

## Term Sheet for Development Charges Payment Agreement

6 – 14 Acorn Street

Borrower: Hamilton East Kiwanis Non-Profit Homes ("Kiwanis")

Project: Kiwanis – the 40-units not funded under the Ontario Priorities Housing Initiative (OPHI) of the 60-unit affordable housing building currently under development by Kiwanis on the property municipally known as 8 and 14 Acorn Street, and legally defined as Part Lots 13 and 14 on Plan 46, designated as Parts 1 and 2 on Plan 62R-8132, in the city of Hamilton, province of Ontario and Lots 11 and 12, Plan 46, Part Lot 10, Plan 46, Part Lot 13, Plan 46, as in VM103496, in the city of Hamilton, province of Ontario hereinafter referred to as the "Project"

Lender: City of Hamilton ("City")

Type of Agreement: Development Charges Payment Agreement ("DCPA") to require payment of Development Charges ("DCs") payable for the Project as set out in this term sheet, Appendix "C" to Report HSC19060(a), below hereinafter referred to as the "Payment Arrangement"

### Agreement Conditions

1. The Payment Arrangement will be subject to the recipient entering into a development charges payment agreement ("DCPA") with the City containing such terms and conditions as set out in this term sheet, Appendix "C" to Report HSC19060(a).
2. The Payment Arrangement will be subject to the recipient entering into a conditional grant agreement ("CGA") with the City, prior to the issuance of any building permits for works beyond the building foundation, on such terms as set out in Appendix "A" to Report HSC19060(a).
3. The DCPA will have a term of 20 years consistent with the period of affordability, commencing from the date any of the 40 affordable housing units in the Project are cleared for occupancy.
4. No assignment of the DCPA will be permitted unless consented to by the General Manager of the Healthy and Safe Communities Department and the General Manager of Corporate Services ("GMS") in the GMS sole discretion and only in the following circumstances: (a) the property is sold to another provider of "non-profit housing" as defined in the DCPA who enters into an assignment agreement

with the City and Kiwanis agreeing to be subject to all of the terms and conditions of the CGA and the DCPA for the remainder of the term of those agreements and such other terms and conditions as the GMS and City Solicitor in their sole discretion deem appropriate; (b) the property is sold to another provider of "non-profit housing" as defined in the *Development Charges Act, 1997* ("DCs Act") who enters into an assignment agreement with the City and Kiwanis agreeing to be subject to all of the terms and conditions of the CGA and the DCPA for the remainder of the term of those agreements and the assignee agrees to complete the Project in accordance with the Kiwanis plans approved by the City and such other terms and conditions as the GMS and City Solicitor in their sole discretion deem appropriate.

5. Requirement to provide the City with original insurance certificates for "Property All Risks" insurance, Broad Form Boiler and Machinery insurance, and insurance against loss of Rent, rental value and other payments required to be paid or made by tenants, or business interruption and profits from the business, to the satisfaction of the Manager of Legal and Risk Management Services.

#### Development Charge and PDCs

6. Kiwanis covenants to pay to the City, in respect of the Project, a total City development charge in the amount of \$ **[insert # here]** or a revised amount as approved by the Council of the City (the "DCs"). Payment of **\$0.00** shall be made prior to the issuance of the Building Permit. Payment of the balance of the DCs in the amount of \$ **[insert # here]**, the Payable Development Charges ("PDCs") shall be made in accordance with this Term Sheet.

#### Payment to Coincide with Conditional Grant Payments

7. The payment of the PDCs shall be made to the City annually, at commencement of, and concurrently with, the Conditional Grant Payments ("CGPs"). The required annual payment amount shall be the higher of:
  - (a) the annual PDCs payment;
  - (b) 1/20 of the approved conditional grant; or,
  - (c) 1/20 of the PDCs;

and if any portion of the PDCs remains unpaid on the date the last CGP payment occurs said unpaid portion shall be due and payable on the date the last CGP payment occurs except where, pursuant to the terms of this Term Sheet, the said payment is required and due in full prior to the said date (the aforesaid payment requirements shall be referred to as the "Payment Agreement").

## Payable To

8. Payment will be made via assignment of the annual CGP until the PDCs are paid in full. Where the annual CGP is less than the required annual payment the difference shall be paid by Kiwanis within sixty (60) days from the date of the CGP payment. If the difference remains unpaid after sixty (60) days the difference shall be added to the Property Tax Roll.

## Interest

9. Kiwanis shall not pay interest on any portion of the PDCs including any unpaid portion of the PDCs.

## Events of Default

10. Events of default shall include but not be limited to:
  - a. Within the term of the DCPA and CGA the housing is no longer "non-profit housing" as defined under the *DC Act O.Reg.82/98*;
  - b. Failure to observe any of the conditions for advance of a grant payment;
  - c. Breach of any provision of the CGA or DCPA;
  - d. If any part of the Project to which the Grant and DCPA applies is changed so that it no longer consists of a non-profit housing;
  - e. Any disposition of the property not consented to by the GM in the GM's sole discretion which consent may include such conditions as the GM determines in his sole discretion;
  - f. Failure to notify the City about any default of the DCPA or CGA within 30 days.
  - g. Where a mortgage, charge, lien, execution or other Encumbrance affecting the Property becomes enforceable against the Property; or
  - h. Where Kiwanis becomes bankrupt, whether voluntary or involuntary, or becomes insolvent or a receiver/manager is appointed with respect to the Property; or
  - i. Where Kiwanis certificate of incorporation is cancelled, or Kiwanis is otherwise wound up or dissolved as a corporation or there is any other change in the ownership or corporate status of Kiwanis not approved by the City in advance;
  - j. Kiwanis:
    - (i) decides to not receive the Grant;
    - (ii) becomes ineligible for any reason to receive the Grant;
    - (iii) does not enter into a CGA with the City prior to the issuance of a building permit for the Project;

- (iv) the CGA, required to be entered into between the City and Kiwanis in order to obtain the Grant, is terminated for any reason prior to the PDCs being paid in full; and,
  - (v) Kiwanis fails to pay, on the date last Grant payment occurs, the portion of the PDCs that are not paid through the application of the Grant payments;
- k. Such further events as the City Solicitor deems appropriate in her sole discretion.

11. Consequences of an event of default, unless permitted to be remedied in such time and manner as the GM determines in his sole discretion, shall include, but not be limited to: all future DC instalments becoming payable immediately and to be paid on demand, no further CGPs, and unpaid DCs shall be added to the tax roll.

#### Advance and Payment Provisions

12. The Payment Arrangement commences as of the date of initial issuance of the Building Permit (the "Commencement Date"), and the Payment Arrangement continues until the earlier of the date on which the final payment of the Grant occurs or, such earlier date payment in full is made of the PDCs, in accordance with the terms of the DCPA. The DCPA shall remain in force and effect until the PDCs are repaid and Kiwanis has performed all of its obligations under the DCPA.

#### The Development Charge

13. Kiwanis acknowledges and agrees that:
- a) the said amounts of the DCs and PDCs (or a revised amount as approved by the Council of the City) is the correct amount calculated and applied to the Kiwanis Application with the City for the Project.
  - b) Kiwanis has not and will not file a complaint pursuant to the *DCs Act* with the City or in any other forum, with respect to the determination and application of the Development Charge By-laws, including the quantum of the charges;
  - c) the PDCs referred to herein for payment by Kiwanis to the City may not be all of the DCs that may become applicable in respect of the Property as there may be further DCs applicable in respect of other development permitted on the Property such as the DCs imposed by a Board of Education, to which the DCPA does not apply.
  - d) the Property is recorded under the following tax roll number(s) **[insert # here]** ("Tax Rolls") and that in the event the PDCs becomes payable and remains unpaid, in whole or in part, or, on its due date remains unpaid, then in addition to any other remedy available to the City at law or in the DCPA, the amount of unpaid PDCs may be added to the Tax Rolls and to any tax roll number which

the City may in its sole and unfettered discretion determine applies to the Property ("Additional Tax Roll") and collected as realty taxes.

**Other Provisions**

14. Any out-of-pocket expenses incurred for the preparation of the DCPA, over and above staff costs, are the responsibility of the proponent.
15. Any other terms deemed appropriate by the City Solicitor and GM.