

Municipal Housing Project Facility Agreement

This is an Agreement made as of the _____ day of _____, 2007.

BETWEEN:

NIAGARA REGIONAL HOUSING

(hereinafter called "NRH")

and

Insert Proponent Name

(hereinafter called the "Proponent")

WHEREAS:

- A. NRH is participating in the **Canada-Ontario Affordable Housing Program: Rental and Supportive Housing Component** (the "Program") pursuant to the *Social Housing Reform Act, 2000* and the *Municipal Act, 2001*.
- B. The **Proponent** has responded to the Niagara Regional Housing's Request for Proposal (**RFP**) No. NRH-RFP-06-02, by submitting its **Proposal** dated _____ (the "Proposal") to undertake **Development Activities** for Affordable Housing in return for financial benefits from the Minister of Municipal Affairs and Housing ("**MMAH**"). The **RFP** is attached to this Agreement as Schedule "A-1" and the **Proposal** is attached to this agreement as Schedule "A-2".
- C. **NRH** has approved of the **Proposal** subject to conditions, including the condition that the **Project** be built as indicated in the attached Schedules and that the **Proponent** receive the Contributions as indicated in Schedule "F".
- D. **NRH** and the **Proponent** have agreed to enter into a Municipal Housing Project Facility Agreement as contemplated by Section 110 of the *Municipal Act 2001* and Section 6.1 of O. Reg. 46/94 as amended, and the provisions of By-law No. 34-2004 of the Regional Municipality of Niagara (The Municipal Housing Facility By-law") to authorize the **Proponent** to proceed with its **Development Activities** with respect to the **Project** on the terms and conditions set out in this **Agreement**.

IN CONSIDERATION of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are acknowledged), **NRH** and the **Proponent** covenant and agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

The following words and phrases used in this Agreement shall have the following meanings ascribed to them:

“**Acceptable Standards**” means the standard of maintaining and repairing a building of similar structure and use that would be followed by a prudent owner of a similar building and acceptable to **NRH**;

“**Accessible Unit**” means a **Unit** that is designed and built to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. (Examples include; lever handles (doors and faucets), a level entrance, wider passageways, flush exterior thresholds, reinforced bathroom walls around tub and toilet, lowered light switches and raised electrical outlets).

“**Affordable Housing**” means affordable housing as defined in the Housing Facility By-law and as indicated in the **RFP**;

“**Agreement**” means this Municipal Housing Project Facility Agreement and all incorporated schedules thereof;

“**Approval**” means approvals of any statutory authority required to construct and complete the **Project**, including any re-zoning of the **Project**, official plan amendments and site plan approvals to permit construction of the building, and building permits;

“**Auditor**” means an auditor licensed under the Public Accountancy Act, R.S.O. 1990, c.P.37;

“**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 the Canada Mortgage and Housing Corporation, its successors and assigns;

“**Contribution Agreement**” means the documentation or agreement in which identified is the cash or in-kind eligible contributions from the Federal Government, Provincial Government of Ontario, municipalities, the private sector, the voluntary sector, charities and individual donors that the **Proponent** is receiving used in accordance with the **Program** and which is included in Schedule “F”;

“**Development Activities**” means those activities which are normally undertaken for the development, construction, repair, renovation or conversion of buildings for residential purposes and includes, without limitation, preliminary activities such as the acquisition of land, the preparation of design plans and the making of

all applications for municipal approvals;

“**Final Project Budget**” means the final development budget for the **Project** prepared by the **Proponent** and reviewed and accepted by the lender under the First Mortgage;

“**First Fiscal Period**” means the period of time which is at least six (6) months long but is no more than eighteen (18) months long, which commences as at the date of this Agreement;

“**Fiscal Year**” means the fiscal year of the **Proponent** that is a period of twelve (12) consecutive months;

“**Housing Facility By-law**” means Niagara Regional Housing's Municipal Housing Facility By-law (By-law No. 34-2004) passed by the Region of Niagara under section 110 of the *Municipal Act*, 2001 as amended from time to time;

“**Interest Adjustment Date**” means the first day of the month following the date on which the final payment by **MMAH** is made;

“**Lands**” means those lands described in Schedule “E”;

“**Letter of Commitment**” means the documentation from the **Municipality** or any other entity or agency from which the **Proponent** is receiving incentives, grants or other contributions which are being used for the purpose of matching funds under this program to leverage the Federal funding available and which is included in Schedule “F”;

“**MMAH**” means Her Majesty the Queen in the Right of Ontario, as Represented by the Minister of Municipal Affairs and Housing or such other provincial ministry that is responsible for the **Program** from time to time;

“**Municipality**” means the lower-tier municipality in the **Region** in which the **Project** is to be constructed;

“**PIPEDA**” means *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, including any amendments thereto;

“**Plans and Specifications**” means the final plans and specifications for the development of the **Project** as included and identified in Schedule “B”;

“**Program**” means the Canada-Ontario Affordable Housing Program: Rental and Supportive Housing Component. initiated by the **MMAH** and **CMHC** pursuant to the Canada Mortgage and Housing Corporation – Ontario Affordable Housing Program Agreement, dated April 29, 2005;

“**Project**” means the **Affordable Housing** proposed or approved for the **Program** under this Agreement and the **Lands**, on which they are to be built and as identified in Schedule “B”;

"**Project Agreements**" includes this Agreement, the **RFP** and the **Provincial Contribution Agreement** and the to which the **Proponent** is or becomes a party to during the term of this Agreement; also included are the **Security Documents** as defined herein and documents included in Schedules "B", "C", "D" and "E" herein and the **Plans and Specifications** as referred to in section 4.1 herein;

"**Proposal**" means the proposal or response to the procurement process submitted to **NRH** pursuant to the **RFP** and attached to this Agreement as Schedule "A-2";

"**Provincial Contribution Agreement**" means the agreement entered into between the **Proponent** and **MMAH** (or any other provincial Ministry having responsibility for the **Program**) pursuant to the **Program** with respect to the **Project**;

"**Region**" means the municipal corporation known as "The Regional Municipality of Niagara" for the geographic area that incorporates all of the lower-tier municipalities within the Region as the context requires;

"**RFP**" means the Request for Proposal NRH-RFP-06-02 issued by **NRH** and attached to this Agreement as Schedule "A-1";

"**Security Documents**" means the security documents attached to and forming part of the **Contribution Agreement** and this **Agreement**.

"**Substantial Completion**" means the substantial performance, within the meaning of the *Construction Lien Act*, of all contracts which the **Proponent** has entered into for **Development Activities** in connection with the **Project** under this Agreement;

"**Term**" means the twenty (20)-year term of this Agreement commencing on the Interest Adjustment Date and plus the five (5)-year phase-out period;

"**Unit**" shall have the same meaning as in the **Provincial Contribution Agreement**.

1.2 Schedules

The following Schedules are attached here to being Schedules "A" to "J" inclusive and form part of this Agreement and are to be interpreted as if the contents there of were included in this agreement. The **Proponent** covenants with **NRH** to abide by each and every provision contained in all of the Schedules attached here to:

Schedule "A-1"	-	Request for Proposal NRH-RFP-04-01
Schedule "A-2"	-	Proponent Proposal
Schedule "B"	-	Building Permit, Plan Examination Report, Plans and Specifications
Schedule "C"	-	Annual Information Return
Schedule "D"	-	Annual Confirmation of Incoming Tenant Limits
Schedule "E"	-	Legal Description of the Project and Permitted Encumbrances
Schedule "F"	-	Contributions by Others – Agreements
Schedule "F-1"	-	Equity Affidavit (Private Proponents only)
Schedule "G"	-	Rental Protocols
Schedule "H"	-	Development Schedule
Schedule "I"	-	Final Project Budget

1.3 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.

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

1.5 While not added as Schedules, the **Proponent** also covenants to abide by each and every provision of the following documents as such may apply from time to time to it, namely,

- (a) Service Manager Administration Agreement;
- (b) Provincial Contribution Agreement; and
- (c) Municipal Housing Facility By-law 34-2004 of the Regional Municipality of Niagara

1.6 The **Proponent** also covenants with **NRH** to ensure that the solicitor for the **Proponent** registers this Agreement upon the title to the lands described in Schedule "E" herein at the expense of the Proponent and furthermore, that the solicitor for the **Proponent** shall provide **NRH** with all documentation and Certificate of Title as required more specifically by the provisions of Schedule "E" herein and any other required evidence of proof of the registration of this Agreement and its priority on title as may be reasonably required from time to time by **NRH**.

ARTICLE 2 PURPOSE OF THIS AGREEMENT

Section 2.1 Purpose

This Agreement is a **Municipal Housing Project Facility Agreement**, as contemplated by the **Housing Facility By-law**.

The purpose of this Agreement is to set out the rights and obligations of the **Proponent** with respect to the development and operation of the **Project**.

Section 2.2 Obligations

The **Proponent** agrees:

- (i) to proceed diligently with the construction of the **Project** as contemplated and as indicated in their **RFP** submission and the related Schedules forming part of this agreement;
- (ii) to maintain and operate the **Project** as **Affordable Housing** in accordance with the terms and conditions of the **Project Agreements**, the Housing Facility By-law and the **RFP**;
- (iii) to use the full amount of all contributions identified in the **Contribution Agreements**, as identified in Schedule "F" for the purpose of its **Development Activities** in connection with the **Project**.
- (iv) that they shall not at any time during the term of this Agreement breach any **Contribution Agreement** that it has entered into with any entity respecting 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 **NRH** with evidence of its good standing under any such **Contribution Agreement** within ten (10) **Business Days** following its receipt of a written request from **NRH**.
- (v) 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 **NRH** under this Agreement.
- (vi) The **Proponent** agrees and acknowledges that this Agreement will be registered on title and that it is the responsibility of the **Proponent** to register and provide proof of such registration to **NRH**.

ARTICLE 3 PROVISION OF AFFORDABLE HOUSING

Section 3.1 The **Proponent** acknowledges and agrees that the Rental Protocol set out in Schedule “H” 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 *Tenant Protection Act, 1997*, and its regulations.

Section 3.2 The **Proponent** agrees to operate the units in accordance with the rules set out in Schedule “G” of this Agreement.

ARTICLE 4 DEVELOPMENT AND USE OF PROJECT

Section 4.1 The Project

The **Proponent** agrees that the **Project** shall be constructed strictly in accordance with the **Plans and Specifications**, the **Final Project Budget** and all building permits, as reviewed and approved by all appropriate governmental authorities for the issuance of all permits necessary to construct and occupy the **Project** and in accordance with all applicable laws, including the *Construction Lien Act* and the **Project Agreements**.

Section 4.2 Use and Management

The **Proponent** shall construct, use, manage and operate the **Project** solely, continuously and actively as **Units of Affordable Housing**, details of which are set out in Schedule “H”, in accordance with the **Housing Facility By-law** and in accordance with the terms and conditions of the **Project Agreements**. The **Proponent** shall not use or permit the use of the **Project** or any part thereof for any other business or purpose except as may be permitted under the **Project Agreements**.

Section 4.3 Standard of Repair

The **Proponent** shall maintain the **Project** to **Acceptable Standards**.

Section 4.4 Income Testing

The **Proponent** shall collect and review tenant’s income information prior to offering a unit in the **Project**, to ensure that the tenant qualifies for **Affordable Housing** under the Housing Facility By-law and with respect to the Maximum Housing Income Limits (as indicated in Schedule “G”).

Section 4.5 Waiting List / Tenant Selection

The **Proponent** shall select tenants for the **Project** in accordance with the directions provided in the **RFP**, section 1.7 (attached as Schedule “A-1”).

ARTICLE 5 MANAGEMENT RESPONSIBILITIES OF THE PROPONENT

Section 5.1 Year-End Reporting

The **Proponent** covenants to retain an auditor at their own expense and shall provide to **NRH** within five (5) months of the end of each fiscal year:

- (a) an annual information return to **NRH**, substantially in the form of the return attached hereto as Schedule "C" or as **NRH** requires;
- (b) a completed copy of the **Project** Owner's Annual Report in substantially in the form attached as Schedule "E" to the **Provincial Contribution Agreement**;
- (c) a management representation report, in a form designated by **NRH**, including management declarations required by **NRH** and a report on compliance with this Agreement prepared by the **Auditor** of the **Proponent**.

Section 5.2 Statistics

The **Proponent** shall on reasonable notice, for statistical purposes, supply information with respect to the **Project** as required by **NRH** from time-to-time, provided such information is reasonably available to the **Proponent**.

Section 5.3 Records

The **Proponent** shall:

- (a) maintain financial records, including records related to rent collection and tenant income and eligibility verification, in a form satisfactory to **NRH**;
- (b) permit **NRH** to inspect such records at all reasonable times and on reasonable notice; and
- (c) retain all such records that pertain to the **Project** for not less than seven (7) years from the end of the first fiscal year to which the records relate.

Section 5.4 Eligibility

The **Proponent** shall:

- (a) ensure that eligibility for **Affordable Housing Units** will be determined in accordance with the provisions set out in the **RFP** in Schedule "A-1"
- (b) ensure that under no circumstances shall an **Affordable Housing Unit** be made available at rent that is higher than the affordable rent as defined in the Rental Protocol in Schedule "G".
- (c) ensure that each **Affordable Housing Unit** shall meet the definitions of **Affordable Housing** set out above and shall be available to only households within eligible **Maximum Income Limits**.
- (d) ensure that **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**, unless:

- i. 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; and
- ii. The **Proponent** is at arm's length to any individual or private for-profit corporation with which the director or individual not at arm's length to the director, as the case may be, has a non-arm's length relationship.

ARTICLE 6 MANAGEMENT RESPONSIBILITIES OF NIAGARA REGIONAL HOUSING

Section 6.1 Year-End Reporting

NRH shall inform the **Proponent** of the annual Provincial Rental Control Guideline issued in August of each year or such other relevant amount and the **Proponent** covenants to abide by the provisions of this Guideline.

ARTICLE 7 SECURITY

Section 7.1 Security Documents

- (a) As security for the performance of the obligations of the **Proponent** under this Agreement and under any instrument or agreement contemplated hereby, the **Security Documents** shall be deposited with and held by **NRH** or as it may direct.
- (b) The **Security Documents** shall be in addition to any other security that **NRH** may now have or acquire as security for the performance of the **Proponent's** obligations hereunder.

Section 7.2 Representations and Warranties

The **Proponent** represents and warrants to **NRH** that:

- (a) Due Incorporation

The **Proponent** is a corporation duly incorporated, organized and existing as a corporation with share capital under the *Business Corporations Act*, Ontario is permitted under its Articles of Incorporation and has the necessary corporate power and authority to own all its property and to carry out its activities to carry out the **Project** as contemplated under this Agreement and all other agreements contemplated thereunder.

OR *[non-profit only]

The **Proponent** is a corporation duly incorporated, organized and existing as a corporation without share capital under the laws of (Canada) or (Ontario), is permitted under its letters patent to carry on its operations without pecuniary gain to its members and any profits or other accretions to the **Proponent** are to be used in promoting its objects and has the necessary corporate power and authority to own all its property and carry out its activities to be conducted by it in respect of the **Project** as contemplated under this Agreement and all other agreements contemplated thereunder.

(b) Power and Authority

The **Proponent** has full corporate power, legal right and authority to enter into this Agreement to do all acts and things as are required or contemplated thereunder to be done, observed or performed by it.

(c) No Breach

Neither the execution and delivery of this Agreement, the consummation of the transactions therein contemplated, nor the compliance with the terms, conditions and provisions hereof and the Security Documents 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.

(d) No Litigation

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 operations, properties or assets, or the condition, financial or otherwise, of the **Proponent**.

(e) No Restriction

Except as previously disclosed in writing to **NRH**, the **Proponent** is not a party to any agreement or instrument or subject to any restriction or any judgement, order, writ, injunction, decree, rule or regulation which materially and adversely affects the operations, prospects, properties or assets, or condition, financial or otherwise, of the **Proponent**.

(f) Compliance

The **Project** will be constructed in accordance with all applicable environmental laws, zoning by-laws and building codes, work place safety legislation and any other law or regulation of any nature or kind that is applicable in any way to the **Project**.

(g) Agreement in Force

A construction contract is in full force and effect and neither the **Proponent** nor any other party thereto is in default thereunder.

(h) Accuracy of Information

None of the information, financial or otherwise, provided by the **Proponent** to **NRH** to induce **NRH** to enter into this Agreement, contain 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.

(i) Environmental

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 **NRH** and the **Proponent** as partners of each other. In particular, **NRH** is in no way accountable for any related environmental or pollution matters. The **Proponent** agrees to indemnify **NRH** and save it harmless from all losses, costs, damages, expenses, injury and liability whatsoever which **NRH** may suffer as a result of claims of any sort whenever made arising out of the implementation of this Agreement, including any environmental or pollution claims, except as caused or contributed by **NRH** other than by entering into or fulfilling this Agreement.

Section 7.3 Covenants of Proponent

The **Proponent** covenants and agrees with **NRH** that, so long as any obligation is owing by the **Proponent** to **NRH** hereunder it shall:

- (a) 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 **Plans and Specifications** and to complete such construction no later than December 31, 2010, subject to acts of God and other events which occur beyond the control of the **Proponent**, including, 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 **Land** and to preserve and protect all of the property, 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.

Section 7.4 Insurance and Application of Proceeds

(a) Building-in-Course-of-Construction Insurance

Prior to the commencement of any work including demolition or construction of the **Project** on the **Land**, the **Proponent** shall effect, maintain or cause to be maintained and keep in force, until completion of such work including demolition, repair, alterations, construction, additions and/or renovations to the building or construction of the **Project**, insurance insuring **NRH** and the **Proponent** and their employees and all those for whom they are at law responsible (without rights of cross-claim as between **NRH** and the **Proponent**) from damage to the **Project**, building, fixtures, equipment and building materials forming part of the **Project** from time to time during the work including demolition and construction (which may be by policies effective from time to time covering the risks during different phases of the work, demolition and construction) by an "all risks" form, including resultant damage from error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a project, to the replacement cost thereof at all times and in any event in an amount sufficient to prevent **NRH** or the **Proponent** from being deemed to be a co-insurer.

(b) "All Risks" Property Insurance

Except as to any portion of the building under construction which is insured by the insurance coverage provided pursuant to subsection (a), the **Proponent** shall, at all times, insure and keep insured the **Project** and all other insurable property belonging to the **Proponent** and from time to time located on the **Project** in an amount not less than the replacement cost thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risks" policy issued by insurers from time to time), including resultant damage from error in design and faulty workmanship, to the extent available and as would be obtained by a prudent owner of such a project, and in any event in an amount sufficient to prevent **NRH** or the **Proponent** from being deemed to be a co-insurer.

(c) Public Liability Insurance

The **Proponent** shall, at all times, maintain or cause to be maintained comprehensive general liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the **Project** or out of the operations of the **Proponent** or its sub-lessees in, on or about the **Project**, indemnifying and insuring **NRH** and the **Proponent** and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a project would, from time to time, carry (which amount shall initially be not less than Five Million Dollars (\$5,000,000.00) during any period of construction and thereafter not less than Five Million Dollars (\$5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the

generality of the foregoing, with provisions for cross-liability and severability of interests. During the course of the work or any other construction, the liability insurance required under this section shall relate to property damage, death or injury arising out of the performance or non-performance of the work or any other construction or related work and shall include non-owned automobile liability insurance covering all licensed vehicles owned by the **Proponent** or engaged in any manner by the **Proponent** in the work or other construction or related work. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies.

(d) Other Insurance

The Proponent shall maintain, or cause to be maintained, and shall keep in force during the **Term** such other insurance as may be reasonably required from time to time.

(e) Co-Insurance

All policies of insurance required under this Article and all renewals thereof shall contain a stated amount co-insurance clause effective for the term of the policy or the renewal so as to prevent the **Proponent** from becoming a co-insurer under the terms of such policy or policies and to permit full recovery of the amount insured in the event of loss.

(f) Copies of Policies and Approval of Policies

The **Proponent** shall deliver certificates of all insurance and copies of all insurance policies to **NRH** forthwith. **NRH**, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the **Proponent** including the limits of coverage and the provisions thereof, provided that if **NRH** is named as loss payee on any insurance policies, and the holder of the First Mortgage has approved such insurance policies, **NRH's** prior approval is not required.

(g) Non-Cancellation

Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or refuse to renew such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days' prior written notice to **NRH**.

(h) Premiums and Evidence of Payment Thereof

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

(i) Named Insured's

The **Proponent** shall cause any and all policies of insurance provided for in this Article, section 7.4 to include **NRH** as an additional named insured.

(j) **NRH's Right to Insure**

The **Proponent** shall advise **NRH** 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, **NRH** 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 **NRH** shall be payable by the **Proponent** to **NRH** forthwith upon demand without prejudice to any other rights and recourses of **NRH** hereunder. No such insurance taken out by **NRH** shall relieve the **Proponent** of its obligations to insure hereunder and **NRH** shall not be liable for any loss or damage suffered by the **Proponent** in connection therewith.

ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Realization on Security

- (a) Upon the occurrence of any one or more of the following events (each an "Event of Default"):
- (i) the failure of the **Proponent** to pay any amount due to **MMAH** on the date on which the same shall be due and payable under the **Project Agreements** and/or the **Security Documents**;
 - (ii) the failure of the **Proponent** to perform, observe or comply with any other term, covenant, condition or provision of any of this Agreement, the **Project Agreements**, the **Security Documents** or the First Mortgage;
 - (iii) any representation or warranty made by the **Proponent** in the **Project Agreements** or in any of the **Security Documents** proves to have been untrue or misleading in any material respect as of the date on which it was made;
 - (iv) the **Project** shall not have been substantially completed in accordance with the **Plans and Specifications** on or before March 1, 2005; and/or
 - (v) if the **Project** shall be entirely destroyed or damaged to such an extent that, in the opinion of a quantity surveyor, acting reasonably, it is no longer fit for the purpose for which it is intended and the insurance proceeds, if any, held by **NRH** pursuant to Article 6 are, in the opinion of a quantity surveyor, acting reasonably, insufficient to repair such destruction or damage, and the **Proponent** has not provided evidence satisfactory to **NRH** of the timely availability of such sufficient funds.

then, if an Event of Default shall occur prior to the completion of the **Project**, then **NRH** 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 **Project** and may complete the **Project** or enter into a contract with another to complete the same, and all amounts

advanced for such purpose, including reasonable legal fees incurred by **NRH** incident to the enforcement of any provisions hereof, shall be an indebtedness of the **Proponent** to **NRH**.

(b) Assignment of Plans and Specifications

The **Proponent** hereby assigns to **NRH** and its successors and assigns, the right to possess and use the **Plans and Specifications** and the **Proponent's** rights under all construction contracts, (to the extent the same are assignable) for the purpose of completing the **Project** if the **Proponent** defaults subject to any prior assignment to the holder of the First Mortgage.

(c) 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 **NRH** pursuant hereto, shall be for the account of the **Proponent** and shall be repayable on demand.

(d) Cross Default

A breach of the First Mortgage, and the **Project Agreements** or of any certificates of insurance (including the endorsements) issued in respect of the **Project** or any part shall constitute a breach of this Agreement and any **Security Documents** or ancillary security as described in this Agreement and, at the option of **NRH**, all powers in and by this Agreement and any such **Security Documents** or ancillary security and all other remedies thereunder shall become exercisable, subject to any relief afforded to the **Proponent** at law.

Section 8.2 Miscellaneous

(a) Further Assurances

The parties agree from time to time, as may be reasonably required by any party hereto, to execute and deliver such further and other transfers, assignments and documents and do all matters and things which may be convenient or necessary to carry out the intention of this Agreement or of any of the **Security Documents** more effectively and completely.

(b) Survival of Agreement

The terms and conditions hereof shall be binding on the **Proponent** and any of its successors on title for the **Term** of this Agreement and any acknowledgements, warranties and covenants herein on the part of the **Proponent** shall run with the **Lands**.

Section 8.3 Delay

Waiver or delay in exercising a remedy shall not prevent **NRH** from exercising the remedy at a later time, for any breach of this Agreement.

Section 8.4 Emergencies

NRH shall not be required to comply with section 8.1(a) in the case of a breach of this Agreement:

- (a) which constitutes an emergency;
- (b) where prompt action is required; or
- (c) where waiting thirty (30) days would materially worsen the situation.

Section 8.5 Equitable Remedies

The **Proponent**, without limiting its right to dispute whether there is a breach of this Agreement or apprehended breach:

- (a) acknowledges that should it be in breach of this Agreement, damages would not always be an adequate remedy;
- (b) consents to the granting by the Court, both temporarily and permanently, of injunctions and orders for specific performance and to the appointment of a Receiver where sought by **NRH**; and
- (c) agrees that such form of relief referred to in Section 8.5(b) will always be appropriate where sought by **NRH**, regardless of other available remedies or lack of actual peril to the **Project**.

ARTICLE 9 AUDITS

Section 9.1 Audit

NRH may cause its employees or agents to conduct an audit, investigation or inquiry in relation to the **Proponent** or the **Project** and the **Proponent** shall co-operate with the employees or agents of **NRH** and provide full and free access to staff, projects, documents and records as determined by employees or agents of **NRH**.

Section 9.2 Provision of Audit Report

Within sixty (60) days of the completion of any final audit report or other report under Section 9.1, **NRH** shall provide a copy of the reports to the **Proponent** unless the reports or circumstances identified in the audit report have been referred to a law enforcement agency for inquiry and **NRH** shall also provide the report to the **Proponent** prior to its release by an authorized official of **NRH** to any person outside **NRH**, other than a law enforcement agency.

Section 9.3 Capacity of NRH

All rights and benefits and all obligations of **NRH** under this Agreement shall be rights, benefits and obligations of **NRH** in its capacity as a party to this Agreement and shall not derogate from or interfere or fetter with the rights, benefits and obligations of **NRH**, its Board of Directors, Regional Council or its elected and appointed officials and representatives in their respective functions and capacities.

**ARTICLE 10
GENERAL MATTERS**

Section 10.1 Communication

NRH and the **Proponent** will maintain regular and open communication in respect to the operation of the **Project** and the administration of this Agreement.

Section 10.2 Laws of Province

Any obligation in this Agreement is subject to the laws of Canada, the laws of the Province of Ontario and applicable by-laws of **NRH**, as those laws and by-laws apply to the interpretation of this Agreement. Any reference to a statute or by-law in this Agreement includes any subsequent amendments or replacement and substitution of that statute or by-law.

Section 10.3 Notice

- (1) Any notice required under this Agreement must be in writing and delivered by personal service or facsimile to **NRH** at the following address:

Niagara Regional Housing
Housing Programs Division
Regional Administration Building
Campbell East
2201 St David's Road
P.O. Box 344
Thorold, ON L2V 3Z3
Facsimile: (905) 687-4844

Attention: General Manager

and to the **Region** Solicitor

2201 St David's Road
Thorold ON _____
Facsimile: (____) ____-____
Attention: _____

and to the **Proponent** at the following address:

Insert Proponent Name and address

Any such notice given as aforesaid shall be deemed to have been effectively given, if sent by facsimiles on the next **Business Day** following such transmission, or if delivered, to have been received on the date of such delivery.

- (2) The parties shall give notice to each other in writing of any change in this information. Any notice under this Agreement shall be deemed to be delivered on the date when personally served or, if mailed, on the fifth day after the notice was mailed.

Section 10.4 Contact Persons

The **Proponent** shall identify in writing one or more contact persons, who are authorized by the **Proponent** to respond on its behalf and who can respond to requests from **NRH** and receive and transmit information from **NRH** and shall give notice to **NRH** of any change in any contact person.

Section 10.5 Assignment

The **Proponent** shall not assign or transfer this Agreement or any of its responsibilities, rights or obligations under this Agreement or any of the **Project Agreements** without the prior written consent of **NRH**, and without the assignee or transferee entering into an agreement to assume the obligations under this Agreement.

Section 10.6 Amendment of Agreement

This Agreement may not be amended except on the consent of the parties and provided that such amendment shall be evidenced by a further written document.

Section 10.7 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

Section 10.8 Indemnification

The **Proponent** acknowledges the existence of the following documents or agreements in possession of **NRH** (namely, the documents contained in Schedules to this Agreement as well as those mentioned in section 1.5 above) and each of which the **Proponent** covenants to abide by and release, indemnify and save harmless **NRH** and the **Region** and their officers, councillors, servants or agents from any and all claims of whatever nature or kind and from whatever source that may be brought against them or any of them as a result of the **Project Agreements** or the development or existence of the **Project** or anything directly or indirectly connected there to or therewith and in addition such indemnity shall extend to any and all administrative and legal costs on a full indemnity basis that are occasioned to **NRH** and the **Region** and their officers, councillors, servants or agents as a result of their defence of any such claims.

Section 10.9 Administration of Agreement

The General Manager of **NRH** will administer the terms of this Agreement on behalf of **NRH**. The General Manager of **NRH** shall administer and manage the Agreement including the provision of any consents, approvals, waivers, notices and notices of

termination provided that the General Manager of **NRH**, may, at any time, refer consideration of such matter (including their content) to the **Region's** and/or Municipality's Council for its determination and direction.

Section 10.10 Municipal Housing Facility By-law No.34-2004

The **Proponent** covenants to completely abide by and comply with all provisions of the Municipal Housing Facility By-law No. 34-2004 and in particular, the following:

- (a) The **Term** of this Agreement shall be not less than twenty-five (25) years, including a twenty (20) year affordability period, with an additional five (5) year phase-out period;
- (b) The **Project** shall provide no fewer than three (3) housing **Units**;
- (c) Each **Unit** within the **Project** shall meet the definition of **Affordable Housing** throughout the term of the Agreement;
- (e) The Affordable Rent (as defined by Municipal Housing Facility By-law No. 34-2004) for each housing **Unit** within the **Project** funded under this program shall be subject to rent increase restrictions as per the *Tenant Protection Act 1997* as may be amended for the duration of the term of this Municipal Housing Project Facility Agreement;
- (f) The **Proponent** and any successor in title shall comply with section 5 of the Municipal Housing Facility By-law No. 34-2004 so long as this Municipal Housing Project Facility Agreement remains in effect. For greater particularity, section 5 of the Municipal Housing Facility By-law No. 34-2004 is as follows:

"Under no circumstances shall a **Unit** be made available at any time during the period the Municipal Housing Project Facilities Agreement is in force:

- (a) at a monthly rent that is not within the definition of Affordable Rent as outlined in this By-law, or
 - (b) to individuals or families who, at the time the **Unit** was initially rented to them already owned residential property as determined by the **Proponent** after making reasonable enquiries."
- (g) The **Proponent** shall indemnify the **Region** and/or **Municipality** and **NRH** against any costs, expenses, loss or damages arising out of the **Proponent's** failure to perform any of its obligations pursuant to this Agreement.

10.11 Undertaking

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 **RFP** and **Proposal** and without restricting the generality of the foregoing shall:

- (a) commence its **Development Activities** on or before the _____ day of _____, 2007 and subject to *Force Majeure*, shall achieve substantial completion in accordance with the Development Schedule annexed to this Agreement in Schedule "I";
- (b) 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 any monies by the **Region** and/or Municipality; and
- (c) not at any time during the term of this Agreement breach any **Contribution Agreement** that it has entered into with any entity governing the contribution by others respecting the project and shall not through any breach on its part, cause any 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 **NRH** with evidence of its good standing under any such **Contribution Agreement** within ten (10) **Business Days** following its receipt of a written request from **NRH**.

10.12 Acknowledgements, Representations and Warranties

The **Proponent** acknowledges, represents and warrants that:

- (a) Any power, right or function of **NRH** contemplated by this Agreement may be exercised by any employee or agent of the **MMAH**;
- (b) The *Freedom of Information and Protection and Privacy Act* shall apply to all records submitted to or created by **NRH** pursuant to this Agreement;
- (c) The **Proponent** shall preserve the **PIPEDA** compliance of all **PIPEDA** Protected Information transferred to it by **NRH** and shall ensure the **PIPEDA** compliance of all **PIPEDA** Protected Information it collects in the course of performing its contractual obligations and shall ensure the **PIPEDA** compliance of all **PIPEDA** Protected Information that it transfers to **NRH**;
- (d) No member of,
 - (i) the House of Commons or Senate of Canada, or
 - (ii) the Legislative Assembly of Ontario, or
 - (iii) a Municipal Council or governing body of any Municipal Agency, Board or Commission, including municipalities designated 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 there from including without limitation any contract, agreement or commission arising from or related to the **Project**.
- (e) Time in all respects shall 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 **NRH** and the **Proponent** or the respective solicitors on their behalf who are expressly appointed in this regard.

- (f) Any tender of documents or money hereunder may be made by **NRH** or the **Proponent** or their respective solicitors.
- (g) The headings and sub-headings 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.
- (h) 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.
- (i) This Agreement shall be read with all changes of gender and number required by the context.
- (j) 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 of this Agreement, if it results in a change in the party or parties who owns or own more than fifty (50) percent of the voting shares of the **Proponent** corporate entity.

10.13 Status

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 modification. 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 request to same.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date of this Agreement.

APPROVED AS TO FORM

Per: _____

Region Solicitor

NIAGARA REGIONAL HOUSING

Per: _____

Name: _____

Title: _____

NIAGARA REGIONAL HOUSING

Per: _____

Name: _____

Title: _____

Authorized by Report No.34-2004 from **NRH** and as adopted by Regional Council on March 18, 2004.

PROPONENT

Per: _____

Name: _____

Title: _____

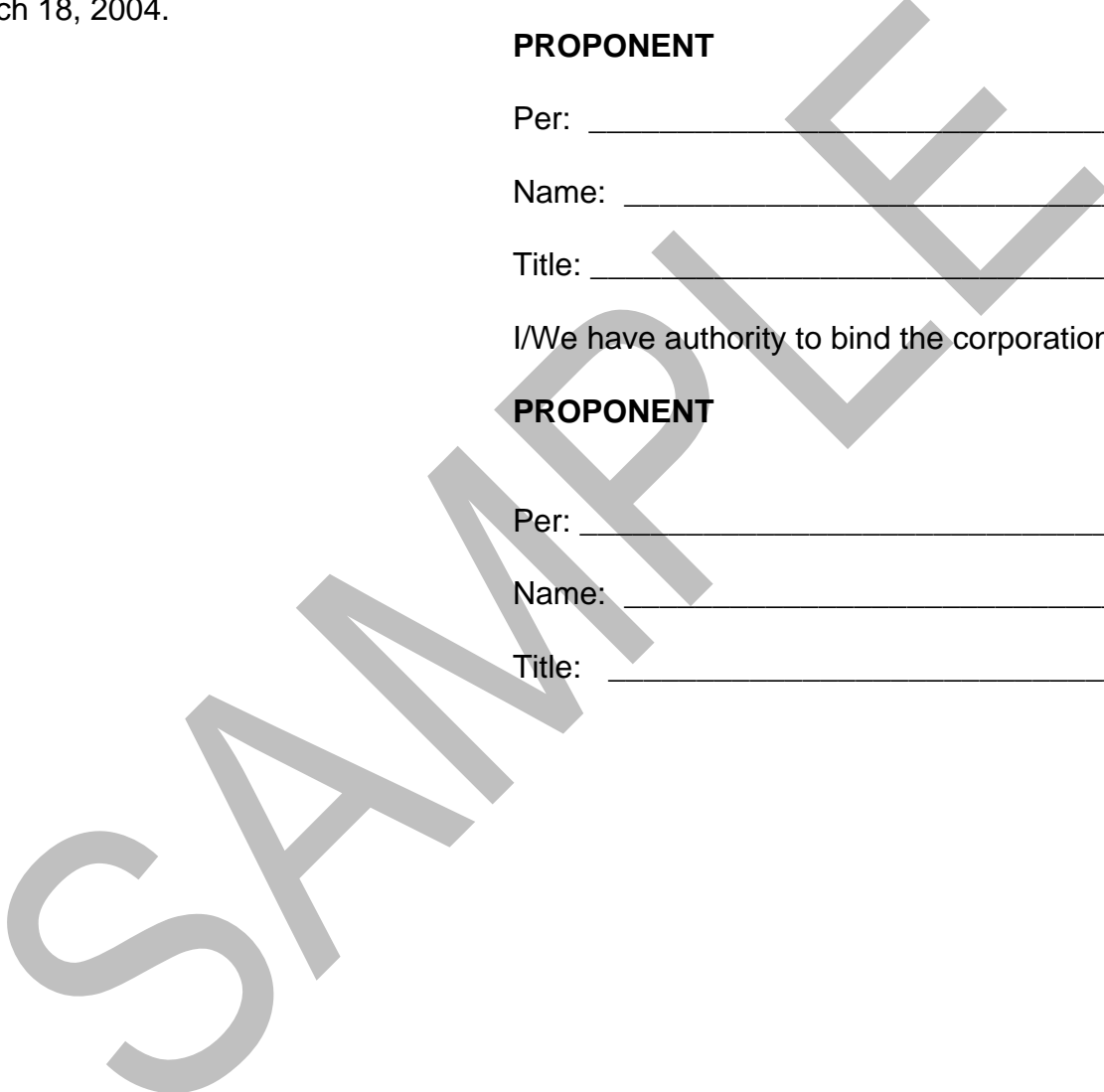
I/We have authority to bind the corporation.

PROPONENT

Per: _____

Name: _____

Title: _____



SCHEDULE "A-1"

REQUEST FOR PROPOSAL NRH-RFP-06-02

- Insert Electronic copy of Canada-Ontario Affordable Housing Program: Rental and Supportive Housing Component RFP

SCHEDULE "A-2"

PROPONENT PROPOSAL

- Insert hard copy of Proponent's proposal submission (and any changes/additions) to the Canada-Ontario Affordable Housing Program: Rental and Supportive Housing Component RFP

SCHEDULE "B"

PLANS and SPECIFICATIONS

- insert copy of building permit and the Plan Examination report from the local Municipality
- include copy of indexed reference # (for title registration) of the final approved building/site plans that were used for the approval of the building permit (include Name/Company Architect, date of drawings, project #)

SAMPLE

SCHEDULE "C"

ANNUAL INFORMATION RETURN

Project Owner's Annual Report

Canada-Ontario Affordable Housing Program:
Rental and Supportive Housing Component
Confirmation of Average Rent
For the Year Ended December 31, 20XX

A. Project Information

MMAH Contribution Agreement Number	XXXXXXXXXX
MMAH Contribution Agreement Expiry Date	DD MM YYYY

Project Name	
Project Address	

B. Average Market Rents

	Average Market Rents	Average Market Rents
Unit Type	Base Year	Reporting Year
One bedroom		
Two bedroom		
Three bedroom		
Others, (please specify)		

C. Project Certification

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

Signed by

Date: _____

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

___ the Owner of the **Project**

___ the Chairperson of the Board of Directors of the **Project**

D. Auditor's Confirmation

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

Confirmed by

Date: _____

Name, Address and Telephone Number of Auditor / Firm:

[Insert relevant information]

SAMPLE

SCHEDULE “D”

ANNUAL CONFIRMATION OF INCOMING TENANT LIMITS

- insert copy of form as created by NRH

SCHEDULE “E”

LEGAL DESCRIPTION OF THE PROJECT AND OPINION OF PROPONENT LAWYER

- insert copy of form as created by NRH and completed by the Proponent and/or their lawyer
- make sure that document includes “PIN#” in the legal description

SAMPLE

SCHEDULE "F"

CONTRIBUTIONS BY OTHERS - AGREEMENTS

- insert copy of Municipal Letter of Commitment or Contribution Agreement in the form as created by the Municipality and signed by their CAO or Council approved
- insert copy of the Regional Municipal Letter of Commitment or Contribution Agreement in the form as created by the Region and signed by their CAO or Council approved
- insert copy of any other Letters of Commitment or Contribution Agreements (i.e. non-profit community agency, other)

SAMPLE

SCHEDULE “G”
RENT PROTOCOLS

1. Definitions

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

- **“Affordability Period”** means the twenty (20) year period as established in the **RFP** following the first (1st) occupancy of a **Unit** in the **Project**,
- **“Agreement”** means the Agreement to which this Schedule “G” is attached,
- **“Market Rents”** are optional and are not eligible for funding under this **Program** as defined in the **RFP**, section 1.7.1.
- **“Maximum Household Income Limits”** applies to the **“Affordable”** rental **Units** as defined in the **RFP**, section 1.8.
- **“Phase-out Period”** means the last five (5) year period of the **“Affordability Period”**, and when used in this Schedule “G”, 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 “G”, in addition to the definitions contained in section 1.1 above.

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

2. Rental rates.

2.1 Affordable Rent

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 “G” nor increase any rent charged for a **Unit** except as permitted in this Schedule “G”.

3. Initial Rents

3.1 The affordable rent for the first (1st) rental period for each **Unit** following completions of construction of the **Project** shall not exceed,

- (a) the 80% of the average monthly market rents for **Units** of the same type, based on bedroom count, in the geographical areas, as determined in the

CMHC Annual Rental Market Survey most recently preceding each of the said first (1st) rental periods, plus

(b) the optional charges, if any.

3.2 The optional charges referred to in section 3.1 (b) mean any amount which the **Proponent** may charge,

(a) on account of utility costs directly attributable to consumption by the occupants of a **Unit**, determined on the basis of separate Unit meters or on the basis of a method of pro rata calculations satisfactory to **MMAH**, or

(b) on account of the use of one (1) or more parking spaces as requested by the tenant of a **Unit** and at a rate which is similar to the rate charges to residential tenants by landlords of similar buildings in the municipality.

3.3 The following are the initial rents approved for this project:

Unit Size	Unit Type	Location	CMHC Market Ave. Rent	Optional Charges	Total Initial Project Rents
1-bed					
2-bed					
3-bed					

4. Rent Increases

4.1 The **Proponent** may increase the rent charged under section 3.1(a) and 3.2(b) 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 *Tenant Protection Act, 1997*. The **Proponent** acknowledges that the rent increase guidelines of the *Tenant Protection Act, 1997*, does not apply to the **Project** pursuant to that Act and its regulations and agrees that the rent increase guideline applies by virtue of the contractual terms of the **Agreement** and this Schedule "G".

4.3 From the beginning of the eleventh (11th) year of the **Affordability Period** until the end of the **Affordability Period**, the **Proponent** may increase **Unit** rents pursuant to section 4.1 by zero decimal five-five per cent (0.55%), in addition to the increase permitted by section 4.2.

5. Maximum Household Income Limits (**does not apply to Market Units*)

The **Proponent** shall only rent the **Affordable Housing Units** to households whose income fall at or below the approved **Maximum Household Income Limits**. The following are the **Maximum Household Income Limits** approved for the **Project** for the Initial Rents:

Unit Size	Apartments	Townhouses
1-bed	\$34,000	N/A
2-bed	\$38,000	\$40,000
3+-bed	\$45,000	\$47,000

6. Phase-out Period

6.1 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 the additional increase permitted under section 4.3.

6.2 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.

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 "H"
DEVELOPMENT SCHEDULE

- **Insert Copy Of Proponents' Development Schedule**

SAMPLE

SCHEDULE "I"
FINAL PROJECT BUDGET

- **Insert copy of proponent's final project budget (construction costs, etc)**

SAMPLE