

**CITY OF HAMILTON**

**COMMUNITY SERVICES DEPARTMENT  
Housing Division**

<b>Report to:</b> Chair and Members Emergency & Community Services Committee	<b>Submitted by:</b> Joe-Anne Priel General Manager, Community Services Department
<b>Date:</b> August 24, 2009	<b>Prepared by:</b> Erin Mifflin, Ext. 7620

**SUBJECT: Hamilton Affordable Housing Partnership Initiative Fund Forgivable Loan Agreement & the Establishment of a Site Specific Municipal Capital Facilities By-Law for 255 West Avenue North (ECS08017(a) (Ward 3))**

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**RECOMMENDATION:**

- (a) That in accordance with By-Law #03-148, a site specific municipal capital facilities by-law for affordable housing, attached as Appendix A to Report ECS08017(a), be passed and enacted with respect to Spallacci Contracting Ltd., for 27 units located at 255 West Avenue North, Hamilton.
- (b) That Spallacci Contracting Ltd., be required to enter into the standard form Forgivable Loan Agreement, attached as Appendix B to Report ECS08017(a), for the 27 units located at 255 West Avenue North, Hamilton.
- (c) That the Mayor and City Clerk be authorized and directed to execute the standard form Forgivable Loan Agreement, attached as Appendix B to Report ECS08017(a), for Spallacci Contracting Ltd. for the 27 units located at 255 West Avenue North, Hamilton.

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Joe-Anne Priel  
General Manager,  
Community Services Department

**EXECUTIVE SUMMARY:**

On April 2, 2008, through joint Report ECS08017/PED08088, City Council approved funding through the Hamilton Affordable Housing Partnership Initiative Fund (HAHPIF) for Spallacci Contracting Ltd.'s affordable housing project, located at 255 West Avenue

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North, Hamilton. At the time, this project also received \$1.12 million in Federal/Provincial funding through the Canada-Ontario Affordable Housing Program (COAHP). Financial assistance in the amount of \$400,000 was approved by Council as a forgivable loan to assist with the affordable rental housing portion of the project. Council also approved additional financial assistance of up to \$420,000 to assist with environmental remediation costs associated with the development, as identified by the project's environmental consultant. Spallacci Contracting Ltd. evidence is that the actual environmental remediation cost is \$73,367.47. Therefore, the total amount of HAHPIF assistance to be provided to Spallacci Contracting Ltd. will be \$473,367.47, as noted in Appendix B to Report ECS08017(a), the Forgivable Loan Agreement.

As part of the previous Council approval of this project, Spallacci Contracting Ltd. was directed to enter into a Forgivable Loan Agreement for the HAHPIF and that the Mayor and City Clerk be authorized and directed to execute the Forgivable Loan Agreement.

This report recommends establishing a Site-Specific, Municipal Capital Facilities for Affordable Housing By-Law for 255 West Avenue North, Hamilton; and, approving the execution of the standard form Forgivable Loan Agreement to protect the City's financial and legal interests in disbursing funds from the HAHPIF.

**BACKGROUND:**

As Service Manager, the City of Hamilton (City) delivers the various homeownership and rental components of the COAHP on behalf of the Province of Ontario. Since the Program was initiated in 2003, City staff have facilitated the creation of 622 affordable rental units through 11 Council-approved projects.

In 2007, Housing Division staff issued Request for Proposal (RFP) C10-28-07 seeking proponents to apply for COAHP funding in tandem with the purchase of the City-owned site located at 255 West Avenue North, Hamilton (the former West Avenue School). Spallacci Contracting Ltd. was the successful proponent and, through joint Report ECS08017/PED08088, City Council recommended Spallacci Contracting Ltd. for funding under the Rental & Supportive component of the COAHP; and, also authorized the sale and transfer in ownership of West Avenue School to the proponent for \$325,000.

On December 10, 2008, an agreement was signed between the Province of Ontario and Spallacci Contracting Ltd. for 16 affordable rental housing units. Subsequent to that agreement, the proponent requested COAHP funding for an additional 11 units. Provincial approval was given on June 23, 2009. With a partial subsidy of \$1.89 million in Federal and Provincial funding to assist with capital costs, the 27 units will offer rents that are 20% below Canada Mortgage and Housing Corporation's (CMHC) average market rents for Hamilton.

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The former school is also designated as a heritage building, under Part IV of the Ontario Heritage Act, and the proponent has committed to maintaining the important Victorian characteristics of the property. As well, the proponent has indicated to City staff that the school will be the first heritage property in the Province of Ontario to have Leadership in Energy and Environmental Design (LEED) certification. LEED is a third-party certification program with an internationally accepted benchmark for the design, construction, and operation of high-performance green buildings.

**ANALYSIS/RATIONALE:**

City Council has previously approved HAHPIF funding for two other affordable rental projects. The first was \$130,000 for the St. Elizabeth Home Society project, located at 307 John Street South, Hamilton, on October 29, 2003, through Report PD03251. The second was for \$550,000, for the T. Valeri Construction Limited project located at 450 Cumberland Avenue, Hamilton, on November 24, 2004, through Report HCS04075.

These new rental housing developments are not “social housing” in the context of the Social Housing Reform Act, and as such, there are no ongoing operating subsidies provided by the City. Therefore, the intent of HAHPIF is to further decrease the capital costs associated with new rental construction. The disbursement and accountability of HAHPIF monies are based on the practices and protocols already in place for disbursing funds under the Hamilton Downtown Residential Loan Program.

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternatives for consideration as on April 9, 2008, Council approved HAHPIF funding to Spallacci Contracting Ltd. through joint Report ECS08017/PED08088.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial:

Funding for the HAHPI Fund was approved by Council through Report PD02001(a) on March 5, 2003. The Fund was in the amount of \$1,500,000 and was based on a recommendation from the Mayor’s Community Trustee Panel (Hamilton Future Fund). It is not a self-sustaining reserve fund; therefore, pending Council’s approval of the Forgivable Loan Agreement for 255 West Avenue North, Hamilton, there will be \$346,632.53 left in the fund for future affordable rental development(s) that also receive funding from senior levels of government.

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Staffing:

There are no staffing implications. Delivery of the COAHP – Rental & Supportive component, and the HAHPI Fund are delivered through the existing staff complement of the Housing Division.

Legal:

There are no adverse legal implications associated with the recommendations of Report ECS08017(a).

**POLICIES AFFECTING PROPOSAL:**

None.

**RELEVANT CONSULTATION:**

From the Corporate Services Department:

- Legal Services Division, Commercial/Development/Policy Section; and,
- Budgets & Finance Division, Finance & Administration Section.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.**

Partnerships are promoted.

Yes

No

**Environmental Well-Being is enhanced.**

Yes

No

**Economic Well-Being is enhanced.**

Infrastructure and compact, mixed use development minimize land consumption and servicing costs.

Yes

No

**Does the option you are recommending create value across all three bottom lines?**

Yes

No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**

Yes

No

## CITY OF HAMILTON

### BY-LAW NO. 09-XXX

#### To Authorize the Entering into Agreement(s) for the provision of Municipal Capital Facilities for Affordable Housing

**WHEREAS** subsection 110(1) of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that the Council of a Municipality may enter into agreements for the provision of Municipal Capital Facilities with any person;

**AND WHEREAS** paragraph 18 of section 2 of Ontario Regulation 46/94, as amended by Ontario Regulation 401/02, prescribes municipal housing project facilities as eligible Municipal Capital Facilities;

**AND WHEREAS** section 2 of City of Hamilton By-law 03-148 authorizes the City to enter into municipal housing project facilities agreements with housing service providers;

**AND WHEREAS** by Resolution dated \_\_\_\_\_, 2009, the Council of the City of Hamilton approved the common provisions to be contained in site specific agreements to be entered into for the provision of municipal housing project facilities;

**AND WHEREAS** the City is desirous of entering into agreements for the provision of a municipal capital facility with Spallacci Contracting Ltd., the owner of a property located at 255 West Avenue North, in the City of Hamilton, which facility is a municipal housing project facility.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. The City of Hamilton is hereby authorized to enter into agreements under section 110(1) of the *Municipal Act* with the owner of property municipally known as 255 West Avenue North in the City of Hamilton for the provision of a municipal capital facility, namely an affordable municipal housing project facility consisting of at least 27 rental dwelling units.
2. The Mayor and City Clerk are hereby authorized and directed to take any action and execute any documentation, which, in the opinion of the City Solicitor, may be required to give effect to section 1 hereof.

**PASSED and ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Fred Eisenberger  
Mayor

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Kevin C. Christenson  
City Clerk

## FORGIVABLE LOAN AGREEMENT

This Agreement dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009

### BETWEEN:

#### CITY OF HAMILTON

(hereinafter called the "City")

OF THE FIRST PART

– and –

#### SPALLACCI CONTRACTING LTD.

A corporation incorporated under the laws of the Province of Ontario  
(hereinafter called the "Borrower")

OF THE SECOND PART

### WHEREAS

- A. The Borrower has applied to the City for a loan to assist in the financing of the construction, renovation and/or rehabilitation of 255 West Avenue North, Hamilton, Ontario (and more particularly set out in Schedule "A" attached hereto) (the "Project") for the provision of affordable rental housing accommodation;
- B. The City and the Borrower have agreed to a forgivable loan on the terms and conditions set out herein.

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

1. The Borrower for value received hereby promises to pay to the City at 71 Main Street West, Hamilton, Ontario, L8P 4Y5 the principal amount outstanding from time to time up to the amount of **FOUR HUNDRED AND SEVENTY-THREE THOUSAND, THREE HUNDRED AND SIXTY-SEVEN Dollars AND FORTY-SEVEN Cents (\$473,367.47)** in the manner hereinafter provided together with all other monies which may from time to time be owing hereunder or pursuant hereto;

## 2. Interest

The principal amount outstanding from time to time shall bear interest both before and after default, maturity or judgment at a variable rate per annum equivalent to the highest rate charged by the City from time to time in respect of property tax arrears calculated and payable monthly (the "Interest Rate"). The rate of interest shall be determined as per the date of the disbursement of the loan by the City. The Borrower shall be advised of the rate of interest by letter by the City. With each change in the Interest Rate charged by the City in respect of property tax arrears there shall be a corresponding change in the loan rate effective forthwith upon such change in the tax arrears rate and without the necessity of any notice from the City to the Borrower. Interest as aforesaid shall accrue from day to day shall be calculated and payable monthly, in arrears on the first day of each and every month until the full amount of the loan has been repaid in full. Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand.

Notwithstanding the above, provided the Chargor is not otherwise in default under any of the Provincial Contribution Agreement, the Loan Agreement or the First Mortgage registered on title to the premises and any security related to the foregoing (the said security hereinafter defined as the "Security"), failure by the Borrower to pay interest monthly will not constitute a default hereunder and interest shall accrue and be compounded monthly and added to the principal amount Outstanding accrued and unpaid interest will be forgiven annually and will not constitute a default hereunder provided that the Borrower is in compliance with the Provincial Contribution Agreement, the Loan Agreement and the First Mortgage registered on title to the premises. The Borrower's compliance with the Provincial Contribution Agreement, the Loan or the First Mortgage shall be reviewed annually within 90 days of the Interest Adjustment Date. Interest Adjustment Date means the date on which the final advance is made by the City under Section 4 of this Agreement.

## 3. Term

The maximum loan term is twenty (20) years (subject to prior termination on default) commencing on the Interest Adjustment Date.

## 4. Advances

- (a) Upon completion of sixty percent (60%) of the total work required to complete the proposed Project sixty percent (60%) of the loan amount shall be advanced to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.
- (b) Upon completion of eighty percent (80%) of the total work required to complete the proposed Project a further twenty percent (20%) of the loan amount shall be paid to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.



- (c) Upon completion of one hundred percent (100%) of the total work required to complete the proposed Project the remaining twenty percent (20%) of the loan amount shall be paid to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.
- (d) Construction lien holdbacks shall be released to the Borrower in accordance with the provisions of the Construction Lien Act.
- (e) The Borrower shall submit with its request for each loan a certificate, of such architect or consulting engineer as is acceptable to the First Mortgagee or the City if there is no First Mortgagee confirming in accordance with the requirements of subparagraphs (a), (b) and (c) above that at the time of each loan advance the value of the work to be done on a construction contract is sufficient to substantially complete construction for the building or its rehabilitation and renovation and the value of the said remaining work is less than the aggregate of the Borrower's equity contribution (if any) the remaining amount to be advanced under the first mortgage, any Provincial contribution and the amount of the City's loan remaining to be advanced.
- (f) The City shall not be required to make any loan advance hereunder until such time as it has received the opinion of the City's solicitors that, as of the date of such loan advance, there are no construction liens registered against the property, no outstanding arrears of real property taxes for the property and no outstanding work orders.
- (g) The Borrower shall have applied for and received a building permit from the City.
- (h) Advances are to be made within ten (10) working days of written request. The City's Corporate Services Department is to receive verification of those items described above, on each such advance. The City shall not be required to make more than one advance in a month.

## 5. Postponement to Takeout Financing

Upon completion of construction, renovation and/or rehabilitation the City agrees to postpone the second mortgage securing this loan agreement to permanent term financing without payment of principal provided the permanent term financing does not exceed **FOUR HUNDRED AND SEVENTY-THREE THOUSAND, THREE HUNDRED AND SIXTY-SEVEN Dollars AND FORTY-SEVEN Cents (\$473,367.47)**.

Alternative – Provided the Borrower is not in default of this Agreement, or any security provided in support, and provided the equity requirement in 10(f) is maintained, the City, in its absolute discretion, may postpone to permanent term financing from time to time on terms and conditions satisfactory to the City.

**6. Prepayment**

The Borrower may prepay the outstanding indebtedness in whole or in part at anytime or times without penalty or bonus and in the case of payment in whole, all other monies for interest or expense, if any.

**7. Security**

The Borrower shall provide the following security in form satisfactory to the City and registered or recorded as required by the City prior to any advance or availment being made of the loan proceeds:

- (a) second charge/mortgage payable on demand in principal amount of **FOUR HUNDRED AND SEVENTY-THREE THOUSAND, THREE HUNDRED AND SIXTY-SEVEN Dollars AND FOURTY-SEVEN Cents (\$473,367.47)** secured against the property; subject to such prior registrations or encumbrances (Permitted Encumbrances as per Schedule "B";
- (b) assignment of rents;
- (c) site specific security agreement;
- (d) insurance as per attached Schedule "C";
- (e) such other security or supporting documents as the City or its solicitors may reasonably require to secure its position;

**8. Cancellation**

- (a) In the event the first advance contemplated in 4(a) hereof has not been advanced by January 31, 2011 or such other date as agreed to by the City then the City may in its sole and absolute discretion terminate this Loan Agreement;
- (b) In the event the final advance contemplated in 4(c) has not been advanced by March 31, 2011 or such other date as agreed to by the City then the City may in its absolute discretion terminate this Loan Agreement and the Borrower shall pay all outstanding principal amounts advanced, accrued and unforgiven interest and any costs provided for in this Loan Agreement

**9. General Conditions**

Advances will be made upon receipt of and/or satisfaction of the following:

- (a) upon receipt of the Borrower's draw request specifying the dollar amount required;
- (b) upon receipt of the architect/consulting engineers' draw/progress certificate specifying the dollar amount of service and/or materials

supplied under the contract with evidence of equity, mortgagee's bank advances and Provincial Contribution if any;

- (c) standard construction terms including statutory holdbacks to be followed;
  - (d) a 45 day holdback of 10% of the dollar value of services and/or materials supplied as certified in the draw progress certificate. Holdback will be held from each advance until substantial completion is declared and the lien period has expired;
  - (e) advances will be made and holdbacks released upon receipt by the City of its solicitor's title opinion ensuring continued ranking of the City's security interest;
  - (f) no subsequent encumbrances may be registered on title without the City's prior written consent, which can be unreasonably withheld. The City's consent to any subsequent encumbrance shall include the requirement that the encumbrance is fully postponed and subordinate to all City advances, repayments and security through the execution of an inter-lenders agreement satisfactory to the City;
  - (g) the Borrower is to ensure that any construction liens or other actions registered against the Project are cleared from title immediately. The City is not obligated to make loan advances if there is any construction lien;
  - (h) the Borrower shall ensure that all municipal realty taxes, development charges, site plan agreement, zoning by-laws and building permits, and any other municipal charges if any are in good standing at the time of each advance failing which the City will be under no obligation to advance;
  - (i) sale or transfer of property herein or any change in the ownership of the Borrower not approved by the City will cause all monies owing under the loan to become due and payable, plus interest and costs. If the Borrower requests the City's consent to a transfer of ownership of the property or a change in ownership of the Borrower then the City will provide its response within fourteen (14) business days of a written request;
  - (j) the Borrower will ensure that the architect/consulting engineer has full access to the Project as required to monitor construction progress by monthly site visits;
  - (k) the architect/consulting engineer retained is to be \_\_\_\_\_ or such other architect or consulting engineer acceptable to the City.
- 10.** The Borrower covenants that as long as this Agreement is outstanding, the following shall apply:

- (a) the Borrower shall pay all amounts owing (including interest, costs and other charges) under this Agreement and any line of credit agreement, loan agreement or any other agreement between the Borrower and the City;
- (b) comply with all the terms and conditions of this Agreement, the Provincial Contribution Agreement and in particular any Rent Protocol, (Schedule "D") and any prior mortgages;
- (c) realty taxes must be paid by the Borrower, current and remain in good standing throughout the development process, and during the term of the City loan;
- (d) the Borrower shall comply with the laws of the Province of Ontario, the Government of Canada and the City of Hamilton as they pertain to the development of the Property;
- (e) the Borrower shall comply with the City's requirements related to specific insurance terms to be met by Borrower in order to protect the City's interest.
- (f) the Borrower shall have equity of not less than 10% of the appraised value of the property as of the date of commencement and the date of completion of the Project. The Borrower shall maintain not less than 10% equity throughout the Term of this Loan Agreement. An accredited member of the Appraisal Institute shall complete the property appraisal prior to funding within a time frame acceptable to the City, providing opinion as to the value of the property prior to commencement of construction and subsequent to the completion of construction;

## **11. Default**

- (a) If default occurs under the terms, covenants and conditions as outlined above or under any security provided to the City or any other event which causes the City in good faith to deem itself unsecured then at the option of the City all monies owing shall immediately become due and payable upon demand; and
- (b) In addition to all monies owing becoming due in the event of default, Development Charges calculated as of the date of building permit issuance for the Project shall be immediately due and payable upon demand.

## **12. Costs**

The Borrower and City agree that all reasonable fees and costs incurred by or on behalf of the City, including but not being limited to legal, professional, registration, escrow agent, appraisal and survey costs and fees, independent

engineer costs and independent insurance advisor costs, are for the account of the Borrower, whether or not closing occurs.

All costs associated with the conversion or renovations are to be borne by the Borrower, including construction, design, administration fee, appraisals, inspections, legal and registration fees shall be considered eligible costs under the loan. The City retains the right to assess the reasonableness of costs and which costs are eligible under the terms of the program.

### **13. Acceleration**

- (a) All indebtedness and liability of the Borrower to the City that becomes payable on demand in accordance with the terms herein, is repayable by the Borrower to the City at any time on demand;
- (b) All indebtedness and liability of the Borrower to the City shall, at the option of the City: (1) become immediately due and payable, and/or (2) the security held by the City shall immediately become enforceable, and/or (3) the obligation of the City to make further advances or other accommodation available shall terminate, if any one of the following Events of Default occurs:
  - (i) the Borrower fails to make when due, whether on demand or at a fixed payment date, by acceleration or otherwise, any payment of interest, principal, fees or other amounts payable to the City;
  - (ii) there is a material breach by the Borrower of any other term, covenant or condition contained in this Agreement to which the Borrower and the City are parties;
  - (iii) any bankruptcy, re-organization, compromise, arrangements, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Borrower and, if instituted against the Borrower, are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;
  - (iv) a receiver is appointed over any property of the Borrower or any judgement or order or any process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;
  - (v) any material adverse change occurs in the financial condition of the Borrower in the absolute discretion of the City;

- (vi) any adverse change occurs in the environmental condition of any property, equipment, or business activities of the Borrower in the absolute discretion of the City;
- (vii) construction ceases for a period of 60 days due to the Borrower's default (strikes and Act of God excepted), and/or the Borrower abandons the site;
- (viii) the Borrower is in default of the terms and conditions of the construction financing secured by a first mortgage and or the Provincial Contribution Agreement (if any);
- (ix) the Borrower is in default of the Rent Protocol in Schedule "D".

#### **14. Forgiveness**

Provided the Borrower has fulfilled all of the requirements of this Agreement, the loan amount shall be fully forgiven on the last day of the month at the end of the term of the loan.

#### **15. Currency**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian funds.

#### **16. Insurance**

Not less than 5 business days prior to the initial advance of funds, the Borrower, shall provide the City with original Certificates of Insurance, or if required by the City, certified copies of each insurance policy, in respect of the property in form and content and with Insurers satisfactory to the City as more particularly set forth in Schedule "C", and provide the City with proof of same on an ongoing basis as reasonably requested by the City.

#### **17. Interpretation**

In this Agreement:

- (i) **Assignment of Rents** means the Assignment of Rents to be entered into as security for this Agreement;
- (ii) **Development Charges** means those development charges set out in By-law 04-145, as the same may be amended from time to time, or any successor thereof, which would have ordinarily been charged to the Borrower at the time of issuance of the building permit for this project and which were otherwise forgiven provided the project received funding from the City's Canada-Ontario Affordable Housing Program;

- (iii) **First Mortgage** means the mortgage registered against the lands described in Schedule “A” in the first position for purposes of financing the project;
- (iv) **Loan** means the City Loan contemplated by this Agreement;
- (v) **Project** means the development of lands described in Schedule “A” for purposes of an affordable housing project as defined by the City and Province of Ontario which must meet the rental protocols set out in Schedule “D”;
- (vi) **Provincial Loan** means any loan from the Province of Ontario for purposes of funding affordable housing projects.
- (vii) **Security Agreement** means the security agreement to be executed by the Borrower as security for and in support of the Loan.

**CITY OF HAMILTON**

Per: \_\_\_\_\_  
Name: Fred Eisenberger, Mayor

Per: \_\_\_\_\_  
Name: Kevin C. Christenson, City Clerk

**SPALLACCI CONTRACTING LTD.**

Per: \_\_\_\_\_  
Name: Rudi Spallacci, President

I have authority to bind the Corporation.

**SCHEDULE "A"**  
**Legal Description**

PIN: 17183-0085 LT

LOTS 17, 18, 19, AND 20, FRONTING ON THE WEST SIDE OF WEST AVENUE IN THE BLOCK BOUNDED BY WEST AVENUE, ROBERT, WELLINGTON, AND BARTON STREETS, IN R.E.A. LAND SURVEY, REGISTERED PLAN 286, CITY OF HAMILTON



**SCHEDULE "B"**  
**Permitted Encumbrances**

1. All mortgages and security collateral thereto totalling principal amounts which do not exceed the permitted amount as set out in this Loan Agreement and incurred in connection with the Project;
2. Such easements and restrictive covenants as do not prevent the Project from being constructed or used as Affordable Housing;
3. Municipal agreements relating to the Development Activities in connection with the Project.

## **SCHEDULE “C” Insurance**

1. Builder’s risk insurance (property insurance) for the full replacement value of completed construction project, including earthquake and flood.

The Policy must include the following:

- (a) replacement cost value;
- (b) stated amount co-insurance ;
- (c) waiver of subrogation; and,
- (d) loss payable in favour of (insert name of building owner or whoever has a financial interest).

**Note:** All deductibles and/or self-insured retention’s are the responsibilities of the contractor.

2. Boiler & Machinery Insurance (including pressure objects, machinery objects and service supply objects) on Comprehensive basis.

The Policy must include the following:

- (a) repair and/or replacement value;
- (b) state amount co-insurance;
- (c) waiver of subrogation; and
- (d) loss payable in favour of (Contractor and/or Owner).

3. Wrap Up Liability Insurance for Third Party Bodily Injury, Personal Injury and Property Damage to an inclusive limit not less than \$5,000,000 per occurrence and \$5,000,000 products and complete operations aggregate. The insurance shall be in the joint names of the Municipality, Designated Consultants, Designated Contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants or other person which the Municipality reasonably may require to be added as insured parties.

The Policy must include the following:

- (a) premises and operations;
- (b) owner’s and contractor’s protective liability;
- (c) broad form products and complete operations liability;
- (d) cross liability;
- (e) blanket written and oral contractual liability;
- (f) all risks tenant’s legal liability;
- (g) hoist liability;
- (h) fire fighting and forest tire fighting expense liability;

- (i) employers liability and voluntary compensation;
- (j) non-owned automobile liability;
- (k) directors, officers, employees, shareholders, legislators, and officials involved in the project added as insureds and/or additional insureds;
- (l) shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, work below and above water, tunnelling and grading, and similar operations associated with the construction work, as applicable;
- (m) sudden and accidental pollution liability with a discovery provision of not less than one hundred and twenty (120) hours and a subsequent reporting provision of not less than one hundred and twenty (120) hours; and
- (n) 30 day written notice of cancellation.

**Note:** Wrap-Up Liability Insurance is Commercial or Comprehensive General Liability Insurance written on a wrap-up basis in the names of the contractor and the sub-contractors, consultants etc. associated with the project. Wrap-Up programs are normally associated with large construction projects usually over \$5 million. However, a large contractor may obtain this coverage to cover all sub-contractors on a smaller project.

- 4. Professional Errors & Omissions Liability Insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this contract, in the amount not less than \$2,000,000 per claim and in the annual aggregate.
- 5. Automobile Insurance as per statutory requirements in Ontario and /or other jurisdictions, Ontario Automobile Policy (OAP 1) Owner's Policy Sections 3 and 4, auto liability for a limit not less than \$2,000,000 per occurrence, including Accident Benefits and where applicable Section 7, Loss or Damage Coverage.
- 6. Proof of WSIB Coverage – If the contractor does not provide a policy endorsement for Employer's Liability and Voluntary Compensation, the contractor shall submit a valid Clearance Certificate of WSIB coverage to the City of Hamilton prior to the commencement date of this contract/agreement. The contractor shall ensure that each subcontractor complies with the WSIB requirements set out in this article.

## **SCHEDULE “D” Rent Protocol**

### **1. DEFINITIONS**

1.1 In this Schedule “D”, unless the context requires otherwise,

- “Affordability Period” means the “twenty (20) year period” following the date of the first (1<sup>st</sup>) occupancy of a Unit in the Project.
- “Agreement” means the Agreement to which this Schedule “D” is attached.
- “Phase-out Period” means the last five (5) year period of the “Affordability Period” and

When used in this Schedule “D”, the term “rent” includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to the Borrower or the Borrower’s agent for the right to occupy a Unit and for any services and facilities and any privilege, accommodation or thing that the Borrower provides for the tenant in respect of the occupancy of the Unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.

1.2 The definitions in the Agreement shall apply to this Schedule “B”, in addition to the definitions contained in Section 1.1 above.

1.3 All references to section numbers in this Schedule are references to sections of the Schedule and not sections of the Agreement, unless otherwise explicitly stated.

### **2. AFFORDABLE RENT**

2.1 During the Affordability Period, the Borrower shall not charge rent for a Unit in the Project in excess of the affordable rent permitted under this Schedule “D” nor increase any rent charged for a Unit except as permitted in this Schedule “D”.

### **3. INITIAL RENTS**

3.1 The affordable rent for the first (1<sup>st</sup>) rental period for each Unit following completion of construction of the Project shall not exceed,

- (a) the average monthly market rent for Units of the same type, based on bedroom count, in the geographical area, as determined in the CMHC Annual Rental Market Survey most recently preceding each of the said first (1<sup>st</sup>) rental periods, plus
- (b) the optional charges, if any.

3.2 The optional charges referred to in Section 3.1(b) mean any amount which the Borrower may charge,

- (a) on account of utility costs directly attributable to consumption by the occupants of a Unit, determined on the basis of separate Unit meters or on the basis of a method of pro rata calculation satisfactory to MMAH, or
- (b) on account of the use of one (1) or more parking spaces as requested by the tenant of a Unit and at a rate which is similar to the rate charged to residential tenants by landlords of similar buildings in the municipality.

#### **4. RENT INCREASES**

- 4.1 The Borrower may increase the rent charged under Section 3.1(a) and 3.2(b) with respect to a Unit only if a least twelve (12) months have elapsed,
  - (a) since the day of the last rent increase respecting the Unit, if there has been an increase, or
  - (b) since the day the Unit was first rented for the first (1<sup>st</sup>) rental period following the completion of the Development Activities in connection with the Project.
- 4.2 Subject to Section 4.3 the Borrower shall not increase the rent pursuant to Section 4.1 during the Affordability Period by more than the then prevailing rent increase guideline established for each calendar year pursuant to the *Residential Tenancies Act, 2006*. The Borrower acknowledges that the rent increase guideline established for each calendar year pursuant to the *Residential Tenancies Act, 2006*, does not apply to the Project pursuant to the Act and its regulations and agrees that the rent increase guideline applies by virtue of the contractual terms of the Agreement and this Schedule "D".
- 4.3 From the beginning of the eleventh (11<sup>th</sup>) year of the Affordability period until the end of the Affordability Period, the Borrower may increase Unit rents pursuant to Section 4.1 by zero decimal five-five per cent (0.55%), in addition to the increase permitted by Section 4.2.

#### **5. PHASE-OUT PERIOD**

- 5.1 During the Phase-out Period the Borrower shall not increase the rent charged to in-situ tenants of Units by more than the rent guideline increase permitted under Section 4.2 and the additional increases permitted under Section 4.3.
- 5.2 Upon a Unit becoming vacant during the Phase-Out Period, the Borrower may rent the Unit to a new tenant at any rent agreed to by the Borrower and the new tenant.

#### **6. AFTER PHASE-OUT PERIOD**

- 6.1 After the end of the Phase-Out Period, the Borrower shall be permitted to rent Units in the Project to new tenants at rents agreed to by the Borrower and the new tenants.