THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 12-166

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND MOLONEY PROJECT DEVELOPMENT CORPORATION

WHEREAS section 110(1) of the Municipal Act, S.O. 2001, c.25 provides that the Council of a Municipality may enter into agreements for the provision of Municipal Capital Facilities; and

WHEREAS the Municipal Housing Project Facility owned by Moloney Project Development Corporation, and municipally known as 21 Barnardo Avenue, in the City of Peterborough is deemed to be a Municipal Housing Capital Facility;

NOW THEREFORE THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and the Clerk be and they are hereby authorized to execute the Affordable Housing Project Facility Agreement between The Corporation of the City of Peterborough and Moloney Project Development Corporation for the provision of a municipal housing project facility, at 21 Barnardo Avenue, in the City of Peterborough, and to affix the Seal of the Corporation thereto, in the form attached hereto as Schedule A.

By-law read a first, second and third time this 10th day of December, 2012.

(Sgd.) Daryl Bennett, Mayor
(Sgd.) John Kennedy, City Clerk
THE CORPORATION OF THE CITY OF PETERBOROUGH
(hereinafter called the “City”)

and

MOLONEY PROJECT DEVELOPMENT CORPORATION
(hereinafter called the "Proponent")

AFFORDABLE HOUSING PROJECT FACILITY AGREEMENT
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AFFORDABLE HOUSING PROJECT FACILITY AGREEMENT

This Agreement made the 15th day of December, 2012

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the “City”)

and

MOLONEY PROJECT DEVELOPMENT CORPORATION

(hereinafter called the “Proponent”)

WHEREAS:

A. The Proponent is the registered owner of the lands municipally known as 21 Barnardo Avenue.

B. The Proponent proposes to develop an affordable rental project for seniors located at 21 Barnardo Avenue, within the Community Improvement Plan area (“Project”).

C. According to section 13(1) of the Housing Services Act, 2001, a Service Manager may establish, administer and fund housing and homelessness programs and services and may provide housing directly.

D. The City’s Bylaw No. 12-094, “Municipal Housing Facilities By-law”, provides that a municipality may enter into an agreement for the provision of affordable housing, as a municipal capital facility.

E. The City’s Bylaw No. 11-114 adopts the Affordable Housing Community Improvement Plan to assist in the development of affordable housing in the City.

F. The City and the Proponent wish to enter into this Agreement to establish the Proponent’s obligations with respect to the Project and the City’s commitment to provide benefits or assistance to the Proponent.

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

1. INTERPRETATION

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

   • “Affordability Period” means the 20 years following the date of the first (1st) occupancy of a Unit in the Project;

   • “Affordable Housing” for the purpose of this Agreement, means a municipal housing project facility in which the average rent for each unit size, including utilities, but exclusive of parking, telephone, cable and other related fees is less than or equal to 90% of the most recently released CMHC “average market rent” for the City of Peterborough for that unit size.

   • “Agreement” means this Municipal Housing Project Facilities Agreement entered into between the City and the Proponent;

   • “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;

   • “CMHC” means the Canada Mortgage and Housing Corporation;
• "Construction Contract" means an agreement with the General Contractor (the person who has contracted with the Proponent for the supply of services and materials) for the construction of the Project;

• "Development Activities" means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for residential purposes, including the acquisition of Property;

• "Event of Default" has the meaning ascribed thereto in Section 14.0 hereof;

• "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;

• "Funding Schedule" means the schedule of funding setting out progress payments for the type of Project to be undertaken by a Proponent, in the form determined by the City and as set out in Schedule "B";

• "Funds" means the total amount of dollars provided to the Proponent, as set out in the Funding Schedule, and the term "Funding" shall have the same meaning;

• "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;

• "Household Income" means the gross annual income from all sources identified by the City and may be revised from time to time, of all persons who reside in a Unit, or who will reside in a Unit if such Unit were rented to them;

• "Maximum Household Income" means the Maximum Household Income in order to rent a Unit, as established by the City and adjusted annually;

• "MPAC" means the Municipal Property Assessment Corporation.

• "Occupancy Date" means the date on which occupancy of all Units in a Project is permitted;

• "Parties" means the City and the Proponent and "Party" means either of them, as the context may require;

• "Permitted Encumbrances" means the encumbrances encumbering the Units listed in Schedule "E" together with such renewals or replacement financing that may be approved by the City, acting reasonably, during the term of this Agreement;

• "Phase-out Period" means the last five (5) year period of the Affordability Period;

• "Program" means the Affordable Housing Community Improvement Plan, as amended from time to time;

• "Project" means Affordable Housing approved for the Program described in Schedule "I";

• "Property" means the lands and premises (including any building located thereon) which are the property of the Proponent and upon which the Project shall be built, described in Schedule "H";

• "Security Documents" means the security documents attached to and forming part of the this Agreement including the Security Documents required in Section 7 of this Agreement;
• "Service Manager" means The Corporation of the City of Peterborough;
• "Substantial Completion" means the substantial performance, within the meaning of the Construction Lien Act, 1990, of all contracts which the Proponent has entered into for Development Activities in connection with the Project under this Agreement;
• "Tenant" means a person or persons who pay rent in return for the right to occupy a Unit for residential use and includes the tenant’s heirs, assigns and personal representatives and "Tenants" shall have a corresponding meaning; and
• "Unit" means a self-contained residential dwelling.

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

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<th>Schedule</th>
<th>Description</th>
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<tr>
<td>&quot;A1&quot;</td>
<td>Municipal Housing Facilities By-law 12-094</td>
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<td>&quot;A2&quot;</td>
<td>Affordable Housing Community Improvement Plan By-law 11-114</td>
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<td>&quot;E&quot;</td>
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<tr>
<td>&quot;J&quot;</td>
<td>Proponent's Monthly Reports</td>
</tr>
</tbody>
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1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

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

2. CONTRIBUTIONS UNDER MUNICIPAL HOUSING FACILITIES BY-LAW 12-094

2.1 The City agrees to provide to the Proponent upon the terms and subject to the conditions set out in this Agreement the amount of Four hundreds and Forty thousands ( $440,000.00), of which $300,000.00 being the Affordable Housing Capital Grant and $140,000 being the land purchase refund.

2.2 The City shall disburse the Funds in accordance with the Funding Schedule attached as Schedule "B." The Proponent agrees that it shall use the Funds in accordance with the terms of this Agreement and in strict accordance with the Funding Schedule.

2.3 The City shall retain, unadvanced, a portion (the "Holdback") of the Funding equal to such percentage of the price of the services and materials supplied under any contract for the construction of the Project or any part thereof or any other improvements on, at or to the Property pursuant to which the Proponent is liable as payer as shall be required by applicable building or construction lien legislation. The Proponent shall be entitled to request the release of the Holdback, or a portion thereof, at such time as the City shall have been satisfied that, to the extent of the amount to be released, no person has a lien under such legislation on the Property, which may have priority over the Permitted Encumbrances.

2.4 The City will provide a waiver of applicable Development Charges in the amount of $222,720.00.

In the event that the Proponent fails to comply with any of the conditions in this Agreement, the Development Charges waived pursuant to section 2.4 shall be deemed payable on the date of occupancy of the Project, and may be added by the City to the tax rolls and collected in the same manner as realty taxes.

2.5 The City will provide the Proponent with full exemption from property taxes levied for municipal and school purposes for a period of ten (10) years which shall commence on the date of additional assessment as established by MPAC ("Commencement Date").

In the event that the Proponent fails to comply with any of the conditions in this Agreement, the tax exemptions provided pursuant to section 2.5 shall be terminated forthwith, and the Proponent will be responsible for any future applicable taxes.
3 CONTRIBUTIONS UNDER COMMUNITY IMPROVEMENT PLAN – MUNICIPAL INCENTIVE PROGRAM

3.1 The City will waive municipal fees including Cash-in-lieu of parking, parks levy, and site plan application fee, as follows:

(a) Cash-in-Lieu of Parking       $65,000.00
(b) Parks Levy                    $24,000.00
(c) Site Plan Application Fee    $2,045.00

3.2 In the event that the Proponent fails to comply with any of the conditions in this Agreement, the Proponent shall pay to the City forthwith the entire amount of municipal fees waived pursuant to section 3.1 together with any applicable costs and interests.

4. CONTRIBUTIONS UNDER COMMUNITY IMPROVEMENT PLAN – TAX INCREMENT BASED GRANT PROGRAM

4.1 The annual grant will be equivalent to 100% of the increase in municipal property taxes which do not include education taxes, in years 11 to year 15 after the Commencement Date. Subsequently, the annual grant shall be 80% in year 16, 60% in year 17, 40% in year 18, and 20% in year 19. For further clarification, the increase in municipal property taxes shall be the difference between the current value assessment of the improved lands less the current value assessment of the vacant lands. Grant payments will cease on the earlier of:

(a) the date when the total of all annual Grant payments equal the total costs of rehabilitation of the subject lands; or

(b) 19 years after the date of completion of the rehabilitation of the subject lands.

4.2 The total value of the sum of the annual grant payments that may be provided under the Program shall not exceed the total costs of rehabilitation that have been accepted by the City, which costs are estimated, as of the date of this agreement, at $6,619,955.00

4.3 Where the actual costs of rehabilitation are, in the opinion of the City, less than the estimated costs of rehabilitation the maximum permitted amount of the total annual grant payments shall be reduced by the difference between the estimated costs and the actual costs.

4.4 Where at any time after the original rehabilitation of the subject lands, new construction is added to the subject lands that is not part of the original Program application, the grant payment will be calculated only in respect of the original rehabilitation contained in the original application, based on the property taxes levied in the last year before revaluation by MPAC as a result of the new construction added to the subject lands.

4.5 The annual grant payment shall be calculated by the City based upon, and provided the City is satisfied in its sole discretion that:

(a) rehabilitation of the property was completed and took place in accordance with the proposed rehabilitation as specified in the Program application and this Agreement;

(b) there was and remains during each year of the grant payment, an increase in net municipal property taxes as a result of an increase in the assessed value attributable to the completion of the rehabilitation; and

(c) annual grant payments after the first grant payment are adjusted downwards in the event the tax increase in any subsequent year has been reduced.

4.6 This Program does not exempt property owners from an increase in municipal taxes due to a general tax rate increase or a change in assessment for any other reason after the property has been improved, except by reason of an assessment appeal.

4.7 The City shall review all cost estimates submitted in support of the application in evaluating the estimated rehabilitation costs eligible for the grant, which costs, when approved by the City shall constitute the maximum amount of the total grant payments to be paid out over a maximum of 9 years. In the event the City is not satisfied with said cost estimates, the City may substitute their opinion of such amounts for purposes of calculating the eligible rehabilitation costs for the grant. If the City is not in receipt of sufficient information satisfactory to the City to determine rehabilitation costs and the amount of the grant, the application will not be processed and the application file will be closed. The decision of the City regarding the total amount of rehabilitation costs, the calculation of the total estimated maximum grant and the calculation of the actual grant payments is final, absolute and within the City's sole discretion.
4.8 The grant is not payable by the City until such time as additional assessment eligible for a grant has been added to the assessment roll by the MPAC, taxes eligible for a grant have been billed by the City, and all taxes have been paid in full for at least one year by the Proponent. The grant will not be issued if there is an outstanding tax payment. If at any time after the execution of this Agreement, property taxes are owing on a property for more than one full year, the City will have the option, upon notice to the Proponent, and at its sole discretion, to terminate all future grant payments. The City is under no obligation under this agreement to inform the Proponent that the property taxes are in arrears.

4.9 The grant is not payable by the City until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment have been filed and finally determined.

4.10 Annual grant payments are not payable by the City until each of the following conditions is fulfilled in a manner satisfactory to the City:

(a) this Agreement has been signed, executed and registered on title;

(b) The Proponent has commenced Development Activities within one hundred and twenty (120) days of execution of this Agreement;

(c) the Proponent has satisfied the City that there are no liens registered on title;

(d) the Proponent has satisfied the City that the total rehabilitation costs incurred have been paid in full and that there are no liens, claims or litigation in respect of the Proponent's obligation to pay these costs;

(e) the Proponent has satisfied the City that there are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the redevelopment, the property and the business of the Proponent conducted on the subject lands;

(f) the Proponent has satisfied the City that as of the date of the proposed first grant payment, the Proponent, its rehabilitation project and property are in full compliance with: by-laws of the City, provincial or federal legislation and their regulations;

(g) the Proponent has satisfied the City that the post project assessed value of the subject property has increased as a result of the said rehabilitation;

(h) the Proponent or the City has not appealed the post-project assessed value and there exists no other pending appeal which has not been settled completely in respect of the post project assessed value;

(i) the Proponent has satisfied the City that the property taxes for the year during which property taxes were calculated pursuant to the said increased assessment and for each of the preceding years, have been paid in full, have not been deferred and there are, at the time of payment of the annual grant, no instalments of property taxes for the current year remaining to be invoiced and paid;

(j) the Proponent has satisfied the City that the Proponent, as of the date of the proposed grant payment, has paid in full and not deferred all other charges (where applicable) against the property in favour of the City, including but not limited to: special assessments, building permit fees and local improvement charges; and

(k) the Proponent has provided the City with an annual rental report on the total amount of rent being charged to tenants, for every unit.

4.11 In the event that the Proponent fails to comply with any of the conditions in this Agreement, no further grant payments are payable by the City.

5. CONDITIONS PRECEDENT

5.1 The provision of the Funding by the City pursuant to Section 2.1 and 2.2 is subject to the following conditions precedent, each of which is for the exclusive benefit of the City, and may be waived in full or in part by the City by written notice to the Proponent:

(a) the Proponent is the registered owner in fee simple of the lands described in Schedule "H" or shall have entered into a lease agreement for the term of this Agreement, with the registered property owners;
any Municipal Housing Facilities Agreement remaining in force and the Proponent being in good standing there under;

c) there being no Claim for Lien under the Construction Lien Act, 1990, 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 lands described in Schedule “H” being free from any encumbrances other than the Permitted Encumbrances;

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 City with the Security Documents required by Section 7 and in accordance with the said section;

k) the Proponent obtaining a current Location Survey (the “survey”) prepared by a qualified land surveyor showing the location of the existing building(s) and showing that these buildings are contained entirely within the limits of the land and that there are no encroachments on the land from adjoining properties or in the alternative, a title insurance policy will be accepted in lieu of a survey;

l) the Proponent having received the required planning approvals including but not limited to severance application, Official Plan and zoning by-law amendments;

m) the Proponent having approval of mortgage financing and interest rate in the form of a mortgage commitment satisfactory to the City to ensure full financing for the balance of the capital costs; and

n) The Proponent having provided the City with a current Corporate Profile Report.

5.2 If any of the conditions contained in Section 5.1 have not been fulfilled by the date for the disbursement of the Funding by the City pursuant to Section 2.2 and are not waived by the City pursuant to Section 5.1, the City shall be under no obligation to make any advance of the Funds to the Proponent and the City 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 City 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 City 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.

6. TERMS OF FUNDING

6.1 The Proponent shall comply with the requirements of the Municipal Housing Capital Facilities By-law 12-094, as set out in Schedule “A-1”, the Affordable Housing Community Improvement Plan By-law 11-114, as set out in Schedule “A-2”, the terms of this Agreement and the Proponent shall have completed the Project in accordance with the Project Information Form, found in Schedule “I”.

6.2 The Funding shall have a term of twenty (20) years, commencing as of the Interest Adjustment Date.

6.3 Prior to the Interest Adjustment Date, interest shall accrue on the total of the Funding or amounts advanced at the rate of eight per cent (8%) per annum. The interest so calculated shall compound semi-annually, not in advance, until the Interest Adjustment Date.

6.4 On the Interest Adjustment Date, the amount of interest accrued as calculated in Section 6.3 shall be forgiven, provided that the Proponent has satisfied all requirements as set out in Section 5.

6.5 With effect from the Interest Adjustment Date, the interest rate applicable to the Funding shall be the higher of the average posted rate offered by major Canadian lending institutions for a commercial first mortgage having a five (5) year term, plus 2% or the interest rate applicable to the first mortgage registered against title to the Property, plus 2%.
6.6 On each anniversary date of the Interest Adjustment Date, the Proponent shall pay the City the amount of interest as calculated on the Funding, according to the interest rate stipulated in section 6.5, so accrued under the Funding, provided, however, if the Proponent is in compliance with all terms and conditions of this Agreement, as of such anniversary date, the amount of the interest so owing shall automatically be forgiven.

6.7 The Funds shall be fully forgiven on the last day of the month at the end of the term of the Agreement provided that the Proponent has fulfilled all the requirements of the Program as set out in this Agreement. The City, at the Proponent's request and costs, will provide a discharge of the Security.

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

6.9 The City shall not be liable to the contractor, suppliers, sub-contractors, craftsmen, labourers or others for goods and services delivered by them in relation to the Project on behalf of the Proponent, or employed in the construction of the Project, or for any debts or claims accruing to any of the parties against the Proponent or against the Project.

6.10 It is distinctly understood and agreed by the parties hereto that there is no contractual relationship either express or implied, between the City and the contractor, any supplier, contractor, sub-contractor, craftsman, labourer or person supplying any work, services or material to the Project, on behalf of the Proponent. The Proponent is not, and shall not be, the agent of the City for any purpose. There shall be no third party beneficiary of this Agreement, express or implied.

7. SECURITY

7.1 Prior to the City disbursing the Funds to the Proponent pursuant to Section 2.2, the Proponent shall provide the City with an executed registrable Agreement and Security Documents in the form attached hereto as Schedules "D-1", "D-2" and "D-3" (the "Security"), completed in accordance with this Agreement.

7.2 The Security shall be collateral to this Agreement. Any cash contributions from the City shall be included in the Security Documents. The amount of any eligible in-kind contributions from the City shall not be included in the Security Documents.

7.3 Without limiting the Proponent's covenants and the remedies of the City under this Agreement and the Security, the Proponent agrees that a breach of this Agreement including the occurrence of an Event of Default pursuant to Section 14 shall constitute a breach of the Security and a breach of the Security shall constitute a breach of this Agreement.

7.4 The City acknowledges and agrees that notwithstanding that the Security provides that the principal and interest secured thereunder is payable on demand, the City shall have no right to demand payment thereunder except in accordance with the provisions of this Agreement relating to 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 the Funds provided by the City.

7.5 The Security shall rank immediately behind the registered security for the Proponent's Permitted Encumbrances for the Project, or as otherwise determined by the City.

8.0 COVENANTS OF THE PROPONENT

8.1 The Proponent covenants and agrees with the City that, it shall:

(a) commence Development Activities within one hundred and twenty (120) days of execution of this Agreement;

(b) take all such actions and do all such things required to develop and continuously carry on the Development Activities in a good and workmanlike manner and in accordance with the Plans and Specifications and to complete such construction not later than the date specified in Schedule "I", subject to acts of God and other events which occur for non-financial reasons beyond the control of the Proponent, including, without limitation, strikes, lock-outs or other labour or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, future valid orders of any regulatory body having proper jurisdiction, wars, riots, sabotage, blockades, embargoes, insurrections, lightning, earthquake, fires, storms, floods and explosions and to pay all costs thereof;
(c) do or cause to be done all acts and things necessary to preserve in full force and effect the existence of the Proponent and all licences and permits required for the carrying on of the operations of the Proponent at and from the Project and to preserve and protect all of the properties, real and personal owned and used by the Proponent in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair;

(d) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the City, 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 City with appropriate security; and

(e) deliver to the City the statements and reports as required by this Agreement;

8.2 The Proponent covenants and agrees with the City that, so long as any obligation is outstanding by the Proponent to the City hereunder the Proponent will not, without the prior written consent of the City, which consent may 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"):

(i) encumbrances created in favour of or assigned or pledged to the City;

(ii) 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 City, if requested;

(iii) inchoate or statutory liens of contractors, sub-contractors, mechanics, suppliers, workers and others in respect of the construction, maintenance, repair and operation of the Project, 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 City 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 City or paid into Court to prevent effectively in the City'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

(iv) Permitted Encumbrances listed in Schedule “E” hereto.

(b) become a party, without the prior written consent of the City, 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) make any material change in the Plans and Specifications or the Construction Contract which pertains to the number or type of residential dwelling units of the Project without the prior written approval of the City; or

(d) 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 City.

8.3 The Proponent covenants and agrees that the Funding is subject to the Canadian Environmental Assessment Act and that the Project does not impose adverse impacts that cannot be mitigated. Considerations include:

(a) Projects that involve construction, expansion, modification or demolition within 30 m of a water body;

(b) Projects that involve construction, expansion or modification with a footprint of more than 500m2 on land not serviced at the time of the Funding commitment;

(c) does not involve the likely releasing of a polluting substance into a water body;
(d) Projects that involve the demolition of a building where its floor area is more than 1,000m² or where the Project is to be carried out within 30m of another building;

(e) does not (i) possibly affect the permafrost and (ii) take place on land not services at the time of the Project and (iii) involve construction or expansion of a sidewalk, boardwalk, path, pedestrian ramp or access road longer than 100m²;

(f) Projects that involve construction or expansion or modification in a national park, park reserve, national historic site or historic canal;

(g) does not involve a use other than:
- residential accommodations
- institutional accommodations/offices
- common-carrier-passenger facilities and services
- retail sales facilities
- medical, educational, informational or recreational facilities or services
- food services
- parking facilities
- non-hazardous storage facilities
- presenting artistic, cultural, sporting or other community-related events.

8.4 The Proponent agrees to complete the Project within the Project Financing, as outlined in Appendix “C” of Schedule “I” attached hereto, with the funds allocated to each item therein, in each case, as such Project Financing may be modified from time to time with the prior written approval of the City.

8.5 The Proponent agrees to complete the Project in accordance with the Project Milestones as outlined in Appendix “A” of Schedule “I”, as may be modified from time to time with the prior written approval of the City. The Proponent shall provide a Monthly Report during construction to the City in the form attached hereto as Schedule “J”.

Despite the foregoing, a modification to the Project Financing or the Project Milestones may be made by the Proponent without the written approval of the City provided that such modification is minor in nature.

8.6 A modification of the Project Financing will be considered minor in nature if the value of the modification increases or decreases the total Project Financing by less than 10%. A modification of the Project Milestones will be considered minor in nature if the milestones for construction start, Substantial Completion and Occupancy are met and all conditions outlined in this Agreement are met within sixty (60) days of the milestone dates as outlined in Schedule “I”.

8.7 In the event that a modification of the Project Financing is not considered minor, the Proponent shall provide the City with a report, prepared by a qualified Quantity Surveyor, or other professional, substantiating the additional costs.

8.8 Following the full completion of the Development Activities related to the Project, the Proponent shall submit to the City a completed Project Initial Occupancy Report attached hereto as Schedule “F”, and annually thereafter shall submit to the City a completed Project Annual Occupancy Report in the form attached hereto as Schedule “G”.

8.9 Without limiting the Proponent’s obligations under Section 8.8, the Proponent, if requested by the City, shall forthwith submit to the City the material required to be submitted to the City pursuant to Section 8.8, in addition to any such material that the Proponent may have previously submitted to the City.

8.10 The Proponent represents that it has not provided the City with any false or misleading information respecting the Project and this Agreement and the Proposal and agrees that it shall not provide any false or misleading information to the City in the performance of its obligations under this Agreement.

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

8.12 The City may conduct an audit, investigation, or inquiry in relation to the Project or any larger development or project of which the Project is a part and the Proponent shall cooperate with the City and provide free access to the Project and to such staff, documents, book, records and accounts as may be determined by the City.
8.13 The Proponent shall disclose to the City without delay any fact or event that the Proponent is aware of from time to time which may compromise the Proponent's chance of success in carrying out and administering the Project.

8.14 The provisions of Sections 8.8, 8.9, 8.10, 8.11, 8.12 and 8.13 shall continue to apply for a period of seven (7) years following the end of the period described in Section 6.2 or the Phase Out Period or the date of any early termination of this Agreement.

8.15 The Proponent shall provide the City with evidence of its good standing under any such municipal housing facilities agreement within ten (10) Business Days following its receipt of a written request from the City.

9. REPRESENTATIONS AND WARRANTIES

The Proponent represents and warrants to the City that:

9.1 The Proponent is a duly incorporated, organized and validly existing body corporate under the laws of the Province of Ontario and has full capacity, power and authority to own all its property and to carry on its business as now conducted and as contemplated under this Agreement and all other agreements contemplated hereunder including but not limited to development, operation and management of the Project, 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.

9.2 The Proponent has full corporate power, legal right and authority to enter into this Agreement and each of the Security Documents to which it is a party in accordance with their respective terms and perform its obligations and to do all acts and things as are required or contemplated hereunder to be done, observed or performed by it.

That this Agreement and each of the Security Documents to which the Proponent is a party have been duly and validly authorized, executed and delivered by the Proponent and are valid and binding obligations of the Proponent enforceable in accordance with their respective terms;

9.3 Neither the execution and delivery of this Agreement or Security Documents, the consummation of the transactions herein contemplated, nor the compliance with the terms, conditions and provisions hereof and of the Charge/Mortgage of Land will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter documents or by-laws or constituting documents of the Proponent or of any agreement or instrument to which it is now a party, or constitute a default there under.

9.4 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.

9.5 Except as previously disclosed in writing to the City, 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.

9.6 None of the information, financial or otherwise, provided by the Proponent to the City to induce the City to provide Funding 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.

10. PROVISION AND OPERATION OF AFFORDABLE HOUSING

10.1 The Proponent agrees to undertake its Development Activities in connection with the Project in accordance with the provisions relating to the development of the Project in conformity with its Project Information Project.

10.2 The Proponent shall, subject to Force Majeure, achieve Substantial Completion in accordance with its Project Information Project.

10.3 Without limiting the condition set out in Section 3.1 (c), the Proponent shall discharge or cause the discharge of any registered construction liens so as to ensure that there is no construction liens registered against the Project on the date for the disbursement of Funds under Section 2.2.
10.4 The Proponent acknowledges and agrees that the Rental Protocol set out in Schedule "C" applies to the Project by virtue entering into this Agreement, notwithstanding the Tenant Protection Act, 1997 or the Residential Tenancies Act, 2006, as amended.

10.5 The Proponent agrees to operate the Units in accordance with the rules set out in Schedule "C" of this Agreement.

10.6 If the Proponent is unable to locate a tenant with income below the Maximum Household Income, the Proponent shall notify the City immediately. Failure to comply with this requirement shall result in the default of this Agreement.

10.7 In the event the Tenant in a Unit vacates the Unit during the initial fifteen (15) year period of the term of the Agreement, the Proponent shall ensure the Household Income of the new Tenant of the Unit is at or below the applicable Maximum Household Income.

10.8 A legitimate and arms length Proponent/Tenant relationship must exist at all times during the term of this Agreement. Units subject to the Agreement shall not be rented to the Proponent or shareholders or directors of the Proponent, or any individual not at arms length to the Proponent or shareholders or directors of the Proponent.

10.9 The Proponent agrees, in the renting of the Property, not to discriminate against any person by reason of race, national or ethnic origin, colour, religion, age, disability, sex, marital status, sexual orientation, a conviction for which a pardon has been granted, or other reason in contravention of the Ontario Human Rights Code.

10.10 The Proponent shall be responsible for ensuring that the Property and all Units are maintained to a minimum level of health and safety in compliance with all applicable legislation.

11.0 RENT

11.1 The proponent agrees to adhere to Schedule "C" Rental Protocol. The City will update the Maximum Household Income on an annual basis and will notify the Proponent of same.

11.2 The Proponent agrees that under no circumstances shall a Unit be made available:

(a) at a rent that is greater than 90% of the Average Market Rent; and

(b) if at the time the Unit was rented, the Household Income would exceed the Maximum Household Income.

11.3 Rents are inclusive of utilities, and exclusive of telephone, parking, cable and other related fees.

11.4 The City, at its option, may require the Proponent to enter into a Rent Supplement Agreement (as defined in the Housing Services Act, 2011,) for a maximum of 20% of the units in the Project.

11.5 The Proponent shall maintain an income screening process and keep records to demonstrate that Tenants have annual incomes below the permitted Maximum Household Income at the time the unit is first rented.

The City may request that the Proponent provide the City with the records relating to the income screening process after providing the Proponent with at least five (5) business days written notice.

12.0 INDEMNIFICATION

12.1 The Proponent shall indemnify and save harmless the City, its Mayor, Councillors, officers, directors, employees, agents, representatives, successors and assigns, from all claims, costs, losses, damages, expenses, injury, disability, duties, dues, accounts, covenants, demands all matter of actions, causes of action, or other proceedings of every kind or nature whatsoever at law or in equity arising out of this Agreement and the Project and out of the operation of the Units including but not limited to claims arising out of negligence of any party to this Agreement and specifically, all claims arising out of the intentional or criminal acts of any officers or directors, employees, agents, volunteers or independent contractors or subcontractors of the Proponent. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring during the term of this agreement.
13. INSURANCE

13.1 The Proponent covenants and agrees at all times during the term hereof to take out and keep in full force and effect the following policies as outlined in Article 13.0.

13.2 Building-in-Course-of-Construction Insurance. During the period of construction including demolition or construction on the Project, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work, including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the City and the Proponent and their employees and all those for whom they are at law responsible (without rights of cross-claim as between the City and the Proponent) from damage to the Project from time to time during the work, including demolition and construction (which may be by policies effective from time to time covering the risks during different phases of the work, demolition and construction) by a Builders' Insurance Policy including resultant damage for error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Project, to the replacement cost thereof.

13.3 “All Risks” Property Insurance. Except as to any portion of the Project under construction which is insured by the insurance coverage provided pursuant to Subsection 13.2, the Proponent shall, at all times during the Affordability Period, insure and keep insured the Project and all other insurable property belonging to the Proponent and from time to time located on the Project in an amount not less than the replacement cost thereof against loss or damage by perils of “all risks” (being the perils from time to time included in the standard “all risk” policy and to the extent available and as would be obtained by a prudent owner of such a Project). If a separate policy of insurance is maintained for the boilers and pressure vessels, the policies will include a Joint Loss Agreement between insurers. The boiler and machinery coverage shall be on a repair and replacement basis, in an amount to reflect the replacement cost of the building and the contents and equipment located on the premises. The City will be included as joint loss payee on the insurance policies required in Sections 13.2 and 13.3.

13.4 Public Liability Insurance. The Proponent shall, at all times during the term of this Agreement, maintain or cause to be maintained comprehensive Commercial General Liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Project or out of the operations of the Proponent or its sublessees in, on or about the Project, indemnifying and insuring the City and the Proponent and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Project would, from time to time, carrying (which amount shall initially be no less than Five Million Dollars ($5,000,000.00) and be written on Wrap Up form during any period of construction and thereafter not less than Five Million Dollars ($5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross-liability and severability of interests. During the course of the work or any other construction, the liability insurance required under this Article shall relate to property damage, death or injury arising out of the performance or non-performance of the work or any other construction or related work and shall include non-owned automobile liability insurance. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies. The City will be included as an additional insured on the Commercial General Liability insurance policy which is to be maintained by the Proponent following the completion of construction.

13.5 Professional Liability Insurance. The Proponent shall provide Professions Liability Insurance having a limit of not less than $2,000,000 per claim with a $4,000,000 aggregate; or alternatively, the shall purchase and maintain in force for the duration of the project, single project or site specific Professional Errors & Omissions Liability Insurance with limits dedicated to the project and having an inclusive limit of not less than $2,000,000 per claim. If the Project or Work involves construction, the coverage will include a two-year maintenance period following substantial performance.
13.6 **Standard Form Automobile Liability Insurance.** The Proponent shall provide the Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario having an inclusive limit of not less than:

(a) Where the contract will involve the use of one or more automobiles or any combination of automobiles and towed vehicles having in any case a combined aggregate weight of 5 tonnes or more before loading, $2,000,000 per occurrence.

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

13.8 **Copies of Policies and Approval of Policies.** The Proponent shall deliver certificates of all insurance forthwith to the City.

13.9 **City Approval.** The City, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the Proponent, including the limits of coverage and the provisions thereof.

13.10 **Non-Cancellation.** Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change the policies, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) days’ prior written notice to the City.

13.11 **Premiums and Evidence of Payment Thereof.** The Proponent shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article.

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

13.13 **Loss or Damage.** The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project, or damage to property of the Proponent, or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the Proponent or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the City, its agents, employees, contractors, or others for whom it may in law be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, failing fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other Persons on the Project or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Proponent kept or stored on the Project shall be so kept or stored at the risk of the Proponent only and the Proponent releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same, including, without limitation, any subrogation claims by the Proponent’s insurers.

13.14 **Workplace Safety and Insurance Board Coverage.** The Proponent agrees to obtain for its employees and to require all designated contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons Workplace Safety and Insurance Board coverage and to ensure that such coverage continues in effect throughout the period of work.

13.15 **Additional Insurance.** It shall be the sole responsibility of the Proponent to determine what additional insurance coverage, if any, are necessary and advisable for its own protection and/or to fulfil its obligation under this Agreement. Any such additional insurance shall be maintained and provided at the sole expense of the Proponent.
14.0 EVENTS OF DEFAULT AND REMEDIES

14.1 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 within ten (10) days of receipt of written notice of the “failure” from the City provided the Proponent shall not be deemed to be in default if within the said period of ten (10) days, the Proponent commences the necessary action to remove the “failure” and such action is diligently prosecuted;  

(b) any representation or warranty made by the Proponent in this Agreement 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 Project, or any person shall commence an action, suit or proceeding contesting or questioning the validity or enforceability of this Agreement, unless the Proponent shall diligently contest such action, suit or proceeding and discharge any such lien forthwith without the requirement of notice by the City and post such bonds, cash or letters of credit or give such other security in order to obtain such discharge in amounts and on terms satisfactory to the City, 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:  
   (i) an involuntary petition seeking the adjudication of the Proponent as bankrupt or insolvent not removed within thirty (30) days; or  
   (ii) 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  
   (iii) a writ of execution, judgment or writ of attachment or any similar process which may, in the reasonable opinion of the City, materially impair the ability of the Proponent to perform its obligations under this Agreement or any of the Security Documents shall be made, given or issued against the Proponent or in respect of its property and assets, and such petition, order, writ or judgment is not vacated or stayed within fifteen (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 City, detrimentally affect the ability of the Proponent to meet its obligations to the City;  

(h) if the Project is entirely destroyed or damaged to such an extent that, in the opinion of the quantity surveyor, acting reasonably, it is no longer fit for the purpose for which it was intended and the insurance proceeds, if any, held by the City, in the opinion of the quantity surveyor, acting reasonably, are insufficient to repair such destruction or damage, and the Proponent has not provided evidence satisfactory to the City of the timely availability of such sufficient funds; or  

(i) where the Proponent, shareholders or directors of the Proponent or their family members or any individual not at arms length to the Proponent or shareholders or directors of the Proponent moves into one of the Units;  

then, the City may declare all of the Funds, together with all other moneys owing to the City hereunder, due and payable forthwith. In such case, the City may realize upon any and all Security pledged to it and may commence such other legal actions or proceedings against the Proponent, the Project or assets of the Proponent as may be permitted hereunder or by any one or more of the Security Documents or at law or in equity, all as it, in its sole discretion, deems expedient.
14.2 If an Event of Default shall occur, then the City 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 construction and may complete the construction 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 City.

14.3 Should the Proponent be in default under the terms of the Security Documents or under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property comprising the Project, the City shall have the right to declare all the Funds due and payable immediately. In this event, interest will be payable only from the date of default until the Funds are paid in full. The interest rate shall be the Bank of Canada Prime Rate plus 2% in effect at the time of the default.

14.4 The Proponent hereby assigns to the City and its successors and assigns, the right to possess and use the Plans and Specifications and the Proponent’s rights under all Construction Contracts, for the purpose of completing the Project if the Proponent defaults subject to any prior assignment to the Proponent’s primary financing.

14.5 All reasonable costs and expenses of collection (including legal fees, disbursements and court costs) of all amounts owing hereunder or of enforcement of any security created in favour of the City pursuant hereto, shall be for the account of the Proponent and shall be repayable on demand.

14.6 All of the remedies in this Agreement and the Security Documents are cumulative and are not alternative and the City 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.

14.7 Notwithstanding any of the terms of this Agreement and the Security Documents, the City shall have the option of waiving any or all of its remedies under this Agreement and the Security Documents, 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.

15.0 ACCOUNTABILITY FRAMEWORK

15.1 (a) In the event:

   (i) the City is advised that the Project will not proceed; or

   (ii) the building permit for the Project is not issued in accordance with Schedule “I”; or

   (iii) the City determines, acting reasonably, that the Proponent is not proceeding with the construction due to delays likely to cause depreciation or deterioration of the Project; or

   (iv) the City is of the opinion that the Proponent is not proceeding in an expeditious manner with the Development Activities for which the Funds have been provided;

   the Proponent shall return to the City all Funds previously advanced, forthwith upon demand.

   (b) If requested by the City, the Proponent shall submit to the City, an audited financial statement respecting the expenditure of the Funds provided to it pursuant to this Agreement, within ninety (90) days or such additional time as may be determined by the City, following the date on which the City is advised by the Proponent that the Project will not proceed or that the Development Activities related to the Project have been fully completed.

15.2 The Proponent shall, at the request of the City, provide the City with an occupancy permit or other proof that occupancy of all Units in the Project is permitted.

15.3 Upon initial occupancy of a Project, the Proponent shall provide the City with the Proponent’s Initial Occupancy Report, in the form attached to this Agreement as Schedule “F”.

15.4 During the period between the Occupancy Date of each Project and the end of the Phase-out Period, the Proponent shall provide annual completed information report, in the form attached to this Agreement as Schedules “G”.
16.0 PUBLICITY

16.1 The Proponent shall not make any public announcement 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 City.

16.2 During the period of the Development Activities related to the Project, the Proponent shall erect a sign in front of the Project. The sign shall be in accordance with specifications issued by the City.

17. NOTICE

17.1 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 City:

The Corporation of the City of Peterborough
Housing Division
500 George Street North
Peterborough, ON K9H 3R9
Fax: 705.742.5218

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

Moloney Project Development Corporation
c/o Glenn Moloney
676 Red Pine Lane
Bridgenorth ON K0L 1H0
Phone: 705-768-0026
Fax: 705-292-7421

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 4:20 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.

18. GENERAL

18.1 Any power, right or function of the City, contemplated by this Agreement, may be exercised by any employee or agent of the City, who is hereby specifically authorized in this regard.

18.2 It is understood that the Municipal Freedom of Information and Protection of Privacy Act, 1990, shall apply to all records submitted to or created by the City pursuant to this Agreement.

18.3 The disbursement of Funds by the City to the Proponent pursuant to Section 2.1 and Sections 2.2 is subject to the necessary approvals from the City Council.

18.4 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 City and the Proponent as partners of each other.
18.5 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 City and the Proponent or their respective solicitors on their behalf, who are hereby expressly authorized in this regard.

18.6 Any tender of documents or money hereunder may be made by the City 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.

18.7 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.

18.8 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.

18.9 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting the Project or this Agreement other than as expressed in writing in this Agreement.

18.10 This Agreement shall be read with all changes of gender and number required by the context.

18.11 The Proponent shall not list, advertise or hold out for sale or lease or otherwise offer for disposal the Project or any part of the Project without the prior written consent of the City.

18.12 The City in its absolute discretion, may withhold consent to a sale, lease or other disposition of the Project if the sale, lease or other disposition does not meet the following conditions:

(a) the sale, lease or other disposition is to a corporation which has been approved by the City;

(b) the purchaser enters into an agreement with the City and under that agreement assumes all of the Proponent’s obligations and liabilities under this Agreement in respect of the Project;

(c) the character and capabilities of the Project will not be changed or diminished;

(d) the City has approved the agreement of purchase and sale or agreement to lease;

(e) the sale or lease will not decrease the number of Units in the Project; and

(f) such other condition or conditions as the City may determine from time to time.

Notwithstanding Section 16.15, the Proponent may lease individual Units to tenants.

18.13 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing certifying that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.

18.14 No indulgence or forbearance by the City hereunder shall be deemed to constitute a waiver of the City’s right to insist on performance in full and in a timely manner of all covenants of the Proponent hereunder, and such waiver, in order to be binding upon the City, must be express and in writing. No waiver of any provision, condition or covenant shall be deemed to be a waiver of the City’s rights to require full and timely compliance with the same term, covenant or condition of this Agreement at any time.

18.15 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Agreement in any jurisdiction.
18.16 All rights and benefits and all obligations of the City under this Agreement shall be rights, benefits and obligations of the City in its capacity as a party to this Agreement and shall not derogate from or interfere or fetter with the rights, benefits and obligations of the City, its Council or its elected and appointed officials and representatives in their respective functions and capabilities.

18.17 This Agreement shall be binding upon and enure to the benefit of the Proponent and the City and their respective heirs, successors and permitted assigns, as the case may be.

18.18 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.

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

THE CORPORATION OF THE CITY OF PETERBOROUGH

________________________________________
Daryl Bennett
Mayor

________________________________________
John Kennedy
City Clerk

MOONEY PROJECT DEVELOPMENT CORPORATION

________________________________________
C/S or
I have the authority to bind the Corporation

________________________________________
C/S or
I have the authority to bind the Corporation