

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 06-167

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING (Shared Funding Delivery)

NOW THEREFORE, THE CORPORATION OF THE CITY OF PETERBOROUGH, by the Council thereof hereby enacts as follows:

1. That the Mayor and Clerk be hereby authorized to execute an agreement with Her Majesty The Queen In Right Of Ontario as represented by the Minister of Municipal Affairs and Housing pursuant to the Shared Funding Delivery of the Rental and Supportive Component of the Canada-Ontario New Affordable Housing Program (2003), hereby attached as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second and third time this 2nd day of October, 2006

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SERVICE MANAGER ADMINISTRATION AGREEMENT

Canada - Ontario New Affordable Housing Program (2003)

Rental and Supportive Component

Shared Funding Delivery

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

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING

(hereinafter called the “Minister”)

- and -

[INSERT NAME OF SERVICE MANAGER]

(hereinafter called the “Service Manager”)

WHEREAS:

- A. In order to create a supply of Affordable Housing, Canada Mortgage and Housing Corporation (“CMHC”) and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Public Infrastructure Renewal entered into a bi-lateral agreement, effective April 1, 2003 (the “CMHC - Ontario New Affordable Housing Program Agreement”).
- B. The CMHC - Ontario New Affordable Housing Program Agreement provides funding for Affordable Housing.
- C. The Minister of Municipal Affairs and Housing (the “Minister”) is responsible for the CMHC - Ontario New Affordable Housing Program Agreement.
- D. The Minister established a Rental and Supportive Component, a Homeownership Component and a Northern Component, pursuant to which the Minister would provide Federal Funds and Provincial Funds for Affordable Housing.
- E. The Service Manager wishes to participate in the Rental and Supportive Component (the “Program”), as set out in this Agreement.

F. The Minister and the Service Manager have entered into this Agreement for the purpose of establishing the Service Manager's obligations with respect to the administration of the Program and the Minister's obligation to provide funding to the Service Manager for the administrative costs of participating in the Program.

NOW THEREFORE, the Minister and the Service Manager agree with each other as follows:

1. INTERPRETATION

1.1 In the Agreement, unless the context requires otherwise,

- "Administration Fee" means the amount paid by the Minister to offset the Service Manager's cost of performing tasks under this Agreement;
- "Affordability Payment" means the Provincial Funds for a Unit, as set out in the Program Guidelines;
- "Affordability Period" means the period during which the average rent in a Project is required to be maintained at an affordable level, as determined in accordance with the Program Guidelines or as otherwise established by the Minister;
- "Affordable Housing" means Housing which is modest in terms of floor area and amenities, based on household needs and community norms, in Projects that achieve rent levels in accordance with the Program Guidelines, but does not include residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility;
- "Average Market Rents" means the average rent figures, based on geographical areas and classified by bedroom count, as determined annually in the CMHC Average Market Rent Survey or as determined by the Minister, based on available data, in areas where there is no information from the CMHC Average Market Rent Survey;
- "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- "Conditional Letter of Commitment" means the letter issued by the Minister confirming approval of the Project and setting out the amount, terms and conditions of Funds allocated to the Proponent;

- “Contribution Agreement” means an agreement entered into by the Service Manager or another party contributing to the Project and an approved Proponent for contributions under the Program, and includes, where applicable, for the purposes of calculating the Administration Fee to be paid pursuant to sections 4.2 and 4.4, an agreement which entitles the Service Manager to receive Funds from the Minister, under the Homeownership Component;
- “Contribution by Others” means cash or in-kind eligible contributions from municipalities, in accordance with the Program. It does not include contributions from any other Government of Canada sources, including, but not limited to the CMHC - Ontario Social Housing Agreement dated November 15, 1999, nor contributions which receive credit under any agreement with CMHC outside this Agreement nor equity contributions to the Project made by the Proponent to the extent required in the Procurement Process;
- “Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes and include the acquisition of property and activities for which Project Development Funding may be provided;
- “Federal Funds” means funding from CMHC for a Unit, as set out in the Program Guidelines;
- “Funds” means Federal Funds or Provincial Funds, as set out in the Program Guidelines;
- “Homeownership Component” means the Affordable Housing Program described in the Homeownership Component Program Guidelines;
- “Housing” means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;
- “Housing Delivery Plan” means the statement of the Service Manager’s affordable housing strategy that pertains to the Program;
- “Interest Adjustment Date” means the date on which the Proponent makes the first

payment of principal and interest in respect of the Proponent's permanent financing obligations for the Project, following the completion of construction;

- “Large Project” means a Project with thirteen (13) or more Units;
- “Occupancy Date” means the date on which occupancy of all Units in a Project is permitted;
- “Ontario Mortgage and Housing Initiative” means the government program that provides Proponents with access to lower-cost, longer-term financing for affordable rental housing for both construction financing and long-term mortgages;
- “Parties” means the Minister and the Service Manager and “Party” means either of them, as the context may require;
- “Phase-out Period” means the last five (5) year period of the Affordability Period;
- “PIPEDA” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, including any amendments thereto;
- “PIPEDA Protected Information” means any “Personal Information” or “Personal Health Information”, as defined under PIPEDA;
- “Procurement Process” means the request for proposals or procurement process used by the Service Manager;
- “Program” means the Rental and Supportive Component of the Affordable Housing Program, as set out in the Program Guidelines;
- “Program Guidelines” means the Program Guidelines issued by the Minister in respect of the Rental and Supportive Component of the Affordable Housing Program and attached to this Agreement as Schedule “A”;
- “Project” means Affordable Housing proposed or approved for the Program, as the context may require;
- “Project Development Funding” means that part of the CMHC funds in an amount of up to One Hundred Fifty Thousand Dollars (\$150,000.00) which is available to private non-profit Proponents to pay for planning and engineering studies,

architectural drawings and legal expenses;

- “Project Information Form” means the form submitted by the Service Manager to the Minister for consideration of a Project;
- “Proponent” means a person or other legal entity that has submitted a Proposal;
- “Proposal” means the response to the request for proposals or procurement process, submitted to the Service Manager pursuant to the Procurement Process;
- “Provincial Contribution Agreement” means a Contribution Agreement between the Minister and an approved Proponent for contributions from the Minister under the Program;
- “Provincial Funds” means funding from Ontario for a Unit, as set out in the Program Guidelines;
- “Rental and Supportive Component” means the Affordable Housing Program described in the Rental and Supportive Component Program Guidelines;
- “Security Documents” means the security documents attached to and forming part of the Provincial Contribution Agreement;
- “Small Project” means a Project with twelve (12) or fewer Units;
- “Strong Start Program” means the Strong Start Program established by the Minister in connection with the CMHC - Ontario New Affordable Housing Program Agreement;
- “Targeting Plan” means the manner in which a Service Manager or a Proponent plans to meet the objectives of the Program to create Affordable Housing for households that are on or are eligible to be on waiting lists for social housing;
- “Unit” means a self-contained residential dwelling, including, without limiting the generality of the foregoing, (i) supportive rental Housing where service funding is secured from sources other than Federal Funds and Provincial Funds provided under the Program; (ii) multi-bedroom units which are used for congregate living; (iii) disabled/accessible units; and (iv) secondary suites.

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

- Schedule "A" - Rental and Supportive Component Program Guidelines;
- Schedule "B" - Proponent's Initial Occupancy Report;
- Schedule "C" - Proponent's Annual Occupancy Report;
- Schedule "D" - Service Manager's Quarterly Report;
- Schedule "E" - Service Manager's Annual Report;
- Schedule "F" - Proponent's Annual Targeting Report;
- Schedule "G" - Protocol for Non-Compliance;
- Schedule "H" - Communications Protocol;
- Schedule "I" - Rental Protocol.

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 stated otherwise.

2. REQUIREMENTS FOR SIGNING THE ADMINISTRATION AGREEMENT

2.1 Prior to the Service Manager signing this Agreement:

- (a) the Service Manager, in its capacity as a municipality, or the municipality or municipalities to which the Procurement Process applies, by Council action, resolution or by-law, shall ensure that the general property tax applicable to Units built under the Program is in accordance with the criteria set out in the Program Guidelines.
- (b) the Service Manager shall establish initial income limits, at levels which it considers appropriate, which it shall apply as a requirement for all applicants for tenancies of Units. The Service Manager may apply annual income testing as a requirement for tenants during the term of their tenancies or upon any lease renewal or extension. The Service Manager shall periodically review such income limits and, if it considers it necessary, revise them to levels which it considers appropriate.

2.2 This Agreement shall not be signed by the Parties unless the Minister has approved the Housing Delivery Plan submitted by the Service Manager.

3. PROCUREMENT PROCESS

- 3.1 The Service Manager shall undertake a Procurement Process which meets the requirements of the Program Guidelines.
- 3.2 The Service Manager shall evaluate, or shall have evaluated, each Project in accordance with the requirements of the Program Guidelines.
- 3.3 The Service Manager shall only select Proponents that agree to comply with the requirements of the Ontario Mortgage and Housing Initiative.
- 3.4 The Service Manager shall submit to the Minister a list of Council approved Projects with recommended funding requirements.
- 3.5 In respect of each Project, the Service Manager shall submit a Project Information Form and the appropriate Funding Schedule to the Minister for approval.
- 3.6 If the Minister approves the Project, the Minister shall issue a Conditional Letter of Commitment to the Proponent and shall advise the Service Manager of the approval of the Project.
- 3.7 The Federal Funds and the Provincial Funds shall be allocated to the Projects at the discretion of the Minister.
- 3.8 The Service Manager shall advise the Minister of any changes to the Projects which may affect the number of Units, the funding requirements or the Targeting Plan for the Service Manager and the Project.
- 3.9 The Minister may change the allocation of Federal Funds and Provincial Funds to a Project in response to a change in the Project.
- 3.10 The Minister shall not be obligated to allocate Federal Funds or Provincial Funds unless the Procurement Process complies or complied with the requirements of the Program Guidelines. The Minister shall not be obligated to allocate Federal Funds or Provincial Funds unless the Proposal complies or complied with the requirements of the Procurement Process.
- 3.11 A Service Manager who utilizes the municipality or a municipal non-profit housing corporation to deliver Units under the Program is not required to use a Procurement Process to solicit the municipality or the municipal non-profit housing corporation as a Proponent,

but the municipality or municipal non-profit housing corporation shall award contracts to build Units using procurement practices authorized by the Service Manager.

4. PAYMENTS BY THE MINISTER

4.1 Service Managers who were allocated fifty (50) or fewer Units as a combined total number of Units under the Rental and Supportive Component and the Homeownership Component and who participate in the Rental and Supportive Component, shall be paid an Administration Fee, as follows:

- (a) Twenty-five Thousand Dollars (\$25,000.00) shall be paid by the Minister to the Service Manager, within fifteen (15) Business Days following the execution of this Agreement by both Parties;
- (b) In respect of every Contribution Agreement the Service Manager prepares, within fifteen (15) Business Days following the Minister receiving written confirmation from the Service Manager that the Contribution Agreement has been signed by both parties, the Minister shall pay the Service Manager an amount calculated as follows:
 - (i) the actual funding amount committed in the Contribution Agreement, divided by the total amount of funding allocated to the Service Manager for the Rental and Supportive Component, multiplied by Fifty Thousand Dollars (\$50,000.00).

4.2 Service Managers who were allocated fifty (50) or fewer Units as a combined total number of Units under the Rental and Supportive Component and the Homeownership Component and who participate in the Rental and Supportive Component and the Homeownership Component, shall be paid an Administration Fee, as follows:

- (a) Twenty-five Thousand Dollars (\$25,000.00) shall be paid by the Minister to the Service Manager, within fifteen (15) Business Days following the execution of this Agreement by both Parties;
- (b) In respect of every Contribution Agreement the Service Manager prepares, within fifteen (15) Business Days following the Minister receiving written confirmation from the Service Manager that the Contribution Agreement has been signed by both parties, the Minister shall pay the Service Manager an amount calculated as follows:
 - (i) the actual funding amount committed in the Contribution Agreement,

divided by the total amount of funding allocated to the Service Manager for the Rental and Supportive Component and the Homeownership Component, multiplied by Fifty Thousand Dollars (\$50,000.00);

- (ii) provided that there shall be no deduction in respect of Twenty-five Thousand Dollars (\$25,000.00) paid under the Service Manager Administration Agreement for the Homeownership Component.

4.3 Service Managers who were allocated fifty-one (51) or more Units as a combined total number of Units under the Rental and Supportive Component and the Homeownership Component and who participate in the Rental and Supportive Component, shall be paid an Administration Fee, as follows:

- (a) One-third (1/3) of the maximum Administration Fee associated with participation in the Rental and Supportive Component, as set out in the Program Guidelines, shall be paid by the Minister to the Service Manager, within fifteen (15) Business Days following the execution of this Agreement by both Parties;
- (b) In respect of every Contribution Agreement the Service Manager prepares, within fifteen (15) Business Days following the Minister receiving written confirmation from the Service Manager that the Contribution Agreement has been signed by both parties, the Minister shall pay the Service Manager an amount calculated as follows:
 - (i) two-thirds (2/3) of the maximum Administration Fee associated with participation in the Rental and Supportive Component, as set out in the Program Guidelines, multiplied by the actual funding amount committed in the Contribution Agreement, divided by the total amount of funding allocated to the Service Manager for the Rental and Supportive Component.

4.4 Service Managers who were allocated fifty-one (51) or more Units as a combined total number of Units under the Rental and Supportive Component and the Homeownership Component and who participate in the Rental and Supportive Component and the Homeownership Component, shall be paid an Administration Fee, as follows:

- (a) One-third (1/3) of the maximum Administration Fee associated with participation in the Rental and Supportive Component and the Homeownership Component, as set out in the Program Guidelines, shall be paid by the Minister to the Service Manager, within fifteen (15) Business Days following the execution of this Agreement by both Parties;

- (b) In respect of every Contribution Agreement the Service Manager prepares, within fifteen (15) Business Days following the Minister receiving written confirmation from the Service Manager that the Contribution Agreement has been signed by both parties, the Minister shall pay the Service Manager an amount calculated as follows:
 - (i) two-thirds (2/3) of the maximum Administration Fee associated with participation in the Rental and Supportive Component and the Homeownership Component, as set out in the Program Guidelines, minus Twenty-five Thousand Dollars (\$25,000.00) paid under the Service Manager Administration Agreement for the Homeownership Component, multiplied by the actual funding amount committed in the Contribution Agreement, divided by the total amount of funding allocated to the Service Manager for the Rental and Supportive Component and the Homeownership Component.

4.5 Notwithstanding sections 4.1 - 4.4, inclusive, the Administration Fee payable by the Minister to the Service Manager shall be reduced by the amount of any Administration Fee paid to the Service Manager in respect of the Strong Start Program.

4.6 The Proponent may authorize the Minister or the Service Manager to pay Funds to a third party and the Minister or the Service Manager, respectively, shall permit such authorization.

5. ADMINISTRATION

5.1 On or before the date the Minister signs a Provincial Contribution Agreement with a Proponent, the Service Manager shall:

- (a) complete and submit to the Minister, a report setting out the value of the Contributions by Others to the Project, in the form attached to this Agreement as Schedule "D";
- (b) provide written confirmation to the Minister that commitments have been made by the Minister of Community and Social Services or the Minister of Health and Long Term Care to provide funding for the support services required by tenants of the supportive housing units in the Project.

5.2 In conjunction with the execution of each respective Provincial Contribution Agreement, the Service Manager shall prepare, have executed by the Proponent and register the required Security Documents.

- 5.3 If the Service Manager makes a contribution in the nature of a Contribution by Others to any Project to which the Minister has allocated funds under this Agreement, it shall enter into a Contribution Agreement with the Proponent for such Project. The Contribution Agreement shall indicate the amount of any cash contributions from the Service Manager and the amount of any eligible in-kind contributions from the Service Manager.
- 5.4 The amount of any cash contributions from the Service Manager shall be included in the Security Documents. The amount of any eligible in-kind contributions from the Service Manager shall not be included in the Security Documents.
- 5.5 The Service Manager shall be responsible for the administration of the Security Documents.
- 5.6 The Service Manager shall monitor all Projects which have received a funding allocation to determine whether the Proponents carry out all Development Activities required in the Procurement Process or proposed in or intended by the Proposal and whether they are carrying out such Development Activities in such manner and within such time periods as are set out in the Program Guidelines or as may be determined by the Minister.
- 5.7 If requested by the Minister, the Service Manager shall obtain from the Proponent and shall forward to the Minister, an audited financial statement respecting the expenditure of the Funds provided to the Proponent, within ninety (90) days or such additional time as may be determined by the Minister, following the date on which the Minister is advised by the Service Manager that the Project will not proceed or that the Development Activities related to the Project have been fully completed.
- 5.8 During the period between the date of execution of this Agreement and the Occupancy Date of all of the Projects, the Service Manager shall complete and submit to the Minister reports on all of the said Projects on or before the tenth (10th) Business Day following the last day of March, June, September and December in each year, in the form attached to this Agreement as Schedule "D".
- 5.9 During the period between the date of execution of this Agreement and the Occupancy Date of all of the Projects, the Minister and the Service Manager shall collaboratively review annually during the month of April the progress of utilization of the Funds by the Proponents at their respective Projects on the basis of the reports submitted pursuant to Schedules "D" and "E".
- 5.10 The Service Manager acknowledges that the Minister is required to report to CMHC under

- the CMHC - Ontario New Affordable Housing Program Agreement and that, in order to fulfill the said reporting requirements, it will be relying on the materials provided to it pursuant to sections 5.8, 5.12 and 5.13, and on the collaborative review of these materials pursuant to section 5.9.
- 5.11 The Service Manager shall, at the request of the Minister, provide the Minister with proof that occupancy of all Units in the Project is permitted.
- 5.12 Upon initial occupancy of a Project, the Service Manager shall obtain from each Proponent the Proponent's Initial Occupancy Report, in the form attached to this Agreement as Schedule "B", and submit it to the Minister.
- 5.13 During the period between the Occupancy Date of each Project and the end of the Phase-out Period, the Service Manager shall:
- (a) obtain annually from each Proponent completed information reports, in the forms attached to this Agreement as Schedules "C" and "F", and submit them to the Minister; and
 - (b) complete and submit to the Minister, on or before the last day of March subsequent to each reporting calendar year, a report on all of the said funded Projects, in the form attached to this Agreement as Schedule "E".
- 5.14 The Service Manager shall provide the Minister with such information in respect of a Project as may be required by the Minister to determine the amount of the Affordability Payment or the amount of any adjustment to the Affordability Payment.
- 5.15 On or before the Interest Adjustment Date, the Service Manager shall approve a Targeting Plan that will enable the Service Manager to meet its Targeting Plan.
- 5.16 The Service Manager shall advise the Minister once the Proponent's Targeting Plan has been approved by the Service Manager and shall advise the Minister annually as to whether the Service Manager is in compliance with its Targeting Plan.
- 5.17 The Service Manager shall immediately inform the Minister in writing of the following matters as soon as it becomes aware of them:
- (a) any failure by the Proponent 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 as may be determined by the Minister;

- (b) actual or constructive notice of any construction lien affecting the Project;
 - (c) any breach by the Proponent of its Contribution Agreement with the Service Manager;
 - (d) the Proponent becoming bankrupt or insolvent or taking the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or filing any proposal or making any assignment for the benefit of creditors or any arrangement or compromise;
 - (e) the appointment of a receiver or a receiver and manager for all or a portion of a Project; and
 - (f) the taking of any steps or any action or the institution of any proceedings by a 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.
- 5.18 The Service Manager shall, on forty-eight (48) hours prior written notice, give the Minister free access to such staff, documents, books, records and accounts as may be determined by the Minister, for the purpose of verifying compliance with this Agreement.
- 5.19 The Minister may conduct an audit, investigation or inquiry in relation to a Project or any larger development or project of which any Project is a part and the Service Manager shall co-operate with the Minister and shall provide free access to such staff, documents, books, records and accounts as may be determined by the Minister.
- 5.20 The provisions of sections 5.18, 5.19 and 5.20 shall continue to apply for a period of seven (7) years following the end of the Phase-out Periods for all of the Projects or the date of any early termination of this Agreement.
- 5.21 The Service Manager shall enter into a Contribution Agreement with the Proponent which imposes on the Proponent such obligations as enable the Service Manager to fulfill its obligations to report to the Minister.
- 5.22 The Service Manager represents that it has not knowingly provided the Minister with any false or misleading information respecting the subject matter of this Agreement and agrees

that it shall not knowingly provide any false or misleading information to the Minister in the performance of its obligations under this Agreement.

6. REMEDIES

6.1 In the event the Service Manager breaches any one (1) or more provisions of this Agreement, and such breach is not corrected within a reasonable period of time after notice has been given to the Service Manager by the Minister, the Minister may terminate this Agreement and shall be entitled to recover all or any portion of the Administration Fee paid to the Service Manager.

6.2 In the event the Minister determines that a Proponent has breached any one (1) or more provisions of the Provincial Contribution Agreement or the Service Manager advises the Minister that a Proponent has breached any one (1) or more provisions of a Contribution Agreement between the Service Manager and a Proponent, the Minister and the Service Manager shall follow the Protocol for Non-Compliance set out in Schedule "G".

6.3 All of the remedies in this Agreement are cumulative and are not alternative and the Minister shall not be precluded from availing himself simultaneously of some or all of the said remedies and any other remedies otherwise available in equity or at law.

6.4 Notwithstanding any of the terms of this Agreement, the Minister shall have the option of waiving any or all of his remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

7. COMMUNICATIONS PROTOCOL

7.1 The Service Manager acknowledges that the Minister of Public Infrastructure Renewal entered into a Communications Protocol with CMHC under the CMHC - Ontario New Affordable Housing Program Agreement as set out in Schedule "H" hereto. The Service Manager agrees that it shall co-ordinate its communications activities with the Minister so as not to cause the Minister to be in default of his obligations to CMHC under the said Communications Protocol.

7.2 The Service Manager shall provide the Minister with information on each recommended Proposal not less than ten (10) Business Days before it notifies any Proponent of the decision to include its Proposal on the list of recommended Proposals to be submitted to the Council of the Service Manager.

- 7.3 The Service Manager shall ensure that Proposal approval notifications are in a form acceptable to both CMHC and the Minister and shall identify the CMHC - Ontario New Affordable Housing Program Agreement as a source of funding.
- 7.4 The Service Manager shall ensure that all public information material related to Procurement Process shall clearly and prominently indicate that the approved Projects are funded pursuant to the CMHC - Ontario New Affordable Housing Program Agreement.

8. NOTICE

- 8.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:
- (a) delivered personally;
 - (b) sent by prepaid courier service; or
 - (c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:
 - (i) in the case of notice to the Minister:

Ministry of Municipal Affairs and Housing
Attention: Director, Delivery Branch
777 Bay Street, 2nd Floor
Toronto, ON
M5G 2E5
Fax: (416) 585-6588
 - (ii) in the case of notice to the Service Manager:

[insert relevant information]

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be

deemed to have been given and received on the next following Business Day. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

9. GENERAL

- 9.1 Any power, right or function of the Minister, contemplated by this Agreement, may be exercised by any employee or agent of the Ministry of Municipal Affairs and Housing.
- 9.2 It is understood that the *Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the Minister, pursuant to this Agreement.
- 9.3 The Service Manager represents and warrants that:
- (a) it shall preserve the PIPEDA compliance of all PIPEDA Protected Information transferred to it by the Minister;
 - (b) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it collects in the course of performing its contractual obligations; and
 - (c) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it transfers to the Minister.
- 9.4 The disbursement of the Administration Fee by the Minister to the Service Manager pursuant to sections 4.1 - 4.4, inclusive, is subject to the necessary appropriations from the Federal Parliament and the Provincial Legislature. Neither the Minister nor CMHC shall have any liability in the event the respective appropriations are insufficient to meet the funding obligations of the Minister.
- 9.5 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the Minister and the Service Manager as partners of each other.

- 9.6 The Service Manager acknowledges that CMHC is not a party to this Agreement or other agreement relating to any Project.
- 9.7 The Service Manager acknowledges and agrees that the Rental Protocol set out in Schedule “I” 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* or the *Residential Tenancies Act, 2006*.
- 9.8 No member of:
- (a) the House of Commons or Senate of Canada; or
 - (b) the Legislative Assembly of Ontario; or
 - (c) the Municipal Council constituting the Service Manager or the Municipal Council of any local municipality of the Service Manager or the governing body of any Municipal Agency, Board or Commission of any of such municipalities;
- shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom, including, without limitation, any contract, agreement or commission arising from or related to the Program.
- 9.9 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 Minister and the Service Manager or their respective solicitors on their behalf, who are hereby expressly appointed in this regard.
- 9.10 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 9.11 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 9.12 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.
- 9.13 This Agreement shall be read with all changes of gender and number required by the context.
- 9.14 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 confirming 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.
- 9.15 The Service Manager shall not assign this Agreement without the prior written consent of the Minister, which consent may be withheld, acting in his sole discretion.
- 9.16 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 9.15 restricting the Service Manager's ability to assign this Agreement.

IN WITNESS THEREOF this Agreement has been executed by the Parties.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE MINISTER
OF MUNICIPAL AFFAIRS AND HOUSING**

The Honourable John Gerretsen
Minister of Municipal Affairs and Housing

*[Insert name of **SERVICE MANAGER**]*

Per: _____

Name:

Title:

c/s

Per: _____

Name:

Title:

AHP - NP - AA - R&S - Shared Funding Delivery - Version - September 15, 2006

SCHEDULE "A"

RENTAL AND SUPPORTIVE COMPONENT PROGRAM GUIDELINES

[Program Guidelines to be attached]

SCHEDULE "B"

PROPONENT'S INITIAL OCCUPANCY REPORT

Affordable Housing Program - New Program - Rental and Supportive Component
 Shared Funding Delivery

Occupancy Date: _____

A. Project Information

Contribution Agreement Number	NNNNNNNNNN
Contribution Agreement Expiry Date	DDMMYYYY

Project Name	
Property Address	

B. Number of Units in Project

Unit Type	AHP Funded Rental Units (#)	AHP Funded Supportive Units (#)	Units Not Receiving AHP Funding (#)	Total Number of Units (#)
Bachelor				
One Bedroom				
Two Bedroom				
Three Bedroom				
Four Bedroom				
Other				
Total Number of Units				

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

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

Unit Type	Average Unit Rent (AHP Funded Units) (A)	CMHC Average Market Rent (\$) (B)	Percentage of CMHC Average Market Rent (A÷B) × 100
Bachelor			
One Bedroom			
Two Bedroom			
Three Bedroom			
Four Bedroom			
Other			

Depth of Affordability: Percentage of CMHC Average Market Rent Achieved for Overall Project	_____ % (Note: This figure cannot be greater than 80% of CMHC Average Market Rent, without the approval of the Minister)
---	---

D. Project Certification

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

Signed by *[please print name]* Date: _____

I am *[please check on the appropriate line below]*
 the Owner of the Project
 the Chairperson of the Board of Directors of the Project

NOTES: This Schedule is required to be submitted by the Proponent to the Service Manager, for approval by the Minister, before the initial Affordability Payment is made to the Proponent.
 The “permitted rents” must be consistent with the formula for determining the initial rents, set out in Schedule “I”.

C. Affordability

Year	Average Rent in Relation to AMR	Variance Between Current and Last Year's Average Rent	RTA Permitted Increase	Rationale for Amount Above RTA Increase
First Year Occupied	≤80%*	n/a		
Annually Thereafter				

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

D. Project Certification

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

_____ Date: _____
Signed by *[please print name]*

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

___ the Owner of the Project

___ the Chairperson of the Board of Directors of the Project

E. Auditor's Confirmation

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

_____ Date: _____
Confirmed by *[please print name]*

Name, Address and Telephone Number of Firm:

[insert relevant information]

SCHEDULE “H”

COMMUNICATIONS PROTOCOL

1. GENERAL

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

2. JOINT COMMITTEE

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

3. COMMUNICATING WITH APPLICANTS

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

4. COMMUNICATING WITH THE PUBLIC

Public Information Products

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

News Releases

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

Press conferences, Public Announcements and other Joint Events

- 4.3 The Parties shall co-operate in organizing press conferences, announcements and official ceremonies. The Parties should also agree on the messages and public statements at such events. The Parties may agree that special ceremonies and events be held at an appropriate location and time. Neither Party nor any municipality, applicant or contributor, shall make any public announcement for a Project under the CMHC - Ontario New Affordable Housing Program Agreement unless the other Party has been informed of it at least seven (7) days in advance.

- 4.4 Either Party may organize a joint press conference. The requester shall give the other Party at least seven (7) days notice of such a press conference, public announcement or joint event. The federal and Ontario Ministers, or the designated representative for each Party, may participate in these press conferences, which shall be held on a date and at a location that are agreed upon.
- 4.5 The signing of the CMHC - Ontario New Affordable Housing Program Agreement shall be the subject of an official ceremony.
- 4.6 The Parties shall work together to organize such announcements or official ceremonies, and shall follow a mutually agreed upon order of precedence. The Parties should jointly agree on the messages and public statements at such events.

Signage

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

Advertising

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

Payments

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

5. COST SHARING

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

SCHEDULE “I”

RENTAL PROTOCOL

1. DEFINITIONS

1.1 In this Schedule “I”, 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 “I” is attached;
- “Phase-out Period” means the last five (5) year period of the “Affordability Period”, and

when used in this Schedule “I”, 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 “I”, in addition to the definitions contained in section 1.1 above.

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

2. AFFORDABLE RENT

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

3. RENTS

- 3.1 The weighted average rent of all Units in a Project for which Program Funds have been utilized shall not exceed eighty per cent (80%) of CMHC Average Market Rents in the geographical area, as determined in the most recent CMHC Annual Rental Market Survey.
- 3.2 The maximum rent for any Unit shall not exceed one hundred and five per cent (105%) of the modified shelter allowance under the Ontario Works program, provided that the amount so calculated does not exceed the CMHC Average Market Rent for units of a similar type in the geographical area.

4. RENT INCREASES

- 4.1 The Proponent may increase the rent charged under section 3.1 with respect to a Unit only if at least twelve (12) months have elapsed,
- (a) since the day of the last rent increase respecting the Unit, if there has been an increase, or
 - (b) since the day the Unit was first rented for the first (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 *Residential Tenancies Act, 2006* or any successor legislation. The Proponent acknowledges that the rent increase guideline of the *Tenant Protection Act, 1997*, 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 "I".
- 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 *[insert name of party with whom it has entered into a Contribution Agreement]* 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 *Tenant Protection Act, 1997*, the *Residential Tenancies Act, 2006* or any successor legislation, and notwithstanding the provisions of this Schedule “I” 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 *Tenant Protection Act, 1997*, 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 “D”

Service Manager’s Quarterly Report

**Affordable Housing Program - New Program - Rental and Supportive Component
Shared Funding Delivery**

for the Period Between _____ and _____ (Quarter)

Service Manager _____

Project Account Number	Project Name	Address	Owner	Commitment Date	Lender	Number of Units	Construction Type *	Project Status **	Projected IAD ***	Service Manager Contribution	3rd Party Contributions	Target Group ****	Supportive Housing	Support Arranged

Notes:

- * Indicate Construction Type: (1) New Construction; (2) Conversion of Non-Rental to Rental; (3) Substantial Rehabilitation of a Rental Building or Non-Federally Funded Social Housing; or (4) Major Addition
- ** Indicate Project Status: (1) Building Permit Issued; (2) Construction Commenced; or (3) Occupancy Permitted
- *** Interest Adjustment Date
- **** Indicate Target Group: (1) Victims of Domestic Violence; (2) Persons with Mental Illness; (3) Aboriginal Populations; (4) Persons with Physical Disabilities; (5) Recent Immigrants; (6) Seniors; (7) Other (specify); or (N/A) if Units are for General Population.

NAME OF PROPONENT	CLIENTELE						
	Number of Units						
	Family	Single	Senior	Supportive Victims of Domestic Violence	Supportive Mental Health	Other Target Group (Name)	Supports in Place
TOTAL NUMBER OF UNITS							

SCHEDULE “F”

Proponent’s Annual Targeting Report

Affordable Housing Program - New Program - Rental and Supportive Component
Shared Funding Delivery

For year ending December 31, _____

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

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

SCHEDULE “G”

PROTOCOL FOR NON-COMPLIANCE

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

1. BACKGROUND

- 1.1 This Schedule addresses the obligations to indemnify and obligations of AHP participants to recover Funds from affordable housing projects which may encounter difficulties within the relationships described below:
- (a) Province (which is referred to as the “Minister” in the Agreement) - Canada Mortgage and Housing Corporation (“CMHC”);
 - (b) Service Manager - Province;
 - (c) Proponent - Service Manager; and
 - (d) Proponent - Province.
- 1.2 It is expected that all Rental and Supportive projects will be required to obtain CMHC insurance for the first mortgage since this is a condition of funding under the Ontario Mortgage and Housing Partnership Initiative.
- 1.3 While this Schedule pertains to the Rental and Supportive Component of the AHP program, the same set of underlying principles and requirements could accommodate other program components with minor adjustments.
- 1.4 The undertakings and commitments contained in this Schedule are consistent with and do not supersede any agreements between the Governments of Canada and Ontario as per the Affordable Housing Program Agreement, effective April 1, 2003 (the “AHP Agreement”).

2. CONSULTATION

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

3. BEST EFFORTS

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

4. ADVANCE NOTICE

- 4.1 Neither CMHC, the Province nor the Service Manager shall substantially modify the terms of any project-specific agreement, including the Contribution Agreement, or the advance of Funds or the security documentation associated with the advance of Funds, with the exception of a CMHC insured first mortgage, without providing written notice to the other parties and a reasonable opportunity for the other parties to address the implications of such action.
- 4.2 The obligation to indemnify or the distribution of a recovery of Funds from a project in difficulty will require the Service Manager and/or Proponent to exhaust all reasonable opportunities to seek recovery, which efforts shall include but shall not be limited to resorting to legal action to defend third party claims, seeking indemnification from insurance

policies, if any, that may afford coverage for a particular loss and/or recovering Funds from bonding companies or other third parties who, at law, may be responsible for the losses of a project in difficulty.

5. INDEMNITY

5.1 Province - CMHC

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

5.2 Service Manager - Province

- (a) Subject to paragraphs (b) and (c) below, the Service Manager shall:
 - (i) during construction and following completion of construction, indemnify the Province for 100% of any third party claims against the Province arising out of the implementation of this Agreement; and
 - (ii) following completion of construction, indemnify the Province for 50% of that portion of any third party claims against CMHC arising out of the implementation of this Agreement where the Province indemnifies CMHC under the AHP Agreement,

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

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

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

- (a) The Proponent shall indemnify the Province for any claims against the Province and/or CMHC, in accordance with the Contribution Agreement.
- (b) The Service Manager should also request full indemnification from the Proponent for any claims against the Service Manager.

5.4 Proponent - Province

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

6. RECOVERY OF FUNDS

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

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

6.2 Province - CMHC

- (a) CMHC would not expect full repayment of federal capital by the Province if the Province confirms that “best efforts” were made to collect the Funds.
- (b) Best efforts would involve adherence by the Service Manager to the “risk sharing protocols” in order to minimize occurrence of failure. Furthermore, the parties will need to explore all available remedies with Service Managers, Proponents and CMHC, and implement the best remedy to the extent possible.
- (c) If efforts lead to a recovery of capital Funds, CMHC would expect a repayment of “a pro rata portion” of the Federal Funds. All three funding partners shall share in any proceeds recovered, in proportion to their contributions.
- (d) A sliding scale for CMHC forgiveness is set at 5% per year over 20 years. Under certain circumstances, the Province will share this forgiveness with Service Managers and Proponents, otherwise the Province will collect these Funds for recycling in other projects.
- (e) Federal Funds could either be repaid by the Service Manager to the Province and recycled in new commitments before March 31, 2009 or refunded directly to CMHC after this date.
- (f) In the event that auditors discover misuse of Federal Funds as per the AHP Agreement, CMHC would expect a refund from the Province where applicable. The amount owing could be reduced based on earned forgiveness of the principal amount during the period of project compliance.

6.3 Service Manager - Province

- (a) In the event a project ceases to be an AHP project for reasons related to negligence, misuse or non-compliance, the Service Manager shall repay the Province all Provincial Funds advanced during the period of non-compliance. It is acknowledged

that where the first mortgagee or CMHC has gained possession, as a result of a default under the insured loan, they would not assume any liability for Provincial Funds paid to the Proponent during the period of non-compliance prior to the date the first mortgagee or CMHC took possession.

- (b) In the event a project ceases to be compliant due to the negligence of the Service Manager, the Service Manager shall repay the Province all Federal Funds, less any earned forgiveness of the principal amount during the period of project compliance.

6.4 Proponent - Service Manager

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

6.5 Proponent - Province

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