

[HAF Rental Housing Grant – Construction of New Housing Units]

THIS GRANT AGREEMENT made in duplicate as of the _____ day of _____, 202__.

BETWEEN:

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter called the "Local Government")

OF THE FIRST PART

AND

_____ an _____ corporation under the _____ *Act*, _____, c. _____, with an office at _____ Street, Fredericton, New Brunswick, E3_ ___, hereinafter called the "Developer")

OF THE SECOND PART

(each a "Party", collectively the "Parties")

WHEREAS the Local Government supports the non-profit sector in the development of new affordable housing units through its Affordable Housing Strategy and the Housing Accelerator Fund initiatives and acknowledges the need for additional financial support for the sector;

AND WHEREAS the Local Government entered into a Housing Accelerator Fund Contribution Agreement with Canada Mortgage and Housing Corporation ("CMHC") and then subsequently established the Housing Accelerator Fund Rental Housing Grant – Construction of New Housing Units ("Rental Housing Grant Program") to support the development of affordable housing in the City of Fredericton;

AND WHEREAS the Developer has applied for a grant under the Rental Housing Grant Program and the application meets the eligibility requirements for the said program;

AND WHEREAS the Rental Housing Grant Program requires that a developer who meets the eligibility requirements sign a grant agreement in order to receive the grants contemplated under the Rental Housing Grant Program;

NOW THEREFORE in consideration of the terms and conditions and mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Local Government and the Developer agree as

follows:

1. TERM

- 1.1 This Agreement will be effective commencing on the date of the last signature below (“Effective Date”) and shall end on the date which is twenty (20) years from the Effective Date (“Term”), unless terminated earlier in accordance with the provisions of this Agreement.

2. GRANT

- 2.1 Subject to the terms and conditions of this Agreement, the Local Government is providing a funding grant to the Developer under the Rental Housing Grant Program for the sole purpose of increasing the supply of rental housing using incentives during the Housing Accelerator Fund funding period for the years 2024 to 2026 for projects related to the promotion of the “missing middle” housing forms within the City of Fredericton.
- 2.2 The Local Government established the Housing Accelerator Fund Rental Housing Grant – Construction of New Housing Units on March 25, 2024.
- 2.3 The parties agree that the application submitted by the Developer and attached hereto as Schedule “A”, together with all supporting documents attached hereto, shall collectively describe the project (the “Project”) for which the Grant is awarded.
- 2.4 The Local Government shall, pursuant to the terms and conditions identified herein, pay the Developer a grant in the amount of \$_____ (the “Grant”) which shall be paid in two payments. The first payment, fifty percent (50%) will be paid within ten (10) business days of confirmation of completion of the Project and that the final building inspection, acceptable to the Local Government, has occurred and the second payment, fifty percent (50%) will be paid when the building has reached one hundred percent (100%) occupancy while achieving the required tenant mix requirements.
- 2.5 Notwithstanding the Local Government’s obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under the Agreement becomes due, the Parliament of Canada has not passed an appropriation that is sufficient and constitutes lawful authority for the Government of Canada making the necessary payment to the Local Government for the project or program in relation to which the Grant is being provided. The Local Government may reduce, delay or terminate any payment under this Agreement in response to the reduction or delay of appropriations or departmental funding levels in respect of transfer payments, the project or Rental Housing Grant Program in relation to which the Grant is being provided, or otherwise, as evidenced by any appropriation act or the federal Crown's main or supplementary estimates expenditures. The Local Government will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction, delay or termination of funding.

- 2.6 The Local Government's obligation to pay the Grant to the Developer is also conditional upon:
- a. if applicable, the Local Government completing a final inspection confirming that the Program eligibility criteria have been met;
 - b. the Project being completed in compliance with all Local Government by-laws and terms and conditions of any Local Government permit(s);
 - c. the Local Government receiving from the Developer a full account of all funds spent that confirms the Rental Housing Grant Program eligibility criteria has been met; and
 - d. the availability of sufficient financial resources in the Local Government's annual budget.

3. ACKNOWLEDGMENTS

- 3.1 The Parties acknowledge and agree that nothing in this Agreement will fetter the discretion of the Local Government's elected council as to future decisions by the elected council.
- 3.2 The Local Government and the Developer acknowledge and agree that the Local Government may, in its sole and absolute discretion, amend or cancel the Rental Housing Grant Program at any time, and that funding provided to the Rental Housing Grant Program by the Local Government may change in future years or be cancelled altogether.
- 3.3 Accordingly, the Local Government and the Developer also acknowledge and agree that Grant funding outside of the first year could be reduced or not applicable at all depending on the resources that the Local Government's City Council decides to allocate in its annual budget. Should this occur, the Developer acknowledges and agrees that it shall have no legal recourse against the Local Government.
- 3.4 Prior to the payment of any Grant contemplated in this Agreement and identified in the Program, the Local Government has the right to withhold payment should it be determined that the property taxes and/or water and sewerage fees for the Project's property have not been paid in full.
- 3.5 Prior to the payment of any Grant contemplated in this Agreement, and at any time during the Term, the Local Government may require an audit of required supporting documentation submitted with the application to ensure its validity and to confirm that the developer continues to meet the affordability requirements under this Agreement, at the Developer's sole expense.
- 3.6 The Developer acknowledges and agrees that (i) the Developer shall be solely and fully responsible for the Project or any element thereof; (ii) by accepting or approving anything required to be accepted or approved pursuant to this Agreement or the

Project, the Local Government shall not be deemed to have warranted or represented the accuracy, sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Local Government; and (iii) the Local Government shall not be responsible in any way whatsoever for the Project or any element thereof.

- 3.7 The Developer consents and agrees that the Local Government may collect and disclose any and all of its information, and any and all information from any third party they engage with respect to the Project, including personal information to the extent necessary, to CMHC. The Developer shall also provide proof of their consent upon request from the Local Government.
- 3.8 The Developer acknowledges that information and documents provided to the Local Government may be subject to release under the *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6, as amended.
- 3.9 The Parties acknowledge that CMHC may wish, at its direction, to participate in any public communications related to this Agreement, Rental Housing Grant Program or Project, and if requested by CMHC, the Developer shall publicly acknowledge CMHC's and the Government of Canada's Housing Accelerator Fund funding in a manner acceptable to CMHC, acting reasonably.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer must complete the Project, for which they are receiving the Grant as outlined under Section 2.3.
- 4.2 The Developer covenants and agrees that it shall maintain the number of affordable housing units (as described in the Program) set out in the Project description for a period of not less than twenty (20) years.
- 4.3 Unless the Local Government shall otherwise agree in writing, the Developer covenants and agrees that it:
 - (i) shall comply with the Rental Housing Grant Program eligibility requirements and shall only use the Grant funding for the Project;
 - (ii) shall carry out the Project and conduct the activities thereof in compliance with all applicable laws, regulations, order, rules, ordinances, permits, licenses, and without restricting the generality of the foregoing, in compliance with all labour, environmental, health and safety and human rights legislation applicable to the Project;
 - (iii) shall carry out the Project with due diligence and efficiency and in accordance with sound engineering, scientific, financial and business practices;

- (iv) shall maintain industry standard insurance coverage which shall include general liability insurance;
- (v) shall not make any material change to the Project or in the nature or scope of its legal status; and
- (vi) in the event the Developer decides to sell, assign, transfer, lease, exchange or otherwise dispose of, or contract to sell, assign, transfer, lease, exchange or otherwise dispose of, any of the real or personal property, whether movable or immovable, acquired, purchased, constructed, rehabilitated or improved, in whole or in part with the Grant, except if previously approved by the Local Government in writing, the Developer shall obtain agreement from such party to whom the Developer wishes to sell, assign, transfer, lease, exchange or otherwise dispose such real or personal property (such party being hereinafter referred to as a "Purchaser") that such Purchaser shall also accept assignment of the Developer's 20 year commitment for affordable housing to the Local Government under this Agreement and the Program.

4.4 The Developer shall provide the Local Government the following information, in form and content satisfactory to the Local Government:

- (i) prompt notice of any proposed change in the nature or scope of its legal status ;
- (ii) prompt notice of any sale of the Project, together with evidence of compliance with section 4.3(vi) above;
- (iii) an annual attestation with a then current rent roll, certified by the Developer, within thirty (30) days of the Local Government making such requests to confirm affordability of such designated units;
- (iv) prompt notice of any act or event which does or may materially and adversely affect the Project or may materially and adversely affect the ability of the Developer to perform its obligations under the Agreement or the Project or any of the Developer's other obligations that are material to the Developer;
- (v) prompt notice of any litigation or administrative proceedings, together with copies of any written legal documents as the Local Government may request, excluding legal documents subject to solicitor client privilege, before any court or arbitral body or other authority which might materially and adversely affect the Project or the ability of the Developer to perform its obligations under the Agreement or in respect of the Project or any of the Developer's other obligations that are material to the Developer;
- (vi) immediate notice of the occurrence of any breach of any term or condition of the Agreement and specifying the nature of such breach, and the steps, if any, that it is taking to remedy the same; and

- (vii) such other information as the Local Government may request from the Developer.

5. REPRESENTATIONS AND WARRANTIES

5.1 The Developer represents and warrants that:

- (i) it is duly established as a charitable or non-profit organization or other incorporated entity under the laws of the Province of New Brunswick and has the legal power and authority to enter into, and perform its obligations under, this Agreement and the Program;
[OR it is duly established as a Corporation under the laws of the Province of New Brunswick and has the legal power and authority to enter into, and perform its obligations under, this Agreement and the Program *(to be revised as appropriate by the Affordable Housing Development Coordinator for the Local Government)*];
- (ii) this Agreement has been duly authorized and executed by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms;
- (iii) neither the making of this Agreement nor the compliance with its terms and the terms of the Program will conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under any indenture, debenture, agreement or other instrument or arrangement to which the Developer is a party or by which it is bound, or violate any of the terms or provisions of the Developer's constating documents or any license, approval, consent, judgment, decree or order or any statute, rule or regulation applicable to the Developer;
- (iv) it is not subject to any restructuring order under any applicable statutory authority; and
- (v) no litigation, arbitration or administrative proceedings are current or pending or have been threatened, and so far as the Developer is aware no claim has been made, which is likely to have an adverse effect on its preparation of the Project or its compliance with its obligations under the Program or this Agreement.

6. TERMINATION

6.1 The Local Government may terminate this Agreement:

- (i) if the Developer breaches any term or condition of this Agreement, and fails to remedy such breach upon the expiry of ten (10) business days' written notice from the Local Government of such breach or, with respect to a breach that cannot be remedied within the ten (10) business day period, such longer period of time as the Local Government may reasonably provide the Developer to remedy the breach, provided the Developer has commenced to remedy the

breach within the ten (10) business day period and is actively and diligently taking appropriate measures to remedy the breach;

- (ii) if, in the Local Government's sole and absolute discretion, the Project cannot be completed as initially presented;
 - (iii) if control and charge over the administration of all the affairs of the Developer are vested in any person other than the Developer;
 - (iv) if the Developer becomes insolvent and/or proceedings have been commenced under any legislation or otherwise for its dissolution, liquidation or winding-up, or bankruptcy, insolvency or creditors' arrangement proceedings have been commenced by or against the Developer; and
 - (v) if the Local Government fails to pass an appropriation that is sufficient and constitutes lawful authority for the Local Government to make the necessary payment to the Developer for the Project or Rental Housing Grant Program in relation to which the Grant is being provided.
- 6.2 Notwithstanding Section 6.1, the Local Government may, at its sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term without notice upon the occurrence of one of the following events:
- (i) if the Developer has not completed construction of the Project within two (2) years of the building permit for the Project being issued by the City of Fredericton; or
 - (ii) if the Local Government, by resolution, rescinds or terminates the Rental Housing Grant Program.

7. RELEASE AND INDEMNIFICATION

- 7.1 The Local Government shall not be liable to the Developer or any other party in relation to the Grant.
- 7.2 The Developer releases and forever discharges the Local Government and its directors, officers, officials, agents, servants and employees from any claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses arising out of or in consequence of any loss, injury or damage to the Developer or its property in any way relating to this Agreement, the Rental Housing Grant Program, Grant, or the Project.
- 7.3 The Developer agrees to indemnify and save harmless the Local Government and its officers, directors, employees, officials and agents from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, a "Claim"), by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with (a) any breach by the

SCHEDULE A

***completed Housing Accelerator Fund Rental Housing Grant – Construction of New Housing Units Application Form – to be inserted**

SCHEDULE B
GENERAL TERMS

1. Headings: The headings are included in this Agreement for convenience of reference only and are not intended to be full or accurate descriptions of the contents thereof.
2. Amendment: Any amendment of any provision of this Agreement, including the Schedules, must be in writing and signed by duly authorized representatives of both Parties.
3. Governing Law: The Parties acknowledge and agree this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.
4. Assignment: This Agreement may not be assigned without the written consent of the Local Government.
5. Waiver: No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.
6. Entire Agreement - The Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior correspondence, agreements, negotiations, discussions and understandings, if any, written or oral.
7. Counterparts: This Agreement may be signed by the Local Government and the Supplier in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.
8. Costs: Each Party shall be responsible for paying its own costs, charges and expenses of and incidental to the preparation, execution and delivery of this Agreement.
9. Successors and assigns: This Agreement shall be binding upon and enure to the benefit of the Parties hereto, their respective successors and assigns.

10. Contra Proferentem Rule Not Applicable: Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.

11. **Notices**: Any notice to be given under this Agreement by the Local Government or the Supplier shall be in writing and delivered by hand, by email transmission or by registered mail, to the other Party at the address and to the attention of the contact individual indicated below:

To the Local Government:

The Office of the
City Clerk
397 Queen Street
Fredericton, NB E3B 1B5
cityclerk@fredericton.ca

To the Developer:

Fredericton, NB E3B _____

notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either Party may change its address or contact for receipt of notices, provided that such Party gives notice thereof in accordance with this Section 11 and confirms the effective date of the change in such notice.

12. Acknowledgement: The Parties acknowledge and agree that any consent or approval required under this Agreement shall be given freely (without any requirement of reasonableness or other standard).

13. Other: The Parties acknowledge and agree that they have had the opportunity to seek independent legal advice or to have this Agreement reviewed by their respective legal counsel.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

- 1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
- 2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
- 3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
- 4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ____ day of)
 _____, 202__.)
)
)
)
)
 _____)
)
 A Commissioner of Oaths)
 Being a Solicitor)

 Jennifer Lawson

PROVINCE OF _____

COUNTY OF _____

*Recipient to provide their standard affidavit OR modify the following as they deem appropriate

AFFIDAVIT OF CORPORATE EXECUTION

I, _____, of the City of _____, in Province of _____, **MAKE OATH AND SAY AS FOLLOWS:**

- 1. That I hold the office of _____ with _____, (hereinafter called the "Corporation") and I am authorized to make this affidavit and have personal knowledge of the matters sworn to herein.
- 2. That the attached instrument was executed by me as the officer duly authorized to execute the instrument on behalf of the corporation.
- 3. That the seal affixed to the foregoing instrument is the seal of the Corporation and was affixed to the instrument by order of the board of directors of the Corporation.

Or

That the Corporation has no seal. (* Delete inapplicable clause)

- 4. That the instrument was executed at the place and on the date specified above.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the)
 Province of New Brunswick, this)
 ____ day of _____, 20__.)
)
)
)
 _____)
)
 A Commissioner of Oaths)
 Being a Solicitor)

DRAFT AFFIDAVIT