

CITY OF TORONTO

- and -

PROPONENT

PRE-DEVELOPMENT FUNDING AGREEMENT

ADDRESS, Toronto

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This Agreement is made effective XXXXXXXXXXXX, 202X.

BETWEEN:

CITY OF TORONTO

(the “City”)

- and -

PROPONENT

(the “Proponent”)

Background

- A. The Proponent applied for assistance with the pre-development activities related to the development of affordable rental housing located at [insert address], Toronto, Ontario under the City’s Community Housing Pre-Development Fund;
- B. The Executive Director, Housing Secretariat, has approved the application and Business Case from the Proponent under the Community Housing Pre-Development Fund for assistance with pre-development work for the development of affordable rental housing at [insert address] Toronto, Ontario.
- C. At its meeting held on June 26, 27 and 28, 2024, City Council adopted Item PH13.8 and approved the Community Housing Pre-Development Fund and the provision of financial assistance and benefits to fund [insert number of units] (XX) affordable rental units to be developed on the property municipally known in 2025 as [insert address], Toronto and approved the City entering into a pre-development funding agreement with the Proponent; and
- D. The Parties wish to enter into this Agreement to set out the terms and conditions of the financial assistance to be provided to the Proponent.

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

ARTICLE 1 INTERPRETATION

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

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

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

“Affordable Housing Unit” means a Housing unit in which Affordable Rent is charged;

“Affordable Rent” or “Affordable Rents” means Monthly Occupancy Costs at or below the lesser of the City’s Affordable Rents and the Provincial Affordable Rents;

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

“Business Case” means the eligible work approved for funding pursuant to this Agreement, as detailed in Schedule “A”;

“Business Day” means a day other than a Saturday, Sunday or any other day which the City has elected to be closed for business;

“City’s Affordable Rents” means Monthly Occupancy Costs at or below the lesser of Average Market Rent or 30% of the before-tax monthly income of renter households in the City as follows:

1. studio units: one-person households at or below the 50th percentile income;
2. one-bedroom units: one-person households at or below the 60th percentile income;
3. two-bedroom units: two-person households at or below the 60th percentile income;
4. three-bedroom units: three-person households at or below the 60th percentile income.

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

“City Loan” has the meaning given to it in Section 4.1;

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

“Deputy City Manager” means the Deputy City Manager, Development and Growth for the City of Toronto, and includes the Deputy City Manager’s designate or successor, if any;

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

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

“Escrow Agreement” means the Escrow Agreement to be 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 “D”;

“Event of Default” has the meaning given to it in Section 12.1;

“Executive Director, Housing Secretariat” means the division head responsible for the administration of the City’s Housing Secretariat Division and includes the Executive Director’s designate or successor, if any;

“First Construction Financing Draw” means the first draw by the Proponent under a construction financing or funding agreement for the Project from a third party lender;

“First Occupancy” means the first day of the first month immediately following the month in which an Affordable Housing Unit in the Project is rented for the first rental period following Substantial Completion;

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

“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;

“Indemnified Parties” has the meaning given to it in Section 9.1;

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

“Maturity Date” means the earlier of the date of the First Construction Financing Draw and three years from the date of this Agreement;

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

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

“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;

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

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

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

“Pre-Development Work” means the eligible work relating to the Project as outlined in the Business Case and/or any other eligible expenses under the Community Housing Pre-Development Fund as set out in Schedule “A”;

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

“Project” means the Affordable Housing Units to be developed and operated by or on behalf of the Proponent in accordance with the terms and conditions of this Agreement, as outlined in ARTICLE 3;

“Proposal” means the Proponent’s proposal dated _____ and submitted to the City to apply for assistance under the City’s Community Housing Pre-Development Fund for the Project, including the Business Case contained as Schedule A to this Agreement, and any attachments, correspondence or other documentation provided by the Proponent to the City in connection with the application process;

“Provincial Affordable Rents” means the affordable rents by bedroom type set out in the “Affordable Residential Units for the Purposes of the *Development Charges Act, 1997* Bulletin”, as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing pursuant to section 4.1(2) of the *Development Charges Act, 1997*, S.O. 1997, c. 27, or successor legislation.

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

“Transfer” means a sale or lease of the Project or Lands or any transaction whereby the rights of the Proponent under this Agreement or any part, are transferred, and includes any transaction or occurrence whatsoever (including, but not limited to, receivership proceedings, seizure by legal process and transfer by operation of law), but does not include the entering into of a mortgage; and

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

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

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

1.4 The following schedules form part of this Agreement:

Schedule “A”	Pre-Development Work / Business Case
Schedule “B”	Charge/Mortgage of Land
Schedule “C”	Legal Opinion
Schedule “D”	Escrow Agreement
Schedule “E”	Subsequent Legal Opinion
Schedule “F”	Declaration of Compliance with Anti-Harassment/ Discrimination Legislation and City Policy

ARTICLE 2 GENERAL

2.1 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.

2.2 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 use the City Loan solely to fund the Pre-Development Work, to advance the development of the Project as Affordable Housing for the Affordability Period, as detailed below:

Location: [insert address]
[insert legal description]
(the "**Lands**")

Affordable Housing Units: XX units consisting of:
[if available]:
XX One Bedroom units
XX Two Bedroom units
XX Three Bedroom units

Monthly Occupancy Costs: For the Affordable Housing Units, Monthly Occupancy Costs for such units shall not exceed the lesser of the City's Affordable Rents and the Provincial Affordable Rents;

ARTICLE 4 CITY LOAN

4.1 City Loan. Subject to the provisions hereof, the City will advance the amount of XXXXX Dollars (\$000,000.00), as a repayable loan, which funds are to be used solely for the Pre-Development Work. The City Loan will be advanced in accordance with ARTICLE 5 and at the milestones set out in Section 4.4 upon the conditions set out in Sections 0 and 4.6, either being satisfied or waived.

4.2 Security. The Proponent shall register or cause to be registered on the Lands a Charge/Mortgage of Land (the "**City Charge**") to secure the City Loan and the obligations of the Proponent hereunder. The City Charge shall be:

- (a) endorsed in favour of the City;
- (b) in the amount equal to the total value of the City Loan (the "**Principal Amount**"); and
- (c) shall include the terms set out in Schedule "B".

4.3 Repayment. The Principal Amount shall be payable upon the Maturity Date or an event of default. Where the Project has not obtained its First Construction Financing Draw within three years of the date of this Agreement, the Executive Director, Housing Secretariat, may in their sole discretion, extend the Maturity Date for the City Loan. Once the Principal Amount has been fully repaid, the City shall discharge the City Charge and the obligations of the Parties hereunder will terminate. In addition to the foregoing, the Proponent may at any time, in its sole discretion, and without notice, bonus or penalty,

repay the City Loan or such portion of it as has at that time been advanced and at the time of such repayment of the City Loan or the portion thereof that has been advanced, the City shall discharge the City Charge and the obligations of the Parties hereunder will terminate.

4.4 Payment to Escrow Agent. City Loan will be advanced to the Escrow Agent as follows, in accordance with Article ARTICLE 5:

MILESTONE	PAYMENTS
Within 60 days of the later of the signing of this Agreement and the date all conditions precedent in Section 0 that have not been met, have been waived	30%
Based on invoices and/or quotes submitted for approved Pre-Development Work, and subject to all conditions precedent in Section 4.6 having been met or waived. 4.6	70%

4.5 City Loan Conditions Precedent – First Advance. The City will make the advance of the City Loan to the Escrow Agent as set out in Section 4.4 upon the Proponent satisfying the following conditions unless waived in writing by the City:

- (a) the City Charge has been registered and an opinion satisfactory to the City Solicitor, substantially in the form of the Legal Opinion attached hereto as Schedule "C" is provided to the City from the Proponent's solicitor;
- (b) an Escrow Agreement, substantially in the form of the Escrow Agreement attached as Schedule" D" has been executed by the Escrow Agent and the Proponent and delivered to the City;
- (c) the Proponent shall have provided certified copies of such corporate documents of the Proponent as the City may reasonably require including, without limitation, letters patent or articles of incorporation, by-laws, and a certified copy of the directors' resolution authorizing the execution of this Agreement, and such documents are to the satisfaction of the City;
- (d) the Proponent shall have provided proof of commercial general liability insurance of not less than Two Million Dollars (\$2,000,000.00) endorsing the City as an additional insured;
- (e) the Proponent shall have provided the City with an up-to-date and comprehensive development schedule including the target date to obtain construction financing and construction start date;
- (f) the Proponent shall have completed, signed and delivered to the City a "Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy" form, a copy of which is attached as Schedule "F";

- (g) the Proponent shall not be in default (or being in default, the time provided for curing such default has not yet elapsed) under any of the terms and conditions of this Agreement, or any agreement with respect to the construction, development or operation of the Project, all of which shall be in full force and effect;
- (h) the representations and warranties of the Proponent set out in Article 6 hereof shall be true and correct and, if requested by the City, the Proponent shall have delivered a certificate or certificates to such effect; and
- (i) nothing shall have occurred which, in the sole opinion of the Executive Director, Housing Secretariat could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

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

- (a) the City shall have received from the Proponent's solicitor a subsequent legal opinion satisfactory to the City Solicitor updating the original legal opinion, substantially in the form of the subsequent opinion attached hereto as Schedule "E", which notwithstanding Section 4.4, shall be delivered within two (2) business days prior to the release of each advance of the City Loan;
- (b) the Proponent shall not be in default (or being in default, the time provided for curing such default has not yet elapsed) under any of the terms and conditions of this Agreement, or any agreement with respect to the construction, development or operation of the Project, all of which shall be in full force and effect;
- (c) 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
- (d) nothing shall have occurred which, in the sole opinion of the Executive Director, Housing Secretariat could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

4.7 No Waiver. The City providing any advance of the City Loan prior to the fulfillment of one or more of the conditions set forth herein shall not constitute a waiver by the City of any such condition, and the City reserves the right to require the fulfillment of each condition prior to the providing of any further advances of the City Loan.

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

ARTICLE 5 ADVANCE OF CITY LOAN

5.1 Advance to Escrow Agent. The City will advance the City Loan to the Escrow Agent pursuant to Section 4.4.

5.2 Requesting an Advance from Escrow to the Proponent. The Escrow Agent will be instructed, by the City, to make an advance of the City Loan, to the Proponent, within thirty (30) days of receipt by the City of the following, unless waived in writing by the Executive Director, Housing Secretariat

- (i) a request, in writing, on the Proponent's letterhead, setting out the amount of the City Loan being requested (to a maximum of \$XXXXXX) including details of what costs are being claimed (attaching original, notarial or certified copies of invoices), all to the satisfaction of the Executive Director, Housing Secretariat;
- (ii) a monthly expenditure report from the Proponent, all to the satisfaction of the Executive Director, Housing Secretariat; and
- (iii) a subsequent legal opinion from the Proponent's solicitors, satisfactory to the City Solicitor, updating the original legal opinion, substantially in the form of the subsequent opinion attached hereto as Schedule "E", which notwithstanding Section 5.2, shall be delivered within two (2) Business Days prior to the release of each advance of the City Loan.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 The Proponent represents and warrants that,

- (a) it is a corporation to which the *Not-for-Profit Corporations Act, 2010* applies, that is in good standing under that Act or a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that Act;

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

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

ARTICLE 7 OBLIGATIONS OF THE PROPONENT – GENERAL

7.1 The Proponent shall:

- (a) proceed diligently with the Pre-Development Work for the Project;
- (b) proceed diligently with an application to Canada Mortgage and Housing Corporation's Seeding Funding program, if one has not been made;
- (c) comply with all applicable federal, provincial and municipal laws, regulations and by-laws;
- (d) ensure all Affordable Housing Units meet the size requirements of the Affordable Housing Design Guidelines, unless otherwise approved in writing by the Executive Director, Housing Secretariat;
- (e) provide such information, within ten (10) days of such written request, with respect to the Project, such as progress on monthly payment draws, as requested or required by the City, acting reasonably, from time to time; and
- (f) 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.

ARTICLE 8

FINANCIAL RECORDS AND RIGHT TO AUDIT

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

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

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

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

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

8.6 This Article shall survive the termination of this Agreement.

ARTICLE 9

INDEMNITY

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

- (a) this Agreement;

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

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

ARTICLE 10 INSURANCE

10.1 Public Liability Insurance. The Proponent shall, at all times during the Affordability Period, maintain or cause to be maintained comprehensive Commercial General Liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Project or out of the operations of the Proponent or its sublessees in, on or about the Project, indemnifying and insuring the Proponent and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Project would, from time to time, carry (which amount shall initially be not less than Five Million Dollars (\$5,000,000.00) 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 insured on the wrap-up during construction and Commercial General Liability insurance policy which is to be maintained by the proponent following the

completion of construction.

10.2 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.

10.3 City Approval. Such insurance policies shall be provided by an insurer licensed to carry on the business of an insurer in Ontario or satisfactory to the City in its sole and absolute discretion.

10.4 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.

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

10.6 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 11 RESTRICTIONS ON CHARGES

11.1 The Proponent shall not assign this Agreement or the City Charge without the prior written consent of the City, which consent may be unreasonably or arbitrarily withheld, conditioned or delayed. The City may, in its sole discretion, charge a commercially reasonable administration fee for such request.

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

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

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

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

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

11.6 The City consents to the postponement of this Agreement and the City Charge to any municipal site plan, development or related agreement required by the City or any other Governmental Authority. Prior to executing any postponement, the City will be entitled to review the form of agreement to ensure same is satisfactory, as well as the postponement required so that same is in a form satisfactory to the City.

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

11.8 The provisions of this Article 11 shall not apply to any sale, lease, foreclosure or other disposition which is pursuant to the exercise of any remedy by a mortgagee where such mortgage and security related thereto is in priority to the City Charge.

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

ARTICLE 12 DEFAULT AND REMEDIES

12.1 Upon the expiration of any cure periods contemplated in Section 12.2, the following shall be considered events of default under this Agreement (each an "**Event of Default**"):

- (a) the Proponent has, in the opinion of the City, acting reasonably, failed to proceed with the Pre-Development Work for the Project in a timely manner, except where such failure is due to causes which, in the opinion of the City, acting reasonably, are beyond the control of the Proponent;
- (b) the Proponent ceases to conduct Pre-Development Work pursuant to the terms and conditions of this Agreement;
- (c) the Proponent has spent the City Loan in a manner not consistent with the Business Case approved by the Executive Director, Housing Secretariat and/or on expenses unrelated to Pre-Development Work;
- (d) the Proponent has breached Article 6, Article 7 and/or Article 8 of this Agreement in whole or in part;
- (e) the Proponent, in its Proposal or Business Case or in connection with this Agreement, has made materially false or misleading representations or statements, or provided materially false or misleading information to the City;
- (f) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;

- (g) the Proponent becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors or fails under any proposal or makes any assignment for creditors or any arrangement or compromise;
- (h) a receiver or receiver-manager is appointed for the Project by a creditor; or
- (i) there is, in the opinion of the City, acting reasonably, a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement with respect to the implementation and/or the operation of the Project.

12.2 If there is an Event of Default by the Proponent that is continuing, and the Event of Default has not been remedied within thirty (30) days of receipt by the Proponent of 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) if before the Maturity Date, require immediate repayment of the Principal Amount;
- (b) require the Proponent to provide additional information or documents to the City;
- (c) require the Proponent to provide to the City all information, data, plans, designs, models, drawings, details, specifications, reports, estimates, summaries, photographs, design calculations and all other documents and information prepared by any consultant or personnel hired by the Proponent using the City Loan, whether they be in draft or final format (the "Deliverables"). The Deliverables shall be and become the sole and absolute property of the City without the payment of any additional compensation whatsoever therefore by the City to the Proponent;
- (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 recovered in any court of competent jurisdiction as a debt due to the City;
- (e) terminate the Agreement by giving Notice to the Proponent;
- (f) enforce its rights pursuant to the City Charge; and/or
- (g) seek any additional remedy available to the City at law or in equity.

12.3 Notwithstanding Section 12.2(a), the Executive Director, Housing Secretariat may, in their sole discretion, forgive the City Loan in whole or in part if the Proponent has submitted a request for forgiveness and has provided all additional information requested by the City with respect to their request, and the Executive Director, Housing Secretariat determines that the Project:

- (a) is not feasible as an Affordable Housing rental or co-operative development as a result of findings of the Pre-Development Work;
- (b) faces significant challenges to project specifications and timelines as part of the Pre-Development Work that renders the Project non-viable;
- (c) faces unresolvable barriers such as changes to government funding programs or inability to secure construction financing despite the Proponent's best efforts; and
- (d) faces other conditions outside of the Proponent's control, including market conditions, Project governances or legislative changes that will prevent the Project proceeding despite the Proponent's best efforts.

12.4 If the City gives the Proponent Notice of an Event of Default, the City may suspend the provision of any advances of the City Loan under this Agreement until the breach is remedied.

12.5 Upon providing a Notice of termination of this Agreement, the City shall have no obligation to provide any advances of the City Loan to the Proponent.

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

ARTICLE 13 CONFIDENTIALITY

13.1 The Proponent, its officers, agents and employees shall treat all information which is obtained by the Proponent through its performance of this Agreement, as confidential and shall not disclose same, other than in accordance with this Agreement, without the prior written approval of the City unless required by law, provided, however, that the Proponent shall notify the City immediately upon learning of the possibility of any such requirement in order to allow the City a reasonable opportunity to contest or limit the scope of such required disclosure (including application for a protective order or other remedy).

13.2 Notwithstanding Section 13.1, the Proponent may disclose information to a mortgagee of the Project or the Lands 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.

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

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

ARTICLE 14 PUBLIC ACKNOWLEDGEMENT OF FUNDS

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

ARTICLE 15 DISPUTE RESOLUTION

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

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

ARTICLE 16 NOTICES

16.1 Unless otherwise provided in this Agreement, any notice, approval or other communication required or permitted to be given ("Notice") shall be in writing and shall be personally delivered, sent by prepaid registered mail, or sent by email to the following addresses:

(a) if to the City, at:

City of Toronto
Metro Hall, 55 John Street, 9th Floor
Toronto, ON M5V 3C6

Attention: Executive Director, Housing Secretariat
Email: HS-DR@toronto.ca

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
Email: legalrec@toronto.ca

(b) if to the Proponent, at:

[ADDRESS]

Attention:
E-mail:

16.2 Any Notice shall be deemed to have been validly and effectively given and received: (1) if personally delivered, on the date of delivery; (2) 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 provided by personal delivery or email; and (3) if sent by e-mail prior to 5:00 p.m. on a Business Day, on the day on which it was sent, or otherwise on the Business Day next following the day on which it was sent.

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

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

ARTICLE 17 CONTRACTUAL STATUS OF THE PARTIES

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

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

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

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

ARTICLE 18 UNCONTROLLABLE CIRCUMSTANCES

18.1 Except as expressly provided for in this Agreement, neither Party shall be in default under this Agreement or liable to the other Party for any loss, damage or delay to the extent it results from an uncontrollable circumstance if such circumstance is not caused by the default or act of commission or omission of such Party or avoidable by the exercise of reasonable effort or foresight provided that nothing excuses a delay caused by lack of funds or other financial circumstances or excuses a Party from payment of any amount payable hereunder when due.

18.2 For the purpose of this Article, the words “uncontrollable circumstance” means any force majeure, strike, walkout, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, change in laws, government regulations or controls, court order, or any cause beyond the reasonable control of the party, unless any such lack of control results from deficiency in financial resources.

ARTICLE 19 GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

19.11 Each obligation of the City or of the Proponent expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

19.12 Notwithstanding any other provision of the Agreement, the provisions of the Agreement which by their nature are continuing, including, without limitation, the provisions regarding confidentiality and indemnity, shall survive the termination or expiry of this Agreement.

19.13 Wherever any consent, agreement or approval of the City is required under the terms of this Agreement, unless otherwise provided and subject to any specific provision respecting such consent, agreement or approval, the City shall not unreasonably or arbitrarily withhold its consent, agreement or approval.

19.14 Notwithstanding any consent or approval given by the City with respect to any plans, specifications or other construction-related matter, the City will not be in any way liable for the design or construction of any proposed structure, and the party that has obtained the consent or approval of the City shall be wholly liable for such design and construction.

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

19.16 No communication or dealing between the Proponent and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City will be deemed to be a communication or dealing under the provisions of this Agreement between the Proponent and the City as parties to this Agreement, or to affect the City with notice of any such communication or dealings. It is intended and agreed that the City acts solely in a private capacity under this Agreement and any communication or dealing between the City and the Proponent as Parties to this Agreement will only be

effective if delivered in accordance with the notice provisions set out in this Agreement. No communication or dealing between the City as a Party to this Agreement and the Proponent as a Party to this Agreement will relieve the Proponent from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or in any other lawful manner separate and apart from the obligations of the Proponent imposed by this Agreement.

19.17 This Agreement may be executed in any number of counterparts (including counterparts delivered electronically) and all such counterparts taken together will be deemed to constitute one and the same instrument. This Agreement may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

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

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

Authorized by xxxx Item xxxx,
adopted as amended, by City of
Toronto Council on xxx

CITY OF TORONTO

Per: _____

Name: Abigail Bond

Title: Executive Director, Housing Secretariat

I have authority to bind the City

PROPONENT

Per : _____

Name:

Title:

APPROVED AS TO FORM

.....
For Wendy Walberg
City Solicitor

File # 4318-203-_-

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

SCHEDULE "A"
BUSINESS CASE

[APPROVED BUSINESS CASE TO BE INSERTED]

Funding Uses

	Eligible Work	Vendor (if selected)	Est. Amount
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Eligible Expenses for Pre-development Work

In addition to activities outlined above, Pre-Development Work means work occurring on or after XXXXXX related to the following activities for the Project:

- Analysis of need and demand for the proposed project
- Preliminary financial feasibility
- Business plans, including costs related to responding to requests for proposals
- Registration of security
- Professional appraisals, Completion appraisals Site surveys, Special purpose surveys
- Planning fees, if applicable
- Project viability study
- Geotechnical reports •
- Costs associated with arrangement with an escrow agent

- Accessibility modelling study
- Engineering studies
- Preliminary design, project drawings and specifications
- Construction cost estimates
- Quantity surveyor
- Contract documents
- Development permits
- Final viability report
- Energy modelling study
- Environment site assessments

Any other activities agreed to in writing by the Executive Director, Housing Secretariat.

SCHEDULE "B"**MORTGAGE/CHARGE OF LAND PROVISIONS****Additional Provisions**

1. It is agreed by the Chargor and the Chargee that this Charge is given as collateral security pursuant to the terms of a Pre-Development Funding Agreement between the Chargee and the Chargor, dated _____, 202_ (the "Agreement") and default that is continuing beyond any applicable cure periods under the terms of the Agreement, shall constitute default under the terms of this Charge.

2. Capitalized terms used in this Schedule but not defined will have the same meaning as in the Agreement.

3. 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 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.

4. 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 effects a Transfer (save and except for a transfer to an Affiliate and of which the Chargee has received notice), or permits any mortgage, charge or other encumbrances (save and except for the entering into of the mortgage) 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."

5. The Charge shall become immediately due and payable on default that is continuing beyond any applicable cure periods under the terms of this Charge, where the Chargee, in its sole and absolute discretion, has elected to accelerate the City Charge as a result of such default.

6. If the Charge has not become payable pursuant to the terms of paragraph 1 above, the full principal amount of the Charge shall become fully due and payable on the maturity date set out on page 1 hereof (the "Maturity Date").

7. The Chargee may

- (a) pay the fees and expenses of any receiver or of any lawyers (on a substantial indemnity basis), real estate broker, realtor or agency appointed or retained by the Chargee in connection with collecting the amount secured by the Charge, or

- (b) take any other proceedings or exercise any of its other rights under this Charge, and all costs, fees or expenses that the Chargee incurs in taking any one or more of these steps shall be added to the Principal Amount.

8. This Charge is void on payment to the Chargee of the Principal Amount and any other amounts paid on behalf of the Chargor and added to the Principal Amount, as set out in this Charge.

9. The discharge of this Charge shall be prepared by the Chargor and all legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Chargor.

LRO # 80 Charge/Mortgage

In preparation on yyyy mm dd at [TIME]

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

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.

[PROPONENT NAME, ADDRESS, ETC.]

Chargee(s)

Capacity

Share

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

Statements

Schedule: See Schedule

Provisions

Principal	\$xxxx.xx	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 *****

SCHEDULE "C"**LEGAL OPINION**

[TO BE ON LETTERHEAD OF SOLICITOR FOR PROPONENT]

DATE

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

Attention: Wendy Walberg, City Solicitor

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

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

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

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

The Agreement and the Charge are collectively referred to as the "**Documents**".

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

We have relied on the following documents, which are originals or copies, that are certified or identified to our satisfaction, to provide our opinion, and these documents have been attached for your reference. The documents are part of organization and public records as well as corporate records.

- 1. Certificate of Status of the Proponent dated _____.
- 2. The constating documents and by-laws of the Proponent including a certified copy of the Letters Patent of the Proponent effective _____ and Supplementary Letters Patent the Proponent effective _____, a certified copy of the Borrowing By-law of the Proponent, a certified copy of a resolution of the Proponent authorizing the borrowing and the execution and delivery of the Documents, the minute book and corporate records of the Proponent.
- 3. A Certificate of an Officer of the Proponent strictly with respect to the factual matters set out therein (the "**Certificate**").

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

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

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

- 1. the Proponent is a subsisting body corporate under the laws of the Province of Ontario, with the necessary powers to borrow the monies secured by the Charge;
- 2. the Proponent has the necessary power and capacity to execute, deliver and perform its obligations under each of the Documents pursuant to the terms of the Agreement;
- 3. all necessary corporate action has been taken by or in respect of the Proponent to authorize the execution and delivery of the Documents and the performance by the Proponent of its obligations thereunder and each of the Documents has been duly executed and delivered by the Proponent;

4. no authorization, consent, permit or approval of, or other action by, filing with or notice to any government, governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required at this time in connection with the execution and delivery of the Documents or the performance by the Proponent of its obligations;
5. the execution and delivery of each of the Documents and the fulfillment of the terms thereof by the borrower, do not result in a breach of, or constitute a default under (i) the Proponent's governing legislation; ii) By-laws of the Proponent; or (iii) any statute, regulation or the laws of the Province of Ontario or the federal laws of Canada applicable herein;
6. each of the Documents constitutes a valid and legally binding obligation of the Proponent, enforceable against the Proponent in accordance with its terms;
7. the Proponent is the sole registered and beneficial owner of the Property;
8. the Proponent has good and valid marketable [leasehold] title to the Property, free from all encumbrances or claims of any nature whatsoever, subject only to the qualifications and the Permitted Encumbrances set out in Schedule "B" attached to this letter (the "Permitted Encumbrances");
9. the Charge constitutes a good and valid [second] charge of the Proponent's interest in the Property and all right, title and interest of the Proponent therein, enforceable by the City in accordance with its terms, subject only to the Proponent's right of redemption thereunder and otherwise at law and equity, the Permitted Encumbrances;
10. 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;
11. there are no arrears in the payment of taxes with respect to the [leasehold] Property; and
12. the Property has not escheated to the Crown.

The opinions expressed above are subject to the following qualifications:

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

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

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

Yours truly,

Solicitor

SCHEDULE "C"

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

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

SCHEDULE "C"

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

SCHEDULE "D"
ESCROW AGREEMENT

THIS AGREEMENT made as of this ____ day of _____, 202x.

A M O N G:

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

- and -

XXXXXXXXXX
(hereinafter referred to as the "Proponent")

- and -

XXXXXXXXXXXXXXXXXX
(hereinafter referred to as the "Escrow Agent")

WHEREAS the City and the Proponent have entered into a pre-development funding agreement dated _____ (the "Pre-Development Funding Agreement"), under which the City has agreed to provide a pre-development loan (the "City Loan") towards the development of affordable housing to be operated as affordable rental housing in Toronto;

AND WHEREAS it has been deemed expedient to have the City Loan disbursed to the Proponent 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 Agreement; and

AND WHEREAS all capitalized terms used in this Escrow Agreement, unless otherwise defined herein, shall have the same meaning as in the Pre-Development Funding Agreement 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 entirety of the City Loan in the amount of XXXXXXXX Thousand DOLLARS (\$000,000) within sixty (60) days of the later of the signing of the Pre-Development Funding Agreement and the date that all conditions precedent set out in Section 4.5 Pre-Development Funding Agreement that have not been met, have been waived.

- (b) The City Loan will be referred to as the "Escrow Funds".
- (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".
- (d) The Escrow Funds 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 Pre-Development Funding Agreement and this Escrow Agreement.

2. Instructions to Escrow Agent

- (a) The Proponent shall be entitled to advances from the Escrow Fund upon receipt by the Escrow Agent of written confirmation from the City that the Proponent's request for an advance under the terms of the Pre-Development Funding Agreement entered into between the City and the Proponent with respect to the Pre-Development Work has been approved by the City and the amount of the approved advance.
- (b) The Escrow Agent, if so instructed by the Proponent, shall keep the Escrow Funds 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.
- (c) In the event a default pursuant to the terms of the Pre-Development Funding Agreement 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 Funds, 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 Funds or a portion thereof (as applicable) made by the City or the Proponent pursuant to this Escrow 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 Funds 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 Escrow 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 Funds 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 Funds 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 Funds or a portion thereof (as applicable) has been commenced, the Escrow Agent may pay the Escrow Funds 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 Funds or to pay the Escrow Funds 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 Funds. 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 Escrow 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 Funds, in accordance with the provisions of this Escrow Agreement.
- (d) The City and Proponent agree that if either shall, pursuant to this Escrow Agreement, deliver to the Escrow Agent a written demand for the Escrow Funds 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 Funds so long as the Escrow Agent continues to comply with the terms and conditions of this Escrow Agreement insofar as they relate to the Escrow Funds.

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 Funds (or such part thereof then held by the Escrow Agent) and any notices and correspondence received or sent with respect to the Escrow Funds 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 Funds.

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
Address:	55 John Street, Metro Hall, 7 th Floor Toronto, Ontario M5V 3C6
Attention:	Executive Director Housing Secretariat
Fax No.:	(416) 397-9155

Notice to the Proponent shall be sent to:

Address:

Attention:
Fax No./Email:

Notice to Escrow Agent shall be sent to:

Address:

Attention:
Fax No./Email:

8. Counterpart and Electronic Signatures

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 and 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.

DATED at the City of Toronto, on _____.

CITY OF TORONTO

Name: Abigail Bond
Title: Executive Director, Housing Secretariat

DATED at the City of Toronto, on _____.

XXXXXXXXXXXXXXXXXXXXX

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation.

DATED at the City of Toronto, on _____.

XXXXXXXXXXXXXXXXXXXXX

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 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 Funds in escrow and to deliver them only pursuant to the terms and conditions of the Escrow Agreement.

[name of escrow agent]

SCHEDULE "E"

SUBSEQUENT LEGAL OPINION

DATE

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

Attention: Wendy Walberg, City Solicitor

Dear Ms. Walberg

**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,

Proponent's Solicitor

Enclosures



Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

Background:

Organizations and individuals in Ontario have obligations not to engage in harassment, discrimination, and hate activity. These obligations are captured in the Ontario Human Rights Code, the Occupational Health and Safety Act, the Employment Standards Act, the Accessibility for Ontarians with Disabilities Act, the Criminal Code of Canada and the Charter of Rights and Freedoms.

The City's [Human Rights and Anti-Harassment/Discrimination Policy](#) and [Hate Activity Policy](#) incorporate these obligations not to engage in harassment, discrimination, and hate activity on all prohibited grounds set out in the Ontario Human Rights Code as well as the additional grounds of political affiliation and level of literacy as set out in section 2.3 of the [Human Rights and Anti-Harassment/Discrimination Policy](#).

These policies also require the following Declaration of Compliance with Anti-Harassment/Discrimination Legislation to be signed in order for a contract, permit or other permission to be approved or issued by the City. The name of the individual or organization and the fact that the Declaration was signed may be included in a public report to City Council.

Declaration:

I/We uphold our obligations in accordance with the above provincial and federal legislation and legal obligations. In addition, I/we uphold our obligations under the City's [Human Rights and Anti-Harassment/Discrimination Policy](#) and [Hate Activity Policy](#) that prohibit harassment, discrimination, and hate activity.

The organization or individual acting on behalf of the organization affirms the necessary policies, programs, information, instruction, plans and/or other supports are in place and are consistent with our legally mandated obligations. Additionally, in order to align with City policy, I/we agree to prohibit harassment, discrimination, and hate activity on all prohibited grounds set out in the Ontario Human Rights Code as well as the additional grounds of political affiliation and level of literacy.

I/We have an internal process available to employees, service recipients, and facility users to prevent, address and remedy discrimination, racism, harassment, hate activity and inaccessibility complaints. I/we agree that, upon the request of the City, I/we shall provide evidence of the policies, programs, information, instruction, plans and other supports and an appropriate internal complaint resolution process required under this Declaration which is sufficient to allow the City to determine compliance with policy and legal obligations.

I/We acknowledge that failure to demonstrate compliance with this Declaration to the satisfaction of the operating Division, in consultation with the City Solicitor, may result in the termination of the contract and/or other consequences, such as fines, penalties, or restrictions as set out in the relevant operating Division's procedures and/or contract.

Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

Declarant Information

Contact Information		
<input type="checkbox"/> Organization/Business <input type="checkbox"/> Individual		
(For Organization/Business representative provide business contact information)		
Organization Name (If applicable) Click here to enter text.		
Organizational Representative or Individual (First and Last Name) Click here to enter text.		
<input type="checkbox"/> Check this box if First Name and Last Name do not apply to you because you have either a registered Birth Certificate or Change of Name Certificate bearing a Single Name. Provide your name below.		
Single Name		
Street Number Click here to enter text.	Street Name Click here to enter text.	Suite/Unit Number Click here to enter text.
City/Town Click here to enter text.	Province Click here to enter text.	Postal Code Click here to enter text.
Telephone Number Click here to enter text.		Email Click here to enter text.
Signature of Organizational Representative or Individual: x _____		Date (yyyy-mm-dd) Click here to enter text.

Multilingual Translation Services: 311 and TTY 416-338-0889. For further information, consult this webpage: [Accessibility and Human Rights](#).

Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy