

APPENDIX 6

**OFFER TO PURCHASE
TERM SHEET**

This term sheet (referred to in the attached Offer to Purchase as the "Term Sheet") forms part of the attached Offer to Purchase (and all references in this Term Sheet are to sections in the attached Offer to Purchase).

Property Address:

Lots 258 – 262, Plan M-2, Toronto, Ontario

1. PURCHASER:

CONTACT:

Name Title Telephone No.

ADDRESS:

2. PURCHASE PRICE:

Two Dollars \$ 2.00

3. DEPOSIT:

Dollars \$

Note: Refer to Section 2.1 (a)

4. PURCHASER'S SOLICITORS:

CONTACT:

Name Telephone No.

ADDRESS:

5. PURCHASER'S HST NO:

Note: Refer to Article 22

6. **IRREVOCABLE DATE:**
Note: Refer to Section 4.1

November 9, 2015

7. **CLOSING DATE:**
Note: Refer to Section 5.1 and
Section 7.1

30 days after all conditions in Paragraph 3 have been waived or
such other dates as has been mutually agreed to by the parties

OFFER TO PURCHASE

BETWEEN:

(the "Purchaser")

- and -

CITY OF TORONTO

(the "City")

1. THE PROPERTY

1.1 The Purchaser offers to purchase from the City the real property more particularly described in Schedule "A" attached (the "*Property*"), on the terms set out in this offer to purchase (the "*Offer*") and in the agreement of purchase and sale that will result if this *Offer* is approved by the Council of the City (the "*Council*") and accepted by the City (the "*Agreement*").

2. PURCHASE PRICE

2.1 The Purchaser shall pay the amount set out in Paragraph 2 of the *Term Sheet* (the "*Purchase Price*") on closing.

3. CONDITIONS:

3.1 Purchaser's Conditions:

This *Offer* and completion of the transaction herein contemplated is conditional until 4:30 on October 3, 2016, upon:

- a) the Purchaser's board of directors authorizing the transaction contemplated herein;
- b) the Purchaser satisfying itself as to the environmental and geotechnical condition of the Property;
- c) the City entering into the Contribution Agreement with the Proponent substantially in the form of the agreement attached hereto as Schedule B hereto, confirming sufficient funding to complete the remediation and construction of the Property; and
- d) the City delivering an up-to-date survey of the Property.

The Purchaser shall have the right to terminate this Agreement by notice in writing to the City on or before the expiry of the time set out above in the event that any one or more of the foregoing conditions has not been satisfied. Upon such notice, this Agreement shall be null and void. In the event that the Purchaser does not

notify the City within the time so limited, the Purchaser shall be deemed to have waived the foregoing conditions. The foregoing conditions are expressed to be for the sole benefit of the Purchaser which the Purchase shall have the right to waive and to complete the transaction contemplated by this Agreement.

3.2 City's Conditions

This *Offer* and completion of the transaction herein contemplated is conditional until 4:30 on October 3, 2016, upon:

- (a) the Proponent having provided a copy of the final design set of drawings and specifications incorporating all compliance requirements of the City's Building Division, as well as all the design and accessibility guidelines outlined in the Request for Proposals for the Development and Operation of Affordable Rental Housing at 200 Madison Avenue, satisfactory to the Affordable Housing Office;
- (b) the Proponent shall have provided a statement of environmental measures, based on the Toronto Green Development Standards, that it undertakes to achieve in the construction of the Project
- (c) the Proponent having provided a detailed outline including a design checklist satisfactory to the City, of the specific features that will be incorporated into the Project to accommodate the ongoing needs and requirement of future tenants with specific reference to seniors and persons with disabilities, satisfactory;
- (d) the Proponent having provided certified copies of such corporate documents of the Proponent as the City may reasonably require including, without limitation, letters patent or articles of incorporation and a certified copy of the director's resolution authorizing the execution of this Agreement;
- (e) the Proponent having provided certificates of incumbency of the persons signing on behalf of the Proponent;
- (f) the Proponent having provided an updated Capital Budget and Operating Budgets, satisfactory to the City;
- (g) the Proponent having provided an updated work plan and a capital budget cash flow chart, approved by the City;
- (h) the Proponent shall have provided a statement of environmental measures, based on the Toronto Green Development Standards, that it undertakes to achieve in the construction of the Project;
- (i) the Proponent shall have provided proof of the insurance required pursuant to the terms of Article 13 the Contribution Agreement attached as Schedule B to this *Offer*;
- (j) nothing having occurred which, in the sole opinion of the Director, could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

The City shall have the right to terminate this Agreement by notice in writing to the Purchaser on or before the expiry of the time set out above in the event that any one or more of the foregoing conditions has not been satisfied. Upon such notice, this Agreement shall be null and void. In the event that the City does not notify the Purchaser within the time so limited, the City shall be deemed to have waived the foregoing conditions. The foregoing conditions are expressed to be for the sole benefit of the City which the City shall have the right to waive and to complete the transaction contemplated by this Agreement

4. ACCEPTANCE – APPROVAL BY COUNCIL

4.1 The Purchaser agrees that no agreement for the purchase and sale of the *Property* shall result from this *Offer* unless and until this *Offer* has been approved by *Council* and accepted by the City. In consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Purchaser agrees that this *Offer* shall be irrevocable until 4:30 p.m. on the Irrevocable Date as set out in Paragraph 6 of the *Term Sheet* after which time, if not approved by *Council* and accepted by the City, this *Offer* shall be null and void.

4.2 Notice of the approval of this *Offer* by *Council* and acceptance of this *Offer* by the City may be communicated by the City to the Purchaser's lawyer (or, if the Purchaser's lawyer has not been identified on the *Term Sheet*, to the Purchaser) by e-mail or by delivering personally or sending by mail the copy of this *Offer* that was executed by the Purchaser that has been approved by *Council* and executed by the City in accordance with this *Offer*. The City shall indicate the date on which it has accepted this *Offer* (the "*Acceptance Date*") in the space provided in item **[B]** on the *Execution Page*.

4.3 The Purchaser agrees that upon *Council* approving and the City accepting this *Offer* there shall be a binding agreement of purchase and sale between the Purchaser and the City.

5. PROPERTY

5.1 The Purchaser shall be allowed until 4:30 p.m. on the fifteenth (15th) day next following the date the last of the conditions set out in Paragraph 3 have been waived (that date itself not to be included in the calculation of the fifteen (15) day period) (the "*Due Diligence Period*") to examine, at the Purchaser's own expense, the title to the *Property*, and to satisfy itself that:

- (a) the title to the *Property* is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in the *Agreement* and save and except for: (i) any registered restrictions or covenants that run with the *Property*, provided that they have been complied with; (ii) any registered agreements with municipalities, publicly regulated utilities and similar authorities, provided that they have been complied with; (iii) any easements, rights of way, and similar interests, provided that they do not, in the aggregate, materially adversely affect the present use of the *Property*; (iv) any qualifications, reservations, provisos and limitations imposed by any applicable statute; (v) any matters which would be disclosed by an up-to-date survey; and
- (b) there are no outstanding compliance orders or deficiency notices issued by any federal, provincial or municipal authority affecting the *Property*;

The City consents to the release by governmental authorities to the Purchaser of details of all outstanding municipal work orders or deficiency notices affecting the *Property*, and the City agrees to execute and deliver to the Purchaser such further authorizations in this regard as the Purchaser may reasonably require. Nothing

in this *Offer* or the *Agreement* shall be deemed to authorize or permit the Purchaser to request any governmental or other inspections of the *Property*, except as expressly provided for in the *Agreement*.

5.2 If, within the *Due Diligence Period*, the Purchaser gives *Notice* to the City or the City Solicitor of any valid objection to title, or to any outstanding order, deficiency notice or directive to which the Purchaser is entitled to object pursuant to Section 5.1 of this *Agreement* and will not waive, and which the City is unable or, in its sole and absolute discretion, determines not to remove, remedy or satisfy, the *Agreement* shall, notwithstanding any intermediate acts or negotiations in respect of any such objection, be at an end and the City, its officers, employees, agents, representatives and elected and appointed officials shall not be liable for any costs or damages. Except for any valid objection so made within the *Due Diligence Period*, and except for any objection going to the root of title, the Purchaser shall be conclusively deemed to have accepted the City's title to the *Property*.

5.3 Subject to Sections 5.1 and 5.2, the City agrees to discharge any outstanding liens, mortgages, charges or encumbrances other than the *Permitted Encumbrances* registered against title to the *Property* at its own expense prior to "*Closing*" (as defined in Section 7.1).

5.4 The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the *Property* except those that are in the control or possession of the City. The City agrees to deliver an up-to-date survey of the *Property* prior to the last day of the *Due Diligence Period*.

5.5 There is no condition, representation, or warranty of any kind, express or implied, that the present use of the *Property* or any future intended use of the *Property* is or will be lawful or permitted or that any survey or plan delivered by the City to the Purchaser is complete or accurate. Without limiting the generality of the foregoing, this *Offer* and the *Agreement* and the obligations of the Purchaser under this *Offer*.

5.6 The Purchaser acknowledges having inspected the *Property* and having satisfied itself with respect to all matters relating to the *Property* (other than those matters to which the Purchaser is entitled to object in accordance with Section 5.2 of this *Offer*), prior to submitting this *Offer*.

6. ACKNOWLEDGMENTS OF PURCHASER

6.1 The Purchaser acknowledges that: (i) the *Property* is being sold "as is", including, without limitation: (1) its environmental condition, state of repair, deficiencies and encroachments from and onto the *Property*, and; (2) all existing buildings, fixtures, structures, infrastructure, equipment, improvements, installations or inclusions of any kind, whether below-grade or above-grade, and whether apparent on a visual inspection of the *Property* or otherwise, and whether or not within the knowledge or imputed knowledge of the City, its officers, employees, agents, representatives, contractors or elected and appointed officials (collectively, the "*Improvements* (ii) the City has not made, does not make, and shall not be required to provide any warranty or representation with respect to the physical or environmental condition of the *Property* or with respect to the condition of the soil or groundwater, both surface and subsurface, or the existence of any *Hazardous Substance* in, on, under or in the vicinity of the *Property*, or with respect to any deficiencies or encroachments affecting the *Property* (environmental or otherwise), (iii) the City shall have no liability or obligation with respect to the value, state, or condition (environmental or otherwise) of the *Property* or with respect to the existence, location, value, state or condition (environmental or otherwise) of any *Improvements*; and (iv) all of (i), (ii) and (iii) shall on *Closing* be accepted and assumed by the Purchaser.

"*Hazardous Substance*" in this Article 6 means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, biological materials and organisms (including, without limitation, viral agents, mold, fungus and bacteria), flammable material, explosive material, radioactive material, ureaformaldehyde foam insulation, asbestos, PCBs, radiation and any other substance, materials, effect, or thing declared or defined to be hazardous, toxic, a contaminant, or a pollutant in or pursuant to any applicable federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives.

6.2 INTENTIONALLY DELETED

6.3 After *Closing*, the *Property* shall be entirely at the risk of the Purchaser and the Purchaser shall assume any and all responsibilities and liabilities arising out of or in any way connected with any state, quality, matter or condition in, on, under or in the vicinity of the *Property*, whether known or unknown and whether such responsibilities are imposed by federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives or by any regulatory authority, and whether imposed by common law, equity or statute.

6.4 The Purchaser agrees to enter into the Environmental Release and Indemnity, attached hereto as Schedule C to this *Offer*.

7. INTENTIONALLY DELETED

8. INTENTIONALLY DELETED

9. INTENTIONALLY DELETED

10. CLOSING DELIVERIES

10.1 The City shall, at its own expense, prepare, execute and deliver to the Purchaser on *Closing* the following:

- (a) Transfer/Deed of Land;
- (b) Statement of Adjustments; and
- (c) Contribution Agreement signed by the City

10.2 The Purchaser shall, at its own expense, prepare, execute and deliver to the City on *Closing* the following:

- (a) the *Purchase Price*;
- (b) a certified copy of the resolution of the Purchaser approving and authorizing the execution of the *Agreement* and completion of the transaction provided for in the *Agreement*;
- (d) H.S.T. Certificate as provided in Section 22.2;
- (e) Environmental Release and Indemnity in form of Schedule C; and
- (f) Contribution Agreement, signed by the Purchaser.

11. NOTICE

11.1 Unless otherwise provided in this *Offer* or the *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 telecopier and, in the case of notice to the City, addressed to it as follows:

City of Toronto
 55 John Street. Metro Hall, 2nd Floor
 Toronto ON M5V 3C6

Attention: Director of Real Estate Services
 Telecopier No.: (416) 392-1880

With a copy to:

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

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

and in the case of *Notice* to the Purchaser, to the Purchaser's lawyer (or if the Purchaser's lawyer has not been identified on the *Term Sheet*, to the Purchaser), at the addresses shown in paragraph 1 of the *Term Sheet*.

11.2 Any *Notice* so given shall be deemed conclusively to have been given and received on the date of delivery if personally delivered, or on the third (3rd) business day following the date of mailing if sent by prepaid registered mail, on the day of transmission by telecopier (if transmitted prior to 5:00 p.m. on a business day), and on the business day next following transmission (if transmitted after 5:00 p.m., or if transmitted on other than a business day), provided that if there is any anticipated or existing postal dispute, *Notice* shall be personally delivered or transmitted by telecopier. Either party may from time to time change its address for service by *Notice* to the other party to this *Offer*.

12. CONFIDENTIALITY AND ACCESS TO INFORMATION

12.1 The Purchaser, for itself, its shareholders, employees, engineers, surveyors, consultants and agents, agrees that it shall not at any time subsequent to the date set out in item **[A]** on the *Execution Page*, except as required by law, disclose to anyone or use for any purpose other than the purpose contemplated by this *Offer* and the *Agreement* or the development of the *Property* by the Purchaser any information concerning the City, the Purchaser and the *Property*, whether such information was disclosed by the City or obtained by the Purchaser, its employees, engineers, surveyors, consultants and agents through its investigations and inquiries, where such information was not or will not be a matter of public record. If, prior to *Closing*, the *Agreement* is terminated, the Purchaser shall return all documents and materials obtained by it from the City in connection with this *Offer* and the *Agreement*. This Section shall not expire with or be terminated or extinguished by or merged in the *Closing* of the transaction of purchase and sale contemplated by this *Offer* and the *Agreement*, and shall survive both the termination of this *Offer* and the termination of the *Agreement* for any reason or cause whatsoever and the *Closing* of this transaction.

12.2 (a) The Purchaser acknowledges that all information, documents and correspondence provided by the Purchaser to the City in connection with the *Offer*, the *Agreement* and the transaction provided for in the *Offer* and the *Agreement* (collectively, the "*Purchaser's Information*") will become the property of the City, subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) as amended ("*MFIPPA*") and subject to any other obligations of the City to disclose information in its possession or control. Therefore, the Purchaser acknowledges that all or some of the *Purchaser's Information* may be reproduced or otherwise copied by the City, may become part of the public record of the transaction provided for in the *Offer* and the *Agreement*, and consents to the disclosure of the *Purchaser's Information* by the City pursuant to *MFIPPA* or otherwise. The Purchaser should assume that the name of the Purchaser will be, in every case, a matter of public record.

(b) The Purchaser agrees to identify those portions, if any, of the *Purchaser's Information* which contain any scientific, technical, commercial, proprietary, financial or labour relations information, any trade secrets or any information of a similar confidential nature the disclosure of which could cause the Purchaser any harm. The Purchaser agrees that any of the *Purchaser's Information* which is not expressly identified to the City as confidential information at the time that it is received by the City will be treated as public information.

13. INTENTIONALLY DELETED

14. INTENTIONALLY DELETED

15. INTENTIONALLY DELETED

16. DIVISIONS/HEADINGS

The division of this *Offer* and the *Agreement* into Articles, Sections, Subsections, Paragraphs and Subparagraphs, and the insertion of headings or captions, are for convenience of reference only, and shall not affect the construction or interpretation of this *Offer* or the *Agreement* or any parts of them.

17. CUMULATIVE REMEDIES

No remedy conferred upon or reserved by one or both of the parties is intended to be exclusive of any other remedy. Each remedy shall be cumulative and in addition to every other remedy conferred or reserved, whether such remedy exists on the date of this *Offer* or after, and whether such remedy becomes available under common law, equity or statute.

18. INTERPRETATION

This *Offer* and the *Agreement* shall be read with all changes of gender and number required by the context. If two or more persons have executed this *Offer* as Purchaser, their liability shall be joint and several.

19. REFERENCES TO STATUTES

19.1 Except as otherwise expressly provided in this *Agreement*, references to any statute shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated under such statute, and to such statute and regulations as amended or re-enacted from time to time. Any reference to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute, or of any regulations promulgated under such statute, shall be deemed to include a reference to any corresponding provisions of future law.

20. TIME OF ESSENCE

20.1 Time shall in all respects be of the essence of all matters provided for in this *Offer* and the *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 Purchaser, or by their respective solicitors, who are expressly appointed for that purpose.

21. CANADIAN FUNDS

All dollar amounts set out in this *Agreement* are in Canadian funds.

22. INTENTIONALLY DELETED**23. INTENTIONALLY DELETED****24. ASSIGNMENT**

The Purchaser shall not assign this *Offer* or the *Agreement*, or direct that title to the *Property* be taken in the name of any person or entity other than the Purchaser, without the prior written consent of the City, which consent **may** be unreasonably and arbitrarily withheld. It shall be deemed to be an assignment of this *Offer* and the *Agreement* requiring the prior written consent of the City if there is a transfer or assignment of the whole or any part of the ownership or control of the Purchaser. If the City consents to an assignment, or to a direction that title to the *Property* be taken in the name of any person or entity other than the Purchaser, the Purchaser shall agree, and shall cause the assignee or such other person or entity to agree, in writing in favour of the City, to be jointly and severally bound to perform the obligations of the Purchaser under this *Offer* and the *Agreement*. The *Agreement* shall enure to the benefit of and be binding upon the City, its successors and assignees, and the Purchaser, its successors and permitted assignees.

25. NO REGISTRATION

The Purchaser agrees not to register this *Offer* or the *Agreement* or notice of this *Offer* or the *Agreement* or a caution, certificate of pending litigation, or any other document providing evidence of this *Offer* or the *Agreement* or of any interest of the Purchaser in the *Property* against title to the *Property* (collectively, the "*Purchaser's Registration*"). The Purchaser irrevocably nominates, constitutes and appoints the City as its agent and attorney in fact and in law to cause the removal of the *Purchaser's Registration* from title to the *Property*. Should the Purchaser be in default of its obligations under this Section, the City may (as agent and attorney of the Purchaser) cause the removal of the *Purchaser's Registration* from the title to the *Property*.

26. CITY AS VENDOR

26.1 Nothing in this *Offer* or the *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 *Offer* or the *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 *Offer* and the *Agreement*.

26.2 No communication or dealing between the Purchaser 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 *Offer* and the *Agreement* between the Purchaser and the City as parties to this *Offer* and the *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 *Offer* and the *Agreement* and any communication or dealing between the City and the Purchaser as parties to this *Offer* and the *Agreement* will only be effective if delivered in accordance with the notice provisions set out in this *Offer* and the *Agreement*. No communication or dealing between the City as a party to this *Offer* and the *Agreement*

and the Purchaser as a party to this *Offer* and the *Agreement* will relieve the Purchaser 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 Purchaser imposed by this *Offer* and the *Agreement*.

26.3 Any of the rights and obligations of the City under this *Offer* and the *Agreement* may be exercised and performed, respectively, by the Chief Corporate Officer from time to time, or by his or her successors and designate(s) from time to time.

27. APPLICABLE LAWS

The *Agreement* shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada. Any legal proceeding arising in connection with this *Agreement* shall be commenced and heard in a court (or, if applicable, a tribunal of competent jurisdiction) sitting in Toronto, Ontario, which it is agreed will be the appropriate location. If the court (or, if applicable, tribunal of competent jurisdiction) does not sit in Toronto, the legal proceedings shall be commenced and heard in the jurisdiction nearest to the City of Toronto within the Province of Ontario in which such court (or, if applicable, tribunal of competent jurisdiction) convenes.

28. TENDER AND ELECTRONIC REGISTRATION

(a) The parties waive personal tender, and agree (subject to subsection **(b)**, next following) that: tender may be validly and effectively made on the lawyer acting for the Purchaser or the City Solicitor, as the case may be. If the Purchaser or Purchaser's lawyer provides *Notice* to the City prior to *Closing* that the Purchaser is unwilling or unable to complete the transaction, the City will be relieved of any obligation to tender upon the Purchaser or the Purchaser's lawyer, and the City may immediately begin to exercise all of its rights under this *Offer* and the *Agreement* in respect of breach by the Purchaser.

(b) If the *LRO* provides for electronic registration of conveyancing documents in respect of the transfer of title to the *Property* on *Closing* ("*Teraview Electronic Registration System*" or "*TERS*"), the following provisions shall apply:

- (i)** the Purchaser agrees to retain a lawyer who is both an authorized *TERS* user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of this transaction, and shall authorize such lawyer to enter into an escrow closing agreement with the City Solicitor in the form recommended from time to time by the Law Society of Upper Canada or in such other form as is required by the City Solicitor (hereinafter referred to as the "*Document Registration Agreement*" or "*DRA*") establishing the procedures and timing for completing this transaction and to be executed by the Purchaser's lawyer and returned to the City Solicitor at least ten (10) days prior to *Closing*.
- (ii)** the Purchaser and the City agree that the delivery and exchange of documents and the release thereof to the City and the Purchaser, as the case may be: **(i)** shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documents); and **(ii)** shall be governed by the *DRA*, pursuant to which the lawyer receiving the documents, and/or certified funds, will be required to hold them in strict accordance with the *DRA*.
- (iii)** if the Purchaser's lawyer is unwilling or unable to complete the transaction using *TERS*, in accordance with the provisions of the *DRA*, then the Purchaser's lawyer (or their agent) shall be obliged to personally attend at the office of the City Solicitor, at such time on the day scheduled for *Closing* as the City Solicitor may direct, in order

to complete this transaction using *TERS* on the computer facilities in the City Solicitor's office, and shall pay a fee as determined by the City Solicitor, acting reasonably, for the use of the City's computer facilities.

- (iv) notwithstanding anything contained in this *Offer* or the *Agreement* to the contrary, it is agreed by the City and the Purchaser that an effective tender shall be deemed to have been validly made by the City upon the Purchaser when the City Solicitor has (i) caused all closing documents to be delivered to the Purchaser's lawyer in accordance with the provisions of the *DRA*; (ii) advised the Purchaser's lawyer by *Notice* that the City is ready, willing and able to complete the transaction in accordance with the terms and provisions of this *Offer* and the *Agreement*; and (iii) has completed steps required by *TERS* in order to complete this transaction that can be performed or undertaken by the City Solicitor without the cooperation or participation of the Purchaser's lawyer, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by or on behalf of the City Solicitor, without personally attending upon the Purchaser or the Purchaser's lawyer with the documents or funds required to be delivered by the City for *Closing*, and without any requirement to have an independent witness to confirm any of (i), (ii) or (iii), immediately preceding.

29. SCHEDULES

Schedules "A", "B", "C" and "D" attached, form part of this *Agreement*. If there is any conflict between what is set out in a Schedule and what is otherwise set out in the *Agreement*, the conflicting term set out in the Schedule shall prevail.

30. INDEPENDENT LEGAL ADVICE

The Purchaser acknowledges that the City, the City Solicitor and the City's solicitors, if any, have not represented and do not represent the legal or financial interests of the Purchaser, and do not provide and have not provided any legal, financial or other advice to the Purchaser. The Purchaser acknowledges that the Purchaser's interests can only be properly protected in this transaction if the Purchaser obtains independent legal and financial advice, and the City encourages the Purchaser to do so. In submitting the *Offer*, the Purchaser acknowledges that the City has recommended that the Purchaser obtain independent legal and financial advice and confirms: (i), that the Purchaser has done so; or (ii), that the Purchaser has made an informed decision not to do so, and has elected to submit the *Offer* and to proceed with the proposed transaction without the benefit of independent legal and financial advice, subject to the requirements of Section 29 relating to electronic registration.

31. ENTIRE AGREEMENT

This *Offer* and the *Agreement*, including any Schedules attached to this *Offer* and the *Agreement*, shall constitute the entire agreement between the parties concerning the transaction contemplated by this *Offer* and the *Agreement*. The Purchaser acknowledges that the City has made no representation, warranty, agreement or condition, whether direct or collateral, or express or implied, which induced the Purchaser to

make this *Offer* or to enter into the *Agreement* or on which reliance is placed by the Purchaser, or which affects the *Agreement* or the *Property*, other than as expressly set out in this *Offer* and the *Agreement*. This *Offer* and the *Agreement* shall not be modified or amended except by written agreement executed by both the City and the Purchaser.

[A] DATED the day of , 2015.

NAME OF PROPONENT

by: _____
Name:
Title:

by: _____
Name:
Title:

I/We have authority to bind the Corporation.

[B] The City accepts this *Offer* the day of , 2015.

CITY OF TORONTO

by: _____
Name:
Title:

by: _____
Name:
Title: I/We have authority to bind the Corporation

APPROVED AS TO FORM

For Anna Kinastowski, City Solicitor

Authorized by Executive Committed Item No. as adopted by the Council of the City of Toronto on theday of 2015.

SCHEDULE "A"

PROPERTY

Municipal Address: 200 Madison Avenue

Legal Description: Lots 25-262, Plan M-2
PIN 21219-0009 (copy attached) (the "*Property*").

The *Property* is being sold subject to the following encumbrances:

1. A restriction, registered under section 118 of the *Land Titles Act*, requiring the consent of the City to subsequent dealings with the land, which will not unreasonably be withheld (see Article 13 of the Contribution Agreement attached as Schedule B.
2. Normal utility easements serving the *Property* and/or other properties.
3. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements and building restrictions, provided they are complied with.
4. Any easements, rights-of-way, licences, and restrictions that run with the land and other minor encumbrances which do not materially interfere with the existing use of the *Property*.
5. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown and any statutory exceptions to title.
6. Any claims, leases, charges, encumbrances, easements or interests in or to the *Property* not disclosed by registered title;
7. Errors, omissions and defects, if any, in surveys and surveying matters generally, and irregularities, easements, encroachments, rights-of-way or other defects and discrepancies in title or possession which are or would be disclosed by an up-to-date survey of the *Property*, or any minor discrepancies in the legal description contained in any registered deed or other instrument.
8. Minor title defects which in the aggregate do not materially affect the marketability of the *Property*.
9. Any rights of expropriation, access or user, or any other similar right conferred or reserved by or in any statute of Canada or Ontario.
10. Any statutory liens or levies not disclosed by registered title.
11. Inchoate liens for taxes or assessments by public authorities.
11. Any structures, infrastructure, equipment, installations or inclusions of any kind, whether below-grade or above-grade, and whether apparent on a visual inspection of the *Property* or otherwise, and whether or not within the knowledge or imputed knowledge of the City, its officers, employees, agents, representatives, contractors or elected and appointed officials

SCHEDULE "B"
CONTRIBUTION AGREEMENT

CITY OF TORONTO

(the "City")

- and -

XXXXX

(the "Proponent")

CONTRIBUTION AGREEMENT

200 Madison Avenue, Toronto

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION..... 1

ARTICLE 2 GENERAL 4

ARTICLE 3 THE PROJECT..... 5

ARTICLE 4 FUNDING 5

ARTICLE 5 DISBURSEMENT OF FUNDING AND ASSISTANCE 8

ARTICLE 6 REPRESENTATIONS AND WARRANTIES 9

ARTICLE 7 GENERAL OBLIGATIONS OF THE PROPONENT10

ARTICLE 8 OBLIGATIONS OF THE PROPONENT DURING THE AFFORDABILITY PERIOD.....11

ARTICLE 9 TENANT SELECTION AND MONTHLY OCCUPANCY COSTS.....13

ARTICLE 10 FINANCIAL RECORDS AND RIGHT TO AUDIT15

ARTICLE 11 INDEMNITY15

ARTICLE 12 INSURANCE.....16

ARTICLE 13 RESTRICTIONS.....18

ARTICLE 14 DEFAULT.....20

ARTICLE 15 REMEDIES21

ARTICLE 16 RECEIVERSHIP.....22

ARTICLE 17 CONFIDENTIALITY22

ARTICLE 18 PUBLIC ACKNOWLEDGEMENT OF FUNDS.....23

ARTICLE 1923

DISPUTE RESOLUTION.....23

ARTICLE 20 NOTICES23

ARTICLE 21 CONTRACTUAL STATUS OF THE PARTIES.....25

ARTICLE 22 UNCONTROLLABLE CIRCUMSTANCES.....25

ARTICLE 23 GENERAL PROVISIONS25

BETWEEN:

CITY OF TORONTO
(the "City")

and

XXXXXXXXXX
(the "Proponent")

Background

- A. The City issued a Request for Proposals No. XXX (the "RFP") in May 2015 to invite proposals to develop 200 Madison Avenue; and
- B. The Proponent submitted a Proposal and at its meeting held XXXXXXXXX, 2015, Council for the City of Toronto approved to enter into an agreement with the Proponent to provide funding for the Proposal.

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:

"Affordability Period" means the term of this agreement, as set out in Article 3 hereof;

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

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

"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;

"Capital Budget" means the budget for the Development Activities of the Project, as amended and updated from time to time;

"City Charge" means the charge/mortgage of land referred to in Subsection 4.4 hereof;

"City Funding" means the Capital Funding to be advanced by the City;

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

"Conditional Letter of Commitment" means the letter issued by the Minister of Municipal Affairs and Housing, confirming that Ministry's intention to fund the Project;

"Development Activities" means those activities which are normally undertaken for the development and construction of a residential multi-unit building;

"Development Charges" means the development charges imposed by the City under the *Development Charges Act, 1997, S.O. 1997, c.27*, as amended from time to time;

"Director Affordable Housing Office" means the Director for the Affordable Housing Office responsible for the administration of this Agreement prior to occupancy and includes his or her designate or Successor, if any;

"Director, Social Housing Unit" means the Director Social Housing Unit, Shelter Support and Housing Administration responsible for the ongoing administration of this Agreement and includes his or her designate or Successor;

"Household Income" means total gross household income from all sources of all persons who reside in a unit or who will reside in a unit if it is rented to them as defined in the City's Community Rental Housing Program – Income Verification Guide;

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

"IAH Funding" means the capital funding to be advanced under the Federal–Provincial Investment in Affordable Housing (2014 Extension) provided through the Her Majesty the queen in the Right of Ontario as Represented by the Minister of Municipal Affairs and Housing;

"Initial Income Limit" means Household Income at or below four (4) times the annualized Monthly Occupancy Costs, as determined annually by the Director;

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

"Low Rent" means Monthly Occupancy Costs set at less than 80% of Average Market Rent;

"Moderate Rent" means Monthly Occupancy Costs set at between 80% and 100% of Average Market Rent;

"Monthly Occupancy Costs" means the total of the monthly rent payable to the Landlord for a housing unit including hydro, heat, water and hot water; "Monthly Occupancy Costs" do not include charges for parking, cable, telephone or any other like charges;

"Operating Budget" means the budget for the operation of the Project, as amended from time to time;

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

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, S.C. 2000, c. 5;

"MFIPPA protected information" means any "Personal Information" or "Personal as defined in MFIPPA";

"Program Guidelines" means the Investment in Affordable Housing (2014 Extension) for Ontario Program Guidelines, August 2014 Rental Housing Component published by the Ministry of Municipal Affairs and Housing;

"Project" means the Affordable Housing to be constructed, at 200 Madison Avenue and, subsequently operated by or on behalf of the Proponent in accordance with the terms and conditions of this Agreement, as outlined in Article 3;

"Property" means 200 Madison Avenue, Toronto, Ontario;

"Rent Supplement Agreement" has the same meaning as the term is given in the *Social Housing Reform Act, 2000*, S.O. 2000, c.27, as amended from time to time;

"Security" means the City Charge referred to in Section 4 and any other documents and or agreements and such opinions of the Proponent's legal counsel as the City determines necessary from time to time;

"Tenant Selection Policy" means a policy established by the Proponent and approved by the Director, Social Housing Unit which policy shall specify how tenants are to be selected and how information about such process is disseminated to the public.

"Waiting List" means the City's housing access list.

1.2 The following schedules form part of this Agreement:

- Schedule "A" Charge/Mortgage of Land
- Schedule "B" Forbearance Agreement
- Schedule "C" Proponent's Annual Targeting Report

Schedule "D"	Declaration of Non-discrimination Policy
Schedule "E"	Statutory Declaration Confirming equity contribution
Schedule "F"	Legal Opinion
Schedule "G"	Start of Construction Affidavit
Schedule "H"	Proponent's Initial Occupancy Report
Schedule "I"	Communications Protocol
Schedule "J"	Vacancy and Arrears Report
Schedule "K"	Proponent's Annual Occupancy Report

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

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

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

ARTICLE 2 GENERAL

2.1 It is agreed that where there is a contradiction between the terms of this Agreement and the Program Guidelines, the Program Guidelines will prevail.

2.2. In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

2.3 All references in this Agreement to section numbers are references to sections of this Agreement unless otherwise stated.

**ARTICLE 3
THE PROJECT**

3.1 The Proponent agrees to develop and operate an Affordable Housing Project for a period of XXX (xx) years commencing on first occupancy of the Affordable Housing Project, including a five year phase out period (the "Affordability Period"), as detailed below:

Location:	20 Madison Avenue Lots 259-262 Plan M-2, Toronto PIN: 21219-0009(LT)
Affordable Housing:	XX units X - 1 bedroom X - 2 bedroom X - 3 bedroom
IAH Funding:	XXXXX Dollars (\$XXX)
City Funding:	XXXXX Dollars (\$XXX)
Proponent's Equity:	XXXXX Dollars (\$XXX)
Rents:	Project average at or below 80% of Average Market Rent

**ARTICLE 4
FUNDING**

4.1 Funding Assistance. The Assistance to be provided to the Proponent shall be comprised of the following and shall be used solely for Development Activities.

- (a) **IAH Funding.** Subject to the provisions hereof, the City will advance IAH Funding in the amount of XXX Dollars (\$XXX), as a grant by way of forgivable loan. The IAH Funding will be advanced during the Development Activities in accordance with Article 5 hereof and are to be used solely to fund the Development Activities of the Project.
- (b) **City Funding Development Charges Reserve fund for Affordable Housing -** Subject to the provisions hereof, the City will advance the City Funding in the amount of XXX Dollars (\$XX), as a grant by way of forgivable loan. The City Funding will be advanced during the Development Activities in accordance with Article 5 hereof and are to be used solely to fund the Development Activities of the Project.
- (c) **Development Charges** – The City Shall exempt the Proponent from the payment of development charges with respect to the Project;

- (d) **Building Permit Fees** – the City will waive all Building Permit Fees with respect to the Project, if not already paid;
- (e) **Planning Application Fees** - The City shall waive the all planning application fees the Project, if not already paid;
- (f) **Property Tax Exemption** – The City shall exempt the Project from taxation for municipal and school purposes for a period of XXXXX (XX) years.
- (g) **Parkland Dedication Payment Requirements.** The City shall waive Parkland Dedication Payment Requirement with respect to the project, if not already paid;
- (h) **Rent Supplements.** The City will provide nine (9) rent supplements and, if required by the City at any time during the Affordability Period, provide up to 25% of the Project's housing units as rent-geared-to-income units, in accordance with the terms and conditions of this agreement or a rent supplement agreement to be entered into between the Proponent and the City.
- (i) **Reduction in Parking Requirements.** The Project has been deemed to be housing that qualifies for relief from normal parking standards.

4.2 Forgiveness. The principal balance of the IAH Funding and the City Funding will be reduced by five percent (5%) on each anniversary of the date of the first payment of City Funding, until fully forgiven, if the Proponent is in good standing under the terms of this Agreement.

4.3 Repayment. If this Agreement is terminated before the are fully forgiven, the Proponent shall repay to the City an amount equal to the outstanding balance of the IAH Funding and the City Funding as of the date of demand for repayment.

4.4 Security.

- (a) The Proponent shall register or cause to be registered a Charge/Mortgage of Land, on the Land, for the total of the IAH Funding and the City Funding to secure the obligations of the Proponent hereunder. The Charge/Mortgage of Lands shall be in the amount of XXXXX (\$XXXXX) and shall be in the form of the Charge/Mortgage set out in Schedule "A".
- (b) Prior to transferring the Property the City shall register a restriction against the title pursuant to Section 118 of the *Lands Titles Act*, restricting dealings with the Property during Affordability Period. Article 13 hereof sets out the conditions under which consents for subsequent registrations will be given.

4.5 Other conditions precedent. The obligation of the City to make any advances of the IAH Funding and the City Funding or to provide any other assistance listed in Subsection 4.1 is conditional upon prior compliance by the Proponent with such of the conditions precedent as are not previously waived in writing by the City:

- (a) the Proponent has provided the City with a signed commitment for the Approved Mortgage, if any, as well as the Capital Budget and Operating Budget approved by the CMHC underwriters, if applicable;

- (b) the Security has been registered;
- (c) the City, the Proponent and the Approved Mortgage shall have entered into a Forbearance and Priorities Agreement, substantially in the form of the agreement attached as Schedule "B";
- (d) the Proponent shall have provided the City with a current Annual Targeting Report in the form of the Annual Targeting Report attached hereto as Schedule "C";
- (e) the Proponent shall have completed, signed and delivered a "Declaration of Non-Discrimination Policy" form, a copy of which is attached as Schedule "D", to the City;
- (f) the Proponent has provided the City with a statutory declaration, substantially in the form of the Statutory Declaration attached hereto as Schedule "E" confirming that the equity contribution, committed to the Project by the Proponent, has been made;
- (g) the Proponent shall have provided an opinion from a solicitor satisfactory to the City Solicitor, substantially in the form of the Legal Opinion attached hereto as Schedule "F";
- (h) the Proponent shall have provided current Capital Budget and Operating Budgets satisfactory to the City;
- (i) the Proponent shall have provided proof, satisfactory to the City that all major contracts have been entered into in accordance with normal business practices, including using a competitive process, where appropriate. If normal business practices have not been followed, a business case for not following such practices must be submitted to and approved by the City;
- (j) the Proponent shall have provided to the City a fully executed contract, in the form of the CCDC, with a construction contractor for the completion of the Project, which contract shall include the bonds required by the City and provide for standard warranties;
- (k) the Proponent shall have and is proceeding with a work plan and a capital budget cash flow chart approved by the City;
- (l) the Proponent shall have provided proof that the following bonds, in a form and content that is in accordance with the most current CCDC approved bond forms, have been obtained:
 - (i) a performance bond in the amount of fifty (50%) per cent of the contract price; and
 - (ii) a labour and materials payment bond in the amount of fifty (50%) per cent of the contract price for labour, materials and/or services.
- (m) the Proponent will have provided to the City a sworn Start of Construction Affidavit attached hereto as Schedule "G";
- (n) the Proponent shall not be in default under the Approved Mortgage, if registered at the time of any advance;

- (o) for advances made subsequent to the first advance, the City shall have received, if requested, opinions from counsel updating opinions previously delivered, all in form and substance satisfactory to the City Solicitor;
- (p) the Proponent shall not be in default (or being in default, the time provided for curing such default has not yet elapsed) under any of the terms and conditions of this Agreement, or any agreement with respect to the construction or operation of the Project, all of which shall be in full force and effect;
- (q) 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
- (r) nothing shall have occurred which, in the sole opinion of the Director, could reasonably be expected to have a material adverse effect on the construction or the financing of the Project or the business, property, assets, liabilities, conditions (financial or otherwise) or prospects of the Proponent.

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

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

ARTICLE 5 DISBURSEMENT OF FUNDING AND ASSISTANCE

5.1 General. The City will advance funds, no more frequently than once monthly and within 30 days of receiving a request for an advance, as set out below, and provided that the other conditions in Article 4 have been met or waived in writing, representations and warranties set forth in Article 6 remain true and correct and the obligations of the Proponent set out in Article 7 have been met, where applicable.

5.2 Requesting an Advance.

A request for an advance must be made by an original signed letter from the Proponent and showing the draw number, the total amount requested and including the following:

Pre-construction

- (a) a summary of the amount requested referring to the approved budget amounts, expenditures to date and the amount remaining in the project budget;
- (b) supporting documentation from consultants or for services including originals or certified copies of invoices;

During and post construction

- (a) a summary of the amount requested referring to the approved budget amounts, expenditures to date and the amount remaining in the project budget for both hard and soft costs;
- (b) an application for payment certified by the project architect from the builder including a detailed payment request, WSIB Clearance Certificate and Statutory Declaration with respect to subcontractors and trades;
- (c) a quantity surveyor's report, addressed to the City including photos showing the current state of the project; and
- (d) any supporting documentation, not included in the quantity surveyor's report, that may be reasonably requested by the City.

5.3 Necessary Appropriations The disbursement of IAH Funding pursuant to this Agreement is subject to the necessary appropriations from the Federal Government and Provincial Government and payment of same by the Province to the City. The City, the Minister or CMHC shall have no liability in the event the respective appropriations or payment obligations to the City are insufficient to meet the funding obligations.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 The Proponent represents and warrants that;

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

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

**ARTICLE 7
GENERAL OBLIGATIONS OF THE PROPONENT**

7.1 The Proponent shall:

- (a) proceed diligently with the development of the Project in accordance with a current work plan, design drawings approved by the City, the capital budget and the cash flow expenditure plan;
- (b) ensure that construction of the building commences no later than 120 days after the execution of this Contribution Agreement;
- (c) work with the Toronto Building Trades Council's Hammer Heads Program to provide skill and employment based training within the construction industry through offering apprenticeship opportunities to youth living in high-risk environments. As part of the Proponent's commitment to the Hammer Heads Program, where possible, each union sub-trade that is awarded a contract to provide goods or services to the Project will be requested to participate in the Program and make their best efforts to employ Hammer Heads graduates. From the Commencement of Construction to the date the Project is fully occupied, the Proponent will provide the City with an ongoing six month status reports on the number of apprenticeship opportunities provided and identify any opportunities to ensure the success of the Program throughout the development of the Project by the Proponent;
- (d) ensure substantial completion of the building is reached no later than XXXXX, 201X, or such other date as determined to by the Director, Affordable Housing Office in his sole discretion;
- (e) notify the City of any increase in the capital budget, exceeding five per cent (5%) within ten days of the date the increase comes to the knowledge of the Proponent, or ought to have been known by the Proponent and provide the following with the notice:
 - (i) an updated capital budget and cash flow projection; and
 - (ii) confirmation that the increase can be accommodated;
- (f) comply with all applicable federal, provincial and municipal laws, regulations and by-laws;
- (g) ensure that the Project is kept free and clear of all liens and encumbrances (save and except the City Charge and the Approved Mortgage), including but not limited to liens registered pursuant to the *Construction Lien Act*, R.S.O. 1990, c.30. If a lien is registered against the Project, the Proponent will vacate the lien within ten (10) business days and provided that the lien has been vacated with ten (10) business days, the Proponent will not be considered to be in default of its obligations hereunder;
- (h) provide such information, within ten (10) days of such request, with information with respect to the Project, such as construction progress, projected Interest Adjustment Date, contributions by third parties and other projected target dates, as requested or required by the City, from time to time;

- (i) no later than 60 days prior to the projected occupancy date of the Project, provide the Director, Social Housing Unit with a completed Proponent's Initial Occupancy Report, in the form of Schedule "H";
- (j) if requested by the City, the Proponent shall provide an audited financial statement respecting the expenditure of the IAH Funding and City Funding, within ninety (90) days of the City's request, if it has been determined that the Project will not proceed; and
- (k) comply with the Communications Protocol attached hereto as Schedule "I", as it may be amended from time to time.

**ARTICLE 8
OBLIGATIONS OF THE PROPONENT
DURING THE AFFORDABILITY PERIOD**

8.1 The Proponent shall:

- (a) ensure that, when first entering into a tenancy agreement for a housing unit, within the Project and thereafter annually, where applicable, the tenant has a Household Income at or below the Initial Income Limit;
- (b) a housing unit will not be rented to the Proponent or shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent unless the Proponent is a non-profit co-operative as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, as amended, or is a not-for-profit corporation;
- (c) where there is a range of Low and Moderate rents, establish an internal transfer list to allow transfers into Low Rent units when available;
- (d) provide the Director, Social Housing Unit with a quarterly Vacancy and Arrears Report in a form as attached as Schedule "J" for the first year of the Affordability Period. For the balance of the term the Report shall be provided annually;
- (e) during the first year after the Occupancy Date, provide the following:
 - (i) unaudited quarterly financial statements in a form acceptable to the Director, Social Housing Unit;
 - (ii) interim information on the Gross Household Income and household composition of Units, in a form acceptable to the Director, Social Housing Unit.
- (f) at or near the end of the first year co-operate with the City in conducting an operational review and provide all requested relevant documents, calculations, statements or information with respect to the Project;
- (g) the Proponent will provide an audited financial statement with respect to the capital costs of the Project within one hundred and twenty (120) days of the City's request;
- (h) operate and maintain the Affordable Housing Project described in Article 3, in accordance with the terms and conditions of this Agreement and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do;

- (i) manage the Project so the total average of the Monthly Occupancy Costs for the Project is maintained at a maximum of eighty per cent (80%) of Average Market Rents for the duration of the Affordability Period;
- (j) put in place a good corporate governance policy, satisfactory to the Director, Social Housing Unit to prevent conflicts of interest in the management of the Project;
- (k) comply with the Communications Protocol as it may be amended from time to time;
- (l) establish a capital asset replacement reserve fund for the Project and pay into the reserve fund in each year of the Affordability Period the amount of a minimum of four (4%) per cent of the gross revenues for the Project or such lesser amount as agreed to by the Director in his absolute discretion. Annual contributions to the reserve fund shall be in addition to any interest earned by the reserve fund. Interest earned in the fund is to accrue in the fund. This fund or a portion thereof may be held by the holder of the Approved Mortgage;
- (m) provide representatives of the City, Province and Canada with access to its books, records, and to the Project, subject to any rights of the residential tenants, of the Project;
- (n) manage the Project in a fiscally responsible manner including ensuring that:
 - (i) a deficit is not incurred in any year without the approval of the Director, Social Housing Unit which approval shall not be unreasonably withheld; and
 - (ii) no expenditure is made which is of a material and excessive nature having regard to the normal practice for a similar housing project;
- (o) in each year of the Affordability Period and at least ninety (90) days prior to the start of each year, provide the City with its annual budget for the Project for the next following year;
- (p) in each year, commencing on the first anniversary of the Interest Adjustment Date, provide to the City, no later than three (3) months after the end of the Proponent's fiscal year:
 - (i) the Proponent's Annual Targeting Report or in a form designated by the Director, Social Housing Unit;
 - (ii) the Proponent's Annual Occupancy Report as set out in Schedule "K", or in a form designated by the Director, Social Housing Unit;
 - (iii) a management representation report, in a form designated by the Director, Social Housing Unit including management declarations and a report on compliance with the provisions of this Agreement;
 - (iv) audited financial statements in a form acceptable to the Director, Social Housing Unit; and
 - (v) information on the Gross Household Income and household composition of the Project rented to new tenants during the year, in a form acceptable to the Director, Social Housing Unit;

when the Interest Adjustment Date occurs less than six (6) months before the end of the Proponent's fiscal year, the first fiscal period to which the provisions of this section apply shall be not less than 12 months.

**ARTICLE 9
TENANT SELECTION AND MONTHLY OCCUPANCY COSTS**

9.1 Household Incomes. At initial occupancy the Household Income for each unit will not exceed four times the annual equivalent of the Monthly Occupancy Cost for the unit rented by that tenant.

9.2 Income Verification. The Proponent shall take such steps as are necessary to verify that Household Income for any unit does not exceed the Initial Income Limit prior to occupancy, as determined in accordance with the City's Community Rental Housing Program – Income Verification Guide and in a form acceptable to the Director, Social Housing Unit.

9.3 Source of Tenants

(a) **Moderate Rent units:** Proponents will publicly advertise and lease, using non-discriminatory practices, to tenants in a manner that is usual for market rent units; and

(b) **Low Rent units:** Proponents will accept referrals of tenants to the Project by Housing Connections from its waiting list, at the discretion of Housing Connections and according to its rules and practices and the number of tenants for each Low Rent unit must comply with the City's occupancy standards.

9.4 Monthly Occupancy Costs

(a) The total average Monthly Occupancy Costs for the Project shall not exceed eighty per cent (80%) of Average Market Rents for any year of the Affordability Period.

(b) Moderate Rents units – the Monthly Occupancy Costs will be set between 80% and 100% of Average Market Rents.

(c) Low Rent units - the Monthly Occupancy Costs will be set below 80% of Average Market Rents.

9.5 Hydro and Water Allowances

While Monthly Occupancy Charges include the cost of heat, water and hydro, if these services are to be paid directly by the tenant, the Monthly Occupancy Charges must be adjusted in accordance with the Hydro and Water allowance to be published annually by the City.

9.6 Monthly Occupancy Costs Increases

(a) Proponent may adjust the Monthly Occupancy Costs, with respect to a housing unit, if at least twelve (12) months have elapsed;

(i) since the day the housing unit was rented for the first rental period following the completion of the Development Activities in connection with the Project; or

(ii) since the day of the last rent increase with respect to the housing unit, if there has been an increase.

(b) Moderate Rent units –

- (i) Subject to 9.4(a) The Proponent shall not increase the Monthly Occupancy Costs during the Affordability Period by more than the prevailing rent increase guideline established each calendar year pursuant to the *Residential Tenancies Act, 2006* or any successor legislation (the "Acts"), to an amount not to exceed Average Market Rent. The Proponent acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* does not apply to the Project in statutory terms, and agrees that the rent increase guideline applies by virtue of the contractual terms of this Agreement.
- (ii) From the beginning of the eleventh (11th) year of the Affordability Period until the end of the Affordability Period, in addition to the increase permitted by section 9.4(a), the Proponent may apply to the City to increase Monthly Occupancy Costs to an amount not to exceed Average Market Rent, if extraordinary circumstances dictate a need for such increase.

(c) Low Rent units –

Household Income will be verified annually, in the approved manner, and while the Monthly Occupancy Costs shall not exceed 80% of Average Market Rent, an increase, in excess of the *Residential Tenancies Act 2007* guideline will be allowed if the Monthly Occupancy Cost are less than thirty (30%) of Household Income. Upon vacancy, the Monthly Occupancy Costs, allowed for the housing unit will revert to the percentage of AMR set out in Article 3.

9.6 Phase-Out Period. Upon a housing unit becoming vacant during and after the Phase-Out Period, the Proponent may rent the housing unit to a new tenant at any rent agreed to by the Proponent and the new tenant.

9.7 Tenant Provisions

The Proponent shall ensure that:

- (a) each lease shall provide that the disclosure to the City, CMHC or the Province, by the Proponent of the tenant's personal information including Household Income, has been consented to by the tenant;
- (b) each lease shall provide that the lease is exempt from paragraphs 6, 7 and 8 of subsection 30(1), Part VII of the *Residential Tenancies Act, 2006*;
- (c) it will provide the City with access to all information obtained from the tenant concerning the Household Income and family composition of each housing unit, which information the City may verify; and
- (d) it will ensure that it otherwise complies with the provisions of MFFIPA, in its collection and sharing of any MFFPI Protected Information, collected and shared, in accordance with the terms of this Agreement.

**ARTICLE 10
FINANCIAL RECORDS AND RIGHT TO AUDIT**

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

10.2 The Proponent shall put in place written operational policies and procedures relating to the financial management of the Project and shall provide a copy of those policies and procedures to the Director.

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

10.4 The Proponent will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor of Canada, Province of Ontario and/or 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.

10.5 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.

10.6 The Proponent shall make available all facilities, physical and otherwise, for the audits and inspections and shall provide Canada, Province of Ontario and/or the City and their authorized representatives with all of the information as it, or they, may from time to time require with reference to the books, accounts, records, receipts, vouchers and other documents.

10.7 The Proponent shall permit the City's representatives to make copies and take extracts from such books and records and shall furnish Canada and/or the City with such additional information as it may require with reference to such books and records.

10.8 For the purposes of this article, audit includes any type of audit.

10.9 This article shall survive the termination of this Agreement.

**ARTICLE 11
INDEMNITY**

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

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

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

11.2 The liability of the Proponent shall be limited to the amount of the IAH Funding and the City Funding advanced to the Proponent.

11.3 For greater clarity, the Proponent shall not be obligated or liable to repay all or any portion of the indebtedness hereunder including principal, interest, premium, costs of realization, damages or any other monies secured by or owing under or in connection herewith, including under any indemnity (collectively for the purpose of this paragraph only the "Indebtedness") and that the recourse of the City to recover the Indebtedness shall be limited and restricted to the right of the City to enforce its security solely against the Property and the rents, chattels and proceeds (including insurance proceeds) relating to the Property and to realize against the interest of the Proponent in the Property and the proceeds thereof, and the City shall not be entitled to effect realization against any other property or assets of the Proponent (or any other person, corporation, partnership or entity) any deficiency remaining outstanding after such realization. However, the City shall be entitled to name the Proponent in any action, enforcement or proceeding commenced to enforce its rights and to realize against the interest of the Proponent in the Property, but only for the purposes of being able to realize against the Property.

ARTICLE 12 INSURANCE

12.1 Building-in-Course-of-Construction Insurance. During the period of construction including demolition or construction on the Project, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the City and the Proponent and their employees and all those for whom they are at law responsible (without rights of cross-claim as between the City and the Proponent) from damage to the Project from time to time during the work including demolition and construction (which may be by policies effective from time to time covering

the risks during different phases of the work, demolition and construction) by a Builders' Insurance Policy including resultant damage from error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Project, to the replacement cost thereof.

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

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

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

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

12.6 Copies of Policies. The Proponent shall deliver certificates of all insurance to the City, annually.

12.7 Copies of Policies and Approval of Policies. The Proponent shall deliver certificates of insurance to the City, including the renewal or the replacement of the insurance policies, without request or demand by the City.

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

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

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

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

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

ARTICLE 13 RESTRICTIONS

13.1 The Proponent shall not mortgage, charge or otherwise encumber the Project or assign this Agreement, other than as security to the holder of the Approved Mortgage and by registration of the Approved Mortgage, at any time during the Affordability Period or permit any mortgage, charge or other encumbrance to remain outstanding in respect of the Lands or alter the terms of any mortgage or charge or encumbrance of the Project without the consent of the Director, Affordable Housing Office which consent may be withheld, acting in her sole discretion.

13.2 With respect to the registration of the restriction on title pursuant to section 118 of the *Land Titles Act*, the Director, Affordable Housing Office will provide his or her consent to subsequent registrations on the following terms and conditions:

- (a) if a postponement of the City Charge to a new first mortgage or an assignment of this Agreement as security for an Approved Mortgage is required:
 - (i) the Proponent is in good standing under this Agreement;
 - (ii) the Proponent's equity, in terms of initial percentage, remains invested in the Project; and
 - (iii) evidence is provided, satisfactory to the of the City, at sufficient equity remains to secure the City's mortgage;
- (b) If a postponement of this Agreement or 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 is required:
 - (i) the City is provided with the easement and/or shared facilities or cost sharing agreement(s); and
 - (ii) evidence is provided, if required, satisfactory to the City that the operation of the Project is not affected by the proposed registrations in any way.
- (c) If a consent to the sale, lease, assignment or other disposition of the Property is requested:
 - (i) the sale, lease or other disposition is to a corporation which has been approved by the Director, Social Housing Unit;
 - (ii) the purchaser enters into an agreement with the City and under that agreement assumes all of the Proponent's obligations and liabilities under this Agreement in respect of the Project;
 - (iii) the character and capabilities of the Project will not be changed or diminished;
 - (iv) the City has approved the agreement of purchase and sale or agreement to lease;
 - (v) the sale or lease will not decrease the number of Units in the Project;
 - (vi) the reserve fund established pursuant to Article 8 will be transferred to the purchaser, lessee or other transferee; and
 - (vii) such other condition or conditions as the City may determine from time to time.

13.3 If the City consents to an assignment of the Proponent's interest in the Contribution Agreement as security to the mortgagee of the Approved Mortgage. The City will enter into an assignment agreement if required by the Proponent's lender, in a form acceptable to the City.

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

ARTICLE 14 DEFAULT

14.1 The following shall be considered events of default under this Agreement:

- (a) the Proponent has, in the opinion of the City, failed to proceed with the implementation, construction and/or the operation of the Project in a timely manner, except where such failure is due to causes which, in the opinion of the City, are beyond the control of the Proponent;
- (b) the Proponent has failed to satisfy the Toronto Green Development Standards set forth in the statement provided to the City, pursuant to subsection 4.7(m);
- (c) the Proponent has failed to achieve substantial completion of the Project by XXXX, 201X, or such other date as agreed to by the City;
- (d) the Proponent, in its response to Request for Proposals No. [xxx] 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;
- (e) the Proponent ceases to construct and/or operate the Project pursuant to the terms and conditions of this Agreement;
- (f) if in the opinion of the City, acting reasonably, the Proponent knows or ought reasonably to have known at initial occupancy that a housing unit is being provided to a tenant whose Household Income exceeds the Initial Income Limit or that the household composition has been misrepresented or has not been verified on initial occupancy as set out in 9.2 hereof;
- (g) the Proponent is unable or unwilling to pay its debts as they become due or defaults under any Approved Mortgage;
- (h) an order is made or resolution is passed for the winding up or dissolution of the Proponent, or the Proponent is dissolved;
- (i) the Proponent becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or fails any proposal or makes any assignment for creditors or any arrangement or compromise;
- (j) a receiver or receiver-manager is appointed for the Project by a creditor other than the City;
- (k) if the City gives notice that it does not approve the Proponent's insurer; or
- (l) there is in the opinion of the City, acting reasonably, a material adverse change in risk in the Proponent's ability to carry out its roles and responsibilities under this Agreement with respect to the implementation and/or the operation of the Project.

14.2 If an event of default occurs and:

- (a) the breach has not been remedied within 30 days of receipt by the Proponent of written notice of the default or within such longer period as or is reasonably required provided the remedy is being diligently pursued; or
- (b) a plan satisfactory to the Director of the Affordable Housing Office to remedy the default has not been implemented within the time period specified in the notice,

the City may, in its absolute discretion, without restricting any remedies otherwise available, immediately terminate the Agreement by giving written notice to the Proponent.

14.3 If the City gives the Proponent written notice of an event of default, the City may suspend any further payment under this Agreement until the default is remedied.

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

ARTICLE 15 REMEDIES

15.1 If the Proponent is in breach of any part of this Agreement and the breach has not been remedied in accordance with Section 14.2 of this Agreement, in addition to the remedies set out in Article 14, the City may exercise any or all of the following remedies in any combination that the City chooses, and without limiting the generality of the foregoing, the City may:

- (a) require the Proponent to provide additional information or documents to the City;
- (b) correct the breach itself or by retaining a third party and the cost of so doing shall be payable forthwith by the Proponent to the City and may be retained from any unpaid portion of the funding being provided pursuant to this Agreement or may be recovered in any court of competent jurisdiction as a debt due to the City;
- (c) appoint or seek the appointment of a manager and/or receiver for the Project, whether an officer, employee or agent of the City or not if the City has determined that there are serious financial matters that could result or have resulted in the Proponent being unable to pay its debts as they become due;
- (d) require repayment of the unforgiven IAH Funding and City Funding;
- (e) rescind the Property Tax Exemption By-law passed with respect to the Project permanently or until the default is rectified; and/or
- (f) seek any additional remedy available to the City at law or in equity.

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

ARTICLE 16

RECEIVERSHIP

16.1 Where a Receiver is appointed by the City pursuant to Subsection 15.1, the Receiver shall be appointed with the agreement of any holder of the Approved Mortgage. The Receiver shall have the power to:

- (a) take control, direction and possession, or any of them, of the Project, the revenue and the assets of the Proponent, the operation and books, records and accounts of the Proponent or any part of them;
- (b) take control and direction of the employees and agents of the Proponent;
- (c) receive and recover and use all revenues and assets of the Proponent;
- (d) incur and pay liabilities;
- (e) complete the construction of the Project and maintain, operate and repair the Project; and
- (f) execute and prosecute all suits, proceedings and actions which the Receiver considers necessary for the proper protection of the Project, to defend all suits, proceedings and actions against the Proponent or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action, then pending or thereafter instituted and to appeal any suit, proceeding or action.

16.2 The City may at any time and from time to time change, terminate or renew the mandate of the Receiver or replace or reinstate the Receiver and fix the reasonable remuneration of the Receiver who may deduct the same out of the revenues of the Project.

16.3 Without limiting any rights of the City under this Agreement, the City acknowledges that it is the intention of the City to reinstate the Proponent whenever feasible, as determined by the City, as a self-governed entity retaining substantial control of the management of the Project within sixty days after the receivership becomes effective.

16.4 The Receiver shall be deemed to be the agent or attorney of the Proponent and the City shall not be responsible for the Receiver's acts or omissions.

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

ARTICLE 17 CONFIDENTIALITY

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

17.2 Notwithstanding Subsection 17.1, the Proponent may disclose information to the grantor of an Approved Mortgage, its lawyers, accountants and other professionals, provided that such persons require the information in order to properly perform their duties.

17.3 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.

17.4 The collection, use and disclosure of information by the City shall be governed by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56.

**ARTICLE 18
PUBLIC ACKNOWLEDGEMENT OF FUNDS**

18.1 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 all three levels of government. The Proponent shall notify the City in advance of any and all communication activities, publications, advertising and press releases.

18.2 The Proponent agrees to display such signs, plaques or symbols as one or more of the three levels of government may provide in such locations on its premises as the City may designate.

18.3 The Proponent shall co-operate with representatives of all three levels of government during any official ceremonies relating to the promotion of the Project.

**ARTICLE 19
DISPUTE RESOLUTION**

19.1 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.

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

**ARTICLE 20
NOTICES**

20.1 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 telecopier and, in the case of notice to the City, addressed as follows:

(a) if to the City, at:

CITY OF TORONTO
55 John Street, 7th Floor, Metro Hall
Toronto, ON M5V 3C6
Attention: Director, Affordable Housing Office
Fax No: (416) 392-8492

with a copy to the City Solicitor, at

55 John Street
Stn.1260, 26th Floor, Metro Hall
Toronto, ON M5V 3C6
Attention: City Solicitor
Fax No: (416) 397-5624

(b) if to the Proponent, at:

PROPONENT
XXXX
Toronto, Ontario XXX XXX
Attention:
Fax: (416) XXX-XXXX
Email:

20.2 Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3rd) business day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the business day next following the day on which it was sent.

20.3 Any Notice permitted or required to be given by the City may be given by the Chief Corporate Officer. However, the Chief Corporate Officer 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.

20.4 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.

20.5 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 21
CONTRACTUAL STATUS OF THE PARTIES**

21.1 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.

21.2 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.

21.3 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.

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

**ARTICLE 22
UNCONTROLLABLE CIRCUMSTANCES**

22.1 Except as expressly provided for in this Agreement, neither party shall be liable to the other party for any loss, damage or delay to the extent it results from an uncontrollable circumstance if such circumstance is neither caused by the default or act of commission or omission of such party nor 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.

22.2 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 23
GENERAL PROVISIONS**

23.1 The Proponent shall permit the City to provide an executed copy of this Agreement to the governments of Canada and Ontario.

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

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

23.4 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.

23.5 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.

23.6 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.

23.7 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.

23.8 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.

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

23.10 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.

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

23.12 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.

23.13 The covenants, representations, warranties and indemnity of the Proponent set forth in this Agreement shall survive the expiry of the Affordability Period.

23.14 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.

23.15 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.

23.16 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.

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

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

DATED this day of , 2016

CITY OF TORONTO

Per: _____

Name:

Title: Director, Affordable Housing Office

I have authority to bind the corporation.

DATED this day of , 2016

[PROPONENT]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation

APPROVED AS TO FORM



For Anna Kinastowski City Solicitor

Authorized by Executive Committee Item No. _____
as adopted by City of Toronto Council on
_____, 200____.

SCHEDULE "A"**MORTGAGE/CHARGE OF LAND PROVISIONS**
*(soft copy available on request)***Additional Provisions**

1. It is agreed by the Chargor and the Chargee that this Charge is given as collateral security for the Chargor's performance of its obligations under a Contribution Agreement on _____, 201_, (herein called the "Agreement"), which Agreement has been entered into with the Chargee and default under the terms of the Agreement, shall constitute default under the terms of this Charge.

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

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

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

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

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

SCHEDULE "B"

FORBEARANCE AND PRIORITIES AGREEMENT

(soft copy available on request)

THIS AGREEMENT is made as of the _____ day of _____, 201__.

BETWEEN

CITY OF TORONTO
(hereinafter called the "City")
of the FIRST PART

and

[_____]
(hereinafter called the "Bank")
of the SECOND PART

and

[_____]
(hereinafter called the "Proponent")
of the THIRD PART

WHEREAS:

A. The Proponent is the owner of the property municipally known as [_____] Toronto, Ontario more particularly described as [_____] (the "Property");

B. By a charge/mortgage of land registered in the Land Titles Division of the Toronto Registry Office (No. 66) (the "Land Registry Office") as Instrument Number _____ (the "Bank Mortgage"), the Proponent mortgaged and charged the Property in favour of the Bank, ("in the amount of");

C. By a charge/mortgage of land registered in the Land Registry Office as Instrument Number _____ ("the City Mortgage") [_____] the Proponent mortgaged and charged the Property in favour of the City to secure money payable by and the obligations imposed on the Proponent pursuant to Contribution Agreement entered into by the Proponent with the City (the "CA");

D. Pursuant to the CA, the Proponent agreed to undertake the development of an affordable housing project (the "Project") on the Property;

E. The parties hereto wish to set out certain (non exclusive) rights they have in the event of a default under either the Bank Mortgage or the City Mortgage.

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

Section 1 Priorities

The Bank Mortgage and other security registered and filed by the Bank, including an Assignment of Rents registered as Instrument No. _____, if any, and other amounts that have been advanced and all amounts that shall hereafter be advanced by the Bank under such Bank Mortgage and also including all other amounts secured thereunder, shall rank in full priority to the City Mortgage and all other security registered or filed on behalf of the City, notwithstanding their respective order of registration nor the timing of the making of advances thereunder, for the full amount of the monies stated to be secured thereby.

Section 2 Default Under City Mortgage

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

Section 3 Status of Bank Mortgage

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

Section 4 Default Under Bank Mortgage

1. If, as a result of a default pursuant to the Bank Mortgage or other security registered or filed by the Bank, the Bank exercises its remedies under the Bank Mortgage, the Bank shall:

(a) deliver a copy of the notice of default given by the Bank to the Proponent in regard to such default, to the City (the "Bank Notice");

(b) provide to the City together with the Bank Notice, a status statement with respect to the Bank Mortgage indicating the principal, interest and any other amounts outstanding pursuant to the Bank Mortgage as of the date of such status statement, together with a per diem rate of interest.

2. The City may notify the Proponent and the Bank in writing (the "Bank Remedies Notice") within forty-five (45) days of the date of receipt by the City of the Bank Notice that the City will assume the payments under the Bank Mortgage (and all other security held by the Bank in regard to the "Bank Mortgage").

3. In the event that the City does not deliver the Bank Remedies Notice as set out in subparagraph 4(2) hereof, the Bank shall be relieved from all restrictions and/or obligations and without limiting the generality of the foregoing, the Bank shall be at liberty to forthwith exercise any and all rights and remedies under the Bank Mortgage and/or all other security held by the Bank in regard to the Bank Mortgage free of any restrictive covenants.

Section 5 Advances of Bank Mortgage

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

Section 6 Postponement of Remedies under Bank Mortgage

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

Section 7 Delivery of a Bank Remedies Notice

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

- (1) where default has occurred in making any payment of principal or interest due under the Bank Mortgage or in the observance of any covenant in the Bank Mortgage and under the terms of the Bank Mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, (a) at any time before sale under the mortgage; or (b) before the commencement of an action for the enforcement of the rights of the mortgagee or any person claiming through or under it, and the City performs such covenant or pays the amount due under the Bank Mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the Bank, the City shall be relieved from the consequences of such default;
- (2) the City shall not be required to pay the three months interest or provide the three months notice set out in Section 17 of the Mortgages Act, R. S. O. 1990 c. M40, however, this provision shall not prejudice the Bank's right to receive all principal, interest and other monies due pursuant to the terms of the Bank Mortgage; and
- (3) the City will be conclusively deemed to have assumed the Bank Mortgage and all other security held by the Bank in regard to the Bank Mortgage and the indebtedness secured thereby or owing thereunder and to have covenanted and agreed to pay the amount secured by the Bank Mortgage, together with interest, at the time and in the manner set out in the Bank Mortgage and to observe, perform, keep and be liable under and bound by every covenant, attornment, term, condition and obligation in the Bank Mortgage contained, or contained in any other security registered and filed by the Bank, to be performed by the mortgagor/Chargor therein, at the time and in the manner and in all respects as therein contained, as if named therein, as principal debtor.

Section 8 Agreement of Proponent

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

Section 9 Notice

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

CITY OF TORONTO

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

Attention: Director, Affordable Housing Office
Fax No: (416) 392-8492

with a copy to:

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

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

[]

Attention:
Fax No.:

[]

Attention:
Fax No.:

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

Section 10 Gender and Number

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

Section 11 Headings

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

Section 12 Applicable Law

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

Section 13 Invalidity

If any covenant, obligation or agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such covenant, obligation or agreement is deemed to be independent of the remainder of this Agreement and to be severable and divisible

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

Section 14 Successors and Assigns

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

Section 15 No Assignment of Bank Mortgage

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

Section 16 Time

Time is of the essence of this Agreement.

Section 17 Further Assurances

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

Section 18 Counterparts

This Agreement may be signed in counterparts (including counterparts by facsimile) and all counterparts taken together shall be deemed to constitute one and the same instrument.

The parties have executed this Agreement as of the date first above written.

CITY OF TORONTO

Per: _____

Name:

Title:

I have authority to bind the Corporation.

[BANK]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation.

[PROPONENT]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

Authorized by Executive Committee Item No. _____
as adopted by City of Toronto Council
on _____, 200_____.

SCHEDULE "C"

PROPONENT'S ANNUAL TARGETING REPORT

Affordable Housing Program – New Program – Rental and Supportive Component Service Manager Funding Delivery

For year ending December 31, 20 ____

Name of Owner	RENTAL Number of Units				SOCIAL HOUSING Number of Units				AVERAGE RENT OF UNITS PER MONTH
	New	Conversion	Rehabilitation	Major Additions	New	Conversion	Rehabilitation	Major Addition	

CLIENTELE					
Family	Number of Units				
	Single	Senior	Supportive Victims of Domestic Violence	Supportive Mental Health	Other Target Group (Name)



Chief Administrator's Office
Shirley Hoy, Chief Administrative Officer

Strategic & Corporate Policy/Healthy City Office
City Hall, 11th Floor, East
100 Queen Street West
Toronto, Ontario M5H 2N2

Rosanna Scotti
Director
Tel: 416-392-8592
Fax: 416-696-3645
TTY: 416-338-0889

Declaration of a Non-Discrimination Policy

The City of Toronto requires that all individuals and organizations adopt a policy of non-discrimination as a condition of receiving a grant or other support from the City. This declaration must be completed by individuals applying for grants or other support. Please note that this requirement does not pertain to artistic content.

Your name and the fact that you have adopted this policy will be included in a public report.

I hereby declare that I will uphold policies which prohibit discrimination and which protect the right to be free of hate activity based on race, ancestry, place of origin, colour, ethnic origin, disability, citizenship, creed, sex, sexual orientation, gender identity, age, marital status, family status, receipt of public assistance, political affiliation, religious affiliation, record of offences, level of literacy or any other personal characteristics in any business that I conduct regarding this project.

Please type or print where applicable

Name:

Complete Address:

Telephone No.

Fax No.

Postal Code

Name of Project (if applicable):

Signature:

Date:

The information requested on this form is collected pursuant to Clause 5 of Strategic Policies and Priorities Committee Report 26, and Clause 2 of Report 19 of Corporate Services Committee adopted by Council on December 16 and 17, 1998. Its purpose is to verify that you have adopted the Non-Discrimination Policy and to report this back to Council. If you have any questions about this declaration, please contact the Manager, Diversity Management and Community Engagement at 416-392-6824.

Text Telephony (TTY) 416-338-0889.

Pour tout renseignement en français concernant la présente, veuillez composer le 416-392-7342.

Para obter informação sobre este assunto, queira contactar o 416-392-7348.

查詢有關上述事宜，請致電 416-338-0338.

Please return to the address shown above

SCHEDULE "E"

STATUTORY DECLARATION

PROVINCE OF ONTARIO

) IN THE MATTER OF title to 200 Madison Avenue

)

TO WIT:

) in the City of Toronto

)

) Legal description: Lots 259-262, Plan M-2, Toronto

) PIN: 21219-0009

) ("the lands and premises")

)

) AND IN THE MATTER OF a Charge

) thereof from ["name of Proponent"] to and

) in favour of the City of Toronto

I, [authorized signing officer], of the City of Toronto, DO SOLEMNLY DECLARE AS FOLLOWS:

1. I am the [officer's title] of the Corporation and as such have knowledge of the matters hereinafter deposited.

2. In accordance with the sum of \$ XXXXX has been advanced as its equity contribution the sum of (\$XXXX) towards the construction costs of the project

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

SWORN BEFORE ME at the
City of Toronto, this _____
day of _____, 201__

)

)

)

)

)

[Print name and title]

A Commissioner etc.

SCHEDULE "F"

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: Anna Kinastowski, City Solicitor

Re: City of Toronto (the "City") and []
(the "Proponent") property located at 200 Madison Avenue, Toronto (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 participated in the preparation of and acted in connection with the authorization, execution, issuance and delivery by the Proponent of the following documents:

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

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

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

- (a) the genuineness of all signatures, the requisite legal capacity of all individuals, the authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as photocopies, facsimile, certified or notarial copies thereof and that all facts set forth in the official public records, indices and filing systems and all certificates supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate;
- (b) that each party to the Agreement and the Charge was in existence when the Agreement and Charge were executed and delivered and had the power and capacity to enter into the Agreement and Charge;

- (c) that each of the Agreement and the Charge has been duly authorized, executed and delivered by each party thereto (whether or not a signatory thereto); and
- (d) that each of the Agreement and the Charge is a legal, valid and binding obligation of each party thereto other than the Proponent.

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

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

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

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

The opinions expressed above are subject to the following qualifications:

1. the enforceability of the Agreement and the Charge may be limited by applicable bankruptcy, winding up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditor's rights;
2. the enforceability of the Agreement and the Charge may be limited by general principles of equity and the obligation to act in a reasonable manner and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance, injunction and relief from forfeiture) which remedies are only available in the discretion of a court of competent jurisdiction;

3. we express no opinion as to whether a security interest may be created in permits, quotes, licences or other property which is neither personal property or an interest in land;
4. a court may decline to accept the factual and legal determinations of a party notwithstanding that a contract or instrument provides that the determinations of that party shall be conclusive;
5. no opinion is given as to the enforceability of any provision of the Agreement and the Charge providing for the severance of illegal or unenforceable provisions from the remaining provisions of the Agreement and the Charge;
6. whenever an obligation, act, agreement or instrument is expressed to be "enforceable" or "legal, valid and binding" or words of like effect, we mean that such obligation, act, agreement or instrument is capable of being given legal effect; we express no opinion as to any factors such as financial capacity or title to assets which may make such obligation, act, agreement or instrument unenforceable in fact;
7. the enforceability of any of the Charge entitling the Lender to exercise rights or remedies as a result of a default thereunder may be limited by applicable laws requiring creditors and secured parties to give obligors a reasonable time to raise money to pay the indebtedness owing by the obligors prior to taking any action to exercise such rights or remedies;

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

Yours truly,

Solicitor

SCHEDULE "A"

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

1. Charge registered on _____, 200__ as Instrument No. _____.

SCHEDULE "B"

Permitted Encumbrances:

City of Toronto Charge.

[list of other encumbrances to follow]

SCHEDULE "G"

AFFIDAVIT

Re: Start of Construction
200 Madison Avenue, Toronto, Ontario

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

1. Environmental remediation is underway on the property municipally known as 200 Madison Avenue, Toronto.
2. Attached hereto and marked as Exhibit "A" is a true copy the first building permit [the demolition permit] received for the above-mentioned affordable housing project.
3. I make this affidavit for no improper purpose.

SWORN before me at)
the City of)
in the Province of Ontario)
this day of)
201__)
)
)
)
)
)
)

[name and title of authorized signing officer]

A Notary Public in the
Province of Ontario.

SCHEDULE "H"

PROPONENT'S INITIAL OCCUPANCY REPORT

IAH – Rental Housing Component

A. Project Information

Reference No.	
Project Name	
Project Address	
Occupancy Date	
Contribution Agreement Expiry Date	

B. Number of Units in Project

Unit Type	IAH Units (A)	Units Not Receiving IAH Funding (B)	Total Number of Units (A + B)
Bachelor			
1 BR			
2 BR			
3 BR			
Other (specify)			
Total			

C. Depth of Affordability: Rents at Occupancy (IAH Funded Units)

Unit Type	Unit Size	Number of Units (A)	Actual Rent to be charged per month (B)	CMHC Average Market Rent (AMR – 20XX) or Alternate AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or Alternate (E)=(A)X(C)
Bachelor						
1BR						
2 BR						
3 BR						
Other (specify)						
TOTAL						

Notes:

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

Weighted Average Rents	Project Weighted Average Rent Total of (D)+Total of (A) =	CMHC or Alternate Weighted Average Rent Total of (E)+Total of (A) =
Depth of Affordability	(Project Weighted Average Rent ÷ CMHC (or Alternate) Weighted Average Rent) x100 =	

D. Source of Alternate AMR (if an alternate AMR is being used)

E. Rationale (if Depth of Affordability is greater than 80% of CMHC AMR (or Alternate))

F. Project Certification

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

Signed by Proponent *[please print name]*

Date: _____

I am *[please check on the appropriate line below]*

____ the Owner of the Project

____ the Chairperson of the Board of Directors of the Project

Signed by Service Manager

Date

[Print Name of Service Manager]

SCHEDULE "I"

COMMUNICATION PROTOCOL

1. GENERAL

- 1.1 CMHC and Ontario agree to undertake joint communications activities and products that will enhance opportunities for open, transparent, effective and pro-active communications with citizens through appropriate, continuous and consistent public information activities that recognize the contributions of the Parties and the applicant. This protocol applies to communications on Projects receiving CMHC Funding or Contributions by others under the program.
- 1.2 All public information material in relation to the CMHC – Ontario New Affordable Housing Program Agreement shall be prepared jointly and shall equitably reflect the contributions of the Parties.

2. JOINT COMMITTEE

- 2.1 The Joint Committee is a forum for sharing information on Affordable Housing Program Projects, planning and approving communications plans, materials and activities, but may elect to address other Program issues by mutual agreement.
- 2.2 The Joint Committee will continue to exist and operate for as long as is necessary to meet the requirements of the CMHC – Ontario New Affordable Housing Program Agreement.
- 2.3 The Joint Committee will consist of two (2) members appointed by the CMHC Minister and two (2) members appointed by the Minister of Public Infrastructure Renewal.
- 2.4 The Joint Committee will be headed by two (2) Co-chairs. The CMHC Minister will appoint one (1) of his or her two (2) members as the CMHC Co-chair and the Minister of Public Infrastructure Renewal will appoint one (1) of his or her two (2) members as the Ontario Co-chair.
- 2.5 The Joint Committee will meet at least twice each year.
- 2.6 The Joint Committee shall approve an annual communications plan and budget.

3. COMMUNICATING WITH APPLICANTS

- 3.1 The Ontario Co-chair will ensure that the CMHC Co-chair is provided with information on each Project application which has been approved five (5) business days before any communication of the approval to the applicant.
- 3.2 Project approval notifications in a form acceptable to both Parties shall identify the CMHC – Ontario New Affordable Housing Program Agreement as a source of funding.
- 3.3 All public information material related to calls for tendering shall clearly and prominently indicate that the Project is funded pursuant to the CMHC – Ontario New Affordable Housing Program Agreement.

4. COMMUNICATING WITH THE PUBLIC

Public Information Products

- 4.1 The Parties may develop information kits, brochures, public reports, and web site material to inform potential applicants and the public about the Affordable Housing Programs.

News Release

- 4.2 A joint news release shall be issued when the CMHC – Ontario New Affordable Housing Program Agreement is signed. Unless the Parties decide otherwise, there shall be a joint news release for each approved Project or group of Projects, in which each Party will have equal importance. A news release may include quotations from a federal, provincial and municipal elected official and the applicant. The Parties must agree on these quotations. The Parties shall agree on the timing of the news release.

Press conferences, Public Announcements and other Joint Events

- 4.3 The Parties shall co-operate in organizing press conferences, announcements and official ceremonies. The Parties should also agree on the messages and public statements at such events. The Parties may agree that special ceremonies and events be held at an appropriate location and time. Neither Party nor any municipality applicant or contributor, shall make any public announcement for a Project under the CMHC – Ontario New Affordable Housing Program Agreement unless the other Party has been informed of it at least seven (7) days in advance.
- 4.4 Either Party may organize a joint press conference. The requester shall give the other Party at least seven (7) days notice of such a press conference, public announcement or joint event. The Federal and Ontario Ministers, or the designated representative for each Party, may participate in these press conferences, which shall be held on a date and at a location that are agreed upon.
- 4.5 The signing of the CMHC – Ontario New Affordable Housing Program Agreement shall be the subject of an official ceremony.
- 4.6 The Parties shall work together to organize such announcements or official ceremonies, and shall follow a mutually agreed upon order of precedence. The Parties should jointly agree on the messages and public statements at such events.

Signage

- 4.7 Where applicable, the Joint Committee shall ensure that the applicant provides and installs temporary signage at a prominent location where there is visible activity related to an approved Project. The signage shall indicate that it is a CMHC- Ontario – Municipal (as applicable) New Affordable Housing Program Project, bear a message approved by the Joint Committee, and remain in place throughout the construction period.
- 4.8 Design, wording and specifications of joint signs shall reflect the participation of CMHC and Ontario and must be approved by both Parties. Signs shall have appropriate spaces indicating participation by the municipality and the applicant, if requested.
- 4.9 The Parties shall issues specifications for signs and time frames for their installation. Temporary signs must be removed within ninety (90) days of Project completion.

- 4.10 CMHC and Ontario may provide and install, where appropriate, a plaque or permanent sign bearing an appropriate inscription. The design, wording and specifications of such permanent signs shall be in accordance with this Schedule and must be approved by both Parties.

Advertising

- 4.11 Either Party may organize an advertising or public information campaign related to the Affordable Housing Programs. However, it must inform the other Party of the contents of the campaign's messages at least thirty (30) days before it is launched.

Payments

- 4.12 Payments to approved applicants under the Affordable Housing Programs will identify the Government of Canada as a source of funding.

5.

COST SHARING

- 5.1 Unless otherwise agreed by the Joint Committee, CMHC and Ontario will determine equitable cost-sharing arrangements for the costs associated with the development and delivery of communications products and activities in the approved communications plan and budget. This would apply to literature, media distribution, organization of joint special events, as established by both Parties.
- 5.2 Costs associated with any public announcement and official ceremony shall be eligible costs. Other costs of the Parties to organize such events would be borne by the Parties using an equitable cost-sharing formula.
- 5.3 Costs associated with any temporary or permanent signage incurred shall be eligible costs. Such costs of the Parties would be borne by the Parties using an equitable cost-sharing formula.
- 5.4 "Municipal" and "municipality" include public bodies designated by Ontario as the local functionary for Programs.

SCHEDULE "J"
VACANCY AND ARREARS REPORT

Housing Provider's Name: _____ Report Ending Date: _____

Year	20__	20__	20__	20__	20__	20__	20__	20__	20__	20__	20__	20__
	April	May	June	July	August	September	October	November	December	January	February	March
1								505 - MKT				
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												

ARREARS REPORT

0-30 Days	30-60 Days	60-90 Days

Instructions

Vacancy report is designed to show vacancy trends for a 12 month period, and monitor how vacancies are being addressed.

- List the most recent month in the last column.
- Record the unit number in the cell for each vacant month. Each row represents a vacant unit.
- Record whether or not the vacant unit is incurring market or RGI vacancy loss. The type of vacancy loss is determined based on the classification of the prior tenancy or membership.

For the Arrears Report record the total amount of outstanding arrears.

- For the past 30 days.
- The previous 30 to 60 days.
- The previous 60 to 90 days.

SCHEDULE "K"

PROPONENT'S ANNUAL OCCUPANCY REPORT

IAH – Rental Housing Component
For the Year Ended December 31, 20XX

A. Project Information

Reference No.	
Project Name	
Property Address	
Occupancy Date	
Contribution Date	
Contribution Agreement Expiry Date	

B. Average Rents at Year End

Unit Type	IAH Funded Units	Previous year		Current Year		(E) CMHC or Alternate AMR	Rationale (if D>B)
		Actual Rent per Unit per Month (A)	RTA Permitted Increase per Unit per month X % (specify) (B)	Actual Rent per Unit per Month (\$) (C)	Rent Increase (D)= (A) – (C)		
Bachelor							
1 BR							
2 BR							
3 BR							
4 BR							
Other (specify)							
TOTAL							

C. Depth of Affordability: Rents during year of reporting (IAH Funded Units)

Unit Type	Unit Size	Number of Units (A)	Actual Rent to be charged per month (B)	CMHC Average market Rent (AMR – 20XX) or Alternate AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or Alternate (E)=(A)X(C)
Bachelor						
1 BR						
2 BR						
3BR						
Others (specify)						
TOTAL						

Notes:

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

Weighted Average Rents	Project Weighted Average Rent Total of (D)=Total of (A) =	CMHC or Alternate Weighted Average Rent Total of (E)=total of () =
Depth of Affordability	(Project Weighted Average Rent+ CMHC (or Alternate) Weighted Average Rent) X100=	

Note:

Depth of Affordability cannot be greater than 80% of CMHC AMR or Alternate without the approval of the Service Manager.

D. Rationale (if Depth of Affordability is greater than 80% of CMHC AMR (or Alternate))

E. Project Certification

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

Date: _____

Signed by [please print name]

I am [please check on the appropriate line below]

_____ the Owner of the Project

_____ the Chairperson of the Board of Directors of the Project

Signed by Service Manager

Date

[Print Name of Service Manager]

SCHEDULE "C"
HST CERTIFICATE

TO: CITY OF TORONTO (the "City")

RE: The transfer of the property described as Lots 259-262, Plan M-2, City of Toronto (the "*Property*") from the City to the undersigned purchaser (the "*Purchaser*") pursuant to an Agreement of Purchase and Sale dated [] (the "*Agreement*")

In consideration of and notwithstanding the closing of the above-noted transaction, the Purchaser certifies that with respect to all goods and services taxes and all harmonized sales taxes ("*HST*") imposed under the *Excise Tax Act* (Canada) (the "*Act*") in respect of the Agreement and any conveyances, dispositions or supplies of land, goods, services or any interest in any of them to be made by the City under the *Agreement*:

1. The Purchaser is purchasing the *Property* as principal, for the Purchaser's own benefit and account, and the *Property* is not being purchased by the Purchaser as an agent or trustee or otherwise on behalf of another person or entity;
2. *HST* is payable in respect of this transaction in accordance with the *Act* and the undersigned, having agreed to pay consideration for the transfer, is liable for the payment of *HST* in respect of the consideration;
3. The Purchaser, at the time of closing the transaction provided for in the *Agreement*, is a registrant under the *Act* (*HST* Registration Number []), and its registration has not been withdrawn or revoked. The Purchaser shall self-assess, file returns and remit to the appropriate authority on a timely basis any *HST* owing in respect of the Agreement and any conveyances, dispositions or supplies of land, goods, services or any interest in any of them to be made by the City under the Agreement;
4. The Purchaser shall indemnify and hold the City, its successors and assigns, harmless from any liability of the City under the *Act* arising because of any incorrect statement or breach of the obligations of the Purchaser set out in this Certificate or the *Agreement* or arising under the *Act*, together with all fines, penalties, losses, costs, expenses and interest charges resulting from such incorrect statement or breach; and
5. The Purchaser agrees that this Certificate, including the indemnity given by the Purchaser in this Certificate, shall survive and shall not merge in the closing of the transaction provided for in the *Agreement*.

DATED the [] day of [], 20 []

[PROPONENT]

by: _____
Name:
Title: c/s

by: _____
Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE D
ENVIRONMENTAL RELEASE AND INDEMNITY

THIS RELEASE AND IDEMNITY ("Indemnity") is made as of the ____ day of _____, 2015.

BETWEEN:

CITY OF TORONTO
(the "Seller" and the "Indemnitee")

and

[PROPONENT]
(the "Indemnitor")

WHEREAS:

- A. By an agreement of purchase and sale dated the ____ day of _____, 2015 (the "Offer to Purchase"), the Seller (the "Indemnitee") agreed to sell and the Buyer (the "Indemnitor") agreed to purchase certain lands and premises municipally known as 200 Madison Avenue, Toronto (the "Property");
- B. The Property is known to be contaminated with certain chemicals including but not limited to petroleum hydrocarbons and polyaromatic hydrocarbons (the "Contamination");
- C. As conditions of the Offer to Purchase, the Indemnitor agreed to fully and completely release, and indemnify and save harmless the Indemnitee in respect of any and all environmental matters including but not limited to the Contamination.

NOW THEREFORE in consideration of the sum of \$10.00 and completion of the transaction contemplated by the Purchase Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is acknowledged), the parties agree as follows:

1. DEFINITIONS

The following terms shall have, for the purpose of this Indemnity, the following meanings:

- (a) "Claim" or "Claims" means:
- (i) any claims, orders, draft orders, complaints, appeals, requests for review, hearings, prosecutions, directions, or other requirements of or issued by the Ontario Ministry of the Environment and Climate Change ("MOECC"), or any other governmental authority, including claims for damages, fines and penalties, directly arising out of or resulting from the Contamination, including any requirement by the MOECC to investigate; remediate, restore, develop a remedial plan develop a risk assessment or risk management plan, or undertake any investigations, remedial, or contaminated management or risk management works or measures; and
 - (ii) any and all actions, causes of action, suits, debts, claims and demands asserted by a third party, other than the MOECC or any other government authority, directly arising out of or resulting from the migration of the Contamination from or through the Property to or through any other property.

2. RELEASE

The Idemnitor and each of its related companies, partners, directors, officers, shareholders, employees, servants, agents and administrators, both present and former, and all of their respective successors and assigns (the "Releasors") hereby release, remise, quit and forever discharge the Indemnitee and its officers, employees, agents representatives or elected or appointed officials, both present and former, and all of the respective successors and assigns the (the "Releasees") from any and all Claims of every kind and nature including but not limited to claims for damages, declaratory relief, injunctive relief, contribution, indemnity, costs, interest and taxes, that have in the past existed, exist now or may in the future arise, whether known or unknown, by reason of any matter or thing that has existed or exists now, in any way relating to connected with the Contamination including claims and allegations made or that could have been made, and the facts alleged or that could have been alleged.

3. PROHIBITED PROCEEDING

The Releasors hereby covenant and agree not to:

- (a) initiate or continue any complaint, appeal, request for review or hearing to any official, office, regulator, tribunal or governmental authority, including the MOECC and the Environmental Review Tribunal, in respect of the Contamination or any other subject matter covered by this Release; or

- (b) initiate or continue any Claim against or contrary to the interests of any person or entity who has claimed, may claim, in future claims, or may reasonably be expected in future to claim, indemnity or contribution from the Releasee, or that results or may result (whether directly, or indirectly against intermediate parties by way of a third or subsequent party claim or any independent legal proceeding) in any Claims being made against the Releasee or liability or requirement for the Releasee in respect of any of the subject matter covered by this Release (collectively, "**Prohibited Proceeding**").

4. **ESTOPPEL**

This Release shall operate conclusively as an estoppel in the event that the Releasor commences a Prohibited Proceeding and the Release may be pleaded as a completed defence and reply to any Prohibited Proceeding; and may be relied upon as evidence to dismiss a Prohibited Proceeding.

In the event that the Releasor commences a Prohibited Proceeding, then it covenants to indemnify the Releasee against any and all liability that may attach to them whether or not the Releasee defends any such proceedings; and shall be liable for all legal and related costs incurred by the Releasee in connection therewith on a substantial indemnity basis.

5. **INDEMNITY**

The Indemnitor covenants and agrees:

- (a) to indemnify, hold harmless and defend the Indemnitee from and against any and all claims; and
- (b) to pay and/or reimburse the Indemnitee for all reasonable professional, legal, engineering, consulting, investigation, remediation, clean-up, risk assessment and restoration costs incurred by the Indemnitee and required by or in response to a Claim,

in accordance with this Indemnity.

6. **NOTIFICATION BY THE INDEMNITEE OF A CLAIM AND REQUEST FOR INDEMNITY**

- (a) The Indemnitee shall provide written notice("Notice of Claim") to the Indemnitor of all Claims as soon as reasonably possible upon becoming aware of any such Claims, and
- (b) The Notice of Claim shall:
 - (i) be given in writing to the provisions below; and
 - (ii) contain a request for indemnity with respect to the Claim ("Request for Indemnity").

7. RESPONSE BY THE INDEMNITOR TO NOTICE OF CLAIM AND REQUEST FOR INDEMNITY

The Indemnitor shall within fifteen (15) days of receipt of a Notice of Claim and Request for Indemnity, provide a written response to the Indemnitees stating that it:

- (a) agrees to indemnify the Indemnitee in which event the procedure to investigate, settle and defend the Claim by the Indemnitor set forth in section 8 of this Indemnity shall apply; or
- (b) does not agree to indemnify the Indemnitee in which event the procedure to investigate, settle and defend the Claim by the Indemnitee set forth in section 9 of this Indemnity shall apply.

8. THE INVESTIGATION, DEFENCE AND SETTLEMENT OF A CLAIM BY THE INDEMNITOR

In the event that the Indemnitor agrees to indemnify the Indemnitee pursuant to this Indemnity, the Indemnitor shall have control of the investigation, defence and settlement of the Claim on the following terms:

- (a) the Indemnitee shall provide its reasonable and good faith co-operation in the investigation, defence and settlement of the Claim;
- (b) the Indemnitor will conduct the investigation, resolution, defence and settlement of the Claim in good faith and in a reasonable manner;
- (c) the Indemnitor shall give the Indemnitee thirty (30) days written notice of any intention to settle a Claim. The notice shall contain all of the essential terms of the contemplated settlement and shall request the consent of the Indemnitee, as the case may be, thereto;
- (d) the Indemnitor shall request the Indemnitee shall not unreasonably withhold consent to the settlement and in this regard it shall not be reasonable for the Indemnitee to withhold Consent (i) on the ground that the settlement includes a payment of any amount provided that the Indemnitor agrees, in writing, to make such payment on the part of the Indemnitee in accordance with the terms of this Indemnity; and the Indemnitee include the delivery of a full and final release in favour of the Indemnitee in a form satisfactory to counsel, acting reasonably and (ii) that the settlement includes the performance of an obligation by the Indemnitee such as, for example, remediation, provided that the Indemnitee agrees, in writing, to perform at its cost, any such obligation on behalf of the Indemnitee in accordance with the terms of this Indemnity; and the settlement includes the delivery of a full and final release in favour of the Indemnitee in a form satisfactory to its counsel, acting reasonably, which release may be conditional on the performance of an obligation on the part of the Indemnitee by the Indemnitor, which the Indemnitor agrees to perform at its own cost of behalf of the Indemnitee.

Without limiting the generality of the foregoing any dispute between the Indemnitor and the Indemnitee regarding the Indemnitor's performance of its obligations on behalf of the Indemnitee in accordance with this section, including any request by the Indemnitee for compensation in connection therewith, shall be resolved pursuant to arbitration in accordance with section 10 below.

9. THE INVESTIGATION, DEFENCE AND SETTLEMENT OF THE CLAIM BY THE INDEMNITEES

In the event that the Indemnitor does not agree to indemnify the Indemnitee for a Claim pursuant to the terms of this Indemnity, then;

- (a) the Indemnitee shall be entitled to investigate, defend and settle the Claim without consultation with or notice to the Indemnitor, subject to the provisions of the sub-sections below;
- (b) notwithstanding sub-section (a) above, the Indemnitee shall give thirty (30) days written notice to the Indemnitor of its intend to settle a Claim. The notice shall contain all of the essential terms of the contemplated settlement and shall request the consent of the Indemnitor thereto;
- (c) if within the thirty (30) day period for delivery of the notice of intention to settle;
 - (i) the Indemnitor delivers written notice to the Indemnitee, as the case may be, stating the Indemnitor agrees to indemnify the Indemnitee in respect of the subject Claim, then the Indemnitor may, at its election, assume control of the further investigation, defence and settlement of the Claim in which event the provisions set forth in section 8 above shall apply; or
 - (ii) the Indemnitor does not deliver written notice to the Indemnitee stating that the Indemnitor agrees to indemnify the Indemnitee in respect of the Claim, then the Indemnitor shall thereafter be without entitlement or right to dispute or otherwise contest the entitlement of the Indemnitee to enter into the settlement or the reasonableness or enforceability of the terms thereof.

10. ARBITRATION

Any dispute between the Indemnitor and the Indemnitee pertaining to, arising out of or in any way connected with this Indemnity shall be heard and determined by a single arbitrator conducting and arbitration in accordance with the *Arbitration Act, 1991, S.O. 1991, c 17*. The arbitration shall deal with any matter in dispute between the parties with respect to the Indemnity, including both legal and equitable claims. The arbitration shall be conducted in English and shall take place in Toronto, or such other place as the parties may agree. The arbitration award shall be given in writing within thirty (30) days of the conclusion of the

hearing and shall be final, binding on the parties and not subject to appeal and shall deal with the questions of costs of the arbitrations and any related matter.

11. NOTICE

Any notice or other communication to be given under or in connection with this Indemnity shall be in writing and shall be personally delivered (including by means of commercial messenger service) or sent by facsimile or by registered mail postage prepaid, return receipt requested as Follows:

Notice to be the Indemnitor

Name
Address
Toronto, ON XXX XXX
Attention:
Fax: (416) XXX-XXXX

With Copy to:

XXXX
XXXX
XXXX

Notice to Indemnitee

City of Toronto
55 John Street, Metro Hall, 7th Floor
Toronto, ON M5V 3C6
Attention: Director Affordable Housing Office
Fax: (416) 392-4219

With Copy to:

XXX
XXX
XXX

Notice of change of address shall be given in the manner detailed herein. Notice sent by personal delivery or facsimile shall be deemed received on the date of delivery or transmission, as the case may be, if within usual business hours or a business day or otherwise on the next business day. Notices sent by registered mail shall be deemed received on that day being four (4) business days following posting thereof.

12. **MISCELLANEOUS**

This Release and Indemnity shall be governed by and interpreted in accordance with the laws of the Province of Ontario, including the federal laws of Canada applicable therein.

13. **EXECUTION AND DELIVERY**

This Release and Indemnity may be executed in counterparts and a fax copy or PDF thereof shall have the same force and effect as an original copy.

IN WITNESS WHEREOF the parties hereto have executed this Indemnity as of the day and year noted below:

CITY OF TORONTO

Name:

Title:

Dated: _____

I have the authority to bind the Corporation

PROPONENT

Name:

Title:

Name:

Title:

Dated: _____

I/We have the authority to bind the Corporation