

OF  
THE REGIONAL MUNICIPALITY OF  
DURHAM

A BY-LAW TO AUTHORIZE THE REGION TO ENTER INTO AN AGREEMENT  
FOR THE PROVISION OF MUNICIPAL HOUSING PROJECT FACILITIES

WHEREAS Section 110 of the Municipal Act, 2001 (the "Act") allows a municipality to enter into agreements for the provision of municipal capital facilities; and

AND WHEREAS pursuant to Ontario Regulation No. 46/94, as amended (the Capital Facilities Regulation") municipal housing project facilities are a class of municipal capital facilities;

AND WHEREAS The Regional Municipality of Durham (the "Region") has passed By-Law Number 48-2003 to allow the Region to enter into agreements for the provision of municipal capital facilities;

AND WHEREAS the new units developed under the Investment in Affordable Housing for Ontario 2014 Extension - Rental Housing Component, owned by Durham Region Non-Profit Housing Corporation located at 75 Nine Mile Road, (the "Premises") in the Township of Brock, in the Regional Municipality of Durham is deemed to be a municipal capital facility to be used as a municipal housing project facility for the purposes of By-Law Number 48-2003.

NOW THEREFORE BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of The Regional Municipality of Durham through its Council as follows:

1. THAT the Region is authorized to enter into an agreement with Durham Region Non-Profit Housing Corporation (the "Housing Provider") for the provision of municipal capital housing facilities in the form attached hereto as Schedule "A" (the "Service Manager Municipal Housing Facility Agreement").
2. THAT the Regional Chair and Regional Clerk be authorized to execute the Agreement and affix the Corporate Seal to the Agreement on behalf of the Region.
3. THAT if the Municipal Property Assessment Corporation classifies the Premises as multi-residential or new multi-residential for property taxation purposes, then the local municipality in which the Premises reside shall provide a rebate to the Housing Provider equivalent to the difference between the multi-residential rate or new multi-residential rate and the residential rate for these new units for so long as this by-law is in force and these units remain with the Investment in Affordable Housing for Ontario 2014 Extension Program.
4. THAT the property tax rebate referred to herein is effective from the first date of tenant occupancy for the new units at the Premises.
5. THAT the Regional Clerk provide the Ministry of Housing with written notice of the passage of this by-law.

BY-LAW read and passed this 14th day of June, 2017.

---

R. Anderson, Regional Chair & CEO

---

Ralph Walton, Regional Clerk

**SERVICE MANAGER MUNICIPAL HOUSING  
CONTRIBUTION AND FACILITY AGREEMENT**

Dated this        day of        , 2017.

**BETWEEN:**

**THE CORPORATION OF THE REGIONAL MUNICIPALITY OF DURHAM**

(herein called the “**Service Manager**”)

- and -

**DURHAM REGION NON-PROFIT HOUSING CORPORATION**

(herein called the “**Proponent**”)

**WHEREAS:**

- A. The 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 Supplementary Agreement effective August 2014 to provide funds to create a supply of Affordable Housing (the “CMHC Agreement”);
- B. Pursuant to Ontario Regulation 136/98, as amended, the Minister has designated The Corporation of the Regional Municipality of Durham as the delivery agent for the *Ontario Works Act*, 1997, S.O. 1997 c. 25; and pursuant to Ontario Regulation 638/00, as amended, the Minister has designated the Corporation of the Regional Municipality of Durham as the Service Manager for the purposes of the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1;
- C. The Corporation of the Regional Municipality of Durham, as the Service Manager, is responsible for administering the Program, the Loan and Security, as hereinafter defined, pursuant to the foregoing legislation and the Service Manager Administration Agreement;
- D. The Proponent responded to the **Request for Proposal #RFP-1002-2016 entitled “From Non-Profit Agencies Under the Investment of Affordable Housing for Ontario Program – 2014 Extension: Rental Housing Component for the Region of Durham”**, of the Service Manager by submitting its proposal to undertake Development Activities for Affordable Housing under the Program (the “**Proposal**”) in return for financial benefits under the Program. This Agreement is the result of RFP-1002-2016 and shall be bound by all terms contained therein;
- E. The Service Manager and the Minister have approved the Proposal subject to conditions contained herein; and
- F. The Proponent and the Service Manager are entering into this Agreement pursuant to section 110 of the *Municipal Act, 2001* and the Service Manager’s Municipal Housing Facility By-law 46-2003, for the purpose of establishing the Proponent’s obligations to the Service Manager under the Program in order to obtain Program funds and to facilitate contributions from the Contributing Municipality pursuant to the *Municipal Act*;

**NOW THEREFORE** in consideration of the Service Manager approving and recommending the Project to the Minister, and the covenants and agreements hereinafter set forth and subject to the terms and conditions herein, the Service Manager and the Proponent agree each with the other as follows:

## 1. INTERPRETATION

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

- **“Affordability Period”** means the 20 year period commencing on the date following the date of the first Occupancy of a unit in a Project constructed under the Investment in Affordable Housing Program-2014 Extension in which the average Unit rents in a Project are required to be maintained at an affordable level, as set out in the Rent Protocol attached as Schedule “A” hereto;
- **“Affordable Housing”** means housing which is modest in terms of floor area and amenities, based on household needs and community norms, in Projects that achieve rent levels in accordance with the Guidelines, but does not include market units or other residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility;
- **“Affordable Housing Unit”** means a Unit in the Project subject to the Program Guidelines and the Rent Protocol;
- **“Affordable Rent”** means a monthly occupancy cost that does not exceed the CMHC Average Market Rent (AMR) for that unit in a geographic area or census metropolitan area, in the Project as set out in section 5.2 of this Agreement;
- **“IAH Components”** has the meaning ascribed to it in the recitals to this Agreement;
- **“Average Market Rent”** means the average monthly market rent for a rental housing unit, classified by bedroom count, as published by Canada Mortgage and Housing Corporation (or, should CMHC not publish such information, as determined from time to time by the Regional Municipality of Durham, acting reasonably), as adjusted on an annual basis;
- **“Agreement”** means this Service Manager Municipal Housing Contribution and Facility Agreement between the Service Manager and the Proponent;
- **“Business Day”** means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- **“Contractors”** shall have the meaning ascribed to it in section 11.2 herein;
- **“Contributing Municipality”** means The Corporation of the Township of Brock;
- **“CMHC”** means the Canada Mortgage and Housing Corporation, its successors and assigns;
- **“Development Activities”** means those activities which are normally undertaken for the development, construction, repair, renovation or conversion of buildings for residential purposes and include, without limitation, preliminary activities such as the acquisition of

land, the preparation of plans and the making of all applications for municipal approvals;

- **“Equity Contribution”** shall have the meaning ascribed to it in section 7.1(a) herein;
- **“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 fulfilment 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”** means the funding of the Loan under the Program, as set out in the Program Guidelines;
- **“Funding Schedule”** means the schedule of funding setting out progress payments for the type of Project to be undertaken by the Proponent, in the form determined by the Service Manager, an example of which is attached as Schedule “B” to this Agreement;
- **“Household”** means an individual who lives alone or two or more individuals who live together and their dependents;
- **“Household Income”** means the gross annual income from all sources of all persons who reside in a Unit, or who will reside in a Unit, if such Unit were rented to them;
- **“Housing”** means residential accommodation and facilities, common areas and services used directly with the residential accommodation, but does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;
- **“Interest Adjustment Date”** means the date on which the Proponent makes the first payment of principal and interest in respect of the Proponent’s permanent financing obligations for the Project, following the completion of construction or if there is no first mortgage financing then the IAD is the Occupancy Date;
- **“Loan”** means the total amount of Funding, advanced by the Service Manager to the Proponent, as set out in section 2.1 herein;
- **“Maximum Income Limit”** means the maximum income that a household may have to be eligible for a specific Affordable Housing Unit as set out in the Request for Proposal.
- **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, as amended from time to time.

- **“Minister”** means Her Majesty the Queen In Right of Ontario as represented by the Minister of Municipal Affairs and Housing;
- **“Occupancy Date”** means the date that occupancy of all units in the project, to which this Agreement applies, is permitted by the Contributing Municipality building official and/or Fire Services official;
- **“Parties”** means Service Manager and the Proponent and **“Party”** means either of them, as the context may require;
- **“Permitted Encumbrances”** means the encumbrances encumbering the Affordable Housing Units and listed in Schedule “C”;
- **“Phase-Out Period”** means the last five (5) years of the Affordability Period.
- **“PIPEDA”** means the *Personal Information Protection and Electronic Documents Act*, as amended from time to time;
- **“PIPEDA/MFIPPA Protected Information”** means any “Personal Information” or “Personal Health Information”, as defined under PIPEDA or MFIPPA;
- **“Program”** means the Investment in Affordable Housing for Ontario–2014 Extension, as set out in the Program Guidelines;
- **“Program Guidelines”** means the Program Guidelines published by the Minister in respect of the Rental Housing Component of the Investment in Affordable Housing for Ontario-2014 Extension and dated August 2014, and as amended from time to time;
- **“Project”** means the eighteen (18) Affordable Housing Units, including improvements and fixtures to be located on the Property, as proposed in the Proposal and approved for the Program under this Agreement;
- **“Property”** means the real property owned or to be owned by the Proponent, where the Project will be constructed, and as described in Schedule “D” attached hereto.
- **“Proponent”** means Durham Region Non-Profit Housing Corporation, a corporation incorporated pursuant to the laws of the Province of Ontario;
- **“Proposal”** has the meaning ascribed to it in the recitals to this Agreement;
- **“Rent”** means 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 for the right to occupy a Unit and shall include housing charges paid by members of non-profit housing cooperatives and “rental” is deemed to have a corresponding meaning.
- **“Rent Protocol”** means the Rent Protocol attached as Schedule “A” to this Agreement;
- **“Request for Proposal”** means the Request for Proposal #RFP-1002-2016 issued by the Service Manager dated July 21, 2016;

- **“Security”** means the security documents required in Article 10 of this Agreement;
- **“Service Manager”** means The Corporation of the Regional Municipality of Durham;
- **“Service Manager Contribution”** has the meaning ascribed to it in section 2.3 herein;
- **“Service Manager Administration Agreement”** means the agreement between the Service Manager and Her Majesty the Queen In Right of Ontario, as represented by the Minister dated October 31, 2014;
- **“Substantial Completion”** means the substantial performance, within the meaning of the *Construction Lien Act*, as amended, of all contracts which the Proponent has entered into for Development Activities in connection with the Project under this Agreement;
- **“Targeting Plan”** means the manner in which the Proponent plans to meet the objectives of the Program to create Affordable Housing for households that are on or are eligible to be on waiting lists for social housing;
- **“Taxes”** means any or all Canadian federal, provincial, local or foreign (i.e. non-Canadian) income, gross receipts, real property gains, goods and services, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, or other taxes, levies, governmental charges or assessments of any kind whatsoever, including, without limitation, any interest, penalties or other additions, whether or not disputed.
- **“Unit”** means a self-contained residential dwelling occupied by a Household in the Project, including, without limiting the generality of the foregoing, (i) supportive rental Housing where service funding is secured from sources other than Federal Funds and the Provincial Funds provided under the Program, (ii) multi-bedroom units which are used for congregate living and (iii) disabled/accessible units;
- **“Unit Size”** means the size of a Unit within the Project, measured by the number of bedrooms and meeting the unit size as prescribed by the Service Manager.

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

|                |   |                                      |
|----------------|---|--------------------------------------|
| Schedule “A”   | - | Rental Protocol                      |
| Schedule “B”   | - | Funding Schedule                     |
| Schedule “C”   | - | Permitted Encumbrances               |
| Schedule “D”   | - | Description of Property              |
| Schedule “E”   | - | Proponent’s Initial Occupancy Report |
| Schedule “F”   | - | Proponent’s Annual Occupancy Report  |
| Schedule “G”   | - | Communications Protocol              |
| Schedule “H-1” | - | Mortgage/Charge of Land              |
| Schedule “H-2” | - | Security Agreement                   |
| Schedule “H-3” | - | Assignment of Rents                  |
| Schedule “I”   | - | Opinion of Counsel of Proponent      |

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule or the Request for Proposal #RFP-1002-2016 the provisions of this Agreement shall prevail.

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

## 2. FUNDING

2.1 **Funding: The Service Manager agrees to lend to the Proponent, upon the terms and subject to the conditions set out in this Agreement the amount of \$141,500.00 per Unit (for a total of \$2,547,000) (the “Loan”);**

2.2 Funding Schedule: The Service Manager shall disburse the Funding in accordance with the Funding Schedule attached as Schedule “B”.

2.3 Contributions by Others: This Agreement also facilitates contributions by the Contributing Municipality pursuant to the section 110 of the *Municipal Act*.

2.4 Withholding: Notwithstanding any provision contained herein, the Service Manager shall have the option of withholding from any amount to be disbursed herein, the amount of the cost of construction necessary to complete the construction of the Project and, in such case, the Service Manager shall disburse the amount so withheld following its receipt of satisfactory evidence that such construction is complete within the meaning of the *Construction Lien Act* and provided that the *Construction Lien Act* is complied with.

2.5 Direction re Funds: The Proponent may authorize the Service Manager to pay the Funding to a third party and the Service Manager may permit such authorization in its sole discretion.

## 3. DEVELOPMENT ACTIVITIES

3.1 Purpose of Loan: The Proponent shall use the Loan for the purpose of its Development Activities in connection with the Project, as required by the Program Guidelines.

3.2 Compliance with Proposal: The Proponent agrees to undertake Development Activities in connection with the Project which is the construction and provision of eighteen (18) Affordable Housing Units, in accordance with the provisions relating to the development of the Project contained in the Request for Proposal #RFP-1002-2016, Proposal, and the Program Guidelines.

3.3 Substantial Completion: The proponent, subject to Force Majeure, shall achieve Substantial Completion in accordance with the Program Guidelines.

3.4 Number of Affordable Housing Units: During the Term of this Agreement, the number of Affordable Housing Units rented or available for rent to tenants who have incomes at or below the Maximum Income Limit, shall be maintained at eighteen (18) units.

#### 4. TERMS OF LOAN

4.1 Term of Loan: The Loan shall have a term of 20 years, commencing as of the Interest Adjustment Date.

4.2 Interest:

(a) Prior to the Interest Adjustment Date, interest shall accrue on the total of the amount or amounts advanced under the Loan at the then current interest rate charged by the Province of Ontario on accounts receivable. The interest so calculated shall compound semi-annually, not in advance, until the Interest Adjustment Date;

(b) On the Interest Adjustment Date, the amount of interest accrued as calculated in section 4.2 (a) shall be forgiven, provided that the Proponent has satisfied all requirements in this Agreement;

(c) With effect from the Interest Adjustment Date, the interest rate applicable to the Loan shall be the higher of the average posted rate offered by major Canadian lending institutions for a commercial first mortgage having a five (5) year term plus two per cent (2%), or the interest rate applicable to the first mortgage registered against title to the property plus two per cent (2%).

4.3 Interest Due or Forgiveness: On each anniversary date of the Interest Adjustment Date, the Proponent shall pay the Service Manager the amount of interest, as calculated on the Loan amount according to the interest rate stipulated in section 4.2, so accrued during the previous year; provided, however, if the Proponent has satisfied, as of such anniversary date, the requirements of this Agreement, the amount of the interest so owing shall automatically be forgiven.

4.4 Forgiveness:

(a) At the discretion of the Service Manager and/or Minister, the amount of the Loan may be reduced at the rate of five per cent (5%) per year, provided that the Proponent has fulfilled all the requirements of the Program as set out in this Agreement.

(b) 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.

#### 5. OPERATION OF AFFORDABLE HOUSING

5.1 Term: This Agreement and the obligations herein shall be in full force and effect for a period of twenty (20) years from the Occupancy Date, including the Phase-Out Period ("Term" or "Affordability Period").

5.2 Rent: During the Term of this Agreement, the Proponent agrees to operate the Units in accordance with the rules set out in the Rent Protocol attached as Schedule "A" to this Agreement, provided that:

(1) where CMHC does not determine the average market rents for the Regional Municipality of Durham, the average shall be as determined by the Service Manager; and

(2) the Initial Rent shall be the Affordable Rent, as defined herein;

In addition to the requirements in the Rent Protocol, the Service Manager shall have the right to approve any “optional charges” charged by the Proponent in addition to Affordable Rent for any Unit, including without limitation, parking, cable, utilities and other similar charges.

- 5.3 Eligibility: Eligibility for Affordable Housing Units for the Project shall be determined in accordance with any maximum income policies set out by the Service Manager. The Proponent shall, at the request of the Service Manager, provide the Service Manager with proof that occupancy of all Units in the Project meets the eligibility requirements.
- 5.4 Targeting Agreement: The Proponent shall make eighteen (18) of the Affordable Housing Units available to seniors and persons with disabilities.
- 5.5 Arm’s Length. Units in the Project may not be rented to the Proponent or shareholders or directors of the Proponent or an individual not at arm’s length to the Proponent, or shareholders or directors of the Proponent, unless the Proponent is a non-profit housing co-operative as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, as amended, or a not-for-profit corporation.

## 6. ACCESS, MONITORING AND ACCOUNTABILITY

- 6.1 Access to Records: The Proponent shall permit the Service Manager, its employees or agents, at all reasonable times, to access the financial and other records of the Proponent relating to the Project or any larger development or project of which the Project is a part (including books, payroll, accounts, rent rolls, records, bank statements, quantity surveys, reports, studies and paid invoices) at any of its places of business for audit, investigation or inquiry purposes. Any such audit, investigation or inquiry may be performed by staff of the Service Manager or by outside auditors, at the Service Manager’s discretion, acting reasonably. The Proponent shall permit copies and extracts to be taken from such books and records and shall furnish the Service Manager with such additional information as it may reasonably require with reference to such books and records.
- 6.2 Record Keeping: The Proponent shall preserve the books and records referred to above, and in addition, retain the verification of income from tenants residing in Affordable Housing Units and other such records in a form satisfactory to the Service Manager.
- 6.3 Provision of Information: The Proponent agrees that it shall cooperate with the Service Manager in the performance of any review or evaluation of the Project and shall supply information as requested to confirm adherence to this agreement, including the submission of the annual report in a form acceptable to the Service Manager and to the satisfaction of the Service Manager, acting reasonably.

- 6.4 Inspection of Project: The Service Manager shall also have the right, at all reasonable times, to inspect the Project where the Proponent conducts its operations, during development and after the Occupancy Date.
- 6.5 Accounting: The Proponent shall submit to the Service Manager within ninety (90) days (or such additional time as may be determined by the Service Manager) following the full completion of the Development Activities related to the Project, an audited statement respecting its expenditure of the funds provided to it pursuant to this Agreement.
- 6.6 Return of Funds: In the event that:
- (a) the Service Manager is advised that the Project will not be proceeding;
  - (b) the construction of the Project does not commence within 120 days of the date of this Agreement; or
  - (c) the Service Manager determines in its sole discretion that all of the Funding was not required for Development Activities in the manner set out in the program guidelines; the Proponent shall return on demand the amount of funding, as determined by the Service Manager, in its sole discretion, that is "unexpended" provided that the foregoing does not in any way limit the remedies of the Service Manager contained in Article 13 herein.
- 6.7 Reports: Following the full completion of the Development Activities related to the Project, the Proponent shall submit to the Service Manager the Proponent's Initial Occupancy Report, attached hereto as **Schedule "E"**, and annually thereafter the Proponent shall submit to the Service Manager the Proponent's Annual Occupancy Report, attached as **Schedules "F"** hereto, and such other reports as are reasonably required by the Service Manager.
- 6.8 Other Information: Without limiting the Proponent's obligations under section 6.7, the Proponent, if requested by the Service Manager, shall forthwith submit to the Service Manager the material required to be submitted to the Service Manager pursuant to the said section, in addition to any such material that the Proponent may have previously submitted to the Service Manager.
- 6.9 No False Information: 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 Service Manager under this Agreement.
- 6.10 Consent to Release of Information: The Proponent consents to the Service Manager releasing any information, documents, books, records, accounts, and any other materials or information that the Service Manager possesses, to the Minister for the purpose of the Minister verifying compliance with the Service Manager Administration Agreement.
- 6.11 The provisions of Article 6 shall continue to apply for a period of seven (7) years following the end of the Phase-Out Period or the date of any early termination of this Agreement.

## 7. COVENANTS OF PROPONENT

7.1 General Covenants. The Proponent covenants and agrees with the Service Manager that it shall:

- (a) If applicable, advance its equity contribution to the Project, on or before Occupancy is permitted in the Project, and provide written confirmation to the Service Manager that the Equity Contribution has been advanced;
- (b) take all such actions and do all such things required to develop and continuously carry on the construction of the Project in a good and workmanlike manner and in accordance with the Proposal and to complete such construction not later than the date specified in the Program Guidelines, subject to Force Majeure.
- (c) 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;
- (d) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the Municipality, 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 Municipality appropriate security;
- (e) deliver to the Service Manager the statements and reports as required by this Agreement or other statements and reports as requested by the Service Manager;
- (f) without limiting the condition set out in section 9.1(b) of this Agreement, to use its reasonable best efforts to discharge or cause the discharge of any registered construction liens so as to ensure that there are no construction liens registered against the Project;
- (g) not at any time during the Term breach any Contribution Agreement that it has entered into with any entity governing a Contribution by Others in respect of the Project 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 shall constitute a breach of this Agreement. The Proponent shall provide the Service Manager with evidence of its good standing under any such contribution agreement within ten (10) Business Days following its receipt of a written request from Service Manager.

- (h) provide the Service Manager with such information respecting the Proponent's permanent financing obligations for the Project as the Service Manager may require from time to time, and to authorize the Proponent's first mortgage lender for the Project ("**Lender**") to provide information to the Service Manager as to the status of its loan with the Proponent, including without limiting the foregoing: the amount of funds advanced and outstanding owing to the Lender, and/or whether the Proponent is in compliance with, or default of, any applicable loan agreement(s) with the Lender, or any other information required by the Service Manager in its discretion.
- (i) The Proponent shall:
  - a. preserve the *PIPEDA* and MFIPPA compliance of all PIPEDA/MFIPPA Protected Information transferred to it by the Service Manager;
  - b. ensure the PIPEDA and MFIPPA compliance of all PIPEDA/MFIPPA Protected Information the Proponent collects in the course of performing the Proponent's contractual obligations; and
  - c. ensure the PIPEDA and MFIPPA compliance of all PIPEDA/MFIPPA Protected Information that the Proponent transfers to any third Party.

7.2 Negative Covenants of the Proponent: The Proponent covenants and agrees that, so long as any obligation is outstanding by the Proponent hereunder the Proponent will not, without the prior written consent of the Service Manager:

- (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 Permitted Encumbrances;
- (b) become a party 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, assignment and leaseback or otherwise;
- (c) permit any change in the ownership of the Proponent; or
- (d) make any material change in the plans and specifications which pertains to the number or type of residential dwelling units of the Project.

## **8. REPRESENTATIONS AND WARRANTIES OF PROPONENT**

8.1 The Proponent represents and warrants to the Service Manager as follows:

- (a) Due Incorporation: The Proponent is 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.
- (b) Power & Authority: 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.
- (c) No Litigation: There is not now pending against the Proponent any litigation, action, suite 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, suite 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.
- (d) Compliance with all Laws: The Project is and will be in compliance with all laws and lawful orders and regulations imposed by any Municipal, Provincial and Federal authority with respect to the Construction Contract and completion of the Project.

## 9. CONDITIONS

- 9.1 Conditions Precedent: The provision of funding pursuant to section 2 above, is subject to the following conditions precedent, each of which is for the exclusive benefit of the Service Manager and may be waived in full or in part by the Service Manager by written notice to the Proponent:
- (a) The Proponent has advanced its Equity Contribution to the Project and provided satisfactory evidence to the Service Manager;
  - (b) there being no Claim for Lien under the *Construction Lien Act* registered against the Project;
  - (c) there being in existence no unregistered lien or statutory claim having priority against the Project;
  - (d) the Proponent's title to the Project being encumbered by no registered encumbrances other than the Permitted Encumbrances;
  - (e) the Proponent being in good standing under all of the Permitted Encumbrances and there being no work orders issued against the Project by any governmental entity, agency or official;

- (f) the Proponent having provided the Service Manager with the Security documents required by section 10 and in accordance with that section;
  - (g) the representations and warranties of the Proponent set forth herein shall be true and correct and, if requested by the Service Manager, the Proponent shall have delivered a certificate to such effect;
  - (h) **the Proponent meeting all of the conditions of funding contained in the revised Conditional Letter of Approval from the Minister addressed to the Proponent dated February 14, 2017, unless otherwise waived by the Service Manager its sole and absolute discretion;**
  - (i) the Proponent having good and marketable title to the Property described in Schedule "D" hereto;
  - (j) the Proponent having provided proof to the Service Manager that it has satisfactory mortgage financing in place to pay for the remainder of the Development Activities, if necessary, in the form of a commitment letter; and
  - (k) the Proponent having provided satisfactory proof that it has in place the required insurance under the Program, as set out in the Mortgage Schedule attached as Schedule H-1.
  - (l) Satisfactory evidence that the Project complies with the *Canadian Environmental Assessment Act*, if applicable;
  - (m) Satisfactory evidence that all Taxes and filings are up to date and current;
- 9.2 **Non-Fulfilment of Conditions:** If any of the conditions contained in section 9.1 have not been fulfilled on the date for the disbursement of the Loan and are not waived by the Service Manager, the Service Manager shall be under no obligation to make such disbursement to the Proponent and the Service Manager 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 Service Manager 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 Service Manager in connection with this Agreement where the non-performance or non-fulfilment of a condition is a result of a breach of a covenant by the Proponent.

## **10. Security and Other Requirements**

- 10.1 Security: Prior to the Proponent receiving any of the proceeds of the Funding the Proponent shall:
- (a) Provide the Service Manager with executed registerable security documents as follows:
    - a. Mortgage;
    - b. Assignment of Rents; and
    - c. Security Agreement

as attached as Schedules "H-1", "H-2" and "H-3", to this Agreement (the "**Security**");

The Security shall secure repayment of the Loan.

- (b) provide the following to the Service Manager:
- certified copy of all by-laws and constating documents of the Proponent;
  - certificate of status of the Proponent;
  - certificate of incumbency of the persons signing on behalf of the Proponent and the current shareholders of the Proponent;
  - certified copy of the director's resolution(s) of the Proponent authorizing the Proponent to enter into this Agreement and to provide the security contained herein; and
  - opinion of legal counsel of the Proponent, substantially in form attached hereto as **Schedule "I"**.

- 10.2 Security Collateral to Agreements: The Security shall be collateral to this Agreement and secures the performance of the Proponent thereunder.
- 10.3 Breach: Without limiting the Proponent's covenants and the remedies of the Service Manager under this Agreement and the Security, the Proponent agrees that a breach of this Agreement or any Contribution Agreement constitutes a breach of the Security and a breach of the Security shall constitute a breach of this Agreement and any other contribution agreement. In the event of a conflict or inconsistency between the provisions of this Agreement and the Security, the provisions of this Agreement shall prevail.
- 10.4 Ranking of Security: The Parties agree that the Security shall rank immediately behind the priority of the first (1<sup>st</sup>) registered security document securing loans made to the Proponent for the Development Activities undertaken in connection with the Project, as set out in Permitted Encumbrances attached as Schedule "C" hereto, provided that the first mortgage shall be a CMHC insured loan. The Region agrees to postpone its security to replacement first mortgage loans, provided that the Proponent is in compliance with the terms of this Agreement and such postponement is in the best interests of the Region in its sole and absolute discretion.
- 10.5 Discharge of Liens: Subject to section 10.4, the Proponent shall discharge any liens or encumbrances registered against or affecting title to the Property and fix any title defects, which in the reasonable opinion of the Service Manager, affects the Security.
- 10.6 Registration of Notices: The Service Manager shall also have the right to register Notice of this Agreement on title to the Property.

## 11 RELEASE AND INDEMNIFICATION

- 11.1 No Liability: The Minister, in its sole discretion, is the final approval authority for the Loan. The Proponent hereby releases the Service Manager from all liability arising from a determination by:
- (i) the Minister that the Proponent does not meet the qualifications of the Ministry for the Loan or any portion thereof; or
  - (ii) the Contributing Municipality as to whether to make a contribution or the size of such contribution.
- 11.2 No Agency: It is distinctly understood and agreed by the Parties that there is no contractual relationship either express or implied, between the Service Manager and any supplier, contractor, sub-contractor, craftsman, labourer or person supplying work, services or material to the Project (the “**Contractors**”). The Proponent is not, and shall not be, the agent of the Service Manager for any purpose. There shall be no third party beneficiary of this Agreement, express or implied, and the Service Manager shall not be liable to Contractors for any debts or claims against the Proponent or against the Property.
- 11.3 Indemnify the Service Manager: The Proponent agrees to hereby indemnify and save harmless the Service Manager and/or the Minister and their officers, employees, servants, agents, successors and assigns from and against any and all claims whatsoever including all damages, liabilities, expenses, costs, including legal or other fees incurred in respect of any such claim, or any cause or proceeding brought thereon arising directly or indirectly from or in connection with this Agreement and/or out of the operation of the Affordable Housing Units including without limitation claims arising out of negligence of any party to the Agreement and specifically, all directors, employees, agents, volunteers or independent contractors of the Proponent, save for those claims caused by the negligence, bad faith or wilful misconduct of the Service Manager and/or Minister or any person for which they are in law responsible. Such indemnification shall survive the termination of this Agreement.
- 11.4 Environmental Matters: 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 Service Manager and the Proponent as partners of each other. In particular, the Service Manager is in no way accountable for any related environmental or pollution matters and shall not be deemed to be an owner or occupant for the purposes of the *Environmental Protection Act*, R.S.O, 1990, c. E.19. The Proponent agrees to indemnify the Service Manager and Minister their officers, employees, servants, agents, successors and assigns and save them harmless from all losses, costs, damages, expenses, injury and liability whatsoever that relate to environmental or pollution claims, which the Service Manager or Minister may suffer as a result of this Agreement,

## 12 SALE OF THE PROPERTY

- 12.1 Consent Required: As set out in Section 7.2 of this Agreement, the Proponent will not, without the prior written consent of the Service Manager:

- (a) become a party to any transaction whereby the Proponent's interest in the Project would become the property of any other person, whether by way of reorganization, amalgamation, merger, transfer, sale, assignment, lease, sale and leaseback or otherwise;
- (b) assign or transfer its interest in this Agreement; or
- (c) permit any change in the ownership of the Proponent;

which consent will not be unreasonably withheld.

12.2 No Transfer: Without limiting the generality of the Section 12.1 hereof, the Proponent shall not transfer or convey its interest in all or any part of the Project, or assign its interest in the Lease, without simultaneously assigning its interest in this Agreement to the transferee, and which transferee shall have entered into one or more agreements with the Service Manager, in a form satisfactory to the Service Manager, acting reasonably, to assume all of the Proponent's obligations under this Agreement and the Security.

12.3 Indemnification: The Proponent hereby indemnifies the Service Manager and/or the Minister with regard to any and all claims, demands, actions and causes of action arising in relation to the Affordable Housing Program or this Agreement in the event that Section 12.1, above, is breached.

### 13. EVENTS OF DEFAULT AND REMEDIES

13.1 Events of Default: Upon the occurrence of any one of the following events (each an "Event of Default" or "Default"):

- (a) the Proponent breaches any of the provisions of this Agreement, including any schedules, or any other Contribution Agreement; or
- (b) the Proponent becomes bankrupt or insolvent, or takes benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise, or
- (c) the Proponent fails to carry out all the Development Activities required in the Program Guidelines or any failure to carry out such Development Activities in such manner and within such time periods as are set out in the Program Guidelines; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Project and the receiver's appointment is not vacated within thirty (30) days, or
- (e) any steps are taken or any action or proceedings are instituted by the Proponent or by any other party including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding up or liquidation of the Proponent or its assets,

the Service Manager and the Minister shall follow the Protocol for non-compliance set out in Schedule "G".

In addition to any remedies of the Service Manager, the Proponent shall, on demand, subject to the provisions of this Article 13, repay all amounts advanced by the Service Manager, if any, together with accrued interest thereon, calculated for the applicable period, and, by way of bonus, three (3) months interest on the amount advanced by the Service Manager plus all costs of the Service Manager related to entering into this Agreement with the Proponent and the breach or default of this Agreement.

- 13.2 Exceptions: In the case of a Default that can be corrected, the Proponent shall not be required to make any payment of principal and interest required pursuant to Section 13.1 unless:
- (a) The Service Manager has delivered to it written notice of the Proponent's breach of the Default; and
  - (b) The Proponent has not corrected the Default within twenty (20) Business Days following its receipt of the said notice or such longer period as determined by the Service Manager in its sole and absolute discretion.
- 13.3 Repayment if Default not Corrected: If the Proponent has not corrected its Default within the period established pursuant to section 13.2 (b), the Service Manager may in its sole and absolute discretion terminate this Agreement and notwithstanding the provisions of Schedule J, the Proponent shall on demand repay all amounts advanced to it by the Service Manager, plus accrued interest, if the Service Manager is required to repay the Minister and/or CMHC, plus 3 months interest as a bonus, and shall pay for the costs of the Service Manager relating to entering into to this Agreement and those arising from the Default.
- 13.4 Remedies are Cumulative: All of the remedies in this Agreement, Schedule J and the Security are cumulative and are not alternative and the Service Manager shall not be precluded from availing itself simultaneously of some or all of the said remedies and any other remedies otherwise available in equity or at law.
- 13.5 Waiver: Notwithstanding any of the terms of this Agreement or of the Security, including any provision that principal and interest shall become due and payable upon the occurrence of any event, the Service Manager shall have the option of waiving any or all of its remedies under this Agreement and the Security, but no waiver of a provision shall be deemed to constitute a waiver of any other provisions (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

**14. Communications Protocol**

- 14.1 The Proponent acknowledges that the terms of the CMHC Agreement require the Minister to co-ordinate with CMHC and/or obtain CMHC's approval with respect to publicity relating to projects funded in accordance with this Agreement, including advertising, written materials and signs; messages; public statements; press conferences; news releases; announcements; official ceremonies; and special events, in each case, for projects funded in accordance with this Agreement. The Proponent shall ensure that there will be no such publicity, advertising, signs, messages, public statements, press conferences, new releases, announcements, official ceremonies or special events, without the prior written consent of the Service Manager and/or the Minister. A copy of the requirements of the CMHC Agreement is attached as Schedule "G". The Proponent agrees that it shall not do or omit to do any act which will cause the Minister to be in breach of these requirements.

**15. Notice**

- 15.1 Delivery of Notice: 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 Service Manager:

The Regional Municipality of Durham  
Housing Services Division  
605 Rossland Road East, Whitby, ON, L1N 6 A3

Tel: (905) 668-7711  
Fax: (905) 666-6225

Attention: Director, Housing Services

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

Durham Region Non-Profit Housing Corporation  
28A Albert Street, Oshawa, ON, L1H 8S5

Tel: 905-436-6610  
Fax: 905-436-5361

Attention: Patti Bell, Executive Director

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.

15.2 Deemed Delivery: 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 the transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first 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 Restrictions: No member of:

- (a) the House of Commons or Senate of Canada; or
- (b) the legislative Assembly of Ontario; or
- (c) the Municipal Council or governing body of any Municipal Agency, board or Commission, including municipalities as a Service Manager

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.

16.2 Time of the Essence: 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 Service Manager and the Proponent or their respective solicitors on their behalf, who are hereby expressly appointed in this regard.

16.3 Tender: Any tender of documents or money hereunder may be made by the Service Manager or the Proponent or their respective solicitors.

16.4 Applicable Laws: 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.

16.5 Interpretation: 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.

16.6 No Representations, Warranties etc.: The parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting this Agreement other than as expressed in writing in this Agreement.

16.7 Changes in Gender: This Agreement shall be read with all changes of gender and

number required by the context.

- 16.8 Certification of Agreement: 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.
- 16.9 Joint and Several: 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.
- 16.10 Amendments in Writing: No modification of, or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the parties hereto.
- 16.11 Enurement: This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of section 12.1, 12.2 and 12.3 restricting the Proponent’s ability to assign this Agreement.

This Agreement has been executed on behalf of the parties by their respective authorized officers.

**THE REGIONAL MUNICIPALITY OF DURHAM**

Per: \_\_\_\_\_  
 Name: Cheryl Bandel  
 Title: Acting Director of Legislative Services and  
 Regional Clerk

Per: \_\_\_\_\_  
 Name: Roger Anderson  
 Title: Regional Chair and CEO

Dated this        day of        , 2017.

**DURHAM REGION NON-PROFIT HOUSING CORPORATION**

Per: \_\_\_\_\_  
 Name:  
 Title:

I have authority to bind the Corporation

Dated this        day of        , 2017.

**SCHEDULE "A"****RENTAL PROTOCOL****1. DEFINITIONS**

1.1 In this Schedule A, unless the context requires otherwise,

- **"Affordability Period"** means the [*insert "twenty (20) year period" or "details in words (and numbers) of such longer period" as may be established in the Procurement Process*] following the date of the first (1st) occupancy of a Unit in the Project;
- **"Agreement"** means the Agreement to which this Schedule A is attached;
- **"Phase-out Period"** means the last five (5) year period of the "Affordability Period", and

when used in this Schedule A, 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 A, 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, unless otherwise explicitly stated.

**2. AFFORDABLE RENT**

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

### **3. RENTS**

- 3.1 The weighted average rent of all Units in a Project for which Program Funding has been utilized shall not exceed eighty per cent (80%) of CMHC Average Market Rents in the geographical area, as determined in the most recent CMHC Annual Rental Market Survey.
- 3.2 Notwithstanding 3.1,
- (a) in the event that eighty per cent (80%) of the CMHC Average Market Rent for units of a similar type in the geographical area is less than one hundred and five per cent (105%) of the modified shelter allowance under the Ontario Works program, the weighted average rent of all Units in a Project for which Program Funding has been utilized shall not exceed one hundred and five per cent (105%) of the modified shelter allowance under the Ontario Works program for units of a similar type;
  - (b) in areas where the CMHC Average Market Rent does not represent the average market rents of a particular community, alternate market rents may be submitted by the Service Manager for review and approval by the Minister.
- 3.3 In no event shall rent for any Unit exceed the CMHC Average Market Rent for units of a similar type in the geographical area or such alternate market rents for units of a similar type in the geographical area as have been approved by the Minister.
- 3.4 If rent supplements are used for IAH (2014 Extension) funded Rental Housing Units, the Service Manager shall ensure that the total rent received by a Proponent, including rent from the tenant and the rent supplement shall not exceed one hundred per cent (100%) of the CMHC Average Market Rent for units of a similar type in the geographical area or alternate rents that have been approved by the Minister.
- 3.5 If federal and/or provincially funded rent supplements are used for IAH (2014 Extension) funded Rental Housing Units, the Service Manager shall ensure that when calculating the weighted average rent for a Project, the total rent received by a Proponent, including rent from the tenants and the federal and/or provincially funded rent supplement shall be considered.

### **4. RENT INCREASES**

- 4.1 The Proponent may increase the rent charged under section 3.1 and 3.2 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 (1st) rental period following the completion of the Development Activities in connection with the Project.
- 4.2 Subject to section 4.3, the Proponent shall not increase the rent pursuant to section 4.1 during the Affordability Period by more than the then
- prevailing rent increase guideline established for each calendar year pursuant to the *Residential Tenancies Act, 2006* or any successor legislation. The Proponent acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* or any successor legislation, does not apply to the Project and agrees that the rent increase guideline applies by virtue of the contractual terms of the Agreement and this Schedule A.
- 4.3 From the beginning of the eleventh (11th) year of the Affordability Period until the end of the Affordability Period, in addition to the increase permitted by section 4.2, the Proponent may apply to the Service Manager to increase Unit rents to an amount not to exceed CMHC Average Market Rent for units of a similar type in the geographical area.

## 5. PHASE-OUT PERIOD

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

**6. EXCEPTION**

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

**7. AFTER PHASE-OUT PERIOD**

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

**SCHEDULE “B”**  
**FUNDING SCHEDULE**

| <b>IAH - 2014 Extension – PAYMENT FUNDING SCHEDULE</b>   |  |   |
|--|--|---|
| <b>Construction Milestones</b>   | <b>Funding of New Construction Progress Payments</b> | <b>Funding of Acquisition and/or Repair Progress Payments</b> |
| Respondent signs Service Manager Municipal Housing Contribution and Facility Agreement, Confirms title to land; Municipal Housing Contribution and Facility Agreement and Securities registered on title; First building permit and/or demolition permit received, and construction equipment mobilized to the site. | 50%  | 50%   |
| Completion of Structural Framing/50% of rehabilitation construction activities   | 40%  | 40%   |
| Occupancy Certificate received for 100% of the IAH funded units; Confirmation of Employment and Apprentices Report provided to Region of Durham; and, updated capital cost statement provided to the Region in a form acceptable to the Ministry.  | 10%  | 10%   |
| <b>Total</b>   | <b>100%</b>  | <b>100%</b>   |

**Payments cannot be made prior to the start of the applicable funding year. Selected Respondent(s) who receive funding from more than one funding year will receive catch-up payments in the second and third funding year, if applicable, to the extent of the construction milestone(s) obtained.**

**All final payments (10% at confirmation of Occupancy certificate) will be made no later than March 31, 2024. If Occupancy certificate is not received by March 31, 2024, the Region’s commitment for the remaining IAH-2014 Extension Funding will lapse and no further payment will be made.**

**SCHEDULE "C"**

**PERMITTED ENCUMBRANCES**

*[This schedule in the executed Charge/Mortgage will contain the registration details*

*of all registered documents which fit into the categories listed below.]*

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

**SCHEDULE "D"**

**"Property Description"**

**Municipal Address:**

**Legal Description:**

**PIN #**

Regional Municipality of Durham

**SCHEDULE "E"**

SCHEDULE "E"

**PROPONENT'S INITIAL OCCUPANCY REPORT**  
IAH (2014 Extension) - Rental Housing Component

**A. Project Information**

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

**B. Unit Details**

| Target Client | Unit Type        | Hous<br>ehold<br>Type | IAH Units<br>(A) | # of<br>IAH<br>RS | # of<br>IAH<br>HA | # of<br>Other<br>RS | # of<br>SS | Non-IAH Units<br>(B) | Total Units<br>(A+B) |
|---------------|------------------|-----------------------|------------------|-------------------|-------------------|---------------------|------------|----------------------|----------------------|
|               | Bachelor         |                       |                  |                   |                   |                     |            |                      |                      |
|               | 1 BR             |                       |                  |                   |                   |                     |            |                      |                      |
|               | 2 BR             |                       |                  |                   |                   |                     |            |                      |                      |
|               | 3 BR             |                       |                  |                   |                   |                     |            |                      |                      |
|               | Others (specify) |                       |                  |                   |                   |                     |            |                      |                      |
|               | <b>Total</b>     |                       |                  |                   |                   |                     |            |                      |                      |

IAH RS: IAH – Rent Supplements  
Other RS: Other Rent Supplements

IAH HA: IAH – Housing Allowances  
SS: Supportive Services

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

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

**Notes:**

- Actual Rent is inclusive of federal and/or provincially funded Rent Supplements received by the Proponent.
- Alternate AMR examples include: modified Ontario Works Shelter Allowance; Ministry-approved alternate.

- 2 -

|                               |  |   |
|-------------------------------|--|---|
| <b>Weighted Average Rents</b> | <b>Project Weighted Average Rent</b><br>Total of (D)+Total of (A) =                | <b>CMHC or Alternate Weighted Average Rent</b><br>Total of (E)+Total of (A) = |
| <b>Depth of Affordability</b> | (Project Weighted Average Rent + CMHC (or Alternate) Weighted Average Rent) x100 = |   |

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

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

**F. Project Certification**

I certify, to the best of my knowledge, that the information provided in Sections B and C above is true and correct. I hereby authorize the \_\_\_\_\_ [insert name of Service Manager] to review the rent roll from appropriate sources(s) if deemed necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

Submitted by \_\_\_\_\_ [insert name of Service Manager]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**SCHEDULE "F"**

**SCHEDULE "F"**

**PROPONENT'S ANNUAL OCCUPANCY REPORT**

IAH (2014 Extension) - Rental Housing Component  
For the Year Ended December 31, 20XX

**A. Project Information**

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

**B. Unit Details**

| Target Client | Unit Type        | Household Type | IAH Units (A) | # of IAH RS | # of IAH HA | # of Other RS | # of SS | Non-IAH Units (B) | Total Units (A+B) |
|---------------|------------------|----------------|---------------|-------------|-------------|---------------|---------|-------------------|-------------------|
|               | Bachelor         |                |               |             |             |               |         |                   |                   |
|               | 1 BR             |                |               |             |             |               |         |                   |                   |
|               | 2 BR             |                |               |             |             |               |         |                   |                   |
|               | 3 BR             |                |               |             |             |               |         |                   |                   |
|               | Others (specify) |                |               |             |             |               |         |                   |                   |
|               | <b>Total</b>     |                |               |             |             |               |         |                   |                   |

**Notes:**

**IAH RS:** IAH – Rent Supplements  
**Other RS:** Other Rent Supplements

**IAH HA:** IAH – Housing Allowances  
**SS:** Supportive Services

**C. 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 X % (specify) (B) | Actual Rent per Unit per Month (C) | Rent Increase (D) = (C)-(A) | (E) CMHC or Alternate AMR |                    |
| Bachelor        |                  |                                    |   |                                    |                             |                           |                    |
| 1 BR            |                  |                                    |   |                                    |                             |                           |                    |
| 2 BR            |                  |                                    |   |                                    |                             |                           |                    |
| 3 BR            |                  |                                    |   |                                    |                             |                           |                    |
| 4 BR            |                  |                                    |   |                                    |                             |                           |                    |
| Other (specify) |                  |                                    |   |                                    |                             |                           |                    |
| <b>TOTAL</b>    |                  |                                    |   |                                    |                             |                           |                    |

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

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

**Notes:**

1. Actual Rent is inclusive of federal and/or provincially funded Rent Supplements received by the Proponent.
2. Alternate AMR examples include: modified Ontario Works Shelter Allowance; Ministry-approved alternate.

|                               |   |   |
|-------------------------------|---|---|
| <b>Weighted Average Rents</b> | <b>Project Weighted Average Rent</b><br>Total of (D)÷Total of (A) = | <b>CMHC or Alternate Weighted Average Rent</b><br>Total of (E)÷Total of (A) = |
|-------------------------------|---|---|

|                               |  |
|-------------------------------|--|
| <b>Depth of Affordability</b> | (Project Weighted Average Rent + CMHC (or Alternate) Weighted Average Rent) x100 = |
|-------------------------------|--|

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

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

**E. Project Certification**

I certify, to the best of my knowledge, that the information provided in Sections B and C above is true and correct. I hereby authorize the \_\_\_\_\_ [insert name of Service Manager] to review the rent roll from appropriate sources(s) if deemed necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

Submitted by \_\_\_\_\_ [insert name of Service Manager]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**SCHEDULE "G"**

Page G-1

**CMHC – ONTARIO****AGREEMENT FOR INVESTMENT IN AFFORDABLE HOUSING 2011-2014****SCHEDULE G  
COMMUNICATIONS PROTOCOL  
(Paragraph 11.1 of the Agreement)****G.1 GENERAL**

- G.1.1 CMHC and MMAH (the "Parties") agree to undertake joint communications activities and products that will enhance opportunities for open, transparent, effective and timely communications with the public through appropriate, continuous and consistent public information activities that recognize the contributions of the Parties and the applicant.
- G.1.2 CMHC and MMAH agree that all communications activities and products related to this Agreement, any Programs and any Projects shall recognize equally, refer to equally and give equal prominence and priority to the "Government of Canada" including "Canada Mortgage and Housing Corporation" and the "Government of Ontario" including "the Ministry of Municipal Affairs and Housing". Without limiting the generality of the preceding sentence, this paragraph applies to all provisions of this Schedule.
- G.1.3 All public information material in relation to this Agreement shall be prepared jointly.
- G.1.4 Subject to G.1.2, both Parties agree to adhere to government visibility requirements. They will be provided by CMHC and MMAH Communications Branch as issued from time to time. Visibility requirements may include, but are not limited to, items such as branding and signage.

**G.2 JOINT COMMITTEE**

- G.2.1 There shall be a Joint Committee of senior CMHC and MMAH officials responsible for the implementation of the Communications Protocol. The Joint Committee is a forum for sharing information on Investment in Affordable Housing 2011-2014 Projects and Programs, planning and approving communications plans, materials and activities, but may elect to address other Program issues by mutual agreement.
- G.2.2 The Joint Committee will continue to exist and operate for as long as necessary to meet the requirements of this Agreement.
- G.2.3 The Joint Committee will consist of two members appointed by CMHC and two members appointed by MMAH.
- G.2.4 The Joint Committee will be headed by two Co-chairs. CMHC will appoint one of its two members as the CMHC Co-chair and MMAH will appoint one of its two members as the MMAH Co-chair.
- G.2.5 The Joint Committee will meet at least twice a year.

S070711SV

**G.3 COMMUNICATION WITH APPLICANTS AND OTHERS**

- G.3.1 MMAH will provide the CMHC co-chair with information on each Project application which has been approved five business days before any communication of the approval to the applicant or others.
- G.3.2 All Project and Recipient approval notifications in a form acceptable to both parties shall identify the "Government of Canada" including "Canada Mortgage and Housing Corporation" and the "Government of Ontario" including "the Ministry of Municipal Affairs and Housing" as sources of funding, under the "Investment in Affordable Housing 2011-2014".
- G.3.3 All public information material related to calls for tendering shall clearly and prominently indicate that the Project is funded by the "Government of Canada" including "Canada Mortgage and Housing Corporation" and the "Government of Ontario" including "the Ministry of Municipal Affairs and Housing" pursuant to this Agreement.

**G.4 COMMUNICATION WITH THE PUBLIC**Public Information Products

- G.4.1 The Parties may develop information kits, brochures, public reports, and web site material, recognizing the joint funding, to inform potential applicants and the public about the Investment in Affordable Housing 2011-2014 and the Programs.

News Releases

- G.4.2 A joint news release shall be issued when this Agreement is signed. Unless the Parties decide otherwise, there shall be a joint news release for each approved Project or group of Projects or Recipients (without disclosing personal information), in which each Party will have equal importance. A news release may include quotations from a federal and a provincial official, other contributors and the applicant. The Parties must agree on these quotations. The Parties shall agree on the timing of the news release.
- G.4.3 The Parties shall co-operate in organizing press conferences, announcements and official ceremonies. The Parties will agree on the messages and public statements at such events. The Parties shall agree if, when and where special ceremonies and events will be held. Neither Party nor any municipality, applicant or contributor shall make any public announcement for a Project or Recipients, without first securing the agreement of the other Party. A Party must be informed of a proposed joint event at least 20 working days prior to the planned date of the event. No arrangements shall be made for events until the other Party agrees to the event.
- G.4.4 Either Party may organize a joint press conference. The requester shall give the other Party notice of at least 20 working days of such a press conference, public announcement or joint event, which shall not be presented by one Party to another as final. The CMHC and Ontario Ministers or their designated representatives and each Party may participate in these press conferences, which shall be held on a date and at a location that are agreed upon.

- G.4.5 The signing of this Agreement shall be the subject of an official ceremony.
- G.4.6 The Parties shall work together to organize such announcements and official ceremonies, and shall follow a mutually agreed-upon order of precedence. The Parties should jointly agree on the messages and public statements at such events.

#### Signage

- G.4.7 MMAH shall ensure that the applicant provides and installs temporary signage at a prominent location where there is visible activity related to an approved Project. The signage shall indicate that it is a Government of Canada - CMHC and Government of Ontario - MMAH (and municipal as applicable) Investment in Affordable Housing 2011-2014 Project, bear a message approved by each Party, and remain in place throughout the construction period.
- G.4.8 MMAH shall provide and install, where appropriate, a plaque or permanent sign bearing an appropriate inscription.
- G.4.9 Design, wording and specifications of signs and plaques shall reflect the equal participation of the "Government of Canada" including "Canada Mortgage and Housing Corporation" and the "Government of Ontario" including "the Ministry of Municipal Affairs and Housing" and must be approved by both Parties. Signs and plaques shall have appropriate spaces indicating participation by the municipality and the applicant, if requested.
- G.4.10 The Parties shall issue specifications for signs and plaques and time frames for their installation. Temporary signs must be removed within 90 days of Project completion.

#### Advertising

- G.4.11 Either Party may organize an advertising or public information campaign, recognizing the joint funding, related to the Investment in Affordable Housing 2011-2014 and the Programs. However, it must inform the other Party of the contents of the campaign's messages at least 30 days before it is launched.

#### Payments

- G.4.12 All payments to approved applicants or others pursuant to or related to this Agreement will identify the "Government of Canada" including "Canada Mortgage and Housing Corporation" and the "Government of Ontario" including "the Ministry of Municipal Affairs and Housing" as sources of funding, under the "Investment in Affordable Housing 2011-2014".

**G.5 COSTS**

- G.5.1 The Joint Committee shall approve an annual communications plan and budget.
- G.5.2 Costs associated with the development and delivery of communications products and activities in the approved communications plan and budget are eligible costs under this Agreement. This would apply to costs incurred by either party associated with any public announcement and official ceremony, temporary or permanent signage and plaques, advertising, literature, media distribution, organization of special events, as established by both Parties.

**G.6 MUNICIPALITIES**

- G.6.1 "Municipal" and "municipality" include public bodies designated by MMAH as the local functionary for Programs.

**SCHEDULE "H-1"**

**Mortgage/Charge of Land**

**SCHEDULE "H-2"**

**Security Agreement**

**SCHEDULE "H-3"**

**Assignment of Rents**

**SCHEDULE "I"****Opinion of Counsel of Proponent**

## Letter of Opinion

(INSERT LAWYER FOR PROPONENT)

Re: DURHAM REGION NON-PROFIT HOUSING CORPORATION

We act on behalf of Durham Region Non-Profit Housing Corporation (hereinafter called the "**Proponent**") and have examined the (Articles of Incorporation/Letters Patent), by-laws, minutes of meetings of the directors and shareholders of the Corporation and other corporate proceedings and documents, as we deemed appropriate.

This opinion is given pursuant to an agreement made the \*\* day of \*\*, 20xx between the Proponent and the Corporation of the Regional Municipality of Durham, for the provision of funds in respect of the Investment in Affordable Housing for Ontario Program: 2014 Extension - Rental Component (the "**Agreement**"), an Agreement between the Province and the Corporation of the Regional Municipality of Durham (the "**Service Manager**") dated the 31st day of October, 2014 (the "**Service Manager Agreement**") in furtherance of the administration of the Ministry Loan and security required therein. All capitalized terms herein shall have the meaning ascribed thereto in the Agreement, unless otherwise defined herein.

Based on the foregoing, we are of the opinion that:

The Proponent has been duly incorporated and organized and is a valid and subsisting corporation in good standing in accordance with the laws of the Province of Ontario and has not been dissolved;

The Proponent has all necessary corporate power to own the Property and to carry on business and is in good standing under the laws of the Province of Ontario in which the nature of the business by it or the property owned or leased by it;

The Proponent is the registered owner of the Property and, to the best of our knowledge, has good and marketable title thereto, free and clear of all mortgages, liens, charges, security interests, adverse claims, pledges, encumbrances and demands whatsoever, save and except the Permitted Encumbrances;

The Proponent has all necessary corporate power and authority to execute and deliver, and to perform all of its obligations under the Service Manager Municipal Housing Facility Agreement, including the granting of the security documents provided therein, and all necessary corporate action and proceedings have been taken authorize the execution of the said agreements and to carry out the actions required therein;

The execution of the Service Manager Municipal Housing Contribution and Facility Agreement and the undertaking of the Development Activities contemplated by the Proposal and the Request for Proposal will not result in a breach of any term or provisions of or constitute a default under the constating documents, by-laws or resolutions of the Corporation or any indenture, agreement, instrument, license, permit or undertaking to which the Corporation is a party or by which it is bound; and

Provided that the opinion herein subject to the following qualifications:

The opinions are limited to the laws of the Province of Ontario and the laws of Canada applicable therein;

The enforceability of the obligations of the Proponent are subject to bankruptcy, insolvency, moratorium and other legislation affecting creditors' rights generally, including the Personal Property Security Act, and no opinion is expressed herein as to the availability of any equitable remedy.

Yours truly,

(Proponent's lawyer)