

Bill No. 84  
2015

By-law No. A.-\_\_\_\_\_

A by-law to approve an agreement between The Corporation of the City of London (the City) and Escalade Property Corp. (the Proponent) for the purpose of establishing the City of London Affordable Housing Program and the City's obligation to provide funding to the Proponent; and to authorize the Mayor and the City Clerk to execute the agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 8 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS The Corporation of the City of London (the City) is responsible for the delivery and administration of affordable housing initiatives including affordable rental housing programs, convert-to-rent programs and other initiatives;

AND WHEREAS the Proponent has responded to the procurement process initiated by the City to undertake development activities in return for funding;

AND WHEREAS it is deemed expedient for the City to enter into an agreement with the Proponent for the purpose of establishing the Proponent's obligations with respect to the City of London Affordable Housing Program and the City's obligation to provide funding to the Proponent;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. An agreement between the City and the Proponent for the purpose of establishing the Proponent's obligations with respect to the City of London Affordable Housing Program and the City's obligation to provide funding to the Proponent be hereby approved.
2. The Mayor and the City Clerk be hereby authorized to execute the agreement approved in section 1, above, substantially in the form of agreement attached as Schedule "1" to this by-law and to the satisfaction of the City Solicitor.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on February 24, 2015.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading - February 24, 2015  
Second Reading - February 24, 2015  
Third Reading - February 24, 2015

# Schedule "1"

## MUNICIPAL CONTRIBUTION AGREEMENT

### Investment in Affordable Housing Rental Housing Component Funding Delivery

This Agreement made the XX day of MONTH, 2014.

#### BETWEEN:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "City")

- and -

PROPONENT

(hereinafter called the "Proponent")

#### WHEREAS:

- A. In order to create a supply of Affordable Housing, 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 entered into a bi-lateral agreement to provide for the Investment in Affordable Housing Program from 2011-2014, effective April 1, 2011 (the "**CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014**").
- B. The purpose of the CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014 is to provide funding for Affordable Housing.
- C. The Minister of Municipal Affairs and Housing (the "Minister") is responsible for the Program and The Corporation of the City of London (the "City") is responsible for the delivery and administration of affordable housing programs in the City of London and County of Middlesex.
- D. The Minister has established a Rental Housing Component, a Homeownership Component, a Northern Repair Component, a Rent Supplement Component, a Housing Allowance Component and an Ontario Renovates Component (the "**IAH Components**"), pursuant to which the Minister will provide the CMHC funding and provincial funding for the Investment in Affordable Housing Program.
- E. The Proponent has responded to the procurement process (the "Procurement Process") initiated by the City by submitting its proposal dated **July 28, 2014** (the "Proposal") to undertake Development Activities for the Project(s) in return for Funding.
- F. The City and the Proponent have entered into this Agreement for the purpose of establishing the Proponent's obligations with respect to the Program and the City's obligation to provide funding to the Proponent.

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

## 1. INTERPRETATION

1.1 In this 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 City;
- "Affordable Rent" in respect of a Unit of rental housing means a monthly occupancy cost that does not exceed 80% of the CMHC AMR for that Unit. The Affordable Rent must include at least the unit heat, water, fridge, stove and parking;
- "Affordable Rental Housing" means new, purpose-built, rental housing accommodation Units in any Building or Buildings 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;
- "Assisted Affordable Rental Housing" means Affordable Rental Housing Units in the Project, the construction and/or operation of which is assisted under this RFP, in accordance with the Project Agreements;
- "Average Market Rents (AMR)" means the average monthly market rent for a rental housing unit, by unit type, as published by CMHC (or, should CMHC not publish such information, as determined from time to time by the City of London, acting reasonably), as adjusted on an annual basis (refer to definitions of market rent and low rent);
- "Barrier-Free Units" means units located in fully accessible buildings and provide ramps, grab bars, wider doorways and/or lower cabinets, as well as provisions for persons with hearing and vision impairments.
- "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- "CMHC" means Canada Mortgage and Housing Corporation;
- "Conditional Letter of Commitment" means the letter issued by the Minister confirming approval of the Project and setting out the amount, terms and conditions of Funding allocated to the Proponent;
- "Construction Start Date" means the later of the following dates:
  - (a) the date that the City receives evidence satisfactory to it that all permits or approvals necessary for the construction of the Assisted Affordable Rental Housing portion of the Project in accordance with the Plans and Specifications and the Project Agreements have been obtained from the appropriate municipal, provincial and federal authorities, and that the Project, when completed, will be in compliance with all applicable

environmental laws, zoning by-laws and building codes and with the Plans and Specifications;

(b) the date that the City, having received a notarial copy of an agreement with a general contractor satisfactory to the City for the construction of the Assisted Affordable Rental Housing portion of the Project, notifies the Successful Proponent that such contract is satisfactory to the City;

(c) the date that each of the Project Agreements and all related security agreements, statements, certificates, opinions of legal counsel, notices and other documents have been executed and delivered to the City and all conditions precedent to the first advance of any loan or grant to be made by the City to a Successful Proponent under this RFP have been satisfied or waived by the City, and all registrations, filings or recordings necessary or desirable to preserve or protect their security and priority have been completed and are not in default;

(d) the date a Successful Proponent, or its forces, begins, in good faith, actual construction of the Assisted Affordable Rental Housing portion of the Project; for purposes of this clause [d] construction shall be deemed not to have been begun until the Successful Proponent or its forces have at least poured footings for the foundation of the Assisted Affordable Rental Housing portion of the Project;

- "Contribution Agreement" means an agreement to be entered into between a Successful Proponent and the City setting out the terms and conditions under which any financial assistance will be provided to the Successful Proponent under the IAH Rental Housing Component;
- "Contribution by Others" means cash or in-kind eligible contributions from Service Managers, municipalities, housing providers, the private sector, the voluntary sector, charities and individual donors, to be used in accordance with a Program or Programs under this agreement. Contributions by Others does not include: contributions from any Government of Canada sources, including, but not limited to arrangements with CMHC; nor contributions under any program wholly or partially funded from Government of Canada sources; nor contributions which receive credit under any arrangement with CMHC or the Government of Canada outside this Agreement;
- "Development Activities" means those activities which have been approved for the Project as set out in the approved Plans and Specifications and, generally, activities that are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property;
- "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 extent 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 City;

- "Funds" means Federal Funds or Provincial Funds, as set out in the Program Guidelines and Municipal funds if applicable;
- "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;
- "IAH" means the Investment in Affordable Housing for Ontario Program – Rental Housing Component;
- "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;
- "Improvements" means the improvements to be made on the Property, consisting of a building and other improvements to be constructed by the Proponent on the Property in accordance with the Plans and Specifications;
- "Loan" means the total amount of Federal Funds, Provincial Funds and Municipal Funds, if applicable, advanced to the Proponent, in accordance with the Funding Schedule;
- "Low Rent" in respect of a Unit of rental housing means a Monthly Occupancy Cost that does not exceed 70% of the Monthly Market Rent for that Unit;
- "Occupancy Date" means the date on which occupancy of all Units in a Project is permitted;
- "Occupancy Standards" means standards which determine the size unit a household is eligible for under the Program or as amended by any future City by-law as outlined in Schedule "O";
- "Parties" means the Proponent and the City 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", together with such renewals or replacement financing that may be approved by the City, acting reasonably, during the term of this Agreement;
- "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;
- "Plans and Specifications" means the plans and specifications for the development of the Project that have been approved and reviewed by all appropriate governmental authorities for the issuance of all permits necessary to construct and occupy the Improvements and as certified by a Quantity Surveyor;

- "Procurement Process" means the request for proposals or procurement process used by the City;
- "Program" means the Rental Housing Component, described in the Program Guidelines;
- "Program Guidelines" means the Program Guidelines for the IAH Components and attached to this Agreement as Schedule "A";
- "Project" means the property and the building(s), as approved by the City, as the context may require on lands described in Schedule "L";
- "Proponent" means a person or other legal entity that has submitted a Proposal;
- "Proposal" means the Proponent's response to the City's request for proposal pursuant to the Procurement Process;
- "Quantity Surveyor" means such Architect, Engineer or other professional duly licensed to practice in the Province of Ontario as the Proponent may from time to time appoint to supervise, direct, monitor, inspect or assess the Project or a specific aspect of the Development Activities;
- "Rental Housing Component" means the Rental Housing Component described in the Program Guidelines;
- "Security Documents" means the security documents attached to and forming part of the Municipal Contribution Agreement;
- "Service Manager" means The Corporation of the City of London;
- "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;
- "Supportive Housing Units" means units that are occupied by households receiving formal support services from Support Service Agencies. Supportive Housing Units may be either intergraded into projects or dedicated to a single Project;
- "Targeting Plan" means the Targeting Plan of the Proponent that sets out delineation of Low Rent, Affordable Rent and Market Rent units as well as Supportive Housing Units in the Projects in order to meet the objectives of the IAH;
- "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" are deemed to include housing charges paid by members of non-profit housing cooperatives 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"	-	IAH Program Guidelines;
Schedule "B"	-	Funding Schedule;
Schedule "C"	-	Contribution by Others - Agreements;
Schedule "D"	-	Rental Protocol;
Schedule "E-1"	-	Charge/Mortgage of Land;
Schedule "E-2"	-	Assignment of Rents;
Schedule "E-3"	-	Security Agreement;
Schedule "F"	-	Energy Efficiency and Building Design Project Details;
Schedule "G"	-	Permitted Encumbrances;
Schedule "H"	-	Proponent's Initial Occupancy Report;
Schedule "I"	-	Proponent "s Annual Occupancy Report;
Schedule "J"	-	Canadian Environmental Assessment Act Considerations;
Schedule "K"	-	Protocol for Non-Compliance;
Schedule "L"	-	Legal Description of Property
Schedule "M"	-	Project Information Form
Schedule "N"	-	Development Schedule
Schedule "O"	-	Occupancy Standards
Schedule "P"	-	Conditional Letter of Commitment from the Minister to the Proponent

- 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 XX million, XX hundred XX thousand dollars (\$X,XXX,XXX) on or before the commencement of Development Activities and provide written confirmation to the City that the equity contribution has been advanced.
- 2.2 Funding for Affordable Housing is comprised of Federal Funds, Provincial Funds and City Funds, if applicable. Federal Funds, Provincial Funds and City Funds will be advanced to the Proponent in the form of a Loan, during the Development Activities.
- 2.3 The City agrees to provide to the Proponent as a Loan, upon the terms and subject to the conditions set out in this Agreement, the amount of XX million, XX hundred, thousand dollars [(\$X,000,000) *Federal Funds*], XX million, XX hundred, thousand dollars [(\$X,000,000) *Provincial Funds*] and XX million, XX hundred, XX thousand dollars [(\$X,000,000) *City Funds*] as described in Schedule "M", to be applied by the Proponent only towards the payment of Development Activities for Affordable Housing. Pursuant to the Proposal, the total amount of such loan being XX million, XX hundred, and XX thousand dollars (\$X,000,000).
- 2.4 The City 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 City shall disburse the amount so withheld following its receipt of satisfactory evidence that such construction is substantially 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 and Contribution by Others solely for the purpose of its Development Activities in connection with the Project.
- 2.6 The City shall disburse the Federal, Provincial and City funds, if applicable in accordance with the Funding Schedule attached as Schedule "B."
- 2.7 The Proponent may authorize the City to pay Funds to a third party and the City shall permit such authorization.

### **3. SPECIAL CONDITIONS**

- 3.1 The Proponent shall provide the City with a revised construction schedule and construction budget for its review and approval four (4) weeks prior to the start of construction. The construction budget shall include soft costs, and the cost of each item of the Project. The Proponent will obtain the City's prior written approval to any material amendment to the construction schedule or construction budget. A material amendment means any single amendment that increases the cost of construction of constructing the Project by amount exceeding \$20,000 or any series of amendments that, in the aggregate, increase the cost of constructing the Project by an amount exceeding \$50,000.
- 3.2 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 and in conformity with its Proposal.
- 3.3 The Proponent shall, subject to Force Majeure, achieve Substantial Completion in accordance with the Program Guidelines.
- 3.4 Without limiting the condition set out in section 5.1 (b), the Proponent shall 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.
- 3.5 The Proponent shall not at any time during the term of this Agreement breach any Contribution Agreement respecting the Project that it has entered into by means of a Contribution by Others, 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. All such agreements by means of a Contribution by Other shall be attached as Schedule "C". The Proponent shall provide the City 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 City.

### **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 Prior to occupancy of a unit, the tenant shall be subject to review and approval of the Service Manager for compliance with the Program requirements. The Proponent shall provide written notice to each prospective first tenant regarding the review by the Service Manager.



- 4.3 The Proponent agrees to operate the Units in accordance with the rules set out in Schedule "D" of this Agreement.
- 4.4 The City requires that the Proponent provide XX units for singles, couples, working poor, recent immigrants, supportive housing and Aboriginal people.
- 4.5 The City requires that 2/3 of units in the project will not exceed 80% or less of the CMHC AMR as outlined in Schedule "D". Rent increases may follow the *Residential Tenancies Act, 2006* rent increase guidelines but must not exceed 80% of the CMHC AMR for the term of the agreement. At initial occupancy, the rent for a one bedroom apartment will be \$563 including items listed in section 4.7. This rent will not be adjusted prior to occupancy.
- 4.6 The City requires that 1/3 of the units in the project will not exceed 70% or less of the CMHC AMR as outlined in Schedule "D". Rent increases may follow the *Residential Tenancies Act, 2006* rent increase guidelines but must not exceed 70% of the CMHC AMR for the term of the agreement. Tenants for these units must be from the Housing Access Centre's Waiting List. At initial occupancy, the rent for a one bedroom apartment will be \$493 including items listed in section 4.7. This rent will not be adjusted prior to occupancy.
- 4.7 The City requires that the Affordable Rent for a project include the fridge, stove, unit heat, water and parking.
- 4.8 This Project will adhere to the Occupancy Standards as outlined in Schedule "O". These standards determine the size and type of unit in respect of which a household can occupy under the IAH.

## 5. CONDITIONS

- 5.1 The provision of funding by the City pursuant to sections 2.3, 2.4 and 2.7 is subject to the following conditions precedent, each of which is for the exclusive benefit of the City, and may be waived in full or in part by the City by written notice to the Proponent:
  - (a) the Proponent is the registered owner in fee simple of the lands described in Schedule "L";
  - (b) any Contribution Agreement referred to in section 3.4 remaining in force and the Proponent being in good standing thereunder;
  - (c) there being no Claim for Lien under the *Construction Lien Act* registered against the Project;
  - (d) there being in existence no unregistered lien or statutory claim having priority against the Project;
  - (e) the Proponent's title to the Project being free from any encumbrances other than the Permitted Encumbrances;
  - (f) the Proponent being in good standing under all of the Permitted Encumbrances;
  - (g) there being no work orders issued against the Project by any governmental entity, agency or official;
  - (h) the Proponent having provided the City with the security documents required by section 7 and in accordance with the said section; and
  - (i) 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 secured by by-law, agreement or otherwise and 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 City pursuant to sections 2.3 or 2.4 and are not waived by the City pursuant to section 5.1, the City shall be under no obligation to make any advance of the Loan to the Proponent and the City 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 City 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 City 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.
- 5.3 The provision of Funds by the City pursuant to section 2.6 is subject to the following conditions precedent, each of which is for the exclusive benefit of the City, and may be waived in full or in part by the City by written notice to the Proponent:
- (a) any Contribution Agreement 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 free from any registered encumbrances other than the Permitted Encumbrances;
  - (e) the Proponent being in good standing under all of the Permitted Encumbrances;
  - (f) there being no work orders issued against the Project by any governmental entity, agency or official;
  - (g) the City has approved the information reports required in section 8.1 (c) ;
  - (h) the City has approved the Proponent's Targeting Plan and has advised the City, on an annual basis, that the Proponent is in compliance with the Targeting Plan.
- 5.4 Purposely Omitted.

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

- 6.1 The Loan shall have a term of twenty-five (25) years, commencing as of the Initial Occupancy of the Project.
- 6.2 Prior to the Interest Adjustment Date, interest shall accrue on the total of the amount or amounts advanced under the Loan the rate of eight per cent (8%) per annum. The interest so calculated shall compound semi-annually, not in advance, 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 Following 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.
- 6.5 On each anniversary date of the Interest Adjustment Date, the Proponent shall pay the City 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 in the opinion of the City, acting reasonably, 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 provide the City with such information respecting the Proponent's permanent financing obligations for the Project as the City may require from time to time.

## **7. SECURITY**

- 7.1 Prior to the City disbursing the Loan proceeds to the Proponent pursuant to section 2.3, the Proponent shall provide the City 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.
- 7.2 The Security shall be collateral to this Agreement. The amount of all contributions from the City shall be included in the Security documents. Any cash contributions from the City shall be included in the Security documents. The amount of any eligible in-kind contributions from the City shall not be included in the Security documents.
- 7.3 Without limiting the Proponent's covenants and the remedies of the City under the Municipal Contribution Agreement and the Security, the Proponent agrees that a breach of this Agreement shall constitute a breach of the Security and a breach of the Security shall constitute a breach of this Agreement.
- 7.4 The City acknowledges and agrees that notwithstanding that the Security provides that the principal and interest secured thereunder is payable on demand, the City 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 City.
- 7.5 The Security shall rank immediately behind the registered security for the Proponent's Permitted Encumbrances obligations for the Project unless the City determines that the Security shall have a lesser priority.

## **8. ACCOUNTABILITY FRAMEWORK**

- 8.1 (a) In the event:

- (i) the City is advised that the Project will not proceed; or
- (ii) the building permit for the Project is not issued on or before **October 31, 2012** or such longer period of time as the City may determine; or
- (iii) the City determines, acting reasonably, that the Proponent is not proceeding with the construction due to delays likely to cause depreciation or deterioration of the Improvements the Proponent shall return all Funds to the City, forthwith upon demand; or
- (iv) the City is of the opinion that the Proponent is not proceeding in an expeditious manner with the Development Activities for which the Funds have been provided; or
- (v) the Proponent is not complying with the requirements as set out in section 4 and Schedule "D" and Schedule "O" during the term of the Agreement;

the Proponent will be in default and shall return all Funds to the City, forthwith upon demand.

- (b) The Proponent shall submit to the City, an audited statement with respect to the expenditure of capital Funds provided to it pursuant to this Agreement, within ninety (90) days following the date on which the City is advised that the Development Activities related to the Project have been fully completed or the Project will not proceed.
- (c) Following the full completion of the Development Activities related to the Project, the Proponent shall submit to the City a completed information report in the form attached hereto as Schedule "H", and annually thereafter shall submit to the City completed information reports in the forms attached hereto as Schedules "I".
- (d) Without limiting the Proponent's obligations under section 8.1 (c), the Proponent, if requested by the City, shall forthwith submit to the City the material required to be submitted to the City pursuant to section 8.1(c), in addition to any such material that the Proponent may have previously submitted to the City.
- (e) If requested by the City, the Proponent shall submit to the City an audited financial statement within ninety days (90) following the fiscal year end of the Project.

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 City under this Agreement.

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

8.4 The City 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 City and provide free access to the Project and to such staff, documents, book, records and accounts as may be determined by the City.

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

## **9. COMMUNICATIONS PROTOCOL**

- 9.1 The Proponent acknowledges that it has been informed by the City that under the terms of the CMHC - Ontario Agreement for Investment in Affordable Housing 2011-2014 all publicity, including written materials and signs, respecting the Project must recognize the contributions of CMHC, the Minister and the City. The Proponent further acknowledges that it has been informed by the City that the CMHC - Ontario Agreement for Investment in Affordable Housing 2011-2014 requires the Minister to co-ordinate with 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 City to be in breach of the terms of the CMHC - Ontario Agreement for Investment in Affordable Housing 2011-2014.
- 9.2 The Proponent shall co-operate in organizing press conferences, announcements, and official ceremonies to be held at an appropriate location and time 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 City.
- 9.3 During the period of the Development Activities related to the Project, the Proponent shall erect a sign at a prominent location where there is visible activity related to the approved Project. The sign shall include that it is a CMHC-Ontario-City Investment in Affordable Housing Project, bear a message approved by the three levels of government, and remain in place throughout the construction period. The sign shall be in accordance with specifications issued by the City. The cost of the sign is included in the funding provided by CMHC, Province and City under the IAH.
- 9.4 CMHC, Ontario and the City 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 provided by the City.
- 9.5 The Proponent acknowledges that any breach by it of sections 9.2 or 9.3 of this Agreement shall cause the City to be in breach of the CMHC - Ontario Agreement for Investment in Affordable Housing 2011-2014.

## **10. REMEDIES**

- 10.1 Upon the occurrence of any one or more of the following events (each an "Event of Default"):
- the failure of the Proponent to perform, observe or comply with any other term, covenant, condition or provision of this Agreement within 10 days of receipt of written notice of the "failure" from the City provided the Proponent shall not be deemed to be in default if within the said period of ten (10) days, the Proponent commences the necessary action to remove the "failure" and such action is diligently prosecuted;
  - any representation or warranty made by the Proponent in this Agreement proves to have been untrue or misleading in any material respect as of the date on which it was made;
  - any person commences an action, suit or proceeding materially affecting the Project or file a lien against the Property, or any person shall commence an action, suit or proceeding contesting or questioning the validity or enforceability of this Agreement, unless the Proponent shall diligently contest such action, suit or proceeding and discharge any such lien forthwith without the requirement of notice by the City and post such bonds, cash or letters of credit or give such other security in order to obtain such discharge in amounts and on terms satisfactory to the City, acting reasonably;

the Proponent ceases to carry on business;

the Proponent:

becomes insolvent or unable to pay its debts as they become due; or

files a petition in bankruptcy or voluntary petition seeking reorganization or effect a plan or other arrangement with creditors; or

makes an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or any other insolvent debtors' legislation; or

applies for or consents to the appointment of any receiver or trustee for it or of all or any substantial part of its property and assets; or

voluntarily liquidates or winds-up or suffers itself to be liquidated or wound-up;

(f) any of:

an involuntary petition seeking the adjudication of the Proponent as bankrupt or insolvent not removed within 30 days; or

an order of any court or other authority appointing any receiver or trustee for the Proponent or for all or any substantial portion of its property and assets; or

a writ of execution, judgment or writ of attachment or any similar process which may, in the reasonable opinion of the City, materially impair the ability of the Proponent to perform its obligations under this Agreement or any of the Security Documents shall be made, given or issued against the Proponent or in respect of its property and assets, and such petition, order, writ or judgment is not vacated or stayed within 15 days after its date;

(g) the occurrence of a material adverse change in the financial condition of the Proponent which would, in the reasonable opinion of the City, detrimentally affect the ability of the Proponent to meet its obligations to the City; and

(h) if the Improvements shall be entirely destroyed or damaged to such an extent that, in the opinion of the Quantity Surveyor, acting reasonably, they are no longer fit for the purpose for which they were intended and the insurance proceeds, if any, held by the City, in the opinion of the Quantity Surveyor, acting reasonably, insufficient to repair such destruction or damage, and the Proponent has not provided evidence satisfactory to the City of the timely availability of such sufficient funds,

then, at its option, the City may declare the full principal amount of the Loan then advanced, together with all other moneys owing to the City hereunder, due and payable forthwith. In such case, the City may realize upon any and all security pledged to it and may commence such other legal actions or proceedings against the Proponent, the Property or assets of the Proponent as may be permitted hereunder, by any one or more of the Security Documents or at law or in equity, all as it, in its sole discretion, deems expedient. The Proponent hereby acknowledges that the City's remedies are cumulative and not mutually exclusive.

10.2 Complete Construction. If an Event of Default shall occur, then the City may, at its option, in addition to any other remedy available to it, enter upon and take charge of the Project and assume full charge of the Improvements and may complete the Improvements or enter into a

contract with another to complete the same, and all amounts advanced for such purpose, including reasonable legal fees incurred by the incident to the enforcement of any provisions hereof, shall be an indebtedness of the Proponent to the City. All such amounts, even though they may, when added to the monies advanced and disbursed under this agreement, exceed the Loan, shall be secured by the Mortgage and other Security Documents

- 10.3 During Term of Agreement. Should the Proponent be in default under the terms of the loan or under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property, the City shall have the right to declare all or part of the unearned portion of the loan due and payable immediately. Interest will be payable only from the date of default until the loan is paid in full. The interest rate shall be the Bank of Canada Prime Rate plus 2% in effect at the time of the loan default. The amount of the loan that must be repaid is equal to the total amount of the loan less any amount considered forgiven from the first day of the month following full payment of the funds until the default.
- 10.4 Assignment of Plans and Specifications. The Proponent hereby assigns to the City and its successors and assigns, the right to possess and use the Plans and Specifications and the Proponent's rights under all construction contracts, for the purpose of completing the Improvements if Proponent defaults subject to any prior assignment to the holder of the First Loan.
- 10.5 Costs and Expenses of Collection. All reasonable costs and expenses of collection (including legal fees, disbursements and court costs) of all amounts owing hereunder or of enforcement of any security created in favour of the City pursuant hereto, shall be for the account of the Proponent and shall be repayable on demand.
- 10.6 In the event the City determines that a Proponent has breached any one (1) or more provisions of the Contribution Agreement, the City shall follow the Protocol for Non-Compliance set out in Schedule "K".
- 10.7 All of the remedies in this Agreement, Schedule "K" and the Security are cumulative and are not alternative and the City shall not be precluded from availing itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.
- 10.8 Notwithstanding any of the terms of this Agreement, Schedule "K" or of the Security, the City shall have the option of waiving any or all of its remedies under this Agreement, Schedule "K" 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.

## **11. ENERGY EFFICIENCY AND BUILDING DESIGN**

- 11.1 Proponents must use ENERGYSTAR – rated products.
- 11.2 Energy efficient details for products and materials included in the project must be listed in Schedule "F".
- 11.3 Funding under the IAH is subject to the Canadian Environmental Assessment Act (CEAA). To receive funding under the IAH, housing proponents must confirm that project proposals do not impose adverse impacts that cannot be mitigated. CEAA Considerations are outlined in Schedule "J".

## **12. REPRESENTATION AND WARRANTIES**

The Proponent represents and warrants to the City that:

- 12.1 The Proponent is a duly incorporated, organized and validly existing under the laws of the Province of Ontario and has full capacity, power and authority to own all its property and to carry on its business as now conducted and as contemplated under this Agreement and all other agreements contemplated thereunder, and is duly qualified and in good standing in each jurisdiction in which the character of the property owned or leased or the nature of the business carried on by it makes such qualification necessary or desirable.
- 12.2 The Proponent has full corporate power, legal right and authority to enter into this Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed or performed by it.
- 12.3 Neither the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, nor the compliance with the terms, conditions and provisions hereof and of the Mortgage will conflict with, or result in a breach of, any of the terms, conditions or provisions of the constating documents of the Proponent or of any agreement or instrument to which it is now a party, or constitute a default thereunder, or (except as contemplated by this Agreement) result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Proponent (whether such properties or assets are owned legally or beneficially) pursuant to the terms of any agreement or instrument to which it is a party.
- 12.4 There is not now pending against the Proponent any litigation, action, suit or other proceeding of a material nature by or before any court, tribunal or other governmental agency or authority or any other such pending or threatened action, suit or other proceeding against the Proponent or against or affecting any of the properties or assets of the Proponent (whether such property or assets are owned legally or beneficially) such that if the same were adversely determined, it could be reasonably expected to materially and adversely affect the business operations, properties or assets, or the condition, financial or otherwise, of the Proponent.
- 12.5 Except as previously disclosed in writing to the City, the Proponent is not a party to any agreement or instrument or subject to any restriction or any judgment, order, writ, injunction, decree, rule or regulation which materially and adversely affects the business, operations, prospects, properties or assets, or condition, financial or otherwise, of the Proponent.
- 12.6 The construction contract is in full force and effect and neither the Proponent nor any other party thereto is in default thereunder.
- 12.7 None of the information, financial or otherwise, provided by the Proponent to the City to induce the City to make the Loan and to enter into this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which it was made.

## **13. COVENANTS OF THE PROPONENT**

13.1 The Proponent covenants and agrees with the City that, it shall:

- (a) take all such actions and do all such things required to develop and continuously carry on the construction of the Improvements in a good and workmanlike manner and in accordance with the Plans and Specifications and to complete such construction not later than the date specified in Schedule "N", subject to acts of God and other events which occur for non-financial reasons beyond the control of the Proponent, including, without



limitation, strikes, lock-outs or other labour or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, future valid orders of any regulatory body having proper jurisdiction, wars, riots, sabotage, blockades, embargoes, insurrections, lightning, earthquake, fires, storms, floods and explosions and to pay all costs thereof;

- (b) do or cause to be done all acts and things necessary to preserve in full force and effect the existence of the Proponent and all licences and permits required for the carrying on of the operations of the Proponent at and from the Property and to preserve and protect all of the properties, real and personal owned and used by the Proponent in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair;
- (c) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the City, or of any other entity having jurisdiction to impose such taxes or levies, when the same become due and payable, except such taxes as are being contested in good faith by appropriate proceedings and provided that, in such case the Proponent shall have provided the City with appropriate security;
- (d) deliver to the City the statements and reports as required by the Contribution Agreement.

13.2 The Proponent covenants and agrees with the City that, so long as any obligation is outstanding by the Proponent to the City hereunder the Proponent will not, without the prior written consent of the City, which consent may not be unreasonably withheld:

- (a) create, incur, assume or permit to exist, after knowledge of the existence thereof, any mortgage, pledge, lien, hypothecation, charge (fixed or floating), security interest or other encumbrance whatsoever on the Property or any personal property or fixtures thereon except the encumbrances created by the following encumbrances (collectively, the "Permitted Encumbrances"):

13.2.a.1 the First Mortgage;

13.2.a.2 encumbrances created in favour of or assigned or pledged to the City;

13.2.a.3 inchoate or statutory liens for taxes which have not been assessed, or if assessed, which are either not delinquent or which are being contested by bona fide proceedings in good faith, and sufficient security for the payment of same has been given to the City, if requested;

13.2.a.4 inchoate or statutory liens of contractors, sub-contractors, mechanics, suppliers, workers and others in respect of the construction, maintenance, repair and operation of the Improvements, provided that the same are not registered encumbrances against title to the Property or any personal property, or, if so registered, have been postponed to all charges in favour of the City contained in the Security Documents or are being contested by bona fide proceedings in good faith with sufficient security for the payment thereof having been given to the City or paid into Court to prevent effectively in the City's opinion realization by disposal or other alienation from the Proponent of its legal or beneficial title to or interest in any such property; and

13.2.a.5 Other Permitted Encumbrances listed in Schedule "G" hereto.

- (b) become a party, without the prior written consent of the City, to any transaction whereby the Project would become the property of any other person, whether by way of reorganization, amalgamation, merger, transfer, sale, lease, sale and leaseback, or otherwise;
- (c) permit any change in the beneficial ownership of the Proponent without prior written consent of the City;
- (d) make any material change in the Plans and Specifications or the Construction Contract which pertains to the number or type of residential dwelling units of the Project without the prior written approval of the City; or
- (e) change its fiscal year end or change the basis upon which the financial records of the Proponent are maintained, without the prior written consent of the City.

#### **14. INDEMNIFICATION**

14.1 The Proponent shall indemnify and save harmless the City from all claims, costs, all matter of actions, cause and causes of action, duties, dues, accounts, covenants, demands or other proceeding of every kind or nature whatsoever at law or in equity arising out of this Agreement and out of the operation of the units including claims arising out of negligence of the Proponent and specifically, all claims arising out of the intentional or criminal acts of any officers or directors, employees, agents, volunteers or independent contractors of the Proponent. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring the term of this agreement.

14.2 The Proponent agrees to purchase and maintain, during the term of this Agreement third party liability insurance in a limit of not less than Five Million Dollars (\$5,000,000.00) covering bodily injury, loss or property damage resulting from any activity related in any way to this Agreement. This insurance shall include the City as an additional insured, a cross liability clause, severability of interest clause, non-owned automobile insurance and personal injury liability clause.

14.2.1 The Proponent further agrees, upon Substantial Completion, to purchase and maintain insurance policies that a prudent manager of similar premises would maintain and, without limiting those types of policies, at least the following:

- a) Broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of the Project and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.);
- b) All risks property insurance (including flood and earthquake) in an amount equal to the full replacement cost of the Project and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.).

14.3 In addition, during the design and construction period of the contract the Proponent will obtain and maintain the following policies of insurance:

14.3.1 All risk builder's risk property insurance for the full replacement value of the completed construction project, including boiler and machinery, earthquake and flood based on a stated amount co-insurance and including a waiver of subrogation and loss payable, as their interest may appear, in favour of the City, and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00) and remaining in effect until the completion of construction;

14.3.2 Construction wrap-up liability insurance coverage including owners and contractors protective, broad form products and completed operations, cross liability and severability of interest clauses, blanket contractual, hook liability, employers liability, non-owned automobile liability) and shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, tunnelling and grading, and similar operations associated with the construction work, as applicable; to an inclusive limit of not less than \$5,000,000.00 and in the joint names of the Proponent, City, Designated Consultants, Designated Contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons (including, but not limited to directors, officers, employees, shareholders, legislators and officials involved in the project) which the City reasonably may require to be added as insured parties. (Note: This section is non-applicable if construction cost is under five million dollars (\$5,000,000))

14.4 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 Agreement, 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.

14.5 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. Evidence that the insurance described above is in force shall be provided to the City prior to commencement of the Agreement and thereafter once annually at least ten (10) clear days prior to the renewal date of the policy, and that the insurance will not be cancelled or permitted to expire unless the insurer notifies the City in writing at least thirty (30) days prior to such cancellation.

14.6 Further, the Proponent shall require all professionals involved with the project to carry professional (errors and omissions) liability insurance in an amount not less than Two Million (\$2,000,000.00) dollars and make reasonable efforts to verify such insurance is in force throughout the period of the work.

14.7 The Proponent agrees to obtain for its employees and to require all Designated Consultants, Designated Contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons Workplace Safety and Insurance Board coverage and to ensure that such coverage continues in effect throughout the period of the work.

## 15. NOTICE

15.1 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 City:

The Corporation of the City of London  
Housing Division  
P.O. Box 5035  
London, ON  
N6A 4L9  
Fax: 519-661-5804

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

Company Name  
Address  
Fax:  
Attention:  
Email

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 4:20 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) 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.

## 16. GENERAL

16.1 Any power, right or function of the City, contemplated by this Agreement, may be exercised by any employee or agent of the Corporation of the City of London, who is hereby specifically authorized in this regard.

16.2 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 City pursuant to this Agreement.

16.3 The Proponent represents and warrants that:

- a) it shall preserve the PIPEDA compliance of all PIPEDA protected Information transferred to it by the City;
- (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 City.
- 16.4 The disbursement of Funds by the City to the Proponent pursuant to sections 2.3, 2.4 and 2.6, is subject to the necessary appropriations from the Federal Parliament, the Provincial Legislature and Municipal Council. The City shall have no liability in the event the respective appropriations are insufficient to meet the funding obligations.
- 16.5 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 City and the Proponent as partners of each other.
- 16.6 The Proponent acknowledges that CMHC and the Minister are not parties to this Agreement or other agreement relating to any Project.
- 16.7 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 Service Manager or the Municipal Council of any local municipality of the Service Manager 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.
- 16.8 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 City and the Proponent or their respective solicitors on their behalf, who are hereby expressly authorized in this regard.
- 16.9 Any tender of documents or money hereunder may be made by the City or the Proponent or their respective solicitors, and it shall be sufficient that a bank draft or certified cheque may be tendered instead of cash.
- 16.10 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.
- 16.11 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.
- 16.12 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.
- 16.13 This Agreement shall be read with all changes of gender and number required by the context.

- 16.14 (a) The Proponent shall not transfer or convey its interest in all or any part of the Project without, subject to subsection 16.14(b), simultaneously assigning its interest in this Agreement to the transferee, which transferee shall enter into one or more agreements with the City, in a form satisfactory to the City, to assume all of the Proponent's obligations under this Agreement and to provide the City 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 City, 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.
- 16.15 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.
- 16.16 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.
- 16.17 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 16.15 restricting the Proponent's ability to assign this Agreement.

**IN WITNESS WHEREOF** this Agreement has been executed by the **Parties**.

**THE CORPORATION OF THE CITY OF LONDON**

---

J. Baechler  
Mayor

---

Catharine Saunders  
City Clerk

**PROPONENT**

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

Name:

Title:

I/We have the authority to bind the Corporation.

**SCHEDULE "A"**

**IAH PROGRAM GUIDELINES**

*[Program Guidelines Attached]*



# SCHEDULE "B"

## FUNDING SCHEDULE

### 1. Government Funding Progress Payments for Construction of Projects

#### Federal, Provincial and City Funds

Construction Milestones	Progress Payments New Construction
Construction Start with First Building Permit	25 per cent (less 10% holdback)
Foundation Completed	15 per cent (less 10% holdback)
Structural Framing Certified Complete	35 per cent (less 10% holdback)
Substantial Completion	15 per cent
Occupancy Certificate	10 per cent

No funds shall flow if an order has been issued under subsection 12(2) of the Building Code Act and there has not been compliance with that order.

### 2. DISBURSEMENT OF THE LOAN

#### 2.1 Payment. – Federal, Provincial & Municipal Funds

The City shall make advances of the loan at the following times upon at least ten (10) days prior notice to the City, provided that the conditions set forth below have been satisfied:

an amount equal to 25% of the Federal/Provincial/City Loan (less 10% holdback) at first building permit, which amount shall be paid to the Proponent's solicitor in trust for payment in its entirety only in respect of Construction Costs provided the funds are, in the opinion of the City, properly secured;

an amount equal to 15% of the Federal/Provincial/City Loan (less 10% holdback), at foundation completion, which amount shall be paid to the Proponent's solicitor in trust for payment in its entirety only in respect of Construction Costs provided the funds are, in the opinion of the City, properly secured;

an amount equal to 35% of the Federal/Provincial/City Loan (less 10% holdback), at completion of structural framing, which amount shall be paid to the Proponent's solicitor in trust for payment in its entirety only in respect of Construction Costs provided the funds are, in the opinion of the City, properly secured;

an amount equal to 15% of the Federal/Provincial/City Loan upon Substantial Completion as evidenced by the General Contractor's Certificate and expiry of all lien periods under the Construction Lien Act (Ontario), as amended, or successor legislation, which amount shall be paid to the Proponent's solicitor in trust for payment in its entirety only in respect of Construction Costs provided the funds are, in the opinion of the City, properly secured;

the balance of the Federal/Provincial/City Loan upon Occupancy as evidenced by the Occupancy Certificate as provided by the City of London, which amount shall be

paid to the Proponent's solicitor in trust for payment in its entirety only in respect of Construction Costs provided the funds are, in the opinion of the City, properly secured.

the City shall not be liable to suppliers, contractors, sub-contractors, craftsmen, labourers or others for goods and services delivered by them in or upon the Property, or employed in the construction of the Improvements, or for any debts or claims accruing to any of the parties against the Proponent or against the Property;

it is distinctly understood and agreed by the parties hereto that there is no contractual relationship either express or implied, between the City and any supplier, contractor, sub-contractor, craftsman, labourer or person supplying any work, services or material to the Improvements. The Proponent is not, and shall not be, the agent of the City for any purpose. There shall be no third party beneficiary of this Agreement, express or implied.

### 3. CONDITIONS

3.1 The obligation of the City to make the payment of the loan is conditional upon prior compliance with such of the following conditions precedent as are not previously waived in writing by the City:

- (a) the Proponent shall have submitted the Project Budget and Project Construction Schedule to the City in a form and content satisfactory to the City;
- (b) the Proponent shall have delivered to the City evidence satisfactory to the City that the Proponent's Equity has been paid, delivered or pledged;
- (c) the City shall have received the following documents and materials each of which shall be satisfactory in substance and in form to the City:

certificates of incumbency of the persons signing on behalf of the Proponent;

certified copies of such corporate documents of the Proponent as the City may reasonably require including, without limitation, letters patent, articles of incorporation, certified abstracts from by-laws, and certified copies of relevant directors' resolutions;

an opinion of the Proponent's counsel, dated the proposed date for the initial advance and addressed to the City and its counsel:

that the Proponent:

is a body corporate, duly incorporated and properly organized and validly existing as a corporation under the laws of the jurisdiction in which it was incorporated;

is qualified to do business in the Province of Ontario;

has all the necessary corporate power and authority to carry on the business to be conducted by it in respect of the development, operation and management of the Project; and

has all the necessary corporate power and authority to enter into and perform its obligations under this Agreement and each of the

Security Documents to which it is a party in accordance with their respective terms;

that this Agreement to which the Proponent is a party have been duly and validly authorized, executed and delivered by the Proponent and are valid and binding obligations of the Proponent enforceable in accordance with their respective terms;

that neither the execution and delivery by the Proponent of this Agreement to which it is a party nor compliance by the Proponent with any of their respective terms will contravene the charter documents or by-laws of the Proponent or, to the best of such counsel's knowledge, after having made due enquiry of the Proponent, contravene or result in a default under any other agreement or instrument by which Proponent may be bound or affected;

that, to the best of such counsel's knowledge, without having made independent enquiry, there are no actions or proceedings pending or threatened against the Proponent, before any court or administrative agency;

that the Proponent has or will have good and marketable title to the Property, subject only to Permitted Encumbrances, and that the Project complies in all respects with and is not in contravention of any relevant municipal, provincial or federal law, by-law, statute, ordinance or regulation;

that no instrument containing a charge on any of the undertaking, property or assets of the Proponent, or notice thereof, has been registered in the Province of Ontario other than Permitted Encumbrances;

that this Agreement and financing statements, notices and other documents relative thereto have been duly registered or filed in all places in Ontario where such registration or filing is required by law or is necessary to make effective, preserve and protect the security which they purport to create; and

as to such other matters as the City or its counsel may reasonably request.

**SCHEDULE "C"**

**CONTRIBUTIONS BY OTHERS – AGREEMENTS**

*(Relevant documents attached.)*

# SCHEDULE "D"

## RENTAL PROTOCOL

### 1. DEFINITIONS

1.1 In this Schedule "D, unless the context requires otherwise,

- "Affordability Period" means the "twenty-five (25) year period" following the date of the first (1<sup>st</sup>) occupancy of a Unit in the Project;
- "Agreement" means the Agreement to which this Schedule "D" is attached;
- "Phase-out Period" means the last five (5) year period of the "Affordability Period", and

when used in this Schedule 'D', the term "rent" includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to the 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. PROJECT RENTS

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 Initial rents are listed in Schedule "M" and will not be adjusted prior to occupancy unless a minimum of twelve months has elapsed since the signing of the Contribution Agreement. A business case must be submitted to the City for consideration and approved by the Director of Municipal Housing.

3.2 Low Rent Units: 1/3 of the units which Program Funds have been utilized shall not exceed seventy per cent (70%) of CMHC Average Market Rent for the London CMA. Rent increases will follow the RTA rent increase guidelines and must not exceed 70% CMHC AMR for the term of the agreement.

3.3 Affordable Rent Units: 2/3 of the units which Program Funds have been utilized shall not exceed eighty per cent (80%) of CMHC Average Market Rent for the London CMA. Rent increases will follow the RTA rent increase guidelines and must not exceed 80% CMHC AMR for the term of the agreement.

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

- 4.1 The Proponent may increase the rent charged under section 3.2 and 3.3 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 (1<sup>st</sup>) rental period following the completion of the Development Activities in connection with the Project.

No additional increase is permitted when a unit becomes vacant within 12 months of the annual rent increase.

- 4.2 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".

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

- 6.1 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.

#### **7. MAXIMUM HOUSEHOLD INCOME**

- 7.1 Gross tenant household income from all sources for tenants of assisted affordable rental housing can be no greater than five (5) times their Monthly Occupancy Cost. Proponents will be required to check incomes for prospective tenants of Assisted Affordable Rental Housing units to ensure compliance with this requirement at initial occupancy ("rent up") and when any new tenants are selected as ensuing vacancies occur during the twenty (20) year period following the Project Completion Date. Proponents are not required or expected to check incomes for approved tenants once they have taken possession of their units.

## **SCHEDULE "E-1", "E-2", "E-3"**

### **SECURITY DOCUMENTS**

*[Relevant Documents 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"**

### **ENERGY EFFICIENCY AND BUILDING DESIGN PROJECT DETAILS**

ENERGY STAR Appliances:

- Fridge
- Stove

Energy Efficient Products:

LEEDS Certification (state level)

Energy Audit (name of company performing audit)



## **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 \$X,XXX,XXX.
2. Construction financing which does not exceed \$X,XXX,XXX.
3. Such easements and restrictive covenants as do not prevent the Project from being constructed or used as Affordable Housing.
4. Municipal agreements relating to the Development Activities in connection with the Project.

## SCHEDULE "H"

### PROPONENT'S INITIAL OCCUPANCY REPORT

IAH - Rental Housing Component  
Service Manager Direct Delivery

#### A. Project Information

Initial Occupancy	
Contribution Agreement Expiry Date	
Contribution Agreement Phase-Out Period	

Project Name	
Project Address	
Proponent	
Contact	
Mailing Address	

#### B. Number of Units in Project

Unit Type	Total IAH Units (A)	Units not Receiving IAH Funding (B)	Total Number of Units (A+B)
Bachelor			
1 BR			
2 BR			
<b>Total</b>			

**C. Depth of Affordability: Rents at Occupancy (IAH Funded Units) – 80% CMHC AMR**

Establishes "permitted rents"

Unit Type	Unit Size	Number of Units (A)	Actual rent to be Charged per Month (B)	CMHC Average Market Rent (20xx) (C)	Actual Project Rents (D)= (A)x(B)	Project Rents as per CMHC AMR (E)=(A)x(C)
Bachelor						
1 BR						
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)

<b>Weighted Average Rents</b>	<b>Project Weighted Average Rent</b> Total of (D)÷Total of (A) =	<b>CMHC Average Market Rent:</b> Total of (E)÷Total of (A) =
<b>Depth of Affordability</b>	(Project Weighted Average Rent ÷CMHC Weighted Average Rent) x100 =	

**Rationale (if Depth of Affordability is greater than 80% of CMHC AMR)**

--

**D. Depth of Affordability: Rents at Occupancy (IAH Funded Units) – 70% CMHC AMR**

Establishes "permitted rents"

Unit Type	Unit Size	Number of Units (A)	Actual rent to be Charged per Month (B)	CMHC Average Market Rent (C)	Actual Project Rents (D)= (A)x(B)	Project Rents as per CMHC AMR (E)=(A)x(C)
Bachelor						
1 BR						
TOTAL						

Notes:

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

<b>Weighted Average Rents</b>	<b>Project Weighted Average Rent</b> Total of (D)÷Total of (A) =	<b>CMHC Average Market Rent:</b> Total of (E)÷Total of (A) =
<b>Depth of Affordability</b>	(Project Weighted Average Rent ÷CMHC Weighted Average Rent) x100 =	

**Rationale (if Depth of Affordability is greater than 70% of CMHC AMR)**

**E. Project Certification**

I certify, to the best of my knowledge that the information provided in Sections B, C and D in this report are true and correct. I hereby authorize the City of London to review the rent roll from appropriate source(s) if deemed necessary.

\_\_\_\_\_  
Signed by Proponent

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

Proponent Name  
Position  
Company/Organization

\_\_\_\_\_

\_\_\_\_\_  
Signed by Service Manager

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

\_\_\_\_\_  
[Print name of Service Manager]

**NOTE:** This Schedule is required to be submitted by the Proponent to the City of London, for approval, before receiving the final Federal/Provincial payment. The "permitted rents" must be consistent with the formula for determining the initial rents, set out in Schedule "D" Rental Protocol.

# SCHEDULE "H"

## PROPONENT'S INITIAL OCCUPANCY REPORT – PART 2

IAH - Rental Housing Component  
Service Manager Direct Delivery

### A. Project Information

Initial Occupancy	
Contribution Agreement Expiry Date	
Contribution Agreement Phase-Out Period	

Project Name	
Project Address	
Proponent	
Contact	
Mailing Address	

### B. Household Income of All Tenants

Unit Number	Unit Type	Tenant Name(s) and Dependent(s)	Total Gross Household Income	Tenant Move-In Date

### C. Project Certification

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

\_\_\_\_\_  
Signature

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

Proponent Name  
Position  
Company/Organization

**SCHEDULE "I"**  
**PROPONENT'S ANNUAL OCCUPANCY REPORT**

IAH - Rental Housing Component  
Service Manager Direct Delivery

**A. Project Information**

Reporting Period	
Initial Occupancy	
Contribution Agreement Expiry Date	
Contribution Agreement Phase-Out Period	

Project Name	
Project Address	
Proponent	
Contact	
Mailing Address	

**B. Actual Rents at Year End**

Unit Type	IAH Funded Units	Previous Year 20XX		Current Year 20XX			Rationale (If D>B)
		Actual Rent per Unit per Month (A)	RTA Permitted Increase per Unit per Month (%) (B)	Actual Rent per Unit per Month (C)	Rent Increase (D)=(A)-(C)	CMHC AMR (E)	
Bachelor							
1 BR							
2 BR							
Total							

Note: If D is larger than B, provide rationale.

**C. Depth of Affordability: Rents during year of reporting (IAH Funded Units) – 80% CMHC AMR Establishes "permitted rents"**

Unit Type	Unit Size	Number of Units (A)	Actual rent to be Charged per Month (B)	CMHC Average Market Rent (C)	Actual Project Rents (D)= (A)x(B)	Project Rents as per CMHC AMR (E)=(A)x(C)
Bachelor						
1 BR						
Total						

Notes:

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

<b>Weighted Average Rents</b>	<b>Project Weighted Average Rent</b> Total of (D)÷Total of (A) =	<b>CMHC Average Market Rent:</b> Total of (E)÷Total of (A) =
<b>Depth of Affordability</b>	(Project Weighted Average Rent ÷CMHC Weighted Average Rent) x100 =	

**Rationale (if Depth of Affordability is greater than 80% of CMHC AMR)**

**D. Depth of Affordability: Rents during year of reporting (IAH Funded Units) – 70% CMHC AMR**  
Establishes "permitted rents"

Unit Type	Unit Size	Number of Units (A)	Actual rent to be Charged per Month (B)	CMHC Average Market Rent (C)	Actual Project Rents (D)= (A)x(B)	Project Rents as per CMHC AMR (E)=(A)x(C)
Bachelor						
1 BR						
Total						

Notes:

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

<b>Weighted Average Rents</b>	<b>Project Weighted Average Rent</b> Total of (D)÷Total of (A) =	<b>CMHC Average Market Rent:</b> Total of (E)÷Total of (A) =
<b>Depth of Affordability</b>	(Project Weighted Average Rent ÷CMHC Weighted Average Rent) x100 =	

**Rationale (if Depth of Affordability is greater than 70% of CMHC AMR)**

**E. Project Certification**

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

\_\_\_\_\_  
Signed by Proponent

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

Proponent Name  
Position  
Company/Organization

\_\_\_\_\_  
Signed by Service Manager

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

\_\_\_\_\_  
[Print name of Service Manager]



# SCHEDULE "I"

## PROPONENT'S ANNUAL OCCUPANCY REPORT – PART 2

IAH - New Rental Housing Component  
Service Manager Direct Delivery

### A. Project Information

Reporting Period	
Initial Occupancy	
Contribution Agreement Expiry Date	
Contribution Agreement Phase-Out Period	
Project Name	
Project Address	
Proponent	
Contact	
Mailing Address	

### B. Household Income of New Tenants

Unit Number	Unit Type	Tenant Name(s) and Dependent(s)	Total Gross Household Income	Tenant Move-In Date

### C. Project Certification

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

\_\_\_\_\_  
Signature

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

Proponent Name  
Position  
Company/Organization

## **SCHEDULE “J”**

### **CANADIAN ENVIRONMENTAL ASSESSMENT ACT (CEAA) CONSIDERATIONS**

Funding from CMHC is now subject to the Canadian Environmental Assessment Act (CEAA). To be eligible for funding, housing proponents must confirm that project proposals do not impose adverse impacts that cannot be mitigated. Considerations include:

1. Projects that involve construction, expansion, modification or demolition within 30m of a body of water.
2. Projects that involve construction, expansion or modification with a footprint of more than 500m<sup>2</sup> on land not serviced at the time of commitment.
3. Does not involve the likely releasing of a polluting substance into a water body.
4. Projects that involve the demolition of a building where its floor area is more than 1,000m<sup>2</sup> or where the proposal is to be carried out within 30m of another building.
5. Does not:
  - i. Possibly affect the permafrost AND
  - ii. Take place on land not serviced at the time of the commitment AND
  - iii. Involve construction or expansion of a sidewalk, boardwalk, path, pedestrian ramp or access road longer than 100m<sup>2</sup>.
6. Projects that involve construction or expansion or modification in a national park, park reserve, national historic site or historic canal.
7. Does not involve a USE OTHER THAN:
  - Residential accommodations
  - Institutional accommodations/offices
  - Common-carrier-passenger facilities and services
  - Retail sales facilities
  - Medical, educational, informational or recreational facilities or services
  - Food services
  - Parking facilities
  - Non-hazardous storage facilities
  - Presenting artistic, cultural, sporting or other community-related events.

# **SCHEDULE "K"**

## **PROTOCOL FOR NON-COMPLIANCE**

IAH - Rental Housing Component

### **1. BACKGROUND**

1.1 This guideline addresses the obligations to indemnify any obligations of AHP participants to recover funding from affordable housing projects which may encounter difficulties within the relationships described below:

- (a) Province - Canada Mortgage and Housing Corporation ("CMHC");
- (b) Service Manager ("SM") - Province;
- (c) Proponent - Service Manager; and
- (d) Proponent - Province.

1.2 While this Schedule pertains to the Rental Housing Component of the IAH Program, the same set of underlying principles and requirements could accommodate other program components with minor adjustments.

1.3 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 CMHC – Ontario Agreement for Investment in Affordable Housing 2011-2014 (the "IAH Agreement").

### **2. CONSULTATION**

2.1 When the Service Manager becomes aware of a failure of a Proponent to observe or perform a material condition in the Municipal Contribution Agreement, the Service Manager shall notify the Province, which shall, in turn, notify CMHC. The Province and the SM 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 or the SM 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 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 Service Manager 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 Province - CMHC**

- (a) As per the IAH Agreement, Ontario will indemnify CMHC as the result of third party "claims" arising out of the implementation of the Agreement. "Claims" is defined as any legal action against CMHC in connection with the IAH Agreement.
- (b) Federal-Provincial indemnity provisions on Project Development Funding and environmental claims remain as per the IAH Agreement.
- (c) Where CMHC has insured a proponent" 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 the IAH Agreement.
- (d) The IAH "capital" funds and the circumstances dealing with the recovery of these funds are dealt with in subsequent sections of these guidelines.

### **5.2 SM - Province**

- (a) It is proposed that the SM indemnify the Province for any third party claims against the Province, unless the claims are in any way, directly or indirectly, attributable to the negligence, bad faith or willful misconduct of the Province.
- (b) Subject to the preceding paragraph, during the construction phase of a project, it is proposed that the Service Manager indemnify the Province for 100% of federal IAH project funding, as a result of any third party 'claims" against the Province, subject to certain exceptions as per the IAH Agreement, including:

- (i) Maximum liability is limited to the total amount of federal-provincial funding advanced at the time of the loss-giving rise to the claim for indemnification;
  - (ii) 50% share of provincial liability for losses in relation to Project Development Funding (i.e. 25% of the total claim);
  - (iii) 50% share of provincial liability for losses as a result of environmental and pollution claims (i.e. 25% of the total claim);
  - (iv) no indemnification for losses covered by CMHC or other insurance.
- (c) Following completion of construction, it is proposed that the Service Manager will indemnify the province for any third party "claims" on a 50% basis for CMHC, with respect to the federal portion of IAH funding, and on a 100% basis for the Province, subject to same exceptions as indicated above.

### 5.3 Proponent - SM

- (a) The proponent would be required to indemnify the province for any claims against the Province or CMHC in accordance with the Contribution Agreement.
- (b) The SM should also request full indemnification from the proponent for any claims against the SM.

### 5.4 Proponent - Province

- (a) Where there is a direct relationship between the Province and a proponent, the Province will require 100% indemnity of CMHC and provincial funds paid in the event of a claim against the province or CMHC.
- (b) Indemnification of CMHC will be required during the construction and occupancy period of a project. Indemnification of the province will be required throughout the period during which provincial affordability payments are made.

## 6. **RECOVERY OF FUNDS**

6.1 Under the IAH, a number of circumstances could arise which could make a project "non-compliant". Examples include:

- (a) Construction Failures - increased construction costs, bankruptcy;
- (b) Environmental considerations - with the exception of those identified and record& in advance of an IAH 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 confirms that "best efforts" were made to collect the funds.
- (b) Best efforts would involve adherence by the SM to the "risk sharing protocols" in order to minimize occurrence of failure. Furthermore, the parties will need to explore all available remedies with SMs, proponents and CMHC, and implement the best remedy to the extent possible.
- (c) If efforts lead to a recovery of capital funding, CMHC would expect a repayment of "a pro rata portion" of the federal funding. It is reasonable to propose that all three funding partners should 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 Province will share this forgiveness with SMs and proponents, otherwise the Province will collect these funds for recycling in other projects.
- (e) Federal funding could either be repaid by the Service Manager to the Province and recycled in new commitments before March 31, 2009 or refunded directly to CMHC after this date.
- (f) In the event that auditors discover misuse of federal funding as per the IAH Agreement, CMHC would expect a refund from the Province where applicable. The amount owing could be reduced based on earned forgiveness of the principal amount during the period of project compliance.

## 6.3 SM - Province

- (a) In the event a project ceases to be an IAH project for reasons related to negligence, misuse or non-compliance, the Province will expect to be repaid for provincial contributions advanced during the period of non-compliance.
- (b) In the event a project ceases to be compliant due to the negligence of the SM, the Province would expect the SM to repay the Province 100% of CMHC funds, less any earned forgiveness of the principal amount, during the period of project compliance.

## 6.4 Proponent - SM

- (a) It is required that the SM would adopt a similar position if a project terminates under reasonable circumstances. That is, best efforts can be

made to recover government contributions, but if there were no proceeds available, repayment would not be expected.

- (b) In situations of non-compliance due to misuse or negligence, the SM is expected to take remedies available to recover government contributions.

#### 6.5 Proponent - Province

- (a) In situations of non-compliance due to misuse or negligence, the province would expect 100% repayment of federal and provincial funds from the proponent.
- (b) If a project ceases to operate as an IAH project, under reasonable circumstances, the provincial affordability payment would end and best efforts will be made to recover the provincial contributions paid during any period of non-compliance. In the event no proceeds were available, repayment would not be expected.

## **SCHEDULE "L"**

### **LEGAL DESCRIPTION OF PROPERTY**

**Number of Units:**  
**Property Address:**

**PIN:**

**Description:**



# SCHEDULE "M"

## PROJECT INFORMATION FORM

Investment in Affordable Housing for Ontario (IAH) – Rental Housing Component

**Service Manager – City of London**

**Project Name:**

---

**Official Name of Proponent:**

**Proponent Address and Contact Information:**

Phone: (519)      Cell: (519)      Fax: (519)      Email:

**Proponent Type:**

private sector     municipal non-profit     co-operative     partnership  
 private non-profit, charitable corporation     other

---

### Project Information

**Number of Affordable Units Created:**      New Supply:

**Total Number of Units in Project:**

**Type of Construction:**    Apartment       Row

**Included in Rent:**    Parking     Heat     Electricity     Hot Water     Water

**Client Type:**

**Commercial Units:**

**Anticipated First Occupancy Date:**

Unit Type	Number of Units	Unit Sizes	Rents
<b>Total</b>			

## Approvals

Date of Council Approval of Project:

Date of MMAH Approval of Project:

---

## Project Funding

### 1. Municipal Contributions (\$X,000,000)

a) AHCRF (XX units x \$XX,000) \$

b) AHCRF Accessible (X units x \$5,000) \$

### 2. Contributions from other sources

Owner Equity - 10% of total project cost (private sector) \$

Non-profit equity \$

PST Rebate (Charitable Status) \$

3. Provincial Funding \$

4. Federal Funding \$

5. Mortgage \$

**TOTAL FUNDING AND FINANCING \$**

**(Construction Financing \$XX,XXX,XXX)**

---

**Amount of Rental Housing Funding (3+4) \$**

---

## Total Capital Costs of Project

Soft Costs (legal, architecture, engineering, insurance, taxes, fees, etc.) \$

Land Costs \$

Construction or Hard Costs (labour, construction materials, equipment) \$

**Total Capital Costs (IAH units only) \$**

**SCHEDULE "N"**  
**DEVELOPMENT SCHEDULE**

Site Acquired

Site Plan Approval

ESA Phase 1

Mortgage Commitment

Demolition Permit

Building Permit

Construction Start

Foundation Completed

Structural Framing Completed

Substantial Completion

Occupancy

Interest Adjustment Date

# SCHEDULE "O"

## OCCUPANCY STANDARDS

The largest unit a household is eligible for is a unit that has:

- a) one bedroom for any two members of the household who are spouses of each other or same-sex partners of each other;
- b) one bedroom for each additional member of the household; and
- c) any additional bedrooms as follows.

Additional bedrooms:

- 1. An additional bedroom if one of the spouses or same-sex partners referred to in a) requires a separate bedroom because of a disability or medical condition.
- 2. An additional bedroom if the room is required to store equipment required by a member of the household because of a disability or medical condition.
- 3. An additional bedroom if the bedroom is required to accommodate an individual who is not a member of the household and who provides a member of the household with support services that are required because of the member's disability or medical condition.
- 4. An additional bedroom if a member of the household is pregnant.
- 5. An additional bedroom if a member of the household has joint custody over a child who is not a member of the household, the member is required to provide accommodation for the child, and the bedroom is required to accommodate the child.
- 6. An additional bedroom if, a member of the household has visiting rights with respect to a child who is not a member of the household, it is a condition of the member's visiting rights that the member must provide adequate accommodation for the child when the child stays overnight with the member, the child will stay overnight with the member frequently, and the bedroom is required to accommodate the child.

An additional bedroom shall be included only if the household requests it.

Two children of the same sex may share a bedroom. Children of the opposite sex, under age 5, may share a bedroom. The decision, whether to share or not, will be left to the applicant.

The smallest unit a household is eligible for is a unit that has:

- a) Bachelor for an individual;
- b) one bedroom for an individual or for every two members of the household who are spouses of each other or same sex-partner of each other; and
- c) an additional bedroom for each additional member of the household if there is an odd number of members in the household.

## **SCHEDULE “P”**

**Conditional Letter of Commitment from Minister to the Proponent**