

APPENDIX 2 A

Multi-Unit Residential Acquisition Contribution Agreement

CITY OF TORONTO

- and -

[PROPONENT]

MULTI-UNIT RESIDENTIAL ACQUISITION

CONTRIBUTION AGREEMENT

[Address]

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	4
ARTICLE 2 GENERAL	7
ARTICLE 3 THE PROJECT	8
ARTICLE 4 CITY BENEFITS	8
ARTICLE 5 REQUESTING AN ADVANCE OF FUNDS.....	12
ARTICLE 6 REPRESENTATIONS AND WARRANTIES	12
ARTICLE 7 GENERAL OBLIGATIONS OF THE PROPONENT	13
ARTICLE 8 MONTHLY OCCUPANCY COSTS CHANGES	15
ARTICLE 9 FINANCIAL RECORDS AND RIGHT TO AUDIT	16
ARTICLE 10 INDEMNITY	16
ARTICLE 11 INSURANCE.....	17
ARTICLE 12 TRANSFERS AND ASSIGNMENTS.....	19
ARTICLE 13 DEFAULT	20
ARTICLE 14 RECEIVERSHIP	22
ARTICLE 15 CONFIDENTIALITY.....	23
ARTICLE 16 PUBLIC ACKNOWLEDGEMENT OF FUNDS.....	23
ARTICLE 17 DISPUTE RESOLUTION.....	23
ARTICLE 18 NOTICES	24
ARTICLE 19 CONTRACTUAL STATUS OF THE PARTIES	24
ARTICLE 20 UNCONTROLLABLE CIRCUMSTANCES	25
ARTICLE 21 GENERAL PROVISIONS	25

BETWEEN:

CITY OF TORONTO

(the "City")

– and –

XXXXXXXXXXXXXXXXXX

(the "Proponent")

Background

- A. At its meeting held on November 9, 10 and 12, 2021, City Council approved the New Multi-Unit Residential Acquisition (MURA) Program (the "Program");
- B. The City issued the Request for Proposals titled City of Toronto Request for Proposals For Non-Profit Acquisition of Affordable Rental Housing under the Multi-Unit Residential Acquisition Program (MURA) (the "RFP") on [DATE] to select proponents to acquire or refinance rental housing for the purpose of protecting existing affordable rental housing in the City of Toronto;
- C. The Proponent submitted a proposal to purchase, renovate, repair and operate the [property description] at Address (the "Project") and has been selected to receive funding through the City and the Program;
- D. 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;
- E. 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;
- F. The City of Toronto passed By-law No. 183-2022 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 affordable housing; and
- G. The parties wish to enter into this Agreement to set out the terms and conditions of the operation of the Project and the financial assistance and benefits 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;

"Acquisition Funds" means the funding being provided by the City, to be used exclusively for the purchase of the Property as set out in Section 4.1(b);

"Affordability Period" means ninety-nine (99) years from the Closing Date;

"Affordable Housing" means Housing that is acquired and operated in accordance with the terms of this Agreement;

"Approved Mortgage" means a mortgage, charge or other encumbrance of the Project approved by the Executive Director, Housing Secretariat;

"Approved Mortgagee" means the lender of the funds secured by the Approved Mortgage;

"Average Market Rents" or **"Average Rents"** or **"AMR"** means average monthly Toronto-wide rents by room type as determined in the end-of-year survey of City-wide rents for the prior calendar year published by CMHC; if CMHC does not publish a survey of City-wide rents, then average market rents for the calendar year shall be City-wide average rents as determined by the City [and the "Average Market Rents" for a "Dwelling Room" means sixty (60) percent of the "Average Market Rents" for one-bedroom units in the City of Toronto;]

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

"City Benefits" means the funding and City Incentives as set out in Sections 4.1, 4.2, and 4.3;

"City Charge" means the Charge/Mortgage of Land referred to in Section 4.3 hereof;

"City Incentives" means the fees, charges and property tax exemptions outlined in Sections 4.3;

"Closing Date" means the date the transaction for the purchase of the Property by the Proponent is completed;

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

"Deposit Funds" means the funding being provided by the City, to be used exclusively for the payment of the deposit required for the purchase of the Property as set out in Section 4.1(b);

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

"Disposition" means any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property;

"Dwelling Room" means a private room for the exclusive use of the occupant or occupants of the

room, designed or intended for use for living accommodation and may include either but not both culinary or sanitary conveniences accommodation, where such living accommodation is provided in exchange for remuneration in the form of rent payable to the landlord; [if applicable]

"Dwelling Unit" means living accommodation comprising a single housekeeping unit, designed or intended for use by one person or by persons living together as a family, and consisting of a room or suite of two or more rooms in which both culinary and sanitary facilities are provided for the exclusive use of such person or persons, where such living accommodation is provided in exchange for remuneration in the form of rent payable to the landlord, and may include a bachelor unit or a one-bedroom unit, but does not include a dwelling room;

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

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

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

"Funded Work" means the renovation and repair work, to be funded under this Agreement, outlined in Schedule "A", if any;

"Funds" means collectively the Pre-Acquisition Funds, Deposit Funds, Acquisition Funds, the Renovation Funds, and the value of the City Incentives;

"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, calculated as 30% of the tenant's Household Income or the shelter allowance of their Ontario Works or Ontario Disability Support Program Benefits, and the rent payable to the landlord for a residential unit;

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

"Legally Recognized Rooming House" means a Rooming House which has a permit from the City to operate, is licensed by the City or the existence of which is allowed as a legal non-conforming use, as determined by the by the Executive Director, Housing Secretariat, at her sole discretion [if applicable];

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

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

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

"Pre-acquisition Funds" means funding used for due diligence and pre-acquisition costs related to the acquisition of the Property, provided to the Proponent prior to entering into this Agreement as set out in Section 4.1(a);

"Prior Tenant" means a tenant occupying a Dwelling Unit/Dwelling Room within the Property on the date of this Agreement;

"Project" means the [Description of Property] to be purchased, [to be renovated, repaired or rehabilitated] and, subsequently operated by the Proponent in accordance with the terms and conditions of this Agreement, as more particularly described in Article 3;

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

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

"Property Acquisition Package" means the information submitted by the Executive Director, Housing Secretariat, with respect to the acquisition of the Property;

"Proposal" means the Proponent's response to the City's Request for Proposals, as revised and approved by the Executive Director, Housing Secretariat and the Property Acquisition Package submitted to and approved by the Executive Director, Housing Secretariat, for the Property;

"Renovation Funds" means the funding to be used exclusively for the renovation of the Property as set out in Section 4.2;

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

"Substantial Completion" means the Funded Work has achieved Substantial Performance as contemplated in the *Construction Act*, R.S.O. 1990, c. C.30;

"Transfer" means a Disposition of the Property 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, the entering into of a mortgage, receivership proceedings, seizure by legal process and transfer by operation of law);

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

"Unit" means a Dwelling Unit or Dwelling Room.

1.2 The following schedules form part of this Agreement:

Schedule "A"	Funded Work
Schedule "B"	Pre-Acquisition Funds Report
Schedule "C"	Escrow Agreement
Schedule "D"	Financial Information Related to Acquisition
Schedule "E"	Forbearance Agreement
Schedule "F"	Post-Acquisition Occupancy Report
Schedule "G"	Annual Occupancy Report
Schedule "H"	Charge/Mortgage of Land
Schedule "I"	Legal Opinion
Schedule "J"	Subsequent Opinion
Schedule "K"	Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

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

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

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

Article 2

GENERAL

2.1 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 a municipal housing project facility agreement pursuant to the City's By-law No. 183-2022 "To enact a new Municipal Housing Facility By-law and to repeal By-law No. 72-2022."

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 set out below for the Affordability Period in accordance with the terms and conditions of this Agreement:

The Property: [Address]
[Legal Description] (the "Property")

Monthly Occupancy Costs: Average across all Units on the Property to be at or below 80% of Average Market Rent.

Article 4 CITY BENEFITS

4.1 **Pre-Acquisition, Deposit, and Acquisition Funds.**

- (a) The Proponent acknowledges that it has received \$XXX (the "Pre-Acquisition Funds") and \$XXX (the "Deposit Funds") in funding as a grant by way of forgivable loan from the City to pay for pre-acquisition costs incurred by the Proponent;
- (b) Subject to the conditions set out in Sections 4.7 and 4.8 hereof being met or waived, the City will advance \$XXX (the "Acquisition Funds") as a grant by way of forgivable loan, to be used solely for the purchase of the Property. The full amount of the Acquisition Funds will be advanced to the Proponent's solicitor in accordance with the terms of the Escrow Agreement.

- 4.2 **Renovation Funds.** The City will advance up to \$XXX as a grant by way of forgivable loan, to be used solely for the Funded Work set out herein. The full amount of the Renovation Funds will be advanced to the Proponent's solicitor in accordance with the terms of the Escrow Agreement, within 30 days of the conditions set out in Section 4.9 hereof having been met or waived. Advances from the Escrow Agreement to the Proponent shall be made in accordance with Article 5.

4.3 **City Incentives.**

- (a) **Property Tax Exemption.** Subject to Council approval being obtained, the City shall exempt the Affordable Housing from taxation for municipal and school purposes for a term of Ninety-Nine (99) years from the Closing Date. For clarity, Units that are not Affordable Housing as of the Closing Date will not benefit from the Property Tax Exemption until ALL such Units are rented to new tenants as Affordable Housing pursuant to the terms of this Agreement. The Property Tax Exemption cannot be implemented until the City has received all of the information and documentation set out in 4.10, as well as further information and documentation as it may reasonably require in order to provide the Municipal Property Assessment Corporation with the information it requires;
- (b) **Planning Application Fees.** The City shall waive the planning application fees with respect to the Project, if not already paid; and
- (c) **Building Permit Fees.** The City shall waive all building permit fees with respect to the Project, if not already paid.

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

- (a) endorsed in favour of the City;
- (b) in the amount equal to the total value of the Funds (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 XXX Dollars (\$XXX)) (the "Principal Amount"); and
- (c) shall include the terms set out in Schedule "H".

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.

4.5 **Forgiveness.** Provided the Proponent is in good standing with the City under the terms of this Agreement, balance of the Principal Amount will be forgiven by one per cent (1%) on each anniversary of the last advance, made to the Proponent's solicitor, pursuant to the Escrow Agreement, until the loan is fully forgiven. Once the Principal Amount has been forgiven, the City shall authorize the discharge the City Charge and this Agreement and the obligations of the Parties hereunder will terminate.

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

4.7 **Acquisition Funds Conditions Precedent.** The City will advance the Acquisition Funds to the Escrow Agent upon prior compliance by the Proponent with the following conditions unless waived in writing by the City:

- (a) the Proponent shall provide a report of how Pre-Acquisition Funds have been used, in a form attached a Schedule B, satisfactory to the Executive Director, Housing Secretariat;
- (b) the Proponent shall provide 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 provide an Access Plan approved by the Director, Housing Stability Services, in the form of the report attached as Schedule "K";
- (d) the Proponent shall have retained the services of a qualified Project Manager, as deemed necessary by and to the satisfaction of the Executive Director, Housing Secretariat;
- (e) the Proponent has provided the City with a signed commitment for the first mortgage, satisfactory to the City;
- (f) the Proponent shall have provided a draft City Charge and acknowledgement and direction to register the City Charge, signed by the Proponent;

- (g) the City has received a draft legal opinion, substantially in the form of the opinion, attached as Schedule "I", from the Proponent's Solicitor;
- (h) the Proponent shall have provided a capital budget and operating budget satisfactory to the City;
- (i) the representations and warranties of the Proponent set out in Article 6 hereof shall be true and correct and, if requested by the City, the Proponent shall have delivered a certificate or certificates to such effect; and
- (j) the Proponent shall have completed, signed and delivered a "Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy" form, a copy of which is attached as Schedule "K", to the City.

4.8 **Release of Acquisitions Funds by Escrow Agent.** The Escrow Agent shall release the Acquisition Funds in accordance with the terms and conditions of the Escrow Agreement and upon confirmation by the City that the Proponent has complied with the following conditions, unless waived in writing by the City:

- (a) the City, the Proponent and the Approved Mortgagee shall have entered into a Forbearance and Priorities Agreement, substantially in the form of the agreement attached as Schedule "B", but incorporating all changes reasonably requested by the lender under the Approved Mortgage; **[the Proponent is responsible for providing the form of Forbearance Agreement to the first mortgagee prior to executing the signed commitment with the first mortgagee];**
- (b) the Proponent shall provide all financial information related to the acquisition of the Property, in a form attached as Schedule D, satisfactory to the Executive Director, Housing Secretariat; and
- (c) the Proponent shall have provided a certificate of insurance confirming that the Project is insured as required by this Agreement.

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

- (a) the City Charge has been registered and the City has received a legal opinion, substantially in the form of the opinion attached hereto as Schedule "I" from the Proponent's solicitor;
- (b) the Proponent has provided the City with an up-to-date capital budget and operating budget satisfactory to it;
- (c) receipt by the City of an up-to-date and comprehensive renovation schedule including the start date and anticipated completion date;
- (d) the Proponent shall have retained the services of a qualified Project Manager to conduct the Funded Work, as necessary by and to the satisfaction of the Executive Director, Housing Secretariat;
- (e) the Funded Work commenced within six (6) months of the Closing Date, or such other date as approved by the Executive Director, Housing Secretariat;
- (f) the Proponent shall have received all applicable permits for the Funded Work;

- (g) the Proponent shall have provided proof, with a copy to be provided upon the City's request, satisfactory to the City that all major contracts have been entered into in accordance with normal business practices, including using a competitive process, where appropriate. If normal business practices have not been followed, a business case for not following such practices must be submitted to and approved by the City;
- (h) 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;
- (i) for advances made by the Escrow Agent to the Proponent, the City shall have received a subsequent legal opinion updating the original legal opinion, substantially in the form of the subsequent opinion attached hereto as Schedule "J";
- (j) for the purposes of the final advance from the Escrow Agent, the Proponent shall have provided the City with a Proponent's Post Acquisition Occupancy Report, substantially in the form of the report attached hereto as Schedule "F" [if applicable];
- (k) the Proponent shall not be in default (or being in default, the time provided for curing such default has not yet elapsed) under any of the terms and conditions of this Agreement, or any agreement with respect to the construction or operation of the Project, all of which shall be in full force and effect;
- (l) the obligations of the Proponent, as set out in Article 7 of this Agreement continue to be met to the satisfaction of the City;
- (m) the representations and warranties of the Proponent set out in Article 6 hereof shall be true and correct and, if requested by the City, the Proponent shall have delivered a certificate or certificates to such effect; and
- (n) nothing shall have occurred which, in the sole opinion of the Executive Director, Housing Secretariat, could reasonably be expected to have a material adverse effect on the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

4.10 **Tax Exemption.** While the Tax Exemption for the Affordable Housing Units will be effective as of the Closing Date or the date of the first meeting of Toronto City Council following the Closing Date, whichever is later, if there is no such meeting of Toronto City Council between the approval of the Proponent's Property Acquisition Package and the Closing Date, taxes will be payable until the following information and documentation is provided to the City and the tax roll has been amended by the Municipal Property Assessment Corporation:

- (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, e.g. laundry, parking or rent from a convenience store located on the property;

(ix) confirmation as to whether the rents include heat, hydro and water; and

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

4.11 **No Waiver.** The making of an advance or advances, either to the Escrow Agent by the City or by the Escrow Agent to the Proponent, prior to the fulfillment of one or more of the conditions set forth herein shall not constitute a waiver by the City of any such condition, and the City reserves the right to require the fulfillment of each condition prior to the making of any subsequent advance.

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

Article 5 REQUESTING AN ADVANCE OF FUNDS

5.1 Advance to Escrow Agent.

- (a) The City will advance all of the Acquisition Funds to the Escrow Agent, in trust, pursuant to the terms and conditions of the Escrow Agreement within ten (10) business days of the conditions set out Section 4.7 being met or waived; and
- (b) The City will advance all of the Renovation Funds to the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement within thirty (30) days of the conditions set out in Section 4.9 having been met or waived.

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

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

Article 6 REPRESENTATIONS AND WARRANTIES

6.1 The Proponent represents and warrants that;

- (a) it is duly incorporated under the laws of Ontario or Canada;
- (b) the Board of Directors of the Proponent has authorized the Proponent to enter into this Agreement and such authorization has not been withdrawn, if applicable;
- (c) 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 House of Commons, Senate, Provincial Legislature and no member of the Council of the City or members of any of its agencies, boards or commissions shall be entitled to any share or part of this Agreement or to any benefit to arise therefrom; and
- (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 GENERAL OBLIGATIONS OF THE PROPONENT

7.1 The Proponent shall:

- (a) implement the Proponent's rent transition plan, in a timely fashion, commencing with the first vacancy that arises after the Project is acquired;
- (b) notwithstanding 7.1 (a), cause the Project to be managed so that the Monthly Occupancy Costs for the Project are maintained at or below 80% of the Average Market Rents by Dwelling Unit type for the Affordability Period a with no monthly occupancy costs for a Dwelling Unit/Dwelling Room to exceed 100% of AMR, except where the Dwelling Unit/Dwelling Room is occupied by a Prior Tenant paying Monthly Occupancy Costs higher than 100% AMR as of the date of this Agreement;
- (c) take commercially reasonable steps, when entering into a tenancy agreement for a Dwelling 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;
- (d) ensure that the Project is kept free and clear of all liens and encumbrances, including but not limited to liens registered pursuant to the *Construction Act*. If a lien is registered against the Project, the Proponent will vacate the lien within ten (10) business days and provided that the lien has been vacated within ten (10) business days, the Proponent will not be considered to be in default of its obligations hereunder. Any orders associated with the Funded Work that are registered on title shall be discharged;
- (e) if requested by the City, provide a report from an independent auditor verifying the Funds received to date have been expended to complete the Funded Work within ninety (90) days of a request for same by the City, if it has been determined that the Proponent will not complete the Funded Work;
- (f) submit an independent report of a professional engineer, at the cost of the Proponent, should there be any dispute(s) in regard to the performance of the Funded Work.

- (g) 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;
- (h) ensure the City is provided with the following, on an annual basis:
 - (i) the Proponent's Annual Occupancy Report in the form of the report attached as Schedule "G", 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;

The first annual report shall be provided to the City no later than one hundred and fifty (150) days after the end of the calendar year in the Closing Date occurs, but when the calendar year end occurs less than six (6) months after the Closing Date, the first calendar year to which the provisions of this section apply shall be not less than twelve (12) months;

- (i) in any year the Proponent shall ensure the Monthly Occupancy Costs are not increased by more than the lower of any Average Market Rent increase, as a result of the CMHC Annual Rental Market Survey, if applicable and the annual rent increase guideline established pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 or any successor legislation to an amount not to exceed the Average Market Rent. 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;
- (j) manage the Project so that the following occupancy standards are observed when entering into a tenancy agreement for a Dwelling 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 under the age of 18 per bedroom;
- (k) 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;
- (l) cause all of its obligations under the *Residential Tenancies Act, 2006* to be met;
- (m) ensure that a Dwelling Unit or Dwelling Room in the Project is not rented to a shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent unless the Proponent is a non-profit co-operative as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, as amended, or is a not-for-profit corporation;

- (n) provide representatives of the City with access to its books, records, and to the Project, subject to any rights of the residential tenants;
- (o) cause a capital asset replacement reserve fund for the Project to be established and ensure that the amount of eight (8%) per cent of the gross revenues for the Project or such lesser amount as agreed to by the Executive Director, Housing Secretariat, in their absolute discretion, is paid into the reserve fund for each year of the Affordability Period. Annual contributions to the reserve fund shall be in addition to any interest earned by the reserve fund. Interest earned in the fund is to accrue in the fund;
- (p) ensure that each lease for a Dwelling Unit or Dwelling Room 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 Dwelling Unit or Dwelling Room 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 Agreement;
 - (iv) a statement that the rent increases which can be imposed by the Proponent are controlled by the City, and cannot exceed 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;
- (q) 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;
- (r) 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;
- (s) upon the expiry of the Affordability Period, upon a Dwelling Unit or Dwelling Room becoming vacant, the Proponent may allow the rental of a Dwelling Unit or Dwelling Room to a new tenant at any Monthly Occupancy Cost mutually agreed;
- (t) [if applicable] ensure compliance with the former City of Toronto Municipal Code, Chapter 285, Rooming Houses, as amended, or the former City of Etobicoke Municipal Code, Chapter 166, Lodging- Houses, as amended, where applicable; and
- (u) comply with all applicable federal, provincial and municipal laws, regulations and by-laws.

Article 8 MONTHLY OCCUPANCY COSTS CHANGES

8.1 Monthly Occupancy Costs Increases

Subject to Section **Error! Reference source not found.**, the Proponent may adjust the Monthly Occupancy Costs, with respect to a Unit, if at least twelve (12) months have elapsed:

- (a) from the date a occupancy of a Unit by a new tenant; 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.

Article 9 FINANCIAL RECORDS AND RIGHT TO AUDIT

- 9.1 The Proponent shall retain all books, accounts, records (including records related to rent collection and tenant income and eligibility verification), receipts, vouchers and other documents, that pertain to the Funds for a period of not less than seven (7) years from the end of each fiscal year of the Proponent to which the records relate.
- 9.2 The Proponent shall submit to the City within five months following the end of each fiscal year of the Proponent, an Annual Information Return in the form established by the City from time to time under this Agreement and the audited statements consisting of a balance sheet and a statement of revenue and expenditures for the year.
- 9.3 The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor of the City or anyone designated in writing by the auditor to ensure compliance with the terms and conditions of this Agreement and verify costs claimed by the Proponent.
- 9.4 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.
- 9.5 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.
- 9.6 For the purposes of this article, audit includes any type of audit.
- 9.7 This Article shall survive the termination of this Agreement.

Article 10 INDEMNITY

- 10.1 The Proponent hereby agrees that it shall, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City, and its elected and appointed officials, officers, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all actions, claims and demands whatsoever which

may be brought against or made upon the Indemnified Parties and against any and all loss, liability, claims, judgments, costs, demands or expenses whatsoever which the Indemnified Parties may sustain, suffer or be put to resulting from or arising out of or in connection with:

- (a) this Agreement;
- (b) the Project, including without limitation, environmental hazards;
- (c) the obligations of the Proponent hereunder;
- (d) the failure of the Proponent, its officers, consultants, contractors, agents, servants or employees to exercise reasonable care, skill or diligence in carrying out any work in respect of the Funds;
- (e) any act or omission of the Proponent, its officers, agents, servants, consultants, contractors, employees or by anyone for whom the Proponent is at law responsible relating to any work or any other thing required to be performed or rendered hereunder by the Proponents;
- (f) all insured and uninsured damage to property installed, property in transit and contractors' tools and equipment while carrying out the Funded Work; and/or
- (g) death or economic loss, caused by or in any way related to any of the Proponent's obligations under this Agreement

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

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

Article 11 INSURANCE

- 11.1 **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 11.1.

- 11.2 **“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 11.1, 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 11.2.
- 11.3 **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 Ten Million Dollars (\$10,000,000.00) and be written on Wrap Up form during any period of construction and thereafter not less than Five Million Dollars (\$5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross liability and severability of interests. During the course of the work or any other construction, the liability insurance required under this Article shall relate to property damage, death or injury arising out of the performance or non-performance of the work or any other construction or related work and shall include non-owned automobile liability insurance. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies. The City will be included as an additional named insured on the Commercial General Liability insurance policy which is to be maintained by the proponent following the completion of construction.
- 11.4 **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 Two Million Dollars (\$2,000,000.00) for all licensed motorized vehicles used in the performance of work.
- 11.5 **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.
- 11.6 **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.
- 11.7 **Non-Cancellation.** Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change policy, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days’ prior written notice to the City.
- 11.8 **City’s Right to Insure.** The Proponent shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Proponent fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Article, the City shall have the right, upon notice to the Proponent and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Proponent and all outlays by the City shall be payable by the Proponent to the City forthwith upon demand without prejudice to any other rights and recourses of the City hereunder. No such

insurance taken out by the City shall relieve the Proponent of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Proponent in connection therewith.

- 11.9 **Loss or Damage.** The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project or damage to property of the Proponent or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the Proponent or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence or wrongful acts of the City, its agents, employees, contractors, or others for whom it may, in law, be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, failing fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other Persons on the Project or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Proponent kept or stored on the Project shall be so kept or stored at the risk of the Proponent only and the Proponent releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Proponent's insurers.

Article 12

TRANSFERS AND ASSIGNMENTS

- 12.1 Except with respect to a charge given in compliance with Section 12.4, the Proponent shall not Transfer the Lands or 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.
- 12.2 The Project shall not be the subject of a Transfer unless the purchaser or transferee has first entered into an assignment and assumption 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.
- 12.3 Notwithstanding anything herein contained, the Proponent may lease Units in the Project to residential tenants, without complying with Section 12.1 and Section 12.2.
- 12.4 The Proponent shall not encumber the Lands or the Project by way of charge without obtaining the prior written consent of the City, which consent shall 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 in the opinion of the City, sufficient equity remains in the Lands and Project to secure the City Charge;

- (b) any event of default by the Proponent under this Agreement, that is continuing; and
 - (c) whether in the opinion of the City, the obligations underlying the charge will negatively impact the Proponent's ability to operate the Project in compliance with the terms of this Agreement.
- 12.5 Any request for a subordination and postponement of the City Charge to a subsequent charge must be submitted by the Proponent to the City in writing, and be accompanied by such information and documentation as reasonably required by the City. The City may, in its sole discretion, charge a commercially reasonable administration fee for such requests.
- Please note: The City requires a minimum of three (3) weeks to process requests for the execution of postponements and forbearance documents.**
- 12.6 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.
- 12.7 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.
- 12.8 The Project shall not be the subject of a Transfer unless the purchaser or transferee has first entered into an assignment and assumption 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.
- 12.9 The provisions of this Article 12 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.
- 12.10 Upon the Principal Amount being fully forgiven under Section 4.4 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 Project.

Article 13 DEFAULT

- 13.1 The following shall be considered events of default under this Agreement:
- (a) the Proponent has failed to acquire the Property by XXX, or such other date as determined by the Executive Director, Housing Secretariat;
 - (b) the Proponent has failed to proceed with the Funded Work within 6 months of the signing of this Agreement, except where such failure is due to causes which, in the opinion of the City, are beyond the control of the Proponent; (c) the Proponent has failed to provide the information requested in Section 4.10 for the purposes of the Tax Exemption, to the Executive Director, Housing Secretariat, within 30 days of the Closing Date;
 - (d) the Proponent knows or ought reasonably to have known, in the opinion of the City, acting reasonably, that a Unit is being provided to a tenant whose Household Income

exceeded the Initial Income Limit, or has not been verified under the terms of this Agreement or that the household composition has been misrepresented;

- (e) the Proponent has failed to undertake sufficient action to achieve the MURA program objective of Average Monthly Occupancy Costs for the Project of 80% of Average Market Rent, with no one Unit rented at more than 100% Average Market Rent within a reasonable time of the acquisition of the Project, in the sole discretion of the Executive Director, acting reasonably;
- (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 80% of Average Market Rent, or that the average Monthly Occupancy Costs for any one Unit exceed 100% of Average Market Rent, once the Project has met the MURA program objective of Average Monthly Occupancy Costs for the Project of 80% of Average Market Rent, with no one Unit rented at more than 100% Average Market Rent;
- (g) the Proponent has failed to meet its obligations under Article 7 and Article 8 of this Agreement;
- (h) the Proponent, has made materially false or misleading representations or statements, or provided materially false or misleading information to the City, in its Proposal ;
- (i) 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 commits fraud, misconduct, criminal acts, gross negligence or willful misconduct; or
- (j) 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.
- (k) the Proponent becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or fails any proposal or makes any assignment for creditors or any arrangement or compromise; or
- (l) a receiver or receiver-manager is appointed for the Project by a creditor other than the City.

13.2 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 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) appoint or seek the appointment of a manager and/or receiver for the Project, whether an officer, employee or agent of the City or not, if the City has determined that there are

serious financial matters that could result or have resulted in the Proponent being unable to pay its debts as they become due;

- (f) terminate the Agreement by giving written notice to the Proponent;
 - (g) enforce its rights pursuant to the City Charge; and/or
 - (h) seek any additional remedy available to the City at law or in equity.
- 13.3 For the purposes of this Section, the Proponent will be found to have remedied the default if, for the purposes of Subsections 13.1 (e) and (f) the Proponent submits a plan satisfactory to the Director, Housing Stability Services attempting to prevent future defaults.
- 13.4 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.
- 13.5 Upon providing a notice of termination, the City shall have no obligation to provide City Incentives to the Proponent.
- 13.6 All rights and remedies of the City under this Agreement shall be cumulative and not alternative

Article 14 RECEIVERSHIP

- 14.1 Where a Receiver is appointed by the City pursuant to Section 13.2(e), the Receiver shall have the power to:
- (a) take control, direction and possession, or any of them, of the Project, the revenue and the assets of the Proponent, the operation and books, records and accounts of the Proponent or any part of them related to the Project;
 - (b) take control and direction of the employees and agents of the Proponent;
 - (c) receive and recover and use all revenues and assets of the Project;
 - (d) incur and pay liabilities;
 - (e) maintain, operate and repair the Project; and
 - (f) execute and prosecute all suits, proceedings and actions which the Receiver considers necessary for the proper protection of the Project, to defend all suits, proceedings and actions against the Proponent or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action, then pending or thereafter instituted and to appeal any suit, proceeding or action.
- 14.2 The City may at any time and from time to time change, terminate or renew the mandate of the Receiver or replace or reinstate the Receiver and fix the reasonable remuneration of the Receiver who may deduct the same out of the revenues of the Project.
- 14.3 Without limiting any rights of the City under this Agreement, the City acknowledges that it is the intention of the City to reinstate the Proponent whenever feasible, as determined by the City, as a self-governed entity retaining substantial control of the management of the Project within sixty days after the receivership becomes effective.
- 14.4 The Receiver shall be deemed to be the agent or attorney of the Proponent and the City shall not be responsible for the Receiver's acts or omissions.

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

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.
- 15.5 Notwithstanding that the *Housing Services Act, 2011* ("HSA") does not apply to the Project, the Proponent agrees, as a contractual obligation, that it shall comply with the standards prescribed under section 169 of the HSA for the collection, use, disclosure and safeguarding of privacy of personal information and for a person's access to his or her personal information, including personal information which the Proponent has obtained from the City. The Proponent shall comply with all other applicable legislative requirements concerning the safeguarding of personal information, including personal health information, including, as applicable, the requirements of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and the *Personal Health Information Protection Act*, 2004 S.O. 2004, c. 3, Schedule A.
- 15.6 The Parties shall hold confidential any information clearly identified and marked as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Nothing in this Agreement shall be construed in a manner that would contravene the access to information and privacy legislation that applies to the Parties.

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 of Toronto including the Housing Secretariat. The Proponent shall notify the City in advance of any and all communication activities, 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 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:

[ADDRESS]

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, 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 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.
- 20.2 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 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 This Agreement shall not be assigned by the Proponent without the prior written consent of the

Executive Director, Housing Secretariat which consent may be withheld or given subject to such terms and conditions as the Executive Director, Housing Secretariat deems appropriate.

- 21.9 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.
- 21.10 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 21.11 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.
- 21.12 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.
- 21.13 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.
- 21.14 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.
- 21.15 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.
- 21.16 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.
- 21.17 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.

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

[Remainder of this page left intentionally blank.]

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

I/We have authority to bind the corporation.

PROPONENT'S NAME

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE "A"
FUNDED WORK

SCHEDULE "B"
PRE-ACQUISITION FUNDS REPORT

Description of use of Pre-Acquisition funds with supporting documentation (invoices, due diligence costs, deposit receipt):

SCHEDULE "C"

EXECUTED ESCROW AGREEMENT

SCHEDULE "D"**FINANCIAL INFORMATION RELATED TO ACQUISITION**

Balance due on closing, in accordance with statement of adjustments, attached	\$
Legal fees and disbursements	\$
Land Transfer Tax	\$
Proponent's equity	\$
First mortgage advance	\$
MURA Acquisition Funding	\$

TOTAL
Deposit Funding

Amount of Deposit Funding advanced	\$
Deposit made on agreement of purchase and sale	\$

TOTAL

SCHEDULE "E"**FORBEARANCE AGREEMENT**

THIS AGREEMENT is made as of the _____ day of _____, 2022,

BETWEEN

CITY OF TORONTO

(hereinafter called the "City")

of the FIRST PART

and

[_____]

(hereinafter called the "Bank")

of the SECOND PART

and

[_____]

(hereinafter called the "Proponent")

of the THIRD PART

WHEREAS:

- A. The Proponent is the owner of the property municipally known as [ADDRESS] Toronto, Ontario more particularly described as [_____] (the "Property");
- B. By a charge/mortgage of land registered in the Land Titles Division of the Toronto Registry Office (No. 66) (the "Land Registry Office") as Instrument Number [_____] (the "Bank Mortgage"), the Proponent mortgaged and charged the Property in favour of the Bank, ("in the amount of");
- C. By a charge/mortgage of land registered in the Land Registry Office as Instrument Number ("the City Mortgage") [_____] the Proponent mortgaged and charged the Property in favour of the City to secure money payable by and the obligations imposed on the Proponent pursuant to Contribution Agreement entered into by the Proponent with the City (the "CA");
- D. Pursuant to the CA, the Proponent agreed to undertake the purchase of an affordable housing project (the "Project") on the Property;
- E. The parties hereto wish to set out certain (non exclusive) rights they have in the event of a default under either the Bank Mortgage or the City Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and the sum of Ten Dollars (\$10.00) paid by each of the parties to the other, the receipt and sufficiency of which are acknowledged by each of the parties, the parties mutually covenant and agree as follows:

ARTICLE 1 PRIORITIES

The Bank Mortgage and other security registered and filed by the Bank, including an Assignment of Rents registered as Instrument No. _____, if any, and other amounts that have been advanced and all amounts that shall hereafter be advanced by the Bank under such Bank Mortgage and also including all other amounts secured thereunder, shall rank in full priority to the City Mortgage and all other security

registered or filed on behalf of the City, notwithstanding their respective order of registration nor the timing of the making of advances thereunder, for the full amount of the monies stated to be secured thereby.

ARTICLE 2 DEFAULT UNDER CITY MORTGAGE

The City shall deliver a copy of all notices of default under the City Mortgage (a "Default Notice"), to the Bank at the same time as such notice is delivered to the Proponent.

ARTICLE 3 STATUS OF BANK MORTGAGE

The Bank shall, within ten (10) days of receipt of a request therefore from the City, provide to the City a status statement (the "Statement") with respect to the Bank Mortgage indicating the principal, interest and any other amounts outstanding pursuant to the Bank Mortgage as of the date of the Statement, together with a per diem rate of interest.

ARTICLE 4 DEFAULT UNDER BANK MORTGAGE

- 4.1** If, as a result of a default pursuant to the Bank Mortgage or other security registered or filed by the Bank, the Bank exercises its remedies under the Bank Mortgage, the Bank shall:
- (a) deliver a copy of the notice of default given by the Bank to the Proponent in regard to such default, to the City (the "Bank Notice");
 - (b) provide to the City together with the Bank Notice, a status statement with respect to the Bank Mortgage indicating the principal, interest and any other amounts outstanding pursuant to the Bank Mortgage as of the date of such status statement, together with a per diem rate of interest.
- 4.2** The City may notify the Proponent and the Bank in writing (the "Bank Remedies Notice") within forty-five (45) days of the date of receipt by the City of the Bank Notice that the City will assume the payments under the Bank Mortgage (and all other security held by the Bank in regard to the "Bank Mortgage").
- 4.3** In the event that the City does not deliver the Bank Remedies Notice as set out in subparagraph 4(2) hereof, the Bank shall be relieved from all restrictions and/or obligations and without limiting the generality of the foregoing, the Bank shall be at liberty to forthwith exercise any and all rights and remedies under the Bank Mortgage and/or all other security held by the Bank in regard to the Bank Mortgage free of any restrictive covenants.

ARTICLE 5 ADVANCES OF BANK MORTGAGE

The Bank covenants and agrees that it shall only make advances of principal under the Bank Mortgage up to the Maximum Amount.

ARTICLE 6 POSTPONEMENT OF REMEDIES UNDER BANK MORTGAGE

Upon delivery by the Bank of a Bank Notice, the Bank agrees that it will not, during the 45 day period set out in Subsection 4(2) of this Agreement, take possession of the Property, appoint a receiver, exercise its power of sale rights or right of foreclosure under the Bank Mortgage or commencing an action on the covenant against the Proponent or against any guarantor) under the Bank Mortgage, at any time prior to the maturity of the Bank Mortgage; provided that notwithstanding the foregoing, the Bank may, but shall not be obligated to, exercise any reasonable rights and/or remedies to safeguard the Project, the Property or the security held by the Bank in regard to the Bank Mortgage, at any time.

ARTICLE 7 DELIVERY OF A BANK REMEDIES NOTICE

The City and the Bank covenant and agree that, if the City delivers the Bank Remedies Notice as set out in Section 4(2) of this Agreement, the following shall apply:

- (a) where default has occurred in making any payment of principal or interest due under the Bank Mortgage or in the observance of any covenant in the Bank Mortgage and under the terms of the Bank Mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, (a) at any time before sale under the mortgage; or (b) before the commencement of an action for the enforcement of the rights of the mortgagee or any person claiming through or under it, and the City performs such covenant or pays the amount due under the Bank Mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay

any expenses necessarily incurred by the Bank, the City shall be relieved from the consequences of such default;

- (b) the City shall not be required to pay the three months interest or provide the three months' notice set out in Section 17 of the Mortgages Act, R. S. O. 1990 c. M40, however, this provision shall not prejudice the Bank's right to receive all principal, interest and other monies due pursuant to the terms of the Bank Mortgage; and
- (c) the City will be conclusively deemed to have assumed the Bank Mortgage and all other security held by the Bank in regard to the Bank Mortgage and the indebtedness secured thereby or owing thereunder and to have covenanted and agreed to pay the amount secured by the Bank Mortgage, together with interest, at the time and in the manner set out in the Bank Mortgage and to observe, perform, keep and be liable under and bound by every covenant, attornment, term, condition and obligation in the Bank Mortgage contained, or contained in any other security registered and filed by the Bank, to be performed by the mortgagor/Chargor therein, at the time and in the manner and in all respects as therein contained, as if named therein, as principal debtor.

ARTICLE 8 AGREEMENT OF PROPONENT

The Proponent consents to the provisions of this Agreement and agrees to be bound by its terms.

ARTICLE 9 NOTICE

Any notice, consent, or other communication (a "Communication") to be given under this Agreement shall be in writing and shall be given by personal delivery or by fax, addressed or sent as set out below or to such other address or fax number of which either of the parties may from time to time notify in writing:

CITY OF TORONTO
Metro Hall, 55 John Street, 7th Floor
Toronto, ON M5V 3C6

Attention: Executive Director, Housing Secretariat
Fax No: (416) 392-8492

with a copy to:

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

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

[BANK]

Attention:
Fax No.:

[PROPONENT]

Attention:
Fax No.:

Any Communication, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by fax with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day next following the day it was transmitted.

ARTICLE 10 GENDER AND NUMBER

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

ARTICLE 11 HEADINGS

The headings contained herein are for reference only and in no way affect this Agreement or its interpretation.

ARTICLE 12 APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

ARTICLE 13 INVALIDITY

If any covenant, obligation or agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such covenant, obligation or agreement is deemed to be independent of the remainder of this Agreement and to be severable and divisible therefrom and its invalidity or unenforceability does not affect, impair or invalidate the remainder of this Agreement or any part thereof, and such covenant, obligation or agreement continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those to which it is invalid or unenforceable.

ARTICLE 14 SUCCESSORS AND ASSIGNS

All of the provisions of this Agreement shall be binding upon the parties hereto and their respective heirs, estate trustees, successors and permitted assigns and shall enure to the benefit of and be enforceable by the parties and the heirs, estate trustees, successors and permitted assigns of any party.

ARTICLE 15 NO ASSIGNMENT OF BANK MORTGAGE

The Bank agrees not to transfer or assign the Bank Mortgage and its interest in this Agreement to any other party without first obtaining from such party an agreement to be bound by the terms of this Agreement and assume the obligations of the Bank under this Agreement as if that party had been the original party hereto in place of the Bank, any such agreement to be in a form acceptable to the City, acting reasonably.

ARTICLE 16 TIME

Time is of the essence of this Agreement.

ARTICLE 17 FURTHER ASSURANCES

Each of the parties shall from time to time hereafter and upon any reasonable request of any other party make or cause to be made all further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.

CITY OF TORONTO

Per: _____
Name:
Title:

PROPONENT

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation

BANK

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation

SCHEDULE "F"
POST ACQUISITION OCCUPANCY REPORT

Room Type / Unit Type	Total Funded Rooms / Units	Actual Rent to be Charged per Month	CMHC Average Market Rent (AMR)

Project Certification

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

Name of Proponent:

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE “G”
ANNUAL OCCUPANCY REPORT

Room / Unit Type	Total Funded Rooms / Units	Actual Rent to be Charged per Month	CMHC Average Market Rent (AMR)

Project Certification

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

Name of Proponent:

by: _____ Date: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE "H" CHARGE/MORTGAGE

LRO # 80 **Charge/Mortgage**

In preparation on 2016 07 18 at 15:12

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN Interest/Estate Fee Simple
 Description
 Address

Chargor(s)

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

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

I, xxxxxxxxx, 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 3C8
 Attention: City Solicitor & Affordable Housing Office

Statements

Schedule:

Provisions

Principal \$ 500,000.00 Currency CDN
 Calculation Period
 Balance Due Date
 Interest Rate
 Payments
 Interest Adjustment Date
 Payment Date
 First Payment Date
 Last Payment Date
 Standard Charge Terms 200033
 Insurance Amount full insurable value
 Guarantor

Additional Provisions

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

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

Additional Provisions

- (m) 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 Multi-Unit Acquisition 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.
- (n) 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.
- (o) 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."
- (p) 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.
- (q) 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.

SCHEDULE "I"
LEGAL OPINION

(electronic version available on request)

[TO BE ON LETTERHEAD OF SOLICITOR FOR PROPONENT]

DATE

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

Attention: City Solicitor

Re: City of Toronto (the "City") and []
(the "Proponent")
[address of Property]

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

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

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

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

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

- (a) the genuineness of all signatures, the requisite legal capacity of all individuals, the authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as photocopies, facsimile, certified or notarial copies thereof and that all facts set forth in the official public records, indices and filing systems and all certificates supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (b) that each party to the Agreement and the Charge, other than the Proponent, 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; other than the Proponent, has been duly authorized, executed and delivered by each party thereto (whether or not a signatory thereto); and
- (d) that each of the Agreement and the Charge is a legal, valid and binding obligation of each party thereto, other than the Proponent.

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

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

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

1. the Proponent is a subsisting body corporate under the laws of the Province of Ontario, with the necessary powers to borrow the monies secured by the Charge;
2. the Proponent has good and valid marketable title to the Property, free from all encumbrances or claims of any nature whatsoever, subject only to the qualifications and the Permitted Encumbrances set out in Schedule "B" attached to this letter (the "Permitted Encumbrances");
3. the Charge constitutes a good and valid [first/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 Property; and
6. the Property has not escheated to the Crown.

The opinions expressed above are subject to the following qualifications:

1. the enforceability of the Agreement and the Charge may be limited by applicable bankruptcy, winding up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditor's rights;
2. the enforceability of the Agreement and the Charge may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance, injunction and relief from forfeiture) which remedies are only available in the discretion of a court of competent jurisdiction;
3. we express no opinion as to whether a security interest may be created in permits, quotes, licences or other property which is neither personal property or an interest in land;

4. a court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive;
5. no opinion is given as to the enforceability of any provision of the Agreement and the Charge providing for the severance of illegal or unenforceable provisions from the remaining provisions of the Agreement and the Charge;
6. whenever an obligation, act, agreement or instrument is expressed to be "enforceable" or "legal, valid and binding" or words of like effect, we mean that such obligation, act, agreement or instrument is capable of being given legal effect; we express no opinion as to any factors such as financial capacity or title to assets which may make such obligation, act, agreement or instrument unenforceable in fact;
7. the enforceability of any of the Charge entitling the Lender to exercise rights or remedies as a result of a default thereunder may be limited by applicable laws requiring creditors and secured parties to give obligors a reasonable time to raise money to pay the indebtedness owing by the obligors prior to taking any action to exercise such rights or remedies;

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

Yours truly,

Solicitor

SCHEDULE "I-A"

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

Charge registered on _____, 201__ as Instrument No. _____.

SCHEDULE "I-B"

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

SCHEDULE "J"
SUBSEQUENT OPINION

DATE

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

Attention: Wendy Walberg, City Solicitor

Dear Sir/Madame,

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

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

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

Yours very truly,

Solicitor

Enclosures

APPENDIX 2 B Form of the City Commitment Letter

[LETTERHEAD OF HOUSING SECRETARIAT]

DATE [within 30 days of RFP closing]

NAME AND ADDRESS OF
SELECTED NOT FOR PROFIT

Attention:

Dear Sir/Madam:

Re: Commitment to Fund - Multi-Unit Residential Acquisition Program

Further to your submission to the City, in response to the Request for Proposals under the Multi-Unit Residential Acquisition Program, issued [•] (the “RFP”), the City is pleased to offer acquisition and health and safety repair funding (“MURA Funding”) and other financial assistance, as set out below, for a multi-unit residential building on the following terms and conditions:

1. Interpretation

All capitalized terms have the same meaning as in the RFP, the Interpretation section of which has been reproduced as Schedule “A” to this Commitment Letter

2. MURA Funding

Subject to the terms and conditions of this agreement, the City agrees to provide a grant (by way of forgivable loan) of Two Hundred Thousand Dollars (\$200,000) per Dwelling Unit [One Hundred and Fifty Thousand Dollars per Dwelling Room], to a maximum of [•] units, to be advanced as follow:

(i) Pre-Acquisition Funding:

The amount of Twenty-Five Thousand Dollars (\$25,000.00) to be used for the purposes of paying pre-acquisition, due diligence expenses, such as legal fees and building condition assessments. The Pre-Acquisition Funding will be paid to the Proponent’s solicitor, pursuant to the terms of the attached Escrow Agreement, within 30 days of receipt by the City of:

- a signed copy of this Letter of Commitment,
- an original Promissory Note, signed by the Proponent;

- the Escrow Agreement, signed by the Proponent and its solicitor; and
- a resolution of the Board of Directors authorizing the entering into of the Letter of Commitment and Escrow Agreement and the delivery of the Promissory Note

(ii) Deposit Funding:

The amount of [•] Dollars (\$[•]) to be used only towards a deposit required under an agreement of purchase and sale entered into by the Proponent for an Eligible Property. The Deposit Funding will be paid, together with the Pre-Acquisition Funding, to the Proponent's solicitor, pursuant to the terms of the attached Escrow Agreement, within 30 days of receipt by the City of:

- a signed copy of this Letter of Commitment,
- an original Promissory Note, signed by the Proponent;
- the Escrow Agreement, signed by the Proponent and its solicitor;
- evidence that the Promissory Note has been secured by the registration of a Financing Statement under the *Personal Property and Security Act*; and
- a resolution of the Board of Directors authorizing the entering into of the Letter of Commitment and Escrow Agreement and delivery of the Promissory Note.

The Deposit Funding, under the terms of the Escrow Agreement will be provided by the Proponent's solicitor to the Proponent upon confirmation by the solicitor that the Agreement of Purchase and Sale contains the conditions required by the City as set out in Section 2.7 (c) of the RFP.

Note: *The Funding being advanced under 2 (i) and (ii) is being advanced as a repayable loan, secured by a Promissory Note until such time as a Proponent enters into a Contribution Agreement (CA) and the Funding becomes a forgivable loan with the City with respect to a specific property purchased by the Proponent.*

(iii) Acquisition Funding.

Upon approval of the Proponent's Property Acquisition Package and the final determination of the total amount of MURA Funding required to ensure that the operation of the proposed Eligible Property is financially viable, the balance of the MURA Funding will be advanced to the Proponent's solicitor, before the Closing Date:

- in accordance with the terms and conditions of the Escrow Agreement;
- subject to the Proponent entering into a CA, substantially in the form of the CA attached to the RFP; and
- the conditions to advancing the Acquisition Funding, set out in the CA, having been met or waived by the City.

3. Other Financial Assistance

- (i) Tax exemption. Subject to Council approval, the City will provide an exemption from taxation for municipal and school purposes for all Dwelling Units [Dwelling Rooms], with rents at or below 100% of AMR as of the Closing Date, for the period of Affordability. Subject to Council approval, an exemption from taxation for municipal and school purposes for the remaining Dwelling Units [Dwelling Rooms] will be granted upon confirmation by the Proponent that all units are being rented at or below 100% of CMHC Average Market Rents.
- (ii) Fees and charges. Proponents will be provided with exemptions from the payment of planning and building permit fees, and development charges or parkland dedication costs, if applicable.

4. Expiration of Commitment

If a Property Acquisition Package has not been received by the City within one year of the date of this letter, at the discretion of the Executive Director, Housing Secretariat, the City's obligation to advance the balance of the MURA Funding, as set out in 2 (iii) above will end, and the Deposit Funding will be returned to the City by the Proponent's solicitor, together with any remaining Pre-Acquisition Funding and an accounting of said funding, in accordance with the Escrow Agreement.

5. Termination of Funding Commitment for Default

The following shall each be considered an event of default:

- (i) the Proponent, has made materially false or misleading representations or statements, or provided materially false or misleading information to the City, in the proposal submitted in response to the RFP or any information or documentation submitted subsequent to the making of the proposal;
- (ii) the Proponent becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or fails any proposal or makes any assignment for creditors or any arrangement or compromise;
- (iii) in the opinion of the City, acting reasonably, there has been a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement.
- (iv) the City has reason to believe, acting reasonably, that the Proponent has used the Pre-Acquisition or Deposit Funding other than in accordance with this Agreement;

If an Event of Default has occurred, and the default has not been remedied within thirty (30) days of receipt by the Proponent of written notice of an event of default "(Notice of Default) or within such longer period as is required and the City may allow, the City may, in its absolute discretion, require repayment of the remaining Pre-Acquisition Funding and the Deposit Funding, in its entirety.

6. Merger of Commitment

This letter of commitment will merge with and upon the signing of the Contribution Agreement for an Eligible Property.

Please indicate your agreement with the terms and conditions of this Letter of Commitment, please sign and date this letter below and return it to [•] together with the signed Escrow Agreement and Promissory Note.

Yours truly

[•]I accepts the terms and conditions of the Letter of Commitment set out above, this [•] day of [•], 202[•].

[•]

by:

Name:
Title:

Name:
Title:

We have authority to bind the Corporation

SCHEDULE "A"

“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.

“Affordable Housing” means Housing with Monthly Occupancy Costs at or below 100% of Average Market Rents.

“Affordability Period” means a minimum of ninety nine (99) years from the date of the closing of the Approved Property.

“Approved Property” means a Housing property for which a Property Acquisition Package has been received and accepted by the City as suitable for purchase under the MURA Program.

“Approved Funding” means the total amount of the grant by way of forgivable loan to be provided towards the purchase and renovation of an Approved Property, as determined by the Executive Director of the Housing Secretariat.

“Average Market Rents” or “Average Rents” or “AMR” means average monthly City-wide rents by bedroom type as determined in the autumn survey published by CMHC for the prior calendar year; 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.

“City” means the City of Toronto.

“City Incentives” means the exemptions of fees and charges, as well as property taxes, outlined in Section 2.5.

“CMHC” means Canada Mortgage and Housing Corporation.

“Commitment Letter” means the letter, substantially in the form of the letter attached hereto as Appendix 4 b. to be provided to Successful Proponents setting out the MURA Funding available to the Successful Proponent. The Commitment Letter will provide the Successful Proponent a maximum funding amount under the MURA program.

“Contribution Agreement” means the written agreement, substantially in the form of the written agreement attached hereto as Appendix 4 a. entered into between the City and a Successful Proponent with respect to the Mura Funding and City Incentives to be provided by the City and the obligations of the Proponent under the MURA Program contemplated under this RFP.

“Council” means Toronto City Council.

“Executive Director” means the Executive Director of the City of Toronto Housing Secretariat, or his/her designate or successor, if any.

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

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

“Housing Benefits” means a financial benefit provided for or on behalf of a tenant to make up the difference between the rent payable by a tenant and the rent payable to the landlord for a residential unit.

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O.

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

“Non-Profit” means a not for profit corporation, cooperative, community land trust or Indigenous Non-Profit.

“Program Guidelines” means the MURA Program Details in Attachment 1 to the November 10, 11 and 12, 2021 Council report PH28.3 “New Multi-Unit Residential Acquisition (MURA) Program to Protect Existing Affordable Rental Homes”.

"Property Acquisition Package" means the documentation and information, listed in Appendix [•], to be submitted by the by Successful Proponents prior to final approval by the City.

“Proponent” means a legal entity, being a Non-Profit.

“Proposal” means a proposal submitted by a Proponent in response to this Request for Proposals (RFP), which includes all of the documentation necessary to satisfy the submission requirements of the RFP.

“Province” means the Province of Ontario as represented by the Ministry of Municipal Affairs and of Housing.

“RFP” means this Request for Proposals package in its entirety, inclusive of all Appendices and any bulletins, guidelines or Addenda that may be issued by the City.

“Successful Proponent” means a Proponent to which a Commitment Letter for MURA Funding is provided.

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

APPENDIX 2 C Form of Promissory Note

PROMISSORY NOTE

Principal Sum: \$_____ Cdn.

Dated: _____, 2022

Due: ON DEMAND

FOR VALUE RECEIVED, **(insert name of debtor)** (the **Borrower**), hereby acknowledges itself indebted to and promises to pay to or to the order of **THE CITY OF TORONTO** (the **Lender**) on demand, in accordance with the provisions contained herein at the Lender's office at 7th Floor, 55 John Street, Toronto, Ontario, M5V 3C6 or at such other place as the Lender may from time to time designate by notice in writing to the Borrower, the principal amount of **(insert amount)** in lawful money of Canada (the **Principal Sum**). All capitalized terms not here in defined have the meaning ascribed to them in the commitment letter dated (insert date) (the **Commitment Letter**).

1. Default

The Principal sum, shall become immediately due and payable, at the option of the Lender if, in accordance with the terms of the commitment Letter, the Lender has issued a Notice of Default and the default has not been remedied within 30 days.

2. **Enforcement Expenses**

The Borrower promises to pay all reasonable costs and expenses incurred by the Lender in collecting any amount due under this Promissory Note and in enforcing its rights hereunder and under any security granted or issued to the Lender by the Borrower, including, without limitation, the fees and disbursements of counsel to the Lender on a solicitor and his own client basis (the **Enforcement Costs**). Any Enforcement Costs that are not paid immediately by the Borrower shall be added to the Principal Sum.

3. **Obligations**

The Borrower irrevocably and unconditionally promises to perform and make due and punctual payment of all present and future debts, liabilities and obligations (collectively the "Obligations") of the Borrower to the Lender pursuant to the Commitment Letter, to a maximum of **the Principal Sum**.

4. **Waiver of Presentment for Payment, etc.**

The Borrower hereby waives any defences based upon indulgences which may be granted by the Lender to any party liable hereunder.

4. **Successors, Assigns and Governing Law**

This Promissory Note shall enure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the Borrower, and shall be governed by and construed in accordance with the laws of the Province of Ontario. The Borrower irrevocably submits to the jurisdiction of the courts of the Province of Ontario in any action or proceeding arising out of or relating to this agreement.

5. General Provisions

The extension of the time for making the repayment, demanded by the Lender or the failure, delay or omission on the part of the Lender to exercise or enforce any rights or remedies which it may have hereunder or under any instrument securing payment of the indebtedness hereunder shall not constitute a waiver of the right of the Lender to enforce such rights and remedies. Time is expressly made of the essence with respect to each and every term and provision of this Promissory Note.

(insert name of debtor)

per:_____

Name:

Title:

per:_____

Name:

Title:

I/we have authority to bind the Corporation.

APPENDIX 2 D Escrow Agreement

ESCROW AGREEMENT

THIS AGREEMENT made as of this day of , 202

A M O N G:

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

- and -

[•]

(hereinafter referred to as the "Proponent")

- and -

[•] Barristers and Solicitors

(hereinafter referred to as the "Escrow Agent")

WHEREAS the City has provided and the Proponent has accepted the terms of a Letter of Commitment dated as of the **[•]** day of **[•]**, 202**[•]**, (the "Commitment"), under which the City has agreed to provide MURA Funding towards the acquisition [and health and safety repairs] of **[•]** affordable housing at **[•]**, Toronto;

WHEREAS prior to the advance of all the MURA Funding referred to in this Escrow Agreement, the Proponent and the City will enter into a Contribution Agreement governing the operation of the affordable housing to be acquired by the Proponent (the "CA");

AND WHEREAS it has been deemed expedient to have the MURA Funding disbursed, by the Proponent's solicitor on the terms and conditions established by the City;

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

AND WHEREAS all capitalized terms used in this Agreement shall have the same meaning as in the Commitment Letter to which this Escrow Agreement is attached; and

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

1. Delivery of Property – The "Escrow Funds"

- (a) The City agrees to deposit with the Escrow Agent, in trust, the Pre-Acquisition Funds in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) and the Deposit Funding, in the amount of [•], within thirty (30) days of the receipt by the City of:
 - i. a signed copy of the Letter of Commitment,
 - ii. an original Promissory Note, signed by the Proponent;
 - iii. the Escrow Agreement, signed by the Proponent and its solicitor; and
 - iv. a resolution of the Board of Directors authorizing the entering into of the Letter of Commitment and this Escrow Agreement and the delivery of the Promissory Note.
- (b) The City agrees to deposit with the Escrow Agent, in trust, the Acquisition Funds, in the amount of [•] DOLLARS (\$[•]), within fifteen (15) business days of the conditions precedent in Section 4.7 of the CA being met by the Proponent or waived by the City, except for those conditions precedent that are required to be met by the Closing Date.
- (c) The City agrees to deposit with the Escrow Agent, in trust, the Renovation Funds, in the amount of [•] DOLLARS (\$[•]), within 30 days of the Proponent fulfilling all the conditions, not otherwise waived by the City, to the advance of the funds set out in section 4.9 of the Contribution Agreement;
- (c) The Escrow Agent will acknowledge receipt of the Escrow Funds by providing the City with an Acknowledgement, in the form of the Escrow Agent's Acknowledgement of Receipt and Obligation attached hereto as Schedule "A".
- (e) The Escrow Fund shall not be released from escrow, transferred within escrow or dealt with in any other manner whatsoever except pursuant to the terms and conditions of the CA and this agreement.

2. Instructions to Escrow Agent

- (a) **Pre-Acquisition Funding.** The Proponent shall be entitled to the advance of the Pre-Acquisition Funding, in its entirety, upon receipt by the City of evidence that the advance of the Pre-Acquisition Funding and the Deposit Funding, the subject of the Promissory Note, has been secured by a registration of a Financing Statement under the *Personal Property Security Act* (PPSA) in favour of the City of Toronto as creditor.
- (b) **Deposit Funding.** The Proponent shall be entitled to the advance of the amount of Deposit Funding, to assist with the deposit payable under the agreement of purchase and sale entered into by the Proponent (the "Purchase Agreement") to a maximum of 10% of the stated purchase price under the Purchase Agreement, whichever is less upon the Escrow Agent confirming to the City, in writing, that Purchase Agreement contains the following terms and conditions:
 - i. the deposit payable under the Purchase Agreement shall be fully refundable until such date as all conditions in the Purchase Agreement are waived by both parties under the Purchase Agreement;
 - ii. the closing date can be no earlier than 60 days after the Purchase Agreement becomes firm and binding, meaning all conditions in favour of either party are waived or confirmed as having been met; and

- iii. a condition that provides the Proponent time to confirm financing, satisfactory to the Proponent.

Any Deposit Funds that remain in Escrow after the payment of the deposit shall be held in Escrow and treated as Acquisition Funding by the Escrow Agent.

- (c) **Acquisition Funding.** The Escrow Agent shall release the Acquisition Funding, as required to complete the agreement of purchase and sale, upon confirmation by the City that the conditions precedent in section 4.8 of the CA that have not been met by the Proponent have been waived and that the Escrow Agent has obtained:
 - i. a clear execution search for the Proponent dated the Closing Date; and
 - ii. a clear tax certificate for the Property; and
 - iii. a certificate of status for the Proponent dated the Closing Date.
- (d) **Renovation Funding.** The Escrow Agent shall release the Renovation Funding, as it is received by the Escrow Agent, upon providing a subsequent legal opinion that there are no construction liens registered against the or executions filed against the Proponent.
- (e) The Escrow Agent, if so instructed by the Proponent, shall keep the Escrow Fund invested in an interest bearing account. All interest is to accrue to the benefit of the Proponent. The Escrow Agent may rely on instructions from the Proponent as to the terms and conditions of such investment with the Escrow Agent's bank.
- (f) In the event a default pursuant to the terms of the Commitment Letter occurs, and the default remains uncured past the date given in the notice of default served on the Proponent, the City shall be entitled to demand the return of the balance of the Escrow Fund, including any and all unpaid accrued interest, pursuant to the dispute resolution process set out below.

3. **Dispute Resolution**

- (a) On receipt of a written demand for the Escrow Fund or a portion thereof (as applicable) made by the City or the Proponent pursuant to this Agreement, the Escrow Agent shall promptly mail a copy of it (by registered mail, return receipt requested) to the other party. The other party shall have the right to object to the delivery of the Escrow Fund or a portion thereof (as applicable), by delivery to the Escrow Agent of written notice of objection within 28 days after the date of the Escrow Agent's mailing of the copy to the other party, but not after. On receipt of the notice of objection, the Escrow Agent shall promptly mail a copy of it (by registered mail, return receipt requested) to the party who made the written demand.
- (b) In the event that the Escrow Agent shall have received a notice of objection as provided in this agreement within the time prescribed, or any disagreement or dispute shall arise among any of the parties, whether or not litigation has been instituted, then in any event, at the Escrow Agent's option:
 - (i) the Escrow Agent may refuse to comply with any claims or demands on it and continue to hold the Escrow Fund or a portion thereof (as applicable) until the Escrow Agent receives written notice signed by the City and the Proponent directing the disbursement of the Escrow Fund or a portion thereof (as applicable), in accordance with said direction;
 - (ii) in the event the Escrow Agent shall receive a written notice advising that litigation over entitlement to the Escrow Fund or a portion thereof (as applicable) has been commenced,

the Escrow Agent may pay the Escrow Fund or a portion thereof (as applicable) into the court in which such litigation is pending; or

- (iii) the Escrow Agent may (but shall not be required to) take such affirmative steps as it may, at its option, elect in order to substitute another impartial party to hold the Escrow Fund or to pay the Escrow Fund into a court of competent jurisdiction and/or to commence an action, the costs of it to be borne by whichever of the City or the Proponent is the losing party, and the Escrow Agent shall be released of any and all liability with respect to the Escrow Fund. The City and the Proponent jointly and severally agree to reimburse the Escrow Agent for any and all expenses incurred in the discharge of its duties under this paragraph including, but not limited to, solicitor's fees (either paid to retained solicitor or amounts representing the fair value of legal services rendered to itself).
- (c) All mailings and notices required hereunder shall be addressed to the party to receive the notice at the address set out below.

4. Limitations on Duties and Liabilities of Escrow Agent

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

5. Substitute for Escrow Agent

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

agent and the Escrow Agent shall thereupon be released of any and all liability with respect to the Escrow Fund.

6. Payment to Escrow Agent

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

7. Addresses for Service

Notice to the City shall be sent to:	City of Toronto
	55 John Street, Metro Hall, 7 th Floor Toronto, Ontario M5V 3C6
Attention:	Attention: Executive Director Housing Secretariat
Fax No.:	Fax No.: (416) 392-4219

with a copy to:

Notice to the Proponent shall be sent to:	Address
	X
	X
	X
	X

with a copy to:

Notice to Escrow Agent shall be sent to:	Address
	X
	X
	X
	X

APPROVED AS TO FORM

For Wendy Walby

Counterpart

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

DATED at the City of Toronto, this _____ day of _____, 20

CITY OF TORONTO

Name:
Title:

DATED at the City of Toronto, this _____ day of _____, 202

[NAME OF PROPONENT]

Name:
Title:

I have authority to bind the corporation

DATED at the City of Toronto, this _____ day of _____, 202

[NAME OF ESCROW AGENT]

Name:
Title:

I have authority to bind the Firm

SCHEDULE "A"**Escrow Agent's Acknowledgment of Receipt and Obligation***(electronic version available on request)*

The Escrow Agent hereby acknowledges receipt of [Pre-Acquisition Fund and Deposit Funding] or the [Acquisition Funding] portion of the Escrow Funds in the amount of \$_____ for [name of Proponent] delivered to it on the ____ day of _____, 202__, and also acknowledges the instructions contained in the said Escrow Agreement and agrees with all parties to hold the Escrow Fund in escrow and to deliver them only pursuant to the terms and conditions of the Escrow Agreement.

[name of escrow agent]