

**MUNICIPAL CONTRIBUTION AGREEMENT**  
**Ontario Priorities Housing Initiative – Rental Housing Component**

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**BETWEEN:**

THE CORPORATION OF THE COUNTY OF BRUCE  
(hereinafter called the “County”)

-and-

Bruce County Housing Corporation  
(hereinafter called the “Proponent”)

**WHEREAS:**

- A. Canada Mortgage and Housing Corporation (“CMHC”) and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Municipal Affairs and Housing (the “Minister”), entered into a bi-lateral agreement to provide for the Ontario Priorities Housing Initiative from 2019-2022, effective April 29, 2019.
- B. The Minister has established a Rental Housing Component, a Homeownership Component, an Ontario Renovates Component, a Rental Assistance Component, and a Housing Support Services Component (“OPHI Components”), pursuant to which the Minister will provide the CMHC funding and federal funding for the Ontario Priorities Housing Initiative (“OPHI”) (the “Program”);
- C. The Minister is responsible for the Program and The Corporation of the County of Bruce (the “County”) is responsible for the delivery and administration of affordable housing programs in the County of Bruce; and
- D. The County and the Proponent have entered into this Agreement for the purpose of establishing the County’s obligation to provide funding to the Proponent under this Program for its Project, and the Proponent’s obligations with respect to the Program for the Rental Housing Component and the use of the funds under related to the Program for the Rental Housing Component.

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

**1. INTERPRETATION**

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

- **“OPHI Components”** has the meaning given to it in the recitals;
- **“Affordability Period”** means the period during which the average rent in a Project is required to be maintained at an affordable level, as determined in accordance with the Program Guidelines or as otherwise established by the County;
- **“Affordable Rent”** in respect of a unit of rental housing means a monthly occupancy cost that does not exceed 80% of the CMHC Average Market Rent (AMR) for that Unit. The Affordable Rent must include at least fridge, stove and a 1 parking space per Unit;
- **“Affordable Rental Housing”** means new, purpose-built, rental housing accommodation units in any Building or Buildings which is modest in terms of floor area and amenities, based on household needs and community norms, in Projects that achieve rent levels in accordance with the Program Guidelines, but does not include residential premises used

as student residences, a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility or owner-occupied housing projects;

- **“Average Market Rents (AMR)”** means the average monthly market rent for a rental housing unit, by unit type, as published by CMHC (or, should CMHC not publish such information, as determined from time to time by the County, acting reasonably), as adjusted on an annual basis (refer to definitions of market rent and low rent);
- **“Barrier-Free Units”** means units located in fully accessible buildings and provide ramps, grab bars, wider doorways and/or lower cabinets, as well as provisions for persons with hearing and vision impairments;
- **“Business Day”** means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- **“CMHC”** means Canada Mortgage and Housing Corporation;
- **“Conditional Letter of Commitment”** means the letter issued by the Minister confirming approval of the Project and setting out the amount, terms and conditions of Funding allocated to the Proponent;
- **“Construction Start Date”** means the later of the following dates:
  - a) the date that the County receives evidence satisfactory to it that all permits or approvals necessary for the construction of the Affordable Rental Housing portion of the Project in accordance with the Plans and Specifications and the Project Agreements have been obtained from the appropriate municipal, provincial and federal authorities, and that the Project, when completed, will be in compliance with all applicable environmental laws, zoning by-laws and building codes and with the Plans and Specifications;
  - b) the date that the County, having received a copy of an agreement with a general contractor satisfactory to the County for the construction of the Assisted Affordable Rental Housing portion of the Project, notifies the Successful Proponent that such contract is satisfactory to the County;
  - c) the date that each of the Project Agreements and all related security agreements, statements, certificates, opinions of legal counsel, notices and other documents have been executed and delivered to the County and all conditions precedent to the first advance of any loan or grant to be made by the County to a Successful Proponent have been satisfied or waived by the County, and all registrations, filings or recordings necessary or desirable to preserve or protect their security and priority have been completed and are not in default; or
  - d) the date a Successful Proponent, or its forces, begins, in good faith, actual construction of the Affordable Rental Housing portion of the Project; for purposes of this clause (d) construction shall be deemed not to have been begun until the Proponent or its forces have at least poured footings for the foundation of the Affordable Rental Housing portion of the Project.
- **“Contribution Agreement”** means an agreement to be entered into between a Proponent and the County setting out the terms and conditions under which any financial assistance will be provided to the Successful Proponent under OPHI - Rental Housing Component;
- **“Contribution by Others”** means cash or in-kind eligible contributions from Service Managers, municipalities, housing providers, the private sector, the voluntary sector, charities, and individual donors, to be used in accordance with a Program or Programs under this Agreement. It does not include contributions from any Government of Canada sources, including, but not limited to arrangements with CMHC; nor contributions under any program wholly or partially funded from Government of Canada sources; nor contributions which receive credit under any arrangement with CMHC or the Government of Canada outside this Agreement.

- **“Force Majeure”** means a delay arising from strike, lockout, riot, insurrection, terrorism, war, fire, tempest, act of God, lack of material or supply of service at a reasonable cost, inclement weather, binding orders or regulations of governmental bodies, courts or arbitrators or any other event beyond the control of the Parties which causes a delay in the fulfillment of a Party’s obligations under this Agreement notwithstanding the reasonable efforts of such Party and provided that any such non-availability or delay does not relate to any extent to any act or omission by such Party or any of its authorized agents or employees;
- **“Funds” and “Funding”** means Federal Funds or Provincial Funds, as set out in the Program Guidelines and Municipal funds, if applicable;
- **“Housing”** means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services of facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;
- **“OPHI”** means the Ontario Priorities Housing Program;
- **“OPHI – RHC”** means the Ontario Priorities Housing Program – Rental Housing Component;
- **“Improvements”** means the improvements to be made on the Property, consisting of a building and other improvements to be constructed by the Proponent on the Property in accordance with the Plans and Specifications;
- **“Loan”** means the total amount of Federal Funds, Provincial Funds and Municipal Funds, if applicable, advanced to the Proponent under this Agreement;
- **“Occupancy Date”** means the date on which occupancy of all Units in a Project is permitted;
- **“Occupancy Standards”** means standards which determine the size unit a household is eligible for under the Program or as amended by any future County by-law as outlined in **Schedule “M”**;
- **“Parties”** means the Proponent and the County and “Party” means either of them, as the context may require;
- **“Permitted Encumbrances”** means the encumbrances encumbering the Affordable Housing Units listed in **Schedule “F”**, together with such renewals or replacement financing that may be approved by the County, acting reasonably, during the term of this Agreement;
- **“Phase-Out Period”** means the last five (5) year period of the Affordability Period;
- **“PIPEDA”** means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, including any amendments thereto;
- **“Plans and Specifications”** means the plans and specifications for the development of the Project that have been approved and reviewed by all appropriate governmental authorities for the issuance of all permits necessary to construct and occupy the Improvements and as certified by a Quantity Surveyor;
- **“Procurement Process”** means the request for proposals or procurement process used by the County of Bruce;
- **“Program”** means the Rental Housing Component of the Ontario Priorities Housing Initiative, as set out in the Program Guidelines;

- **“Program Guidelines”** means the Program Guidelines for OPHI and attached to this Agreement as **Schedule “A”**;
  - **“Project”** means the property and the building(s), as approved by the County for the Program, as the context may require on lands described in **Schedule “K”**;
  - **“Proponent”** means a person or legal entity identified as such on the first page of this Agreement;
  - **“Proposal”** means the Proponent’s proposal for the Project; ;
  - **“Quantity Surveyor”** means an architect, engineer or other professional duly licenced to practice in the Province of Ontario to inspect or assess the Project or a specific aspect of the Project;
  - **“Rental Housing Component”** means the Rental Housing Component described in the Program Guidelines;
  - **“Security Documents”** means the security documents for the Project in the form of, or described in **Schedule “D”**;
  - **“Service Manager”** means The Corporation of the County of Bruce;
  - **“Substantial Completion”** means the substantial performance, within the meaning of the *Construction Act*, R.S.O. 1990 c.C.30, as amended, of all contracts which the Proponent has entered into for the Project under this Agreement;
  - **“Unit”** means a self-contained residential dwelling, including, without limiting the generality of the foregoing, (i) supportive rental Housing where service funding is secured from sources other than Federal Funds and Provincial Funds provided under the Program; (ii) multi-bedroom units which are used for congregate living; and (iii) disabled/accessible units.
- 1.2 All references in this Agreement, including, without limitation, the Schedules hereto, to “rent” are deemed to include housing charges paid by members of non-profit housing cooperatives and “rental” is deemed to have a corresponding meaning.
- 1.3 The following Schedules are attached to and form part of this Agreement:
- |              |   |  |
|--------------|---|--|
| Schedule “A” | - | OPHI Program Guidelines                                |
| Schedule “B” | - | Funding Schedule;                                      |
| Schedule “C” | - | Rental Protocol;                                       |
| Schedule “D” | - | Security Documentation                                 |
| Schedule “E” | - | Energy Efficiency and Building Design Project Details; |
| Schedule “F” | - | Permitted Encumbrances;                                |
| Schedule “G” | - | Proponent’s Initial Occupancy Report;                  |
| Schedule “H” | - | Annual Occupancy Report                                |
| Schedule “I” | - | Canadian Environmental Assessment Act Considerations;  |
| Schedule “J” | - | Protocol for Non-Compliance;                           |
| Schedule “K” | - | Legal Description of Property;                         |
| Schedule “L” | - | Development Schedule                                   |
| Schedule “M” | - | Occupancy Standards                                    |
| Schedule “N” | - | Conditional Letter of Commitment                       |
| Schedule “O” | - | Contribution by Others                                 |

1.4 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

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

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

2.1 Funding for Affordable Housing is comprised of Federal Funds and Provincial Funds. Federal Funds and Provincial Funds will be advanced by the County to the Proponent in the form of a forgivable capital Loan, over the course of the Project being completed.

2.2 The Proponent acknowledges that the County can fund under the Program up to 75% of the pro-rated share of the capital costs of the affordable units. Total capital costs shall include land, financing, construction costs and soft costs less any HST rebates that may be applicable. The Proponent and County agree that the maximum funds available to the Proponent under the OIHP – RIC, subject to the terms and conditions of this Agreement, shall be **FOUR HUNDRED AND FIFTY THOUSAND FOUR HUNDRED AND NINETY DOLLARS (\$450,490.00)** Canadian Dollars.

2.3 The Proponent agrees and understands that construction of the Project shall commence within one hundred and twenty (120) days of signing this Contribution Agreement.

2.4 The Proponent agrees and understands that construction of the Project shall be completed within four (4) years of the date of both parties signing this Contribution Agreement and that Funding will not be advanced after that time.

2.5 The Proponent warrants to the County that the Project is financially viable from a construction and operating costs perspective.

2.6 The County shall have the option of withholding from the amount to be disbursed under Section 2.2 the amount of the cost of construction necessary to complete the construction of the Project and, in such case, the County shall disburse the amount so withheld following its receipt of satisfactory evidence that such construction is substantially complete within the meaning of the *Construction Act*, R.S.O. 1990 c.C.30, as amended and provided that said *Construction Act* is complied with.

2.7 The Proponent shall use the amount of the Loan and Contribution by Others solely for the purpose of its Project in connection with the Project. For greater certainty, the Proponent agrees that it shall comply with and abide by the terms and conditions set out in this Agreement and in those Schedules to this Agreement relevant to the Program.

2.8 The County shall disburse advances of the Loan to the Proponent on at least ten (10) days' prior written notice to the County, provided that the conditions of this Agreement have been satisfied, as follows:

- a) an amount equal to 50% of the Loan on the date of signing this Agreement and confirmation of registration of security, less a 10% holdback as per the *Construction Act*, R.S.O. 1990 c.C.30, as amended ("*Construction Act*");
- b) 40% upon completion of structural framing of the Project for new construction, to be confirmed by the Chief Building Official, less a 10% holdback as per the *Construction Act*;
- c) the 10% balance of the Loan, less a 10% holdback as per the *Construction Act*, upon completion of all of the following:
  - i. confirmation of occupancy evidenced by an Occupancy Certificate; provided to the County;
  - ii. submission of an Initial Occupancy Report; and
  - iii. submission of an updated capital cost statement in a form acceptable to the Ministry.

- d) The County shall disburse the amount so withheld pursuant to the *Construction Act* following its receipt of satisfactory evidence that such construction is substantially complete within the meaning of the *Construction Act* and provided that said *Construction Act* is complied with.

### **3. SPECIAL CONDITIONS**

- 3.1 The Proponent shall provide the County with a construction schedule and construction budget for its review and approval four (4) weeks prior to the start of construction. The construction budget shall include soft costs, and the cost of each item of the Project. The Proponent will obtain the County's prior written approval to any material amendment to the construction schedule or construction budget. A material amendment means any single amendment that increases the cost of construction of constructing the Project by amount exceeding \$20,000.00 or any series of amendments that, in the aggregate, increase the cost of constructing the Project by an amount exceeding \$50,000.00.
- 3.2 The Proponent shall discharge or cause the discharge of any registered construction liens so as to ensure that there are no construction liens registered against title to the lands of the Project on the date for the disbursement of the Loan under Section 2.
- 3.3 The Proponent shall not at any time during the term of this Agreement breach any contribution agreement, respecting the Project that, it has entered into by means of a Contribution by Others, including any municipal capital facility agreement made pursuant to Section 110 of the *Municipal Act, 2001*, S.O. 2001 C.25, as amended, and shall not, through any breach on its part, cause such other entity to terminate a contribution agreement for cause. The Proponent agrees that a breach by it of any such contribution agreement that has not been corrected shall constitute a breach of this Agreement. All such agreements by means of a Contribution by Other shall be attached and form a Schedule to this Agreement. The Proponent shall provide the County with evidence of its good standing under any such contribution agreement within ten (10) Business Days following its receipt of a written request from the County.
- 3.4 The Proponent acknowledges and agrees that the Minister may conduct site inspections of the Project at its sole discretion.
- 3.5 The Proponent agrees that at no time shall the County be liable to suppliers, contractors, sub-contractors, craftsmen, labourers or others for goods and services supplied by them in or upon the property subject of the Project, or employed in the construction of the Project, or for any debts or claims accruing to any of the parties against the Proponent. The Proponent expressly agrees that there is no contractual relationship between the County and any supplier, contractor, subcontractor, craftsman, labourer or person supplying work or supplies to the Project. The Proponent is not, and shall not be the agent of the County for any purpose.

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

- 4.1 The Proponent acknowledges and agrees that the Rental Protocol set out in **Schedule "C"** applies to the Project by virtue of the contractual terms of this Agreement, notwithstanding that the Rental Protocol does not apply to the Project under the *Residential Tenancies Act, 2006*.
- 4.2 Prior to occupancy of a unit, the tenant shall be subject to review and approval of the County, for compliance with the Program requirements. The Proponent shall provide written notice to each prospective first tenant regarding the review by the County.
- 4.3 The Proponent agrees to undertake its Project in accordance with the provisions relating to the development of the Project contained in the Program Guidelines and in conformity with its proposal submitted to the County; specifically, the Proponent warrants that all Units shall remain affordable for a minimum period of twenty (20) years calculated from the time of occupancy. A unit shall be deemed affordable if average rents are at or below 80% of Average Market Rent, taking into consideration actual rents paid by tenants and any rent supplements provided through the County.

- 4.4 At no time during the twenty (20) year period set out in paragraph 4.3 above shall a Unit funded through the Project have a rent that is greater than Average Market Rent for the geographic area in which it is located.
- 4.5 The County requires that the Affordable Rent for each unit include the fridge, stove, laundry equipment and one parking space for the development.
- 4.6 This Project will adhere to the Occupancy Standards as outlined in **Schedule “M”**.

## 5. CONDITIONS

- 5.1 The provision of funding by the County, pursuant to Section 2 is subject to the following conditions precedent, each of which is for the exclusive benefit of the County, and may be waived in full or in part by the County by written notice to the Proponent:
- a) the Proponent is the registered owner in fee simple of the lands described in **Schedule “K”**;
  - b) any contribution agreement with others referred to in Section 3.3 remaining in force and the Proponent being in good standing thereunder;
  - c) there being no Claim for Lien under the *Construction Act* registered against the Project;
  - d) there being in existence no unregistered lien or statutory claim having priority against the Project;
  - e) the Proponent’s title to the Project being free from any encumbrances other than the Permitted Encumbrances as set out in **Schedule “F”**;
  - f) the Proponent being in good standing under all of the Permitted Encumbrances;
  - g) there being no work orders issued against the Project by any governmental entity, agency or official;
  - h) the Proponent having provided the County with the security documents required by Section 7 and in accordance with the said section;
  - i) all funds provided by means of a Contribution by Others due on or before a disbursement date hereunder having been fully advanced to the Proponent on or before such disbursement date and having been secured by by-law, agreement or otherwise and attached hereto as a Schedule;
  - j) the Proponent providing the minimum amount of equity as set out in the Program Guidelines, attached hereto as **Schedule “A”**; and
  - k) the Proponent providing the County with an Initial Occupancy Report in the form attached hereto as **Schedule “G”** to ensure units of the Project will be occupied within a reasonable period of time.

- 5.2 If any of the conditions contained in Section 5.1 have not been fulfilled on the date for the disbursement of the Loan by the County pursuant to Section 2 and are not expressly waived by the County in writing, the County shall be under no obligation to make any advance of the Loan to the Proponent and the County shall thereupon have the right to terminate this Agreement and, in that event, neither party to this Agreement shall have any rights or obligations hereunder, save and except that the County may, notwithstanding such termination, bring an action against the Proponent for all losses, costs and expenses, including, without limitation, reasonable legal fees incurred by the County in connection with this Agreement where the non-performance or non-fulfillment of a condition is a result of a breach of a covenant by the Proponent and the County shall have the right to require repayment of any previously advanced Funds together with interest as set out in this Agreement.

## 6. TERMS OF THE FUNDING

- 6.1 The Loan shall have a term of twenty (20) years, commencing on the Construction Start Date (the “Term”).
- 6.2 The Loan amount shall be fully forgiven on the last day of the month at the end of the Term, provided that the Proponent has fulfilled all the requirements of the Program as set out in this Agreement, and to the satisfaction of the County.

6.3 The Proponent acknowledges that the County has an annual reporting requirement to the Minister to ensure compliance with the Program, and the Proponent agrees that it will provide the County with information and documents the County deems relevant, in its sole discretion, for the purposes of these quarterly reports to the Minister during the Term.

6.4 The Proponent shall provide the County with such information respecting the Proponent's permanent financing obligations for the Project as the County may require from time to time.

## 7. SECURITY

7.1 Prior to the County disbursing the Loan to the Proponent pursuant to Section 2, the Proponent shall provide the County with executed registered security documents in the form attached or described in **Schedule "D"** (collectively, the "Security"), completed in accordance with this Agreement.

7.2 The Security shall be collateral to this Agreement and any Contributions by Others Agreement between the County and the Proponent. The amount of all contributions from the County shall be included in the Security documents.

7.3 The Proponent agrees that a breach of this Agreement or a Contribution by Others Agreement with the County shall be a breach of the Security and a breach of the Security shall constitute a breach of this Agreement and any Contribution by Others Agreement with the County.

7.4 The County acknowledges and agrees that notwithstanding that the Security provides that the principal and interest secured thereunder is payable on demand, the County shall have no right to demand payment thereunder except in accordance with the provisions of this Agreement relating to default and repayment. In the event of a conflict or inconsistency between the provisions of this Agreement and the Security, the provisions of this Agreement shall prevail with respect to Funds provided by the County.

7.5 The Security shall rank immediately behind the registered security for the Proponent's Permitted Encumbrances obligations for the Project unless the County determines that the Security shall have a lesser priority.

## 8. ACCOUNTABILITY FRAMEWORK

8.1 (a) In the event:

- i) the County is advised that the Project will not proceed; or
- ii) the County determines, acting reasonably, that the Proponent is not proceeding with the Project due to delays likely to cause depreciation or deterioration of any construction of the Project, the Proponent shall return all Loan monies advanced to the County, forthwith upon demand; or
- iii) the County is of the opinion that the Proponent is not proceeding in an expeditious manner with the Project for which Loan monies have been provided; or
- iv) the Proponent is not complying with the requirements as set out in this Agreement, inclusive of all Schedules during the term of the Agreement;

the Proponent will be in default and shall return all Loan monies advanced to it to the County, forthwith upon demand, including interest from the date of default until paid in full along with any applicable costs and expenses as per the terms of this Agreement.



- (b) The Proponent shall submit to the County, an audited statement with respect to the expenditure of Loan monies provided to it, within ninety (90) days following the date on which the County is advised that the Project has been fully completed, or the Project will not proceed in the opinion of the Proponent or the County.
- (c) Following the full completion of the Project, the Proponent shall submit to the County a completed Occupancy Report in the form attached hereto as **Schedule “G”**, and annually in the form attached hereto as **Schedule “H”** thereafter shall submit to the County the aforesaid report in the form as attached.
- (d) If requested by the County, the Proponent shall submit to the County an audited financial statement within ninety (90) days following the fiscal year end of the Project.

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

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

8.4 The Proponent agrees that it shall maintain and make available to the County all records and documentation pertaining to the Project during the 20 year term of the Loan or the date of any early termination of this Agreement, or in either case for a further seven (7) years thereafter.

## **9. COMMUNICATIONS PROTOCOL**

9.1 The Proponent acknowledges that it has been informed by the County, that under the terms of the CMHC – Ontario Agreement the Ontario Priorities Housing Initiative all affordable County Housing, including written materials and signs, respecting the Project must recognize the contributions of CMHC, the Minister and the County. The Proponent further acknowledges that it has been informed by the County that the CMHC – Ontario Agreement for OPHI requires the Minister to coordinate with CMHC and/or obtain CMHC’s approval with respect to communications, signage, and advertising matters. The Proponent agrees that it shall not do or omit to do any act, which will cause the County to be in breach of the terms of the CMHC – Ontario Agreement for OPHI.

9.2 The Proponent shall co-operate in organizing press conferences, announcements, and official ceremonies to be held at an appropriate location and time respecting the Project, insofar as it relates to the Program, or respecting its participation in the Program or respecting the Program in any other respect without the prior written consent of the County.

9.3 CMHC, Ontario and the County may provide and install, where appropriate, a plaque or permanent sign bearing an appropriate inscription. The design, wording and specifications of such permanent signs shall be provided by the County.

9.4 The Proponent acknowledges that any breach by it of Sections 9.2 or 9.3 of this Agreement shall cause the County to be in breach of the CMHC – Ontario Agreement for OPHI.

## **10. REMEDIES**

10.1 Upon the occurrence of any one or more of the following events (each an “Event of Default”):

- a) the failure of the Proponent to perform, observe or comply with any term, covenant, condition or provision of this Agreement or any other Contribution of

Others Agreement between the County and the Proponent within ten (10) days of receipt of written notice of the “failure” from the County;

- b) any representation or warranty made by the Proponent in this Agreement that proves to have been untrue or misleading in any material respect as of the date on which it was made;
- c) any person commences an action, suit or proceeding materially affecting the Project or files a lien against the Property, or any person commences an action, suit or proceeding contesting or questioning the validity or enforceability of this Agreement, unless the Proponent diligently contests such action, suit or proceeding and discharges any such lien forthwith without the requirement of notice by the County and posts such bonds, cash or letters of credit or gives such other security in order to obtain such discharges in amounts and on terms satisfactory to the County acting reasonably;
- d) the Proponent ceases to carry on business;
- e) the Proponent:
  - i) becomes insolvent or unable to pay its debts as they become due; or
  - ii) files a petition in bankruptcy or voluntary petition seeking reorganization or effect a plan or other arrangement with creditors; or
  - iii) makes an assignment for the benefit of creditors under the *Bankruptcy Act* (Canada) or any other insolvent debtors’ legislation; or
  - iv) applies for or consents to the appointment of any receiver or trustee for it or of all or any substantial part of its property and assets; or
  - v) voluntarily liquidates or winds-up or suffers itself to be liquidated or wound-up;
- f) any of:
  - vi) an involuntary petition seeking the adjudication of the Proponent as bankrupt or insolvent not removed within 30 days; or
  - vii) an order of any court or other authority appointing any receiver or trustee for the Proponent or for all or any substantial portion of its property and assets; or
  - viii) a writ of execution, judgment or writ of attachment or any similar process which may, in the reasonable opinion of the County, materially impairs the ability of the Proponent to perform its obligations under this Agreement or any of the Security Documents are made, given or issued against the Proponent or in respect of its property and assets, and such petition, order, writ of judgment is not vacated or stayed within 15 days after its date;
- g) the occurrence of a material adverse change in the financial condition of the Proponent which would, in the reasonable opinion of the County, detrimentally affect the ability of the Proponent to meet its obligations to the County; and
- h) if the improvements shall be entirely destroyed or damaged to such an extent that, in the opinion of the Quantity Surveyor, acting reasonably, they are no longer fit for the purpose for which they were intended and the insurance proceeds, if any, held by the County, in the opinion of the Quantity Surveyor, acting reasonably, insufficient to repair such destruction or damage, and the Proponent has not

provided evidence satisfactory to the County of the timely availability of such sufficient funds,

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

- 10.2 In the event of default under this Agreement, the County may cancel or suspend further instalments of the Loan for such period as the County deems appropriate in its sole discretion.
- 10.3 Complete Construction. If an Event of Default shall occur, then the County 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 the incident to the enforcement of any provisions hereof, shall be an indebtedness of the Proponent to the County. All such amounts, even though they may, when added to the monies advanced and disbursed under this agreement, exceed the Loan, shall be secured by the Mortgage and other Security Documents.
- 10.4 During Term of Agreement. Should the Proponent be in default under the terms of the Loan or under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property, the County shall have the right to declare all or part of the unearned portion of the Loan due and payable immediately. Interest will be payable from the date of default until the loan money advanced and any applicable costs and expenses, as set out in section 10.6, are paid in full. The interest rate shall be the Bank of Canada Prime Rate plus 2% in effect at the time of the loan default, and interest will be calculated monthly on the outstanding principal balance.
- 10.5 Assignment of Plans and Specifications. The Proponent hereby assigns to the County and its successors and assigns, the right to possess and use the plans and specifications for construction of the Project, together with the Proponent's rights under all construction contracts, for the purpose of completing the Project in the event the Proponent defaults under this Agreement.
- 10.6 Costs and Expenses of Collection. In the event of a default under this Agreement, all reasonable costs and expenses of collection (including, but not limited to, legal fees, disbursements and court costs) of all amounts owing hereunder or of enforcement of any Security created in favour of the County pursuant hereto, shall be payable by the Proponent to the County.
- 10.7 In the event the County determines that a Proponent has breached any provision of this Agreement, the County shall follow the Protocol for Non-Compliance set out in **Schedule "J"**.
- 10.8 All of the remedies in this Agreement, **Schedule "J"** and the Security are cumulative and are not alternative and the County shall not be precluded from availing itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.
- 10.9 Notwithstanding any of the terms of this Agreement, **Schedule "J"** or of the Security, the County shall have the option of waiving any or all of its remedies under this Agreement, **Schedule "J"** and the Security, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

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

- 11.1 Proponents must use ENERGYSTAR – rated products.
- 11.2 It is mandatory that suite meters be installed in all affordable housing units for the Project.
- 11.3 Energy efficient details for products and materials included in the project must be listed in **Schedule “E”**.
- 11.4 The Proponent acknowledges that funding under the Program is subject to the Canadian Environmental Assessment Act (CEAA). To receive funding under the Program, the Proponent must confirm that the Project does not impose adverse impacts that cannot be mitigated. CEAA Considerations are outlined in **Schedule “I”**, and the Proponent covenants that the Project adheres to these CEAA Considerations.

## **12. REPRESENTATION AND WARRANTIES**

The Proponent represents and warrants to the County that:

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

### 13. COVENANTS OF THE PROPONENT

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

- a) take all such actions and do all such things required to develop and continuously carry out the Project in a good and workmanlike manner and in accordance with all applicable codes and standards, including those applicable to employment health and safety, and to complete such construction of the Project within the timeframe afforded in this Agreement;
- b) do or cause to be done all acts and things necessary to preserve in full force and effect the existence of the Proponent and all licences and permits required for the carrying on of the operations of the Proponent at and from the Property and to preserve and protect all of the properties, real and personally owned and used by the Proponent in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair;
- c) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the County, or of any other entity having jurisdiction to impose such taxes or levies, when the same become due and payable, except such taxes as are being contested in good faith by appropriate proceedings and provided that, in such case the Proponent shall have provided the County with appropriate security;
- d) deliver to the County the statements and reports as required by this Agreement.

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

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

13.2.a.1 the First Mortgage;

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

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

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

13.2.a.5 Any other Permitted Encumbrances listed in **Schedule "F"** hereto.

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

#### **14. INDEMNIFICATION**

- 14.1 The Proponent shall indemnify and save harmless the County from all claims, costs, all matter of actions, cause and causes of action, duties, dues, accounts, covenants, demands or other proceeding of every kind or nature whatsoever at law or in equity arising out of this Agreement and out of the operation of the units including claims arising out of negligence of the Proponent and specifically, all claims arising out of the intentional or criminal acts of any officers or directors, employees, agents, volunteers or independent contractors of the Proponent. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring the term of this Agreement.
- 14.2 The Proponent agrees to purchase and maintain, during the term of this Agreement third party liability insurance in a limit of not less than Five Million Dollars (\$5,000,000.00) covering bodily injury, loss or property damage resulting from any activity related in any way to this Agreement. This insurance shall include the County as an additional insured, a cross liability clause, severability of interest clause, non-owned automobile insurance and personal injury liability clause.
  - 14.2.1 The Proponent further agrees to purchase and maintain insurance policies that a prudent manager of similar premises would maintain and, without limiting those types of policies, at least the following:
    - a) Broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of the Project and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00);
    - b) All risks property insurance (including flood and earthquake) in an amount equal to the full replacement value of the Project and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00).
- 14.3 In addition, during the design and construction period of the Project, the Proponent will obtain and maintain the following policies of insurance:
  - a) All risk builder's risk property insurance for the full replacement value of the completed construction project, including boiler and machinery, earthquake and flood based on a stated amount co-insurance and including a waiver of subrogation and loss payable, as their interest may appear, in favour of the County, and with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00) and remaining in effect until the completion of construction.

- b) Construction wrap-up liability insurance coverage including owners and contractors protective, broad form products and completed operations, cross liability and severability of interest clauses, blanket contractual, hook liability, employers liability, non-owned automobile liability and shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, tunnelling and grading, and similar operations associated with the construction work, as applicable; to an inclusive limit of not less than Five Million Dollars (\$5,000,000.00) and in the joint names of the Proponent, County, Designated Consultants, Designated Contractors, and other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons (including, but not limited to directors, officers, employees, shareholders, legislators and officials involved in the project) which the County reasonably may require to be added as insured parties.
- 14.4 The Proponent acknowledges and agrees that, in addition to the insurance requirements contained in section 14 herein; it will obtain and maintain any other insurance coverage, as required from the County from time to time, acting reasonably.
- 14.5 The Proponent shall advise the County of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Proponent fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Agreement, the County shall have the right, upon notice to the Proponent and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Proponent and all outlays by the County shall be payable by the Proponent to the County forthwith upon demand without prejudice to any other rights and recourses of the County hereunder. No such Insurance taken out by the County shall relieve the Proponent of its obligations to insure hereunder and the County shall not be liable for any loss or damage suffered by the Proponent.
- 14.6 The Proponent shall duly and punctually pay or cause to be paid all premiums and other monies payable for maintaining the insurance to be provided under this Agreement. Evidence that the insurance described above is in force shall be provided to the County prior to commencement of this Agreement and thereafter annually.
- 14.7 The Proponent shall require all professionals involved with the Project to carry professional (errors and omissions) liability insurance in an amount not less than Two-Million Dollars (\$2,000,000.00) during the period of the Project.
- 14.8 The Proponent agrees to obtain for its employees and all consultants, contractors, sub-contractors, suppliers and/or tradesmen while working on the Project, WSIB coverage and to ensure that such coverage continues in effect throughout the period of the work.

## NOTICE

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

**The Corporation of the County of Bruce**  
 30 Park St.  
 Walkerton, ON  
 N0G 2V0td

Fax: (519) 396-3499

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

**Bruce County Housing Corporation**

Box 1450  
Kincardine, Ontario  
N2Z 2Z4

Fax: 519-396-3499

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

**16. GENERAL**

- 16.1 Any power, right or function of the County, contemplated by this Agreement, may be exercised by any employee or agent of the County who is hereby specifically authorized in this regard.
- 16.2 It is understood that the *Municipal Freedom of information and Protection of Privacy Act (MFIPPA)* shall apply to all records submitted to or created by the County pursuant to this Agreement.
- 16.3 The Proponent represents and warrants that it shall ensure compliance with the PIPEDA.
- 16.4 The disbursement of the Loan as set out in Section 2 is subject to the necessary appropriations from the Minister. The County, the Province nor CMHC shall have liability in the event the respective appropriations are insufficient to meet the funding obligations of the Proponent.
- 16.5 Nothing in this Agreement is to be construed as authorizing one party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the County and the Proponent as partners of each other.
- 16.6 The Proponent acknowledges that the CMHC and the Minister are not parties to this Agreement or any other agreement related to the Project.
- 16.7 No member of:
- a) the House of Commons or Senate of Canada;
  - b) the Legislative Assembly of Ontario; or
  - c) the Municipal Council constituting the County or the Municipal Council of any local municipality of the County or the governing body of any Municipal agency, Board or Commission, or any such municipalities;



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

- 16.8 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the County and the Proponent of their respective solicitors on their behalf, who are hereby expressly authorized to this regard.
- 16.9 Any tender of documents or money hereunder may be made by the County or the Proponent or their respective solicitors, and it shall be sufficient that a bank draft or certified cheque may be tendered instead of cash.
- 16.10 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 16.11 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 16.12 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting the property or this Agreement other than as expressed in writing in this Agreement.
- 16.13 This Agreement shall be read with all changes of gender and number required by the context.
- 16.14 (a) The Proponent shall not transfer or convey its interest in all or any part of the Project without, subject to subsection 16.14(b), simultaneously assigning its interest in this Agreement to the transferee, which transferee shall enter into one or more agreements with the County, in a form satisfactory to the County, to assume all of the Proponent's obligations under this Agreement and to provide the County with Security in accordance with this Agreement.
- (b) The Proponent shall not assign its interest in this Agreement without the prior written consent of the County, which consent shall not be arbitrarily or unreasonably withheld.
- (c) For the purpose of this Agreement, a transfer of the beneficial interest in the shares of the Proponent shall be deemed to constitute an assignment if it results in a change in the party or parties who owns or own more than fifty percent (50%) of the voting shares of the said corporation.
- 16.15 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing certifying that this Agreement is in good standing, unmodified and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.
- 16.16 If more than one entity is a party to this Agreement as Proponent, all references to the Proponent shall include all of the said entities and this Agreement shall be binding on each jointly and severally.

16.17 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of Section 16.14 restricting the Proponent's ability to assign this Agreement.

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

THE CORPORATION OF THE COUNTY OF BRUCE

\_\_\_\_\_  
Mitch Twolan, Warden

\_\_\_\_\_  
Donna Van Wyck, Clerk

We have authority to bind the Corporation

BRUCE COUNTY HOUSING CORPORATION

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

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

We have the authority to bind the Corporation.