

**CONTRIBUTION AGREEMENT**  
**Canada Ontario Community Housing Initiative**  
**New Rental Build Component**  
**Direct Delivery**

This Agreement made the                      day of                      2019

**BETWEEN:**

THE CORPORATION OF THE COUNTY OF GREY  
(hereinafter called the “County”)  
- and -  
OWEN SOUND HOUSING COMPANY LIMITED  
(hereinafter called the “Proponent”)

**WHEREAS:**

- A. Canada Mortgage and Housing Corporation (“CMHC”) and Her Majesty the Queen in right of Ontario as represented by the Minister of Municipal Affairs and Housing (“MMAH”) entered into a bi-lateral agreement through the National Housing Strategy on April 30, 2018 to provide for the Canada Ontario Community Housing Initiative from 2019 to 2028.
  
- B. Whereas the Minister is now responsible for the above agreements signed by MMAH.
  
- C. The County and the Proponent have entered into this Agreement for the purpose of establishing the County’s obligation to provide funding to the Proponent for its Project, and the Proponent’s obligations with respect to use of such funds under the Canada Ontario Community Housing Initiative.

NOW THEREFORE, the County and the Proponent agree with each other as follows:

**1. INTERPRETATION**

- 1.1 In the Agreement, including its Schedules, unless the context requires otherwise,
  - “Affordability Period” means the period during which the average rent in a Project is required to be maintained at an affordable level, as determined in accordance with the Program Guidelines or as otherwise established by the County;
  
  - “Affordable Housing” means Housing which is modest in terms of floor area and amenities, based on household needs and community norms, in Projects that achieve rent levels in accordance with the Program Guidelines, but does not include residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility as determined by the

County;

- “Average Market Rents” means the average rent figures, based on geographical areas and classified by bedroom count, as determined annually in the CMHC Average Market Rent Survey or as determined by the County, based on available data, in areas where there is no information from the CMHC Average Market Rent Survey;
- “Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- “Contribution by Others Agreement” means an agreement entered into by the County (other than this Agreement) or another party contributing to the Project, and the Proponent ;
- “Contribution by Others” means cash or in-kind eligible contributions from municipalities, in accordance with the Program and may include a contribution from the County pursuant to another funding program documented by a Contribution Agreement other than this Agreement. It does not include contributions from any other Government of Canada sources, including, but not limited to the CMHC - Ontario Social Housing Agreement dated November 15, 1999, nor contributions which receive credit under any agreement with CMHC outside this Agreement nor equity contributions to the Project made by the Proponent to the extent required in the Procurement Process;
- “Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property and activities for which Project Development Funding may be provided;
- “Federal Funds” means funding from CMHC for a Unit, as set out in the Program Guidelines;
- “Force Majeure” means a delay arising from strike, lockout, riot, insurrection, terrorism, war, fire, tempest, act of God, lack of material or supply of service at a reasonable cost, inclement weather, binding orders or regulations of governmental bodies, courts or arbitrators or any other event beyond the control of the Parties which causes a delay in the fulfillment of a Party’s obligations under this Agreement notwithstanding the reasonable efforts of such Party and provided that any such non-availability or delay does not relate to any act or omission by such Party or any of its authorized agents or employees;

- “Funding Schedule” means the schedule of funding setting out progress payments for the type of Project to be undertaken by a Proponent, in the form determined by the County;
- “Funds” means Federal Funds or Provincial Funds, as set out in the Program Guidelines;
- “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;
- “Interest Adjustment Date” means the date on which the Proponent makes the first payment of principal and interest in respect of the Proponent’s permanent financing obligations for the Project, following the completion of construction;
- “Large Project” means a Project with thirteen (13) or more Units;
- “Loan” means the total amount of Federal Funds and Provincial Funds, if applicable, advanced by the County to the Proponent, in accordance with the Funding Schedule;
- “Occupancy Date” means the date on which occupancy of all Units in a Project is permitted;
- “Ontario Mortgage and Housing Initiative” means the government program that provides Proponents with access to lower-cost, longer-term financing for affordable rental housing for both construction financing and long-term mortgages;
- “Parties” means the County and the Proponent and “Party” means either of them, as the context may require;
- “Permitted Encumbrances” means the encumbrances encumbering the Affordable Housing Units listed in Schedule “G”;
- “Phase-out Period” means the last five (5) year period of the Affordability Period;
- “PIPEDA” means the *Personal Information Protection and Electronic Documents*

Act, S.C. 2000, c. 5, including any amendments thereto;

- “PIPEDA Protected Information” means any “Personal Information” or “Personal Health Information”, as defined under PIPEDA;
- "PPSA" means the *Personal Property Security Act*, R.S.O. 1990, c. P. 10, including any amendments thereto;
- “Procurement Process” means the request for proposals or procurement process used by the County;
- “Program” means the Rental Housing Component of the Canada Ontario Community Housing Initiative, as set out in the Program Guidelines;
- “Program Guidelines” means the Program Guidelines in respect of the new Rental Housing Component of the Canada Ontario Community Housing Initiative and attached to this Agreement as Schedule “A”;
- “Project” means Affordable Housing proposed or approved for the Program subject of this Agreement, as the context may require;
- “Project Development Funding” means that part of the CMHC funds in an amount of up to One Hundred Fifty Thousand Dollars (\$150,000.00) which is available to private non-profit Proponents to pay for planning and engineering studies, architectural drawings and legal expenses;
- “Proponent” means a person identified as such on the first page of this Agreement;
- “Proposal” means the proposal made by the Proponent for the Project;
- “Provincial Funds” means funding from Ontario for a Unit, as set out in the Program Guidelines;
- “Rental Housing Component” means the Affordable Housing Program described in the Rental Housing Component Program Guidelines;
- “Security Documents” means the security documents for the Project in the form of, or described in Schedules E-1, E-2, E-3 and F;
- “Service Manager” means the County;

- “Small Project” means a Project with twelve (12) or fewer Units;
- “Substantial Completion” means the substantial performance, within the meaning of the *Construction Lien Act*, of all contracts which the Proponent has entered into for Development Activities in connection with the Project;
- “Targeting Plan” means the manner in which a Service Manager or a Proponent plans to meet the objectives of the Program to create Affordable Housing for households that are on or are eligible to be on the waiting lists for social housing;
- “Unit” means a self-contained residential dwelling, including, without limiting the generality of the foregoing, (i) supportive rental Housing where service funding is secured from sources other than Federal Funds and Provincial Funds provided under the Program; (ii) multi-bedroom units which are used for congregate living; and (iii) disabled/accessible units.

1.2 All references in this Agreement, including, without limitation, the Schedules hereto, to “rent” is deemed to include housing charges paid by members of non-profit housing co-operatives and “rental” is deemed to have a corresponding meaning.

1.3 The following Schedules are attached to and form part of this Agreement:

- Schedule “A” – Rental Housing Build Program Guidelines;
- Schedule “B” -Funding Schedule;
- Schedule “C” -Contribution by Others Agreement(s);
- Schedule “D” -Rental Protocol;
- Schedule “E-1” -Charge/Mortgage of Land;
- Schedule “E-2” -Assignment of Rents;
- Schedule “E-3” -Security Agreement;
- Schedule “F” -Alternate Security;
- Schedule “G” -Permitted Encumbrances;
- Schedule “H” -Proponent’s Initial Occupancy Report;
- Schedule “I” -Proponent’s Annual Occupancy Report;
- Schedule “J” -Proponent’s Annual Targeting Report;
- Schedule “K” -Protocol for Non-Compliance.

1.4 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.

1.5 All references in this Agreement to section numbers are references to sections of this

Agreement unless otherwise stated.

## **2. FUNDING FOR AFFORDABLE HOUSING**

- 2.1 The Proponent agrees to advance as its equity contribution to the Project the amount of \$0, in the form of a contribution of land, on or before Occupancy is permitted in the Project, and provide written confirmation to the County that the equity contribution has been advanced.
- 2.2 Funding for Affordable Housing is comprised of Federal Funds and Provincial Funds. Funds will be advanced to the Proponent in the form of a Loan during Development Activities, based on the completion of construction milestones.
- 2.3 The Loan, upon the terms and subject to the conditions set out in this Agreement, shall be in the amount of one hundred and forty one thousand, eight hundred and eighty three dollars and eight seven cents (\$141,883.88) for each Unit included in the Development Activities for Affordable Housing by the Proponent pursuant to the Proposal, the total amount of such Loan being four million six hundred and eighty two thousand, one hundred and sixty eight dollars (\$4,682,168).
- 2.4 The County shall disburse the amount of the Loan in accordance with the Funding Schedule attached as Schedule "B". Notwithstanding Schedule "B", the County shall at all times hold back the amount of funds required to comply with the *Construction Lien Act*.
- 2.5 The County shall have the option of withholding from the amount to be disbursed under section 2.4 the amount of the cost of construction necessary to complete the incomplete construction of the Project from time to time and, in such case, the County shall disburse the amount so withheld following its receipt of satisfactory evidence that such construction is complete within the meaning of the *Construction Lien Act* and provided that the *Construction Lien Act* is complied with.
- 2.6 The Proponent shall use the amount of the Loan and Contribution by Others only for the purpose of its Development Activities in connection with the Project.
- 2.7 The Proponent may authorize the County to pay Funds to a third party and the County shall permit such authorization.

## **3. PROVISION OF AFFORDABLE HOUSING**

- 3.1 The Proponent agrees to undertake its Development Activities in connection with the Project in accordance with the provisions relating to the development of the Project

contained in the Program Guidelines.

- 3.2 The Proponent shall, subject to Force Majeure, achieve Substantial Completion in accordance with the Program Guidelines.
- 3.3 Without limiting the condition set out in section 5.1(b), the Proponent shall use its reasonable best efforts to discharge or cause the discharge of any registered construction liens so as to ensure that there are no construction liens registered against the Project on the date for the disbursement of the Loan under sections 2.4 and 2.5. The County's obligation to disburse shall be conditional upon Proponents compliance with the *Construction Lien Act* as set out in section 5.1 (b).
- 3.4 The Proponent shall not at any time during the term of this Agreement breach any Contribution by Others Agreement respecting the Project including any municipal capital facility agreement made pursuant to section 110 of the *Municipal Act, 2001* and shall not, through any breach on its part, cause such other entity to terminate a Contribution by Others Agreement for cause. The Proponent agrees that a breach by it of any such Contribution by Others Agreement, that has not been corrected, shall constitute a breach of this Agreement. All Contribution by Others Agreements shall be attached as Schedule "C". The Proponent shall provide the County with evidence of its good standing under any such Contribution by Others Agreement within ten (10) Business Days following its receipt of a written request from the County.

#### **4. OPERATION OF AFFORDABLE HOUSING**

- 4.1 The Proponent acknowledges and agrees that the Rental Protocol set out in Schedule "D" applies to the Project by virtue of the contractual terms of this Agreement, notwithstanding that the Rental Protocol does not apply to the Project under the *Residential Tenancies Act, 2006*.
- 4.2 The Proponent agrees to operate the Units in accordance with the rules set out in Schedule "D" of this Agreement.

#### **5. CONDITIONS**

- 5.1 The provision of funding by the County pursuant to sections 2.4 and 2.5 is subject to the following conditions precedent, each of which is for the exclusive benefit of the County, and may be waived in full or in part by the County by written notice to the Proponent:
  - (a) any Contribution by Others Agreement(s) referred to in section 3.4 remaining in force and the Proponent being in good standing thereunder;

- (b) there being no Claim for Lien under the *Construction Lien Act* registered against the Project;
- (c) there being in existence no unregistered lien or statutory claim having priority against the Project;
- (d) the Proponent's title to the Project being encumbered by no registered encumbrances other than the Permitted Encumbrances;
- (e) the Proponent being in good standing under all of the Permitted Encumbrances and there being no work orders issued against the Project by any governmental entity, agency or official;
- (f) the Proponent having provided the County with the security documents required by section 7 and in accordance with the said section; and
- (g) all funds provided by means of a Contribution by Others due on or before a disbursement date hereunder having been fully advanced to the Proponent on or before such disbursement date and having been authorized by by-law, agreement or otherwise and all Contribution by Other Agreements shall be attached as Schedule "C".

5.2 If any of the conditions contained in section 5.1 have not been fulfilled on the date for the disbursement of the Loan by the County pursuant to sections 2.4 or 2.5 and are not waived by the County pursuant to section 5.1, the County shall be under no obligation to make any advance of the Loan to the Proponent and the County shall thereupon have the right to terminate this Agreement and, in that event, neither Party to this Agreement shall have any rights or obligations hereunder, save and except that the County may, notwithstanding such termination, bring an action against the Proponent for all losses, costs and expenses, including, without limitation, reasonable legal fees incurred by the County in connection with this Agreement where the non-performance or non-fulfillment of a condition is a result of a breach of a covenant by the Proponent and the County shall have the right to require repayment of any previously advanced Funds together with interest as set out in this Agreement.

## **6. TERMS OF THE FUNDING**

6.1 The Loan shall have a term of twenty (20) years, commencing as of the Interest Adjustment Date.

6.2 Prior to the Interest Adjustment Date, interest shall accrue on the total of the amount or amounts advanced under the Loan at the rate of eight per cent (8%) per annum. The



interest so calculated shall compound semi-annually, not in advance, and shall be payable upon demand, until the Interest Adjustment Date.

- 6.3 On the Interest Adjustment Date, the amount of interest accrued as calculated in section 6.2 shall be forgiven, provided that the Proponent has satisfied all requirements as set out in section 3.
- 6.4 With effect from the Interest Adjustment Date, the interest rate applicable to the Loan shall be the higher of the average posted rate offered by major Canadian lending institutions for a commercial first mortgage having a five (5) year term, plus two per cent (2%) or the interest rate applicable to the first mortgage registered against title to the property, plus two per cent (2%).
- 6.5 On each anniversary date of the Interest Adjustment Date, the Proponent shall pay the County the amount of interest, as calculated on the Loan amount according to the interest rate stipulated in section 6.4, so accrued during the previous year, provided however, if the Proponent has satisfied, as of such anniversary date, the requirements of this Agreement, the amount of the interest so owing shall automatically be forgiven.
- 6.6 The Loan amount shall be fully forgiven on the last day of the month at the end of the term of the Loan, provided that the Proponent has fulfilled all the requirements of the Program as set out in this Agreement.
- 6.7 The Proponent shall comply with the requirements of the Ontario Mortgage and Housing Initiative.
- 6.8 The Proponent shall provide the County with such information respecting the Proponent's permanent financing obligations for the Project as the County may require from time to time.

## **7. SECURITY**

- 7.1 Prior to the County disbursing the Loan proceeds to the Proponent pursuant to section 2.4, the Proponent shall provide the County with executed registerable security documents in the form attached hereto as Schedules "E-1", "E-2" and "E-3" (the "Security"), completed in accordance with this Agreement or at the County's option, such alternate form of security, on such terms and conditions as the County may require, attached hereto as Schedule "F".
- 7.2 The Security shall be collateral to this Agreement and any Contribution by Others Agreement between the County and the Proponent. The County shall be a party on all Security documents and shall share in any recoveries thereunder in proportion to their

respective contributions to the total amount secured. The amount of all contributions from the County shall be included in the Security documents. The amount of any eligible in-kind contributions from the County shall not be included in the Security documents.

- 7.3 Without limiting the Proponent's covenants and the remedies of the County under this Agreement and the Security, the Proponent agrees that a breach of this Agreement or any Contribution by Others Agreement with the County shall constitute a breach of the Security and a breach of the Security shall constitute a breach of this Agreement and any Contribution by Others Agreement with the County.
- 7.4 The County acknowledges and agrees that notwithstanding that the Security provides that the principal and interest secured thereunder is payable on demand, the County shall have no right to demand payment thereunder except in accordance with the provisions of this Agreement relating to repayment or in the event of breach described in section 7.3. In the event of a conflict or inconsistency between the provisions of this Agreement and the Security, the provisions of this Agreement shall prevail with respect to Funds provided by the County.
- 7.5 The Security shall rank immediately behind the registered security for the Proponent's primary financial obligations for the Project, unless the County determines that the Security shall have a lesser priority.

## **8. ACCOUNTABILITY FRAMEWORK**

- 8.1 (a) In the event:
- (i) the County is of the opinion that the Proponent is not proceeding in an expeditious manner with the Development Activities for which Project Development Funding has been provided; or
  - (ii) the Province is advised by the County that the Project will not proceed; or
  - (iii) the building permit for the Project is not issued on or before April 30, 2020 or such longer period of time as the County may determine;
- the Proponent shall return all unexpended Project Development Funding to the County, forthwith upon demand, provided however, that the County shall not require the Proponent to return any Project Development Funding that has been expended for the intended purposes.
- (b) If requested by the County, the Proponent shall submit to the County, an audited financial statement respecting the expenditure of the Funds provided to it pursuant

to this Agreement, within one hundred and twenty (120) days or such additional time as may be determined by the County, following the date on which the County is advised that the Project will not proceed or that the Development Activities related to the Project have been fully completed.

(c) Following the full completion of the Development Activities related to the Project, the Proponent shall submit to the County a completed information report in the form attached hereto as Schedule “H”, and annually thereafter shall submit to the County completed information reports in the forms attached hereto as Schedules “I” and “J”.

(d) Without limiting the Proponent’s obligations under section 8.1(c), the Proponent, if requested by the County, shall forthwith submit to the County the material required to be submitted pursuant to section 8.1(c), in addition to any such material that the Proponent may have previously submitted to the County.

8.2 The Proponent represents that it has not provided any false or misleading information in the Proposal and agrees that it shall not provide any false or misleading information to the County under this Agreement.

8.3 The Proponent shall, on forty-eight (48) hours prior written notice, give the County free access to the Project and to such staff, documents, books, records and accounts as may be determined by the County, for the purpose of verifying compliance with this Agreement.

8.4 The County may conduct an audit, investigation or inquiry in relation to the Project or any larger development or project of which the Project is a part and the Proponent shall cooperate with the County and provide free access to the Project and to such staff, documents, books, records and accounts as may be determined by the County.

8.5 The provisions of sections 8.1, 8.2, 8.3, 8.4 and 8.5 shall continue to apply for a period of seven (7) years following the end of the Phase-out Period or the date of any early termination of this Agreement.

## **9. PUBLICITY**

9.1 The Proponent acknowledges that it has been informed by the County that under the terms of the 2016 Social Infrastructure Fund under the Investment in Affordable Housing Program and the Supplementary Agreement all publicity, including written materials and signs, respecting the Project must recognize the contributions of CMHC, the Province and the County. The Proponent further acknowledges that it has been informed by the County that the 2018 Canada Ontario Community Housing Initiative requires the County to co-ordinate with the Province and CMHC and/or obtain CMHC’s approval with

respect to communications, signage and advertising matters. The Proponent agrees that it shall not do or omit to do any act which will cause the County to be in breach of the terms of the 2018 Canada Ontario Community Housing Initiative.

9.2 The Proponent shall not make any public announcement respecting the Project, insofar as it relates to the Program, or respecting its participation in the Program or respecting the Program in any other respect without the prior written consent of the County.

9.3 During the period of the Development Activities related to the Project, the Proponent shall erect a sign in front of the Project. The sign shall be in accordance with specifications issued by the Province and the County.

9.4 The Proponent acknowledges that any breach by it of sections 9.2 or 9.3 of this Agreement shall cause the County to be in breach of its obligations as a Service Manager responsible for administration of the funding program in the 2018 Canada Ontario Community Housing Initiative

## **10. REMEDIES**

10.1 In the event the County determines that a Proponent has breached any one (1) or more provisions of this Agreement or any other Contribution of Others Agreement or the County advises the Province that a Proponent has breached any one (1) or more provisions of this Agreement or any other Contribution of Others Agreement between the County and a Proponent, the Province and County shall follow the Protocol for Non-Compliance set out in Schedule "K".

10.2 All of the remedies in this Agreement and the Security are cumulative and the Province and the County shall be entitled to avail itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.

10.3 Notwithstanding any of the terms of this Agreement or of the Security, the County shall have the option of waiving any or all of its' remedies under this Agreement and the Security, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

## **11. NOTICE**

11.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

- (a) delivered personally;

- (b) sent by prepaid courier service; or
- (c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:

- (i) in the case of notice to the County:

*The Corporation of the County of Grey  
595 9th Avenue East  
Owen Sound, Ontario N4K 3E3  
Fax: 519-376-8998*

- (ii) in the case of notice to the Proponent:

*Owen Sound Housing Company Limited  
700 21st Street East  
Owen Sound, On N4K 6W1  
Fax: 519-376-1710*

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

## **12. GENERAL**

- 12.1 Any power, right or function of the County, contemplated by this Agreement, may be exercised by any employee or agent of the County.
- 12.2 It is understood that the *Municipal Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the County pursuant to this Agreement.
- 12.3 The Proponent represents and warrants that:

- (a) it shall preserve the PIPEDA compliance of all PIPEDA Protected Information transferred to it by the County;
- (b) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information it collects in the course of performing its contractual obligations; and
- (c) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it transfers to the County.

12.4 The disbursement of Funds by the County to the Proponent pursuant to sections 2.4 to 2.5, inclusive, is subject to the necessary appropriations from the Federal Parliament and the Provincial Legislature. Neither the County, the Province nor CMHC shall have any liability in the event the respective appropriations are insufficient to meet the funding obligations of the County.

12.5 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the County and the Proponent as partners of each other.

12.6 The Proponent acknowledges that CMHC is not a party to this Agreement or other agreement relating to any Project.

12.7 No member of:

- (a) the House of Commons or Senate of Canada; or
- (b) the Legislative Assembly of Ontario; or
- (c) the Municipal Council constituting the County or the Municipal Council of any local municipality of the County or the governing body of any Municipal Agency, Board or Commission, of any such municipalities;

shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom, including, without limitation, any contract, agreement or commission arising from or related to the Program.

12.8 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the County and the Proponent or their

respective solicitors on their behalf, who are hereby expressly appointed in this regard.

- 12.9 Any tender of documents or money hereunder may be made by the County or the Proponent or their respective solicitors.
- 12.10 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 12.11 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 12.12 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting the property or this Agreement other than as expressed in writing in this Agreement.
- 12.13 This Agreement shall be read with all changes of gender and number required by the context.
- 12.14
- (a) The Proponent shall not transfer or convey its interest in all or any part of the Project without, subject to subsection 12.14(b), simultaneously assigning its interest in this Agreement to the transferee, which transferee shall enter into one or more agreements with the County, in a form satisfactory to the County, to assume all of the Proponent's obligations under this Agreement and to provide the County with Security in accordance with this Agreement.
  - (b) The Proponent shall not assign its interest in this Agreement without the prior written consent of the County, which consent shall not be arbitrarily or unreasonably withheld.
  - (c) For the purpose of this Agreement, a transfer of the beneficial interest in the shares of the Proponent shall be deemed to constitute an assignment if it results in a change in the party or parties who owns or own more than fifty per cent (50%) of the voting shares of the said corporation.
- 12.15 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing certifying that this Agreement is in good standing,

unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.

12.16 If more than one entity is a party to this Agreement as Proponent, all references to the Proponent shall include all of the said entities and this Agreement shall be binding on each jointly and severally.

12.17 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of section 12.14 restricting the Proponent's ability to assign this Agreement.



**IN WITNESS WHEREOF** This agreement has executed by the **Parties.**

The Corporation of the County of Grey

Per: \_\_\_\_\_

Paul McQueen, Warden

c/s

Per: \_\_\_\_\_

Heather Morrison, Clerk

Owen Sound Housing Company Limited

Per: \_\_\_\_\_

Name:

Title:

c/s

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "A"**  
**RENTAL BUILD PROGRAM GUIDELINES**

**SCHEDULE "B"**  
**FUNDING SCHEDULE**

|  |                |
|--|----------------|
| 50% at signing of Contribution Agreement   | \$2,341,084.00 |
| 40% at completion of Structural Framing  | \$1,872,867.20 |
| 10% at proof of occupancy, apprenticeship,<br>report and capital costs statement | \$ 468,216.80  |

**SCHEDULE "C" (Not Applicable)**

**CONTRIBUTION BY OTHERS AGREEMENTS**

**CONTRIBUTION AGREEMENT**

This Agreement made the                      day of                      *[insert year]*.

**BETWEEN:**

THE CORPORATION OF THE COUNTY OF GREY

(hereinafter called the "County")

- and -

(hereinafter called the "Proponent")

**WHEREAS:**

- A. In order to create a supply of Affordable Housing, the County of Grey wishes to provide funds to proponents of affordable housing.
- B. The County has confirmed that the Proponent has responded to the Procurement Process of the County of Grey by submitting its proposal dated xxxx (the "Proposal") to undertake Development Activities for the Project(s) in return for Funding.
- C. The County and the Proponent have entered into this Agreement for the Purpose of establishing the Proponent's obligations with respect to the Program and the County's obligation to provide funding to the Proponent.

NOW THEREFORE, the County and the Proponent agree with each other as follows:

**1. INTERPRETATION**

- 1.1 In the Agreement, including its Schedules, unless the context requires otherwise,

- “Affordability Period” means the period during which the average rent in a Project is required to be maintained at an affordable level, as established by the County;
- “Affordable Housing” means Housing which is modest in terms of floor area and amenities, based on household needs and community norms, in Projects that achieve rent levels no greater than 80% of average market rents in the County of Grey, but does not include residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility as determined by the County;
- “Average Market Rents” means the average rent figures, based on geographical areas and classified by bedroom count, as determined annually in the CMHC Average Market Rent Survey or as determined by the County, based on available data, in areas where there is no information from the CMHC Average Market Rent Survey;
- “Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- “Contribution Agreement” means an agreement entered into by the County or another party contributing to the Project and an approved Proponent receiving contributions under the Program;
- “Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property and activities for which Project Development Funding may be provided;

- “Force Majeure” means a delay arising from strike, lockout, riot, insurrection, terrorism, war, fire, tempest, act of God, lack of material or supply of service at a reasonable cost, inclement weather, binding orders or regulations of governmental bodies, courts or arbitrators or any other event beyond the control of the Parties which causes a delay in the fulfillment of a Party’s obligations under this Agreement notwithstanding the reasonable efforts of such Party and provided that any such non-availability or delay does not relate to any act or omission by such Party or any of its authorized agents or employees;
  
- “Funds” means County Funds under this County program;
  
- “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;
  
- “Interest Adjustment Date” means the date on which the Proponent makes the first payment of principal and interest in respect of the Proponent’s permanent financing obligations for the Project, following the completion of construction;
  
- “Loan” means the total amount of County funds advanced by the County to the Proponent, in accordance with this contribution agreement;
  
- “Occupancy Date” means the date on which occupancy of all Units in a Project is permitted;
  
- “Parties” means the County and the Proponent and “Party” means either of them, as the context may require;
  
- “Permitted Encumbrances” means the encumbrances encumbering the Affordable

Housing Units listed in Schedule “G”;

- “Phase-out Period” means the last five (5) year period of the Affordability Period;
- “PIPEDA” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, including any amendments thereto;
- “PIPEDA Protected Information” means any “Personal Information” or “Personal Health Information”, as defined under PIPEDA;
- "PPSA" means the *Personal Property Security Act*, R.S.O. 1990, c. P. 10 including any amendments thereto;
- “Procurement Process” means the request for proposals or procurement process used by the County;
- “Program” means the County of Grey's New Affordable Housing Program, as set out in this contribution agreement;
- “Project” means Affordable Housing proposed or approved for the Program, as the context may require;
- “Proponent” means a person identified as such on the first page of this Agreement;
- “Proposal” means the response to the request for proposals or procurement process, submitted to the County;
- “Security Documents” means the security documents attached to and forming part of the Contribution Agreement;

- “Substantial Completion” means the substantial performance, within the meaning of the *Construction Lien Act*, of all contracts which the Proponent has entered into for Development Activities in connection with the Project under this Agreement;
- “Targeting Plan” means the manner in which a Proponent plans to meet the objectives of the Program to create Affordable Housing for households that are on or are eligible to be on the waiting lists for social housing;
- “Unit” means a self-contained residential dwelling.

1.2 All references in this Agreement, including, without limitation, the Schedules hereto, to “rent” is deemed to include housing charges paid by members of non-profit housing co-operatives and “rental” is deemed to have a corresponding meaning.

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

## **2. FUNDING FOR AFFORDABLE HOUSING**

2.1 The Proponent agrees to advance as its equity contribution to the Project the amount of XXXX in the form of a contribution of land, on or before Occupancy is permitted in the Project, and provide written confirmation to the County that the equity contribution has been advanced.

2.2 Funding for Affordable Housing is comprised of Funds held by the County. Funds will be advanced to the Proponent in the form of a Loan, during the Development Activities.

2.3 The County shall disburse the amount of the Loan following the date on which this Agreement is signed by the Parties and upon construction milestones as set out in the Program guidelines. Notwithstanding this provision, the County shall at all times hold back the required amount of funds to comply with the *Construction Lien Act*.



- 2.4 The County shall have the option of withholding from the amount to be disbursed under section 2.3 the amount of the cost of construction necessary to complete the construction of the Project and, in such case, the County shall disburse the amount so withheld following its receipt of satisfactory evidence that such construction is complete within the meaning of the *Construction Lien Act* and provided that the *Construction Lien Act* is complied with.
- 2.5 The Proponent shall use the amount of the Loan for the purpose of its Development Activities in connection with the Project.
- 2.6 The Proponent may authorize the County to pay Funds to a third party and the County shall permit such authorization.

### **3. PROVISION OF AFFORDABLE HOUSING**

- 3.1 Without limiting the condition set out in section 5.1(b), the Proponent shall use its reasonable best efforts to discharge or cause the discharge of any registered construction liens so as to ensure that there are no construction liens registered against the Project on the date for the disbursement of the Loan under sections 2.3 and 2.4. The County's obligation to disburse shall be conditional upon the Proponent's compliance with the *Construction Lien Act* as set out in section 5.1 (b).
- 3.2 The Proponent shall not at any time during the term of this Agreement breach any Contribution Agreement respecting the Project including any municipal capital facility agreement made pursuant to section 110 of the *Municipal Act, 2001* and shall not, through any breach on its part, cause such other entity to terminate a Contribution Agreement for cause. The Proponent agrees that a breach by it of any such Contribution Agreement, that has not been corrected, shall constitute a breach of this Agreement. The Proponent shall provide the County with evidence of its good standing under any such Contribution Agreement within ten (10) Business Days following its receipt of a written

request from the County.

#### **4. OPERATION OF AFFORDABLE HOUSING**

4.1 The Proponent acknowledges and agrees that the Rental Protocol set out in Schedule “D” applies to the Project by virtue of the contractual terms of this Agreement, notwithstanding that the Rental Protocol does not apply to the Project under the *Residential Tenancies Act, 2006*.

4.2 The Proponent agrees to operate the Units in accordance with the rules set out in Schedule “D” of this Agreement.

#### **5. CONDITIONS**

5.1 The provision of funding by the County pursuant to sections 2.3 and 2.4 is subject to the following conditions precedent, each of which is for the exclusive benefit of the County, and may be waived in full or in part by the County by written notice to the Proponent:

- (a) any Contribution Agreement referred to in section 3.2 remaining in force and the Proponent being in good standing thereunder;
- (b) there being no Claim for Lien under the *Construction Lien Act* registered against the Project;
- (c) there being in existence no unregistered lien or statutory claim having priority against the Project;
- (d) the Proponent’s title to the Project being encumbered by no registered encumbrances other than the Permitted Encumbrances;
- (e) the Proponent being in good standing under all of the Permitted Encumbrances

and there being no work orders issued against the Project by any governmental entity, agency or official; and

(f) the Proponent having provided the County with the Security Documents required by section 7 and in accordance with the said section.

5.2 If any of the conditions contained in section 5.1 have not been fulfilled on the date for the disbursement of the Loan by the County pursuant to sections 2.3 and 2.4 and are not waived by the County pursuant to section 5.1, the County shall be under no obligation to make any advance of the Loan to the Proponent and the County shall thereupon have the right to terminate this Agreement and, in that event, neither party to this Agreement shall have any rights or obligations hereunder, save and except that the County may, notwithstanding such termination, bring an action against the Proponent for all losses, costs and expenses, including, without limitation, reasonable legal fees incurred by the County in connection with this Agreement where the non-performance or non-fulfillment of a condition is a result of a breach of a covenant by the Proponent and the County shall have the right to require repayment of any previously advanced Funds together with interest as set out in this Agreement.

## **6. TERMS OF THE FUNDING**

6.1 The Loan shall have a term of twenty (20) years, commencing as of the Interest Adjustment Date.

6.2 Prior to the Interest Adjustment Date, interest shall accrue on the total of the amount or amounts advanced under the Loan at the rate of eight per cent (8%) per annum. The interest so calculated shall compound semi-annually, not in advance, payable on demand until the Interest Adjustment Date.

6.3 On the Interest Adjustment Date, the amount of interest accrued as calculated in section 6.2 shall be forgiven, provided that the Proponent has satisfied all requirements as set out

in section 2.

- 6.4 With effect from the Interest Adjustment Date, the interest rate applicable to the Loan shall be the higher of the average posted rate offered by major Canadian lending institutions for a commercial first mortgage having a five (5) year term, plus two per cent (2%) or the interest rate applicable to the first mortgage registered against title to the property, plus two per cent (2%).
- 6.5 On each anniversary date of the Interest Adjustment Date, the Proponent shall pay the County the amount of interest, as calculated on the Loan amount according to the interest rate stipulated in section 6.4, so accrued during the previous year, provided however, if the Proponent has satisfied, as of such anniversary date, the requirements of this Agreement, the amount of the interest so owing shall automatically be forgiven.
- 6.6 The Loan amount shall be fully forgiven on the last day of the month at the end of the term of the Loan, provided that the Proponent has fulfilled all the requirements of the Program as set out in this Agreement.
- 6.10 The Proponent shall provide the County with such information respecting the Proponent's permanent financing obligations for the Project as the County may require from time to time.

## **7. SECURITY**

- 7.1 Prior to the County disbursing the Loan proceeds to the Proponent pursuant to section 2.4, the Proponent shall provide the County with executed registerable security documents in the form attached hereto as Schedules "E-1", "E-2" and "E-3" (the "Security"), completed in accordance with this Agreement or at the County's option, such alternate form of security, on such terms and conditions as the County may require, attached hereto as Schedule "F".

- 7.2 The Security shall be collateral to this Agreement and any other Contribution Agreement between the County and the Proponent. The County shall be a party on all Security documents and shall share in any recoveries thereunder in proportion to their respective contributions to the total amount secured. The amount of all contributions from the County shall be included in the Security documents. The amount of any eligible in-kind contributions from the County shall not be included in the Security documents.
- 7.3 Without limiting the Proponent's covenants and the remedies of the County under this Agreement and the Security, the Proponent agrees that a breach of this Agreement or any other Contribution Agreement with the County shall constitute a breach of the Security and a breach of the Security shall constitute a breach of this Agreement and any other Contribution Agreement with the County.
- 7.4 The County acknowledges and agrees that notwithstanding that the Security provides that the principal and interest secured thereunder is payable on demand, the County shall have no right to demand payment thereunder except in accordance with the provisions of this Agreement relating to repayment. In the event of a conflict or inconsistency between the provisions of this Agreement and the Security, the provisions of this Agreement shall prevail with respect to Funds provided by the County.
- 7.5 The Security shall rank immediately behind the registered security for the Proponent's primary financial obligations for the Project, unless the County determines that the Security shall have a lesser priority.

## **8. ACCOUNTABILITY FRAMEWORK**

- 8.1 Submissions will be required of the Proponent as follows:
- (a) If requested by the County, the Proponent shall submit to the County, an audited financial statement respecting the expenditure of the Funds provided to it pursuant to this Agreement, within ninety (90) days or such additional time as may be

determined by the County, following the date on which the County is advised that the Project will not proceed or that the Development Activities related to the Project have been fully completed.

(b) Following the full completion of the Development Activities related to the Project, the Proponent shall submit to the County a completed information report in the form attached hereto as Schedule “H”, and annually thereafter shall submit to the County completed information reports in the forms attached hereto as Schedules “I” and “J”.

8.2 The Proponent represents that it has not provided any false or misleading information in the Proposal and agrees that it shall not provide any false or misleading information to the County under this Agreement.

8.3 The Proponent shall, on forty-eight (48) hours prior written notice, give the County free access to the Project and to such staff, documents, books, records and accounts as may be determined by the County, for the purpose of verifying compliance with this Agreement.

8.4 The County may conduct an audit, investigation or inquiry in relation to the Project or any larger development or project of which the Project is a part and the Proponent shall cooperate with the County and provide free access to the Project and to such staff, documents, books, records and accounts as may be determined by the County.

8.5 The provisions of sections 8.1, 8.2, 8.3, 8.4 and 8.5 shall continue to apply for a period of seven (7) years following the end of the Phase-out Period or the date of any early termination of this Agreement.

## **9. PUBLICITY**

9.1 The Proponent shall not make any public announcement respecting the Project, without the prior written consent of the County.

9.2 During the period of the Development Activities related to the Project, the Proponent shall erect a sign in front of the Project. The sign shall be in accordance with specifications issued by the Province and the County.

## **10. REMEDIES**

10.1 In the event the County determines that a Proponent has breached any one (1) or more provisions of this Agreement or any other Contribution Agreement or the County advises the Province that a Proponent has breached any one (1) or more provisions of this Agreement or any other Contribution Agreement between the County and a Proponent, the Province and County shall follow the Protocol for Non-Compliance set out in Schedule "K".

10.2 All of the remedies in this Agreement and the Security are cumulative and the County shall be entitled to avail itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.

10.3 Notwithstanding any of the terms of this Agreement or of the Security, the County shall have the option of waiving any or all of its remedies under this Agreement and the Security, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

## **11. NOTICE**

11.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

- (a) delivered personally;

- (b) sent by prepaid courier service; or
- (c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:

- (i) in the case of notice to the County:

*The Corporation of the County of Grey*  
*595 9th Avenue East*  
*Owen Sound, Ontario N4K 3E3*

- (ii) in the case of notice to the Proponent:

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

## **12. GENERAL**

12.1 Any power, right or function of the County, contemplated by this Agreement, may be



exercised by any employee or agent of the County.

- 12.2 It is understood that the *Municipal Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the County pursuant to this Agreement.
- 12.3 The Proponent represents and warrants that:
- (a) it shall preserve the PIPEDA compliance of all PIPEDA Protected Information transferred to it by the County;
  - (b) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information it collects in the course of performing its contractual obligations; and
  - (c) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it transfers to the County.
- 12.4 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the County and the Proponent as partners of each other.
- 12.5 No member of the municipal council constituting the County or the municipal council of any local municipality of the County or the governing body of any municipal agency, board or commission, of any such municipalities shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom, including, without limitation, any contract, agreement or commission arising from or related to the Program.
- 12.6 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or

abridged by agreement in writing signed by the County and the Proponent or their respective solicitors on their behalf, who are hereby expressly appointed in this regard.

- 12.7 Any tender of documents or money hereunder may be made by the County or the Proponent or their respective solicitors.
- 12.8 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 12.9 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 12.10 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting the property or this Agreement other than as expressed in writing in this Agreement.
- 12.11 This Agreement shall be read with all changes of gender and number required by the context.
- 12.12
- (a) The Proponent shall not transfer or convey its interest in all or any part of the Project without, subject to subsection 12.12(b), simultaneously assigning its interest in this Agreement to the transferee, which transferee shall enter into one or more agreements with the County, in a form satisfactory to the County, to assume all of the Proponent's obligations under this Agreement and to provide the County with Security in accordance with this Agreement.

- (b) The Proponent shall not assign its interest in this Agreement without the prior written consent of the County, which consent shall not be arbitrarily or unreasonably withheld.
- (c) For the purpose of this Agreement, a transfer of the beneficial interest in the shares of the Proponent shall be deemed to constitute an assignment if it results in a change in the party or parties who owns or own more than fifty per cent (50%) of the voting shares of the said corporation.

12.13 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing certifying that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.

12.14 If more than one entity is a party to this Agreement as Proponent, all references to the Proponent shall include all of the said entities and this Agreement shall be binding on each jointly and severally.

12.15 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of section 12.12 restricting the Proponent's ability to assign this Agreement.

**IN WITNESS WHEREOF** This agreement has executed by the **Parties.**

The Corporation of the County of Grey

Per: \_\_\_\_\_

Name:

Clerk

*c/s*

Per: \_\_\_\_\_

Name:

Warden

Per: \_\_\_\_\_

Name:

Title:

*c/s*

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “D”  
RENTAL PROTOCOL**

**1. DEFINITIONS**

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

- “Affordability Period” means the “twenty (20) year period”, or “details in words (and numbers) of such longer period” as may be established in the Procurement Process, following the date of the first occupancy of a Unit in the Project;
- “Agreement” means the Agreement to which this Schedule “D” is attached, and  
when used in this Schedule “D”, the term “rent” includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to the Proponent or the Proponent’s agent for the right to occupy a Unit and for any services and facilities and any privilege, accommodation or thing that the Proponent provides for the tenant in respect of the occupancy of the Unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.

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

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

**2. AFFORDABLE RENT**

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

### **3. RENTS**

3.1 The weighted average rent of all Units in a Project for which Program Funds have been utilized shall not exceed eighty per cent (80%) of CMHC Average Market Rents in the geographical area, as determined in the most recent CMHC Annual Rental Market Survey.

3.2 The maximum rent for any Unit shall not exceed one hundred and five per cent (105%) of the modified shelter allowance under the Ontario Works program, provided that the amount so calculated does not exceed the CMHC Average Market Rent for units of a similar type in the geographical area.

### **4. RENT INCREASES**

4.1 The Proponent may increase the rent charged under section 3.1 with respect to a Unit only if at least twelve (12) months have elapsed,

(a) since the day of the last rent increase respecting the Unit, if there has been an increase, or

(b) since the day the Unit was first rented for the first rental period following the completion of the Development Activities in connection with the Project.

4.2 Subject to section 4.3, the Proponent shall not increase the rent pursuant to section 4.1 during the Affordability Period by more than the then prevailing rent increase guideline established for each calendar year pursuant to the *Residential Tenancies Act, 2006* or any successor legislation. The Proponent acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* or any successor legislation, does not apply to the Project and agrees that the rent increase guideline applies by virtue of the contractual terms of the Agreement and this Schedule "D".

4.3 From the beginning of the eleventh (11 ) year of the Affordability Period until the end of

the Affordability Period, in addition to the increase permitted by section 4.2, the Proponent may apply to the County to increase Unit rents to an amount not to exceed CMHC Average Market Rent for units of a similar type in the geographical area.

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

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

## **6. EXCEPTION**

- 6.1 Subject to the provisions of the *Residential Tenancies Act, 2006* or any successor legislation, and notwithstanding the provisions of this Schedule “D” respecting rent increases prior to and during the Phase-out Period, where a Service Manager implements income verification of tenants following the initial occupancy of a Unit, a Service Manager may increase the rent for a Unit by more than the rent increase guideline under the *Residential Tenancies Act, 2006* or any successor legislation, provided that the rent for the Unit does not exceed the CMHC Average Market Rent for units of a similar type for that year and provided that the weighted average rent for the funded Units in a Project does not exceed the permitted rents for the Project.

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

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

**SCHEDULES "E-1", "E-2", "E-3" SECURITY DOCUMENTS**

*[Relevant Documents to be Attached]*

Schedule E-1 - Charge/Mortgage of Land - register in land titles/land registry system

Schedule E-2 - Assignment of Rents - register in land titles/land registry system and PPSA

Schedule E-3 - Security Agreement (chattels) - register in PPSA



**SCHEDULE "F"**

**ALTERNATE SECURITY**

*[Relevant Documents to be Attached]*

Schedule "F" is not registerable and is used to replace Schedules "E-1", "E-2" and "E-3".

**SCHEDULE “G”**  
**PERMITTED ENCUMBRANCES**

*[This schedule in the executed Charge/Mortgage will contain the registration details of all registered documents which fit into the categories listed below.]*

1. All mortgages and security collateral thereto totaling principal amounts which do not exceed the total costs of the Development Activities incurred in connection with the Project.
  
2. Such easements and restrictive covenants as do not prevent the Project from being constructed or used as Affordable Housing.
  
3. Municipal agreements relating to the Development Activities in connection with the Project.

## SCHEDULE "H"

2018 Canada Ontario Community Housing Initiative Rental Build Program

### Initial Occupancy Report

Occupancy Date: \_\_\_\_\_

#### A. Project Information

|                                    |  |
|------------------------------------|--|
| Contribution Agreement Number      |  |
| Contribution Agreement Expiry Date |  |

|                  |  |
|------------------|--|
| Project Name     |  |
| Property Address |  |

#### B. Number of Units in Project

| Unit Type                    | AHP Funded Rental Units (#) | AHP Funded Supportive Units (#) | Units Not Receiving AHP Funding (#) | Total Number of Units (#) |
|------------------------------|-----------------------------|---------------------------------|-------------------------------------|---------------------------|
| Bachelor                     |                             |                                 |                                     |                           |
| One Bedroom                  |                             |                                 |                                     |                           |
| Two Bedroom                  |                             |                                 |                                     |                           |
| Three Bedroom                |                             |                                 |                                     |                           |
| Four Bedroom                 |                             |                                 |                                     |                           |
| Other                        |                             |                                 |                                     |                           |
| <b>Total Number of Units</b> |                             |                                 |                                     |                           |

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

Establishes “permitted rents” which are used in Schedule “I”

| Unit Type        | Average Unit Rent<br>(AHP Funded<br>Units) (A) | CM HC Average<br>Market Rent (\$) (B) | Percentage of CM HC<br>Average Market Rent<br>(A÷B) • 100 |
|------------------|--|---------------------------------------|---|
| Bachelor         |  |                                       |   |
| One Bedroom      |  |                                       |   |
| Two Bedroom      |  |                                       |   |
| Three<br>Bedroom |  |                                       |   |
| Four Bedroom     |  |                                       |   |
| Other            |  |                                       |   |

|   |  |
|---|--|
| Depth of Affordability: Percentage of CMHC Average Market Rent Achieved for Overall Project | <u>80%</u><br>(Note: This figure cannot be greater than 80% of CMHC Average Market Rent, without the approval of the County) |
|---|--|

**D. Project Certification**

I certify, to the best of my knowledge, that the information provided in Sections B and C above is true and correct. I hereby authorize the County 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

**SCHEDULE "I"**

2018 Canada Ontario Community Housing Initiative - Rental Build Program  
**Annual Occupancy Report**

**A. Project Information**

|                                    |  |
|------------------------------------|--|
| Contribution Agreement Number      |  |
| Contribution Agreement Expiry Date |  |

|                  |  |
|------------------|--|
| Project Name     |  |
| Property Address |  |

**B. Average Rents at Year End**

| Unit Type   | Total Number of Units (#) | AHP Funded Rental Units (#) | AHP Funded Supportive Units (#) | Previous Year  |                                 | Current Year                               |  | Rationale (if D>C) |
|-------------|---------------------------|-----------------------------|---------------------------------|--|---------------------------------|--|--|--------------------|
|             |                           |                             |                                 | Permitted Rent [insert last reporting year] (\$) (A) | RTA Permitted Increase (\$) (B) | Permitted Rent per Unit per Month (\$) (C) | Average Rent per Unit per Month (\$) (D) |                    |
| Bachelor    |                           |                             |                                 |  |                                 |  |  |                    |
| One Bedro   |                           |                             |                                 |  |                                 |  |  |                    |
| Two Bedro   |                           |                             |                                 |  |                                 |  |  |                    |
| Three Bedro |                           |                             |                                 |  |                                 |  |  |                    |

|               |  |  |  |  |  |  |  |  |
|---------------|--|--|--|--|--|--|--|--|
| Four<br>Bedro |  |  |  |  |  |  |  |  |
| Other         |  |  |  |  |  |  |  |  |
| Total         |  |  |  |  |  |  |  |  |

**C. Affordability**

| <b>Year</b>         | <b>Average Rent in Relation to AMR</b> | <b>Variance Between Current and Last Year's Average Rent</b> | <b>RTA Permitted Increase</b> | <b>Rationale for Amount Above RTA Increase</b> |
|---------------------|--|--|-------------------------------|--|
| First Year Occupied | #80%*                                  |  |                               |  |
| Annually Thereafter |  |  |                               |  |

\* This figure cannot be greater than 80% of CMHC Average Market Rent, without the approval of the County

**D. 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 County 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

**E. Auditor's Confirmation**

We have performed the necessary review and tests on the records of the named property pertaining to the rent levels for the reporting period. Our results confirm the information as provided in Sections B and C above is true and correct.

\_\_\_\_\_ Date: \_\_\_\_\_

Confirmed by *[please print name]*

Name, Address and Telephone Number of Firm:

*[insert relevant information]*

**SCHEDULE "J"**

**Annual Targeting Report**

For year ending December 31, \_\_\_\_\_

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

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



## **SCHEDULE "K"**

### **PROTOCOL FOR NON-COMPLIANCE**

2018 Canada Ontario Community Housing Initiative Rental Build Program  
Direct Delivery

#### **1. BACKGROUND**

1.1 This Schedule addresses the obligations to indemnify and obligations of 2018 Canada-Ontario Community Housing Initiative participants to recover Funds from affordable housing projects which may encounter difficulties within the relationships described below:

- (a) Province (which is referred to as the “Province” in the Agreement) - Canada Mortgage and Housing Corporation (“CMHC”);
- (b) Service Manager - County;
- (c) Proponent - Service Manager; and
- (d) Proponent - County.

1.2 It is expected that all Rental and Supportive projects will be required to obtain CMHC insurance for the first mortgage since this is a condition of funding under the Ontario Mortgage and Housing Partnership Initiative.

1.3 While this Schedule pertains to the Rental and Supportive Component of the AHP program, the same set of underlying principles and requirements could accommodate other program components with minor adjustments.

1.4 The undertakings and commitments contained in this Schedule are consistent with and do not supersede any agreements between the Governments of Canada and Ontario as per the 2018 Canada Ontario Community Housing Initiative through the National Housing Strategy

## **2. CONSULTATION**

- 2.1 When the County becomes aware of a failure of a Proponent to observe or perform a material condition in the Contribution Agreement, the County shall notify the Province, which shall, in turn, notify CMHC. The County and the Province shall each appoint one person to an ad hoc committee for the purpose of assembling information relating to the project in difficulty and determining a course of action for rectifying the difficulty. CMHC shall be invited to participate and will determine the extent of its involvement on the committee. Terms of reference for the ad hoc committee shall be developed and agreed to by all three parties.

## **3. BEST EFFORTS**

- 3.1 In determining what course of action may be undertaken to rectify a project in difficulty, the parties shall use their best efforts to work together co-operatively with a view to maintaining, to the greatest extent possible in the circumstances, the affordability of the rents for the project as determined by the Contribution Agreement. The parties acknowledge that the interests of the tenants shall be considered in determining what course of action may be most suitable for a project in difficulty.

## **4. ADVANCE NOTICE**

- 4.1 Neither CMHC, the Province nor the County shall substantially modify the terms of any project-specific agreement, including the Contribution Agreement, or the advance of Funds or the security documentation associated with the advance of Funds, with the exception of a CMHC insured first mortgage, without providing written notice to the other parties and a reasonable opportunity for the other parties to address the implications of such action.
- 4.2 The obligation to indemnify or the distribution of a recovery of Funds from a project in difficulty will require the County and/or Proponent to exhaust all reasonable

opportunities to seek recovery, which efforts shall include but shall not be limited to resorting to legal action to defend third party claims, seeking indemnification from insurance policies, if any, that may afford coverage for a particular loss and/or recovering Funds from bonding companies or other third parties who, at law, may be responsible for the losses of a project in difficulty.

## **5. INDEMNITY**

### **5.1 County - CMHC**

- (a) As per Section 8.4 of the SIF-IAH Agreement, the County shall indemnify CMHC as the result of third party claims arising out of the implementation of the Agreement.
- (b) Federal-Provincial indemnity provisions on Project Development Funding and environmental claims remain as per Section 8.4 (d), (e) and (f) of the National Housing Strategy- 2018 Canada Ontario Community Housing Initiative.
- (c) Where CMHC has insured a Proponent's first mortgage and a default occurs on the insured mortgage, the Province is not required to indemnify CMHC for any losses related to the mortgage insurance as per Section 8.4 (g) National Housing Strategy 2018 Canada Ontario Community Housing Initiative.
- (d) The SIF-IAH "capital" Funds and the circumstances dealing with the recovery of these Funds are dealt with in subsequent sections of this Schedule.

### **5.2 County - Province**

- (a) Subject to paragraphs (b) and (c) below, the County shall:
  - (i) during construction and following completion of construction, indemnify the Province for 100% of any third party claims against

the Province arising out of the implementation of this Agreement;  
and

- (ii) following completion of construction, indemnify the Province for 50% of that portion of any third party claims against CMHC arising out of the implementation of this Agreement where the County indemnifies CMHC under the 2018 Canada Ontario Community Housing Initiative

unless the claims are in any way, directly or indirectly, attributable to the negligence, bad faith or willful misconduct of the County.

- (b) During the construction phase of a project, the County shall indemnify the Province as a result of any third party claims against the County, subject to certain exceptions as per Section 8.4 2018 Canada Ontario Community Housing Initiative, including:
  - (i) Maximum liability is limited to the total amount of 2018 Canada-Ontario Community Housing Initiative Funds advanced at the time of the loss giving rise to the claim for indemnification;
  - (ii) This indemnity is limited to 50% of the provincial liability for losses in relation to Project Development Funding (i.e. 25% of the total claim);
  - (iii) This indemnity is limited to 50% of all losses, costs and expenses incurred by the County that relate to environmental or pollution claims, including claims against CMHC; and
  - (iv) There is no indemnification for losses covered solely by CMHC or by other insurance.
- (c) Following completion of construction, the County shall indemnify the Province as a result of any third party claims against the County and/or CMHC, subject to certain exceptions as per Section 8.4 of the 2018 Canada Ontario Community Housing Initiative, including:

- (i) Maximum liability is limited to the total amount of 2018 Canada Ontario Community Housing Initiative advanced at the time of the loss giving rise to the claim for indemnification;
- (ii) This indemnity is limited to 50% of the provincial liability for losses in relation to Project Development Funding (i.e. 25% of the total claim);
- (iii) This indemnity is limited to 50% of all losses, costs and expenses incurred by the County that relate to environmental or pollution claims, including claims against CMHC; and
- (iv) There is no indemnification for losses covered solely by CMHC or by other insurance.

### 5.3 Proponent - Province

- (a) The Proponent shall indemnify the Province for any claims against the County and/or CMHC, in accordance with the Contribution Agreement.
- (b) The Proponent shall indemnify the County for any claims against the Province and/or CMHC, in accordance with the Contribution Agreement.

### 5.4 Proponent - County

- (a) Where there is a direct relationship between the County and a Proponent, the Proponent shall indemnify the County for all Federal Funds and Provincial Funds paid in the event of a claim against the County or CMHC.
- (b) Indemnification of CMHC will be required during the construction and occupancy period of a project. Indemnification of the County will be required throughout the Affordability Period.

## 6. RECOVERY OF FUNDS

6.1 Under the 2018 Canada-Ontario Community Housing Initiative a number of circumstances could arise which could make a project “noncompliant”. Examples include:

- (a) Construction Failures - increased construction costs, bankruptcy;
- (b) Environmental considerations - with the exception of those Canada Ontario Community Housing Initiative identified and recorded in advance of an 2018 funding commitment;
- (c) Program compliance violations - project fails to remain affordable or does not maintain its affordability target for the full 20 years, or Funds are misused.

### 6.2 Province - CMHC

- (a) CMHC would not expect full repayment of federal capital by the Province if the Province and the County confirms that “best efforts” were made to collect the Funds.
- (b) Best efforts would involve adherence by the County to the “risk sharing protocols” in order to minimize occurrence of failure. Furthermore, the parties will need to explore all available remedies with the County, the Province, Proponents and CMHC, and implement the best remedy to the extent possible.
- (c) If efforts lead to a recovery of capital Funds, CMHC would expect a repayment of “a pro rata portion” of the Federal Funds. All three funding partners shall share in any proceeds recovered, in proportion to their contributions.
- (d) A sliding scale for CMHC forgiveness is set at 5% per year over 20 years. Under

certain circumstances, the County will share this forgiveness with Service Managers and Proponents, otherwise the County will collect these Funds for recycling in other projects.

- (e) Federal Funds could either be repaid by the Service Manager to the County and recycled in new commitments before March 31, 2018 or refunded directly to CMHC after this date.
- (f) In the event that auditors discover misuse of Federal Funds as per the 2018 Canada Ontario Community Housing Initiative Agreement, CMHC would expect a refund from the County where applicable. The amount owing could be reduced based on earned forgiveness of the principal amount during the period of project compliance.

### 6.3 County - Province

- (a) In the event a project ceases to be an 2018 Canada Ontario Community Housing Initiative project for reasons related to negligence, misuse or non-compliance, the County shall repay the Province all Provincial Funds advanced during the period of non-compliance. It is acknowledged that where the first mortgagee or CMHC has gained possession, as a result of a default under the insured loan, they would not assume any liability for Provincial Funds paid to the Proponent during the period of non-compliance prior to the date the first mortgagee or CMHC took possession.
- (b) In the event a project ceases to be compliant due to the negligence of the County, the County shall repay the Province all Federal Funds, less any earned forgiveness of the principal amount during the period of project compliance.

### 6.4 Proponent - County

- (a) The County shall adopt a similar position if a project terminates under reasonable circumstances. That is, best efforts can be made to recover Funds, but if there were no proceeds available, repayment would not be expected.
- (b) In situations of non-compliance due to misuse or negligence, the County is expected to take remedies available to recover Funds.

6.5 Proponent - County

- (a) In situations of non-compliance due to misuse or negligence, the Proponent shall repay the County all Federal Funds and Provincial Funds.
  - (b) If a project ceases to operate as a 2018 Canada Ontario Community Housing Initiative project, under reasonable circumstances, the provincial affordability payment would end and best efforts will be made to recover the Provincial Funds paid during any period of non-compliance. In the event no proceeds were available, repayment would not be expected.