 PUBLIC ACKNOWLEDGEMENT OF FUNDS

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

advertising and press releases.

**ARTICLE 17
DISPUTE RESOLUTION**

17.1 The City and Proponent agree that alternate dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration may be preferable to litigation as a way to resolve disputes that may arise under this Agreement and they agree to give good faith consideration to having resort to an alternate dispute resolution process before initiating legal or other proceedings to deal with any such disputes.

17.2 In the event the parties agree to arbitration, the arbitration shall be governed by the provisions of the *Arbitration Act, 1991*, S.O.1991 c.17.

**ARTICLE 18
NOTICES**

18.1 Unless otherwise provided in this Agreement, any notice, approval or other communication required or permitted to be given ("Notice") shall be in writing and shall be delivered by personal service or delivery, fax or email to the following addresses:

(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:
E-mail:
Fax No.: ()

18.2 Any Notice shall be deemed to have been validly and effectively given and

received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3rd) Business Day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by fax, or e-mail prior to 5:00 p.m. on that Business Day or otherwise on the Business Day next following the day on which it was sent.

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

18.4 Either Party under this Agreement may from time to time by Notice to the other Party change its address for service under this Agreement.

ARTICLE 19 CONTRACTUAL STATUS OF THE PARTIES

19.1 The Proponent shall be solely responsible for the payment of any person or entity employed, engaged or retained by the Proponent for the purpose of carrying out the Project or otherwise assisting it in the discharge of its obligations under this Agreement.

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

19.3 The Proponent acknowledges that it is not the agent or representative of the City and has no authority to make a promise, agreement or contract on behalf of the City in respect of the Project.

19.4 The Parties agree that, in respect of the Project, the City is not an "Owner" within the meaning of the *Construction Act*.

ARTICLE 20 UNCONTROLLABLE CIRCUMSTANCES

20.1 Except as expressly otherwise provided in this Agreement:

- (a) if because of an event of uncontrollable circumstance, the Party is delayed in performing or observing a covenant or in complying with a condition under the terms of this Agreement that Party is required to do by a specified date or within a specified period of time or with all due diligence; and
- (b) if the circumstance is not caused by the default or act of commission or omission of that Party nor avoidable by the exercise of reasonable effort or foresight by that Party

then, in that event, the date or period of time by or within which that Party is to perform, observe or comply will be extended by a period of time equal to the duration of the delay, provided that nothing excuses a delay dealing with a life and safety issue or excuses the

Proponent from payment under this Agreement.

20.2 For the purpose of this Agreement, the words “uncontrollable circumstance” means a delay which directly causes either Party to be unable to perform all or a material part of its obligations under this Agreement, resulting from any strike, lockout, civil commotion, war, invasion, rebellion, sabotage; acts of a God, restrictive government laws, regulations or directives, epidemic, pandemic, including Covid-19 and mutations thereof, failure of a Governmental Authority to provide services beyond usual service response times; delays caused by any action or inaction of the other Party (and as to which action or inaction the Party relying upon the action or inaction has given Notice to the other Party as soon as reasonably practicable); or any other similar cause beyond the control of a Party by which the Party is delayed but “uncontrollable circumstance” does not include any delay caused by lack of funds or any delay to the extent it could have been avoided or minimized by the Party claiming relief and an uncontrollable circumstance will end, in each case, as soon as the matter, mentioned above, ceases to be the cause of the delay, and the Party invoking uncontrollable circumstance will take all reasonable steps to avoid or minimize the delay.

ARTICLE 21 GENERAL PROVISIONS

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

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

21.3 The insertion of headings and the division of this Agreement into articles and subdivisions thereof is for convenience of reference only and shall not affect the interpretation hereof.

21.4 Any reference in this Agreement to an “article” or any subdivision thereof shall, unless the context otherwise requires, be taken as a reference to the correspondingly-labelled provision of this Agreement.

21.5 Time shall in all respects be of the essence of all matters provided for in this Agreement, provided that the time for the doing or completing of any matter may be extended or abridged by an agreement, in writing, executed by the City and the Proponent, or by their respective solicitors, who are expressly appointed for that purpose.

21.6 The waiver by a party of strict compliance or performance of any of the terms and conditions of this Agreement or of any breach on the part of any other party shall not be held or deemed to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of this Agreement or of any breach thereof.

21.7 No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by an authorized representative of the party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

21.8 Should any provision of this Agreement be declared or found to be illegal, unenforceable, legally ineffective or void, then each party shall be relieved of any obligation arising from such provision, but the balance of this Agreement, if capable of performance, shall remain in full force and effect.

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

21.10 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.

21.11 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.

21.12 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.

21.13 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.

21.14 Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City of all of its rights as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including planning rights and responsibilities. Nothing in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.

21.15 No communication or dealing between the Proponent and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City will be deemed to be a communication or dealing under the provisions of this Agreement between the Proponent and the City as parties to this Agreement, or to affect the City with notice of any such communication or dealings. It is intended and agreed that the City acts solely in a private capacity under this Agreement and any communication or dealing between the City and the Proponent as parties to this Agreement will only be effective if delivered in accordance with the notice provisions set out in this Agreement. No communication or dealing between the City as a party to this Agreement and the Proponent as a party to this Agreement will relieve the Proponent from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or in any other lawful manner separate and apart from the obligations of the Proponent imposed by this Agreement.

21.16 This Agreement 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.

21.17 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.

CITY OF TORONTO

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

PROPONENT

Per : _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE "A"**PROPONENT'S INITIAL 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 Rent to be charged per month (includes housing benefit & utility allowance) (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), total rent includes tenant rent, housing benefits and utility allowance amounts

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 =	

Indicate which utilities tenants are paying:

Water ___ Heat ___ Electricity ___ Hot Water ___

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:

SCHEDULE "C"

MORTGAGE/CHARGE OF LAND PROVISIONS

Additional Provisions

1. It is agreed by the Chargor and the Chargee that this Charge is given as collateral security for the Chargor's performance of its obligations under a Contribution Agreement on _____, 202_, (herein called the "Agreement"), which Agreement has been entered into with the Chargee and default under the terms of the Agreement, shall constitute default under the terms of this Charge.

2. It is agreed that the Chargee's rights hereunder shall in no way merge or be affected by any proceedings which the Chargee may take under the Agreement and/or under any other collateral security securing the performance of obligations under the Agreement and that the Chargee shall not be required to take proceedings under the Agreement, before proceeding under this Charge and conversely, no proceedings under this Charge or other collateral security or any of them shall in any way affect the rights of the Chargee under the Agreement and the Chargee shall not be required to take proceedings under this Charge or any other collateral security before proceeding under the Agreement.

3. Paragraph 14 of the set of Standard Charge Terms filed as number 200033 on November 3, 2000 and forming part of this Charge is hereby deleted and the following substituted therefor:

"14. If the Chargor offers, lists, advertises, sells, transfers, disposes of, leases, licenses, mortgages, charges, encumbers or holds out or offers for sale, lease, licence, or disposal the land or any part, or permits any mortgage, charge or other encumbrances to remain outstanding in respect of the Land or any part or revises, alters, renews or amends any mortgage, charge or encumbrance or otherwise deals with the Land or any part other than in accordance with the Agreement, the principal amount secured by this Charge, or such lesser amount as may be outstanding pursuant to the provisions of the Agreement shall, at the option of the Chargee, immediately become due and payable. PROVIDED that no permitted sale or other dealing by the Chargor with the Land or any part shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any person liable for payment of the monies hereby secured."

4. Paragraph 16 of the set of Standard Charge Terms filed as number 200033 on November 3, 2000 and forming part of this Charge is hereby deleted and the provisions of section 12 of the Agreement are substituted therefor.

5. It is understood and agreed that notwithstanding anything in the standard charge terms made part of this Charge or any provisions of any other document or certificate or security provided in connection with this Charge, the Chargor shall not be obligated or liable to repay all or any portion of the indebtedness hereunder including principal, interest, premium, costs of realization, damages or any other monies secured by owing under or in connection herewith, including under any indemnity (collectively for the purpose of this paragraph only the "Indebtedness") and that the recourse of the Chargee to recover the Indebtedness shall be limited and restricted to the right of the Chargee to enforce its security solely against the charged property and the rents, chattels and proceeds (including insurance proceeds) relating to the charged property and to realize against the interest of the Charge or in the charged property and the proceeds thereof, and that the Chargee shall not be entitled to effect realization against any other property of assets or the Chargor (or any other person, corporation, partnership or entity) any deficiency remaining outstanding after such realization.

LRO # 80 Charge/Mortgage

In preparation on 2016 07 18 at 14:15

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN *Interest/Estate* *Fee Simple*
Description
Address

Chargor(s)

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

Name PROPONENTS NAME
Acting as an individual
Address for Service Proponents address for service

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

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

Chargee(s)*Capacity**Share*

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

Statements

Schedule: Standard Charge Terms 200033

Provisions

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

Additional Provisions

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

SCHEDULE "D"

LEGAL OPINION

[TO BE ON LETTERHEAD OF SOLICITOR FOR PROPONENT]

DATE

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

Attention: Wendy Walberg, City Solicitor

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

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

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

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

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

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

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

officials are complete, true and accurate;

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

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

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

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

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

The opinions expressed above are subject to the following qualifications:

1. the enforceability of the Agreement and the Charge may be limited by applicable bankruptcy, winding up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditor's rights;
2. the enforceability of the Agreement and the Charge may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance, injunction and relief from forfeiture) which remedies are only available in the discretion of a court of competent jurisdiction;
3. a court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive;
4. no opinion is given as to the enforceability of any provision of the Agreement and the Charge providing for the severance of illegal or unenforceable provisions from the remaining provisions of the Agreement and the Charge;
5. whenever an obligation, act, agreement or instrument is expressed to be "enforceable" or "legal, valid and binding" or words of like effect, we mean that such obligation, act, agreement or instrument is capable of being given legal effect; we express no opinion as to any factors such as financial capacity or title to assets which may make such obligation, act, agreement or instrument unenforceable in fact;
6. the enforceability of the Agreement or Charge entitling the City to exercise rights or remedies as a result of a default thereunder may be limited by applicable laws requiring creditors and secured parties to give obligors a reasonable time to raise money to pay the indebtedness owing by the obligors prior to taking any action to exercise such rights or remedies;
7. the enforcement of the Agreement and Charge are subject to:
 - a) applicable limitations periods;
 - b) the statutory power of a court to grant relief from forfeiture;
 - c) the discretion which a court may reserve to itself to decline to hear an action if it is contrary to public policy for it to do so or if it is not the proper forum to hear such action;
 - d) limitations on the right of a party to enforce an agreement on the basis of a default of a minor or non-substantive nature; and
 - e) limitations upon the right of a party to accelerate the maturity of any indebtedness without reasonable notice to the indebted party.
8. provisions of the Agreement or the Charge which provide that delay or failure by a party to exercise any right, remedy or option will not operate as a waiver thereof may not be enforceable;

9. provisions of the Agreement or the Charge which provide for the waiver of certain legal or equitable rights or which absolve or purport to absolve a party from responsibility for its acts may not be enforceable;
10. a court may require discretionary powers expressed to be conferred on the City in the Agreement or the Charge to be exercised reasonably and in good faith notwithstanding any provision to the contrary and may decline to accept as conclusive factual or legal determinations described as conclusive therein;
11. the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another and certain remedial terms, and waivers of equitable defences provided for in the Agreement or the Charge, are limited by law;
12. the enforcement of provisions in the Agreement or the Charge providing for the recovery of expenses and costs is subject to the discretion of the courts;
13. notwithstanding any provision of the Agreement or the Charge, any certificate or determination provided thereunder may be subject to challenge in a court on the grounds of fraud, collusion, mistake on the face of the certificate, or mistake on the basis that the certificate differed in a material respect from the certificate contemplated in such provision;
14. we express no opinion as to the enforceability of any provision of the Agreement or the Charge to the effect that:
 - a) modifications, amendments or waivers of or with respect to the Agreement or the Charge that are not in writing will be ineffective;
 - b) relate to delay or omission in the enforcement of remedies by or on behalf of the City;
 - c) purport to appoint any person or an officer or employee thereof as attorney or agent to act on behalf of any other person;
 - d) purport to bind or affect, or confer a benefit upon persons who are not parties to the Agreement or the Charge;
 - e) provide for agreement at a later date;
 - f) purport to restrict the access to, or waive the benefit of, legal or equitable remedies or defences;
 - g) purport to waive or affect any rights to notices; or
 - h) provide a non-judicial foreclosure or self-help remedies or relate to delay or omission of enforcement of remedies.
15. no opinion is expressed as to the enforceability of any provisions in any of the Agreement or Charge which provide for obligations, rights or remedies which are inconsistent with any other provisions of the Agreement or the Charge or subject or subordinate to, or overridden by, other provisions in the Agreement or Charge;
16. rights of indemnification provided for in the Agreement or the Charge may be limited under applicable law;
17. we express no opinion as to compliance, and the effect of non-compliance, with any privacy laws; and

18. a receiver, manager or receiver-manager appointed under the Agreement or the Charge may, for certain purposes, be held by a court of competent jurisdiction to be acting as an agent or attorney of the City and not as an agent or attorney of the Proponent notwithstanding terms to the contrary therein;

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

Yours truly,

Solicitor

SCHEDULE "D-A"

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

1. Charge registered on _____, 20__ as Instrument No. _____.

SCHEDULE "D-B"

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

SCHEDULE "E"

START OF CONSTRUCTION AFFIDAVIT

Re: PROPONENTS NAME AND PROJECT ADDRESS

I, [name of authorized signing officer], of the City of _____, in the Province of Ontario make oath and say:

- 1. Construction equipment has been mobilized on the property municipally known as [ADDRESS], Toronto.
- 2. Attached hereto and marked as Exhibit "A" is a true copy the first building permit received for the above-mentioned affordable housing project.
- 3. I make this affidavit for no improper purpose.

SWORN before me at)
 the City of)
 in the Province of Ontario)
 this ____ day of _____,)
 201___.)
)
)
)
)
)
)
)
 Commissioner, etc.)

 [name and title of authorized signing officer]