

MEMORANDUM

TO: Mayor and Council
AND TO: Jay Barbeau, CAO
FROM: Melanie Ducharme, Clerk
DATE: December 2, 2021
RE: **MUNICIPAL HOUSING FACILITIES AGREEMENT - DNSSAB**

In 2009 the Municipality of West Nipissing, pursuant to By-Law 2009/57, entered into an Affordable Housing Project agreement with DNSSAB and then owner 1732965 Ontario Inc., for the property located at 145 Main Street, Sturgeon Falls.

As the property has recently changed ownership, DNSSAB is requiring that a new Municipal Housing Facilities Agreement be entered into by all parties being the Municipality, DNSSAB and the new owner 5053523 Ontario Inc. (Nazbur Rahman)

Thank you,

Joie de vivre



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The Corporation of the Municipality of West Nipissing
 La Corporation de la Municipalité de Nipissing Ouest

Resolution No.

2021 /

DECEMBER 7, 2021

Moved by / *Proposé par* :

Seconded by / *Appuyé par* :

BE IT RESOLVED THAT By-Law **2021/88**, being a by-law to authorize the execution of an Municipal Housing Facilities Agreement between the Corporation of the Municipality of West Nipissing, the District of Nipissing Social Services Administration Board and 5053523 Ontario Inc.; shall come into force and take effect on the date it is passed.

	YEAS	NAYS
DUHAIME, Yvon		
FISHER, Christopher		
LARABIE, Roland		
MALETTE, Léo		
ROVEDA, Dan		
WARD 7 (vacant)	X	X
SÉNÉCAL, Denis		
SÉNÉCAL, Lise		
SAVAGE, Joanne (MAYOR)		

CARRIED: _____

DEFEATED: _____

DEFERRED OR TABLED: _____



THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING

BY-LAW 2021/88

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING, THE DISTRICT OF NIPISSING SOCIAL SERVICES ADMINISTRATION BOARD AND 5053523 ONTARIO INC.

WHEREAS Subsection 8 of the *Ontario Municipal Act 2001, S.O. 2001, c. 25* empowers and authorizes a municipality to enter into agreements to enable them to govern their affairs as they consider appropriate;

AND WHEREAS Section 110 of the *Municipal Act 2001, S.O. 2001, c. 25*, as amended, allows municipalities to enter into agreements for the provision of municipal capital facilities by any proponent;

AND WHEREAS Council is of the opinion that making use of Section 110 of the *Municipal Act 2001, S.O. 2001, c. 25* as amended, is a desirable means of increasing the supply of affordable housing by provincial or other assistance at less than fair market value to the 5053523 Ontario Inc. (Nazbur Rahman) as set out in this agreement;

AND WHEREAS the parties hereto agree to the terms and conditions set out in the attached Municipal Housing Facilities Agreement for the provision of municipal capital facilities by the proponent 5053523 Ontario Inc. (Nazbur Rahman);

NOW THEREFORE the Corporation of the Municipality of West Nipissing hereby enacts as follows:

- 1. THAT** the attached Municipal Housing Facilities Agreement dated the 7th day of November, 2021 between the Corporation of the Municipality of West Nipissing, the District of Nipissing Social Services Administration Board and 5053523 Ontario Inc. (Nazbur Rahman) shall form part of this by-law.
- 2. THAT** the Mayor and the Chief Administrative Officer are hereby authorized to execute the Municipal Housing Facilities Agreement on behalf of the Council for the Corporation of the Municipality of West Nipissing and to affix the Corporate Seal thereto.
- 3. THAT** this agreement shall be effective and shall remain in effect and force in accordance with the terms of the agreement subject to any amendments thereto or the termination of the said agreement.
- 4. THAT** By-Law 2009/57 be repealed.

ENACTED AND PASSED THIS 7th DAY OF DECEMBER, 2021 AS WITNESSED BY THE SEAL OF THE CORPORATION AND THE HANDS OF ITS PROPER OFFICERS.

JOANNE SAVAGE
MAYOR

MELANIE DUCHARME
CLERK

THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING

hereinafter called the "MUNICIPALITY"

OF THE FIRST PART

and

DISTRICT OF NIPISSING SOCIAL SERVICES ADMINISTRATION BOARD

hereinafter called the "SERVICE MANAGER"

OF THE SECOND PART

and

5053523 ONTARIO INC. (Nazbur Rahman)

hereinafter called "5053523 ONTARIO INC."

OF THE THIRD PART

MUNICIPAL HOUSING FACILITIES AGREEMENT

DISTRICT OF NIPISSING AFFORDABLE HOUSING PROGRAM

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THIS AGREEMENT made as of the **7th** day of **December**, 2021

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING
(hereinafter called the “**MUNICIPALITY**”)

OF THE FIRST PART

-and-

DISTRICT OF NIPISSING SOCIAL SERVICES ADMINISTRATION BOARD
(hereinafter called the “**SERVICE MANAGER**”)

OF THE SECOND PART

-and-

5053523 ONTARIO INC.
(hereinafter called “**5053523 ONTARIO INC.**”)

OF THE THIRD PART

WHEREAS:

- A. The Municipality is participating in the Canada/Ontario Affordable Housing Program (2003) – “Northern Component” (the “Program”) pursuant to the *Housing Services Act, 2011* and the *Municipal Act, 2001*.
- B. The District of Nipissing Social Services Administration Board, as Consolidated Municipal Service Manager (Service Manager) is the delivery agent under the *Ontario Works Act, 1997, S.O. 1997, c.25, Sch. A* and is authorized to operate and manage housing projects as well as to establish, fund and administer programs for the provision of residential accommodation in its service area under the *Housing Services Act, S.O. 2011*.
- C. 1732965 Ontario Inc. responded to the Proposal Call (the “Proposal Call”) of the Service Manager by submitting its Submission dated December 14th, 2007 as amended (the “Proposal Submission”) for the Development of New Affordable Rental Housing Units in the Municipality in return for financial benefits from the Minister and the Municipality. The Proposal Call is attached to this Agreement as Schedule A and the Proposal Submission is attached to this Agreement as Schedule B.
- D. The Municipality, the Service Manager and Minister approved the Proposal Submission subject to conditions, including the condition that the Municipality provide funding under the Program by means of a property tax reduction to the Affordable Housing Project for the implementation of the Proposal Submission.
- E. The Municipality has entered into this Agreement pursuant to By-Law No. 2009/57 and the *Municipal Act, 2001*.
- F. The parties acknowledge, understand and agree that, as of the date of this Agreement, the Project is complete and the housing facility has been built, is operating, and is fully occupied by tenants.
- G. 5053523 ONTARIO INC. has agreed to assume the ownership and operation of the Affordable Housing Project from 1732965 Ontario Inc. effective January 20, 2022.
- H. The Service Manager has allocated Program funds for the Project, to be used by 5053523 ONTARIO INC. in accordance with the terms and conditions of this Agreement.
- I. Pursuant to section 16.2 of the original Municipal Housing Facilities Agreement as between the Municipality, the Service Manager and 1732965 Ontario Inc., dated the 1st day of September, 2009, any purchaser of the property shall agree to be bound by the terms and conditions of that agreement and shall execute a new agreement in the same form before consent to the sale in writing may be given by the Municipality and Service Manager.
- J. 5053523 ONTARIO INC. wishes to enter into this Agreement and a complementary Provincial Contribution Agreement and Operating Agreement in order to obtain Program

funds from the province of Ontario and Government of Canada to enable it to continue to provide 18 Units of Affordable Housing.

NOW THEREFORE IN CONSIDERATION of the covenants and agreements and in reliance upon the representations and warranties of the 5053523 ONTARIO INC. hereinafter set forth and subject to the terms and conditions herein, the Municipality, the Service Manager and 5053523 ONTARIO INC. agree as follows:

1.0 REFERENCES

1.1 Definitions

The following terms as used herein shall have the following meanings:

"Affordable Housing" means **Housing** which is modest in terms of floor area and amenities, based on household needs and community norms, in projects that achieve an average project rent which is 20% below **Average Market Rents** for comparable housing in the community or area, but does not include residential premises used as a nursing home, retirement home, shelter, crisis care facility or any other type of similar facility;

"Affordable Housing Unit" – means a unit in which the rent for each unit size inclusive of water and heat utility costs and parking and exclusive of hydro, telephone, cable and other related fees, is 20% less than the most recently released average rent as reported by Canada Mortgage and Housing Corporation (CMHC) as determined and amended from time to time by CMHC for the MUNICIPALITY OF WEST NIPISSING Census Metropolitan Area (CMA) for that unit size.

"Affordable Rent" The Service Manager has set the upper limit for Affordable Rent at 80% of the Canada Mortgage and Housing Corporation (CMHC) rent as determined and amended from time to time by CMHC for the MUNICIPALITY OF WEST NIPISSING Census Metropolitan Area (CMA) for that Unit Size.

"Agreement" means this Municipal Housing Facilities Agreement.

"Business Day" means a day on which the offices of the Municipality are open for business.

"CMHC" means the Canada Mortgage and Housing Corporation.

"Date of Occupancy" means September 25th, 2009.

"Established Income Threshold" means the maximum level of total income a household can have in order to occupy an Affordable Housing Unit. The Established Income Threshold will be adjusted in accordance with the consumer report prepared by Statistics Canada.

"Forgivable Loan" means the financial assistance awarded to the housing project at time of construction as defined and administered under the Contribution Agreement made between 5053523 ONTARIO INC. and the Service Manager.

"Event of Default" has the meaning ascribed thereto in Section 15 hereof.

"Fiscal Year" means the fiscal year of the 5053523 ONTARIO INC. that is a period of twelve (12) consecutive months commencing on the first day of January and ending on the last day of December.

"Household Income" means the gross annual income from all sources of all persons who reside in a housing unit, or who will reside in a housing unit if such housing unit were rented to them.

"Immediate Family Member" means current spouse, children, step children, parents, step parents, brother, sister, step brother, step sister, spouse of brother or sister, daughter in-law, son in-law, grandparents, grandchildren, parents of current spouse and brother or sister of current spouse.

"Improvements" means the improvements made on the Property, consisting of a building and other improvements constructed on the Property in accordance with the Plans and Specifications.

"Minister" means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Municipal Affairs and Housing.

"Occupancy" means 100% of the Affordable Housing Units have been occupied and proof shall have been submitted to the Service Manager who will make the determination that the Project has reached the applicable level of occupation. Proof shall consist of copies of lease

agreements in respect of the space for which occupation must be demonstrated and such other material or evidence as the Service Manager may require.

“Permitted Encumbrances” has the meaning ascribed thereto in subsection 12.2 (a) hereof.

“PIPEDA Protected Information” means “Personal Information” or “Personal Health Information” as defined under PIPEDA.

“Program” means the Canada-Ontario Affordable Housing Program Extension (2009) – New Rental Housing Component – Shared Delivery.

“Project” means Affordable Housing approved for a property tax reduction under this Agreement, including improvements and fixtures to provide residential rental housing.

“Property” means the lands acquired by 5053523 ONTARIO INC. and all fixtures and improvements located thereon or therein.

“Provincial Contribution Agreement” means the agreement entered into between 5053523 ONTARIO INC. and Her Majesty the Queen in Right of Ontario as Represented by the Minister related to the Canada-Ontario Affordable Housing Program Extension (2009) – New Rental Housing Component – Shared Delivery.

“Rent” means the amount of any consideration paid or given or required to be paid or given by or on behalf of a Tenant to the 5053523 ONTARIO INC. for the right to occupy a Unit and for any services and facilities and any privilege, accommodation or thing that 5053523 ONTARIO INC. provides for the Tenant in respect of the occupancy of the Unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.

“Security Documents” means the documents identified in the Provincial Contribution Agreement, including but not limited to the Charge/Mortgage of Land, Assignment of Rents, and the Security Agreement, and any other document, which may be required by the Municipality or the Service Manager from time to time.

“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.

“Term of Agreement” shall have the meaning ascribed to it in section 2.1.

“Unit” means a unit of residential accommodation in the Project, which is self-contained.

“Unit Size” means the size of a Unit within the Project, measured by the number of bedrooms and meeting the maximum unit size as defined by the Service Manager.

1.2 Schedule. The following schedule attached hereto is incorporated herein and made a part of this Agreement:

Schedule A	Original Proposal Call
Schedule B	Original Proposal Submission
Schedule C	Legal Description of Property

1.3 Conflict: 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.

2.0 TERM

2.1 Term of Agreement. This Agreement shall be in full force and effect for a period of twenty (20) years from the Date of Occupancy. This term includes a five (5) year phase-out period.

3.0 PHASE-OUT PERIOD

3.1 Phase-Out Period and Rent. The Phase-Out Period means the last five (5) years of the term of this Agreement. During the Phase-Out Period, 5053523 ONTARIO INC. shall not increase the rent charged to the in-situ Tenants of Units by more than the rent

guideline increase permitted under the *Residential Tenancies Act*. Upon a Unit becoming vacant during the Phase-Out Period, 5053523 ONTARIO INC. may, subject to any applicable legislation, rent the Unit to a new Tenant at any rent agreed to by 5053523 ONTARIO INC. and the new Tenant. After the end of the Phase-Out Period, 5053523 ONTARIO INC. shall be permitted, subject to any applicable legislation, to rent Units to new Tenants at rents agreed to by 5053523 ONTARIO INC. and the new Tenants.

4.0 RENT

4.1 Availability of Affordable Housing Units. 5053523 ONTARIO INC. agrees that under no circumstances shall an Affordable Housing Unit be made available:

- (a) at a rent that is higher than the Affordable Rent, unless approved by the Service Manager; or
- (b) if at the time the Affordable Housing Unit was rented or re-rented, the Household Income would exceed the Established Income Threshold.

4.2 What Rents Include/Exclude. Rents are inclusive of water and parking and exclusive of hydro, heat, telephone, cable and other similar fees. Qualified households for each Affordable Housing Unit shall be those households with annual income not in excess of the Established Income Thresholds herein for each Affordable Housing Unit.

4.3 Rental Increases. In subsequent years while this Agreement is in force, 5053523 ONTARIO INC. may implement rent increases that are no greater than those allowed under the *Residential Tenancies Act, 2006* S.O. 2006, c.17. (Rent Increase Guidelines are published annually.)

4.4 Requested Rental Increases. Where rent increases above this level are necessary because of increases in the eligible operating expenses, Revenue and Expense Statement and a Projected Budget must be submitted to the Service Manager. These statements are required at least four (4) months prior to the effective date of the proposed rental increase. The Service Manager may request additional information to substantiate the requested rent increase. Upon review of the information supplied, the Service Manager, at its sole discretion, may approve the proposed rent increase in whole or in part. The increase will be the lower amount approved by the Service Manager or allowed under the *Residential Tenancies Act*.

5.0 LEASING AFFORDABLE HOUSING UNITS

5.1 Number of Affordable Housing Units. During the term of this Agreement, the number of Affordable Housing Units rented or available for rent to tenants who have incomes at or below the Established Income Threshold, must be maintained at eighteen (18) units as stated in this Agreement. In the event this requirement is not met, the unforgiven portion of the Forgivable Loan for any affordable unit(s) not rented to Tenants meeting the Established Income Threshold becomes immediately due and payable in accordance with Section 15 and the Property Tax Grant shall not be payable.

5.2 Tenants. If 5053523 ONTARIO INC. is unable to locate a tenant with income below the Established Income Threshold, the 5053523 ONTARIO INC. shall notify the Service Manager immediately. Failure to comply with this requirement may result in the default of this Agreement.

5.3 Established Income Threshold. In the event the Tenant in an Affordable Housing Unit vacates the Unit during the Term of the Agreement, 5053523 ONTARIO INC. shall ensure the Household Income of the new Tenant of the Affordable Housing Unit is at or below the applicable Established Income Threshold. Household Income shall include only income sources identified by the Service Manager and may be revised from time to time.

5.4 Tenants' Information. Records confirming the new Tenant(s) name, household size and Household Income must be completed by the Tenant before occupancy and, must be retained by the 5053523 ONTARIO INC. for the term of this Agreement.

5.5 Arm's Length. A legitimate and arm's length 5053523 ONTARIO INC./Tenant relationship must exist at all times during the term of this Agreement. Affordable Housing Units subject to the Agreement shall not be rented to 5053523 ONTARIO INC. or shareholders or directors of 5053523 ONTARIO INC., or any individual not at arm's length to 5053523 ONTARIO INC. or shareholders or directors of 5053523 ONTARIO INC.. Where 5053523 ONTARIO INC. and/or Immediate Family Member moves into one of the Affordable Units, the unearned pro rata portion of the Forgivable Loan applicable to the rental unit is to be repaid, in accordance with the provisions of Section 15.

6.0 ACCESS & MONITORING

6.1 Financial Records. 5053523 ONTARIO INC. shall permit the Service Manager, at reasonable times, to access the financial and other records of 5053523 ONTARIO INC. relating to the Project (including books, payroll, accounts, records, bank statements, quantity surveys, reports, studies and paid invoices) at any of its places of business for audit purposes. Any such audit may be performed by Service Manager staff or by outside auditors, as the Service Manager may choose. 5053523 ONTARIO INC. shall permit copies and extract to be taken from such books and records and shall furnish the Service Manager with such additional information as it may require with reference to such books and records.

6.2 Access to Records. 5053523 ONTARIO INC. shall preserve the books and records referred to in Section 6.1 and in addition retain the verification of income from tenants residing in Affordable Housing Units and other such records in a form satisfactory to the Service Manager and shall permit the Service Manager to have access to the Project and to inspect such records at any reasonable time.

6.3 Provision of Information. 5053523 ONTARIO INC. agrees that it shall cooperate with the Service Manager in the performance of any review or evaluation of the Project and shall supply information as may be requested by the Service Manager to confirm adherence to this Agreement, including submission of an annual report in a form acceptable to the Service Manager and to the satisfaction of the Service Manager.

6.4 Notice to Service Manager. 5053523 ONTARIO INC. shall disclose to the Service Manager without delay any fact or event that 5053523 ONTARIO INC. is aware of from time to time which may compromise 5053523 ONTARIO INC.'s chance of success in carrying out and administering the Project.

6.5 Inspection of Project. The Service Manager shall have the right, at all reasonable times, to inspect the Project where 5053523 ONTARIO INC. conducts their operations.

7.0 PROPERTY TAX REDUCTION FUNDING CONTRIBUTION

7.1 The Municipality Property Tax Reduction. Subject to the prior annual receipt by May 15 in each year of a certificate in writing by the City from the DNSSAB that 5053523 ONTARIO INC. is in strict compliance with all of the terms of this agreement 5053523 ONTARIO INC. will receive a property tax reduction grant from the Municipality, calculated as the tax differential between Multi-Residential and Residential Tax Rates, to be calculated on an annual basis by the Municipality Treasurer on or before July 1 of each year for the original twenty (20) year term, pursuant to Section 2.1 of the Agreement.

7.2 Reporting. Prior to May 1 of each year, 5053523 ONTARIO INC. shall submit to the Service Manager a "Proponent's Annual Occupancy Report", "Proponent's Annual Targeting Report" for each individual project, supported by audited financial statements for the current fiscal year so as to certify that all Affordable Housing Units at the Project comply with the Affordable Rent otherwise permitted hereunder.

7.3 Default. Should 5053523 ONTARIO INC. be in default under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property, the Municipality or Service Manager shall have the right to declare all or part of the Property Tax Reduction Funding Contribution due and payable immediately and discontinue the funding contribution program immediately.

8.0 LIABILITY

- 8.1 No Liability. The Municipality and the Service Manager shall not be liable to suppliers, contractors, sub-contractors, craftsmen, labourers or others for goods and services delivered by them in or upon the Property, or for any debts or claims accruing to any of the parties against 5053523 ONTARIO INC. or against the Property.
- 8.2 No Agency Relationship. It is distinctly understood and agreed by the parties hereto that there is no contractual relationship either express or implied, between the Municipality, the Service Manager and any supplier, contractor, sub-contractor, craftsman, labourer or person supplying any work, services or material to the Improvements. 5053523 ONTARIO INC. is not, and shall not be, the agent of the Municipality or the Service Manager for any purpose. There shall be no third party beneficiary of this Agreement, express or implied.

9.0 CONDITIONS

- 9.1 Conditions Precedent. The obligation of the Municipality to make the payment of the property tax reduction referred to in Section 7, is conditional upon prior compliance with such of the following conditions precedent as are not previously waived in writing by the Municipality:
- (a) the Service Manager shall have received the following documents and materials each of which shall be satisfactory in substance and in form to the Service Manager.
- (i) certificates of incumbency of the persons signing on behalf of the 5053523 ONTARIO INC.;
 - (ii) certified copies of such corporate documents of 5053523 ONTARIO INC. as the Service Manager may reasonably require including, without limitation, letters patent, articles of incorporation, certified abstracts from by-laws, and certified copies of relevant directors' resolutions;
 - (iii) an opinion of 5053523 ONTARIO INC.'s counsel, addressed to the Service Manager and its counsel:
 - (A) that 5053523 ONTARIO INC.:
 - (a) is a body corporate, duly incorporated and properly organized and validly existing as a corporation under the laws of the jurisdiction in which it was incorporated;
 - (b) is qualified to do business in the Province of Ontario;
 - (c) has all the necessary corporate power and authority to carry on the business to be conducted by it in respect of the development, operation and management of the Project; and
 - (d) has all the necessary corporate power and authority to enter into and perform its obligations under this Agreement and each of the Security Documents to which it is a party in accordance with their respective terms;
 - (B) that this Agreement and each of the Security Documents to which 5053523 ONTARIO INC. is a party have been duly and validly authorized, executed and delivered by 5053523 ONTARIO INC. and are valid and binding obligations of 5053523 ONTARIO INC. enforceable in accordance with their respective terms;
 - (C) that neither the execution and delivery by 5053523 ONTARIO INC. of this Agreement or Security Documents to which it is a party nor compliance by 5053523 ONTARIO INC. with any of their respective terms will contravene the charter documents or by-laws of 5053523 ONTARIO INC. or, to the best of such

counsel's knowledge, after having made due enquiry of 5053523 ONTARIO INC., contravene or result in a default under any other agreement or instrument by which 5053523 ONTARIO INC. may be bound or affected;

- (D) that, to the best of such counsel's knowledge, without having made independent enquiry, there are no actions or proceedings pending or threatened against 5053523 ONTARIO INC., before any court or administrative agency;
- (E) that 5053523 ONTARIO INC. has or will have good and marketable title to the Property, subject only to Permitted Encumbrances, and that the Project complies in all respects with and is not in contravention of any relevant municipal, provincial or federal law, by-law, statute, ordinance or regulation;
- (F) that no instrument containing a charge on any of the undertaking, property or assets of 5053523 ONTARIO INC., or notice thereof, has been registered in the Province of Ontario other than Permitted Encumbrances;
- (G) that this Agreement and financing statements, notices and other documents relative thereto have been duly registered or filed in all places in Ontario where such registration or filing is required by law or is necessary to make effective, preserve and protect the security which they purport to create; and
- (H) as to such other matters as the Service Manager or its counsel may reasonably request.

10.0 THE IMPROVEMENTS

Intentionally left blank.

11.0 REPRESENTATION AND WARRANTIES

5053523 ONTARIO INC. represents and warrants to the Municipality and Service Manager that:

- 11.1 Due Incorporation. 5053523 ONTARIO INC. is duly incorporated, organized and validly existing 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 thereunder, and is duly qualified and in good standing in each jurisdiction in which the character of the property owned or leased or the nature of the business carried on by it makes such qualification necessary or desirable.
- 11.2 Power & Authority. 5053523 ONTARIO INC. has full corporate power, legal right and authority to enter into this Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed or performed by it.
- 11.3 No Breach. Neither the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, nor the compliance with the terms, conditions and provisions hereof and of the First Mortgage will conflict with, or result in a breach of, any of the terms, conditions or provisions of the constating documents of 5053523 ONTARIO INC. or of any agreement or instrument to which it is now a party, or constitute a default thereunder, or (except as contemplated by this Agreement) result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of 5053523 ONTARIO INC. (whether such properties or assets are owned legally or beneficially) pursuant to the terms of any agreement or instrument to which it is a party.
- 11.4 No Litigation. There is not now pending against 5053523 ONTARIO INC. 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 5053523 ONTARIO INC. or against or affecting any of

the properties or assets of 5053523 ONTARIO INC. (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 5053523 ONTARIO INC..

- 11.5 No Restrictions. Except as previously disclosed in writing to the Service Manager, 5053523 ONTARIO INC. 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 5053523 ONTARIO INC..
- 11.6 Compliance with all Laws. Compliance with all laws and lawful orders and regulations imposed by any Municipal, Provincial and Federal authority with respect to the Construction Contract and completion of the Project.
- 11.7 Accuracy of Information. None of the information, financial or otherwise, provided by 5053523 ONTARIO INC. to the Municipality and Service Manager to induce the Municipality and Service Manager to make the property tax reduction 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.
- 11.8 PIPEDA Compliance. 5053523 ONTARIO INC. shall:
- (a) preserve the *Personal Information Protection and Electronic Documents Act (PIPEDA)* compliance of all PIPEDA Protected Information transferred to it by the Municipality and Service Manager;
 - (b) ensure the PIPEDA compliance of all PIPEDA Protected Information 5053523 ONTARIO INC. collects in the course of performing 5053523 ONTARIO INC.'s contractual obligations; and
 - (c) ensure the PIPEDA compliance of all PIPEDA Protected Information that 5053523 ONTARIO INC. transfers to the Municipality and Service Manager.

12.0 COVENANTS OF 5053523 ONTARIO INC.

- 12.1 General Covenants. The 5053523 ONTARIO INC. covenants and agrees with the Municipality and Service Manager that, it shall:
- (a) do or cause to be done all acts and things necessary to preserve in full force and effect the existence of 5053523 ONTARIO INC. and all licenses and permits required for the carrying on of the operations of the 5053523 ONTARIO INC. at and from the Property and to preserve and protect all of the properties, real and personal owned and used by 5053523 ONTARIO INC. in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair;
 - (b) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the Municipality, 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 5053523 ONTARIO INC. shall have provided the Municipality with appropriate security;
 - (c) deliver to the Service Manager the statements and reports as required by this Agreement or other statements and reports as requested by the Service Manager.
- 12.2 Certain Negative Covenants of 5053523 ONTARIO INC.. 5053523 ONTARIO INC. covenants and agrees with the Municipality and Service Manager that, so long as any obligation is outstanding by 5053523 ONTARIO INC. to the Municipality or Service Manager hereunder 5053523 ONTARIO INC. will not, without the prior written consent of the Municipality or Service Manager, 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) the First Mortgage;
 - (ii) encumbrances created in favour of or assigned or pledged to the Municipality, Service Manager and Her Majesty the Queen in Right of Ontario as Represented by the Minister;
 - (iii) 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 Municipality, if requested;
 - (iv) inchoate or statutory liens of contractors, sub-contractors, mechanics, suppliers, workers and others in respect of the construction, maintenance, repair and operation of the Improvements, provided that the same are not registered encumbrances against title to the Property or any personal property, or, if so registered, have been postponed to all charges in favour of the Municipality or Service Manager 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 Municipality or Service Manager, or paid into Court to prevent effectively in the Municipality’s or Service Manager’s opinion realization by disposal or other alienation from the 5053523 ONTARIO INC. of its legal or beneficial title to or interest in any such property; and
- (b) become a party to any transaction whereby the Project would become the property of any other person, whether by way of reorganization, amalgamation, merger, transfer, sale, lease, sale and leaseback or otherwise;
- (c) permit any change in the ownership of 5053523 ONTARIO INC.; or
- (d) 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.

13.0 INDEMNIFICATION

- 13.1 Indemnify the Municipality and Service Manager. 5053523 ONTARIO INC. agrees that it will indemnify and save harmless the Municipality and Service Manager and its officers, employees, servants, agents, successors and assigns from and against any and all claims whatsoever including all damages, liabilities, expenses, costs, including legal or other fees incurred in respect of any such claim, or any cause or proceeding brought thereon arising directly or indirectly from or in connection with this Agreement and out of the operation of the Affordable Housing Units including claims arising out of negligence of any party to the Agreement and specifically, all directors, employees, agents, volunteers or independent contractors of 5053523 ONTARIO INC.. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring during the term of this Agreement.
- 13.2 Environmental & Pollution Matters. 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 Municipality, Service Manager and 5053523 ONTARIO INC. as partners or joint venturers of each other. In particular, the Municipality and Service Manager are in no way accountable for any related environmental or pollution matters. 5053523 ONTARIO INC. agrees to indemnify the Municipality and Service Manager and save it harmless from all losses, costs, damages, expenses, injury and liability whatsoever which the Municipality and Service Manager may suffer as a result of claims of any sort whenever made arising out of the implementation of this Agreement, including any environmental or pollution claims, but in the case of the Municipality or Service Manager, except as caused or contributed to by the Municipality or Service Manager.

14.0 INSURANCE

- 14.1 Commercial General Liability Insurance. 5053523 ONTARIO INC. covenants and agrees at all times during the term hereof to take out and keep in full force and effect a policy of Commercial General Liability Insurance, insuring the Municipality, Service Manager and 5053523 ONTARIO INC. against damage or injury to persons or property with limits of not less than \$5,000,000.00 per occurrence or such greater amount as the Municipality or Service Manager may from time to time request. The insurance policy shall:
- (a) Include as an additional insured "The Corporation of the Municipality";
 - (b) Include as an additional insured "District of Nipissing Social Services Administration Board";
 - (c) Contain a cross-liability clause endorsement and severability of interest clause;
 - (d) Contain a clause including Contractual Liability coverage arising out of the contract or agreement;
 - (e) Contain a non-owned auto endorsement;
 - (f) Proof of insurance will be submitted by way of an executed Certificate of Insurance in a form satisfactory to the Municipality and/or Service Manager each year or ten (10) days prior to renewal of policy;
 - (g) If cancelled or changed in any manner, that would affect the Municipality or Service Manager as outlined in coverage specified herein for any reason, thirty (30) days prior written notice by mail or facsimile transmission will be given by the insurer(s);
 - (h) It shall be the sole responsibility of 5053523 ONTARIO INC. to determine what additional insurance coverage, if any, are necessary and advisable for its own protection and/or to fulfill its obligation under this agreement. Any such additional insurance shall be maintained and provided at the sole expense of 5053523 ONTARIO INC..
- 14.2 Boiler & Machinery Insurance. The insurance shall include pressure objects, machinery objects and service supply object, on a Comprehensive basis. The Policy shall include the following:
- (a) repair and/or replacement value;
 - (b) stated amount of insurance;
 - (c) waiver of subrogation; and
 - (d) loss payable in favour of the "The Corporation of the Municipality of West Nipissing"
 - (e) loss payable in favour of the "District of Nipissing Social Services Administration Board".
- 14.3 Professional Errors & Omissions Insurance (if applicable). Liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this Agreement, in the amount not less than \$2,000,000.00 per claim and in the annual aggregate.
- 14.4 Automobile Insurance. Automobile insurance per statutory requirements in Ontario, Automobile Policy (OAP 1) Owner's Policy Sections 3 and 4, auto liability for a limit not less than \$2,000,000.00 per occurrence, including Accident benefits and where applicable Section 7, Loss or Damage Coverage.

15.0 EVENTS OF DEFAULT & REMEDIES

- 15.1 Realization on Security. Upon the occurrence of any one or more of the following events (each an "Event of Default"):
- (a) the failure of 5053523 ONTARIO INC. to perform, observe or comply with any other term, covenant, condition or provision of this Agreement within twenty (30)

days of receipt of written notice of the “failure” from the Municipality or Service Manager provided 5053523 ONTARIO INC. shall not be deemed to be in default if within the said period of twenty (20) days, 5053523 ONTARIO INC. commences the necessary action to remove the “failure” and such action is diligently prosecuted;

- (b) 5053523 ONTARIO INC. breaches the Provincial Contribution Agreement entered into with Her Majesty the Queen in Right of Ontario as Represented by the Minister;
- (c) any representation or warranty made by 5053523 ONTARIO INC. in this Agreement proves to have been untrue or misleading in any material respect as of the date on which it was made;
- (d) any person commences an action, suit or proceeding materially affecting the Project or file a lien against the Property, or any person shall commence an action, suit or proceeding contesting or questioning the validity or enforceability of this Agreement, unless 5053523 ONTARIO INC. shall diligently contest such action, suit or proceeding and discharge any such lien forthwith without the requirement of notice by the Municipality and Service Manager 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 Municipality and Service Manager, acting reasonably;
- (e) 5053523 ONTARIO INC. ceases to carry on business as a company;
- (f) 5053523 ONTARIO INC.:
 - (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 effects 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;
- (g) any of:
 - (i) an involuntary petition seeking the adjudication of 5053523 ONTARIO INC. 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 5053523 ONTARIO INC. 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 Municipality or Service Manager, materially impair the ability of 5053523 ONTARIO INC. to perform its obligations under this Agreement or any of the Security Documents shall be made, given or issued against 5053523 ONTARIO INC. 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;
- (h) the occurrence of a material adverse change in the financial condition of 5053523 ONTARIO INC. which would, in the reasonable opinion of the Municipality or Service Manager, detrimentally affect the ability of 5053523 ONTARIO INC. to meet its obligations to the Municipality and Service Manager; and
- (i) if the Improvements shall be entirely destroyed or damaged to such an extent that, in the opinion of a quantity surveyor for the Project, acting reasonably, they are no longer fit for the purpose for which they were intended and the insurance

proceeds, if any, held by the Municipality and Service Manager pursuant to Section 14 are, in the opinion of a quantity surveyor, acting reasonably, insufficient to repair such destruction or damage, and 5053523 ONTARIO INC. has not provided evidence satisfactory to the Municipality or Service Manager of the timely availability of such sufficient funds, then, at its option, the Municipality or Service Manager may declare the unforgiven amount of principal of the Forgivable Loan, together with all other monies owing to the Municipality or Service Manager hereunder, due and payable within ninety (90) days. In such case, the Municipality or Service Manager may realize upon any and all security pledged to it and may commence such other legal actions or proceedings against 5053523 ONTARIO INC., the Property or assets of 5053523 ONTARIO INC. as may be permitted hereunder, by any one or more of the Security Documents or at law or in equity, all as it in its sole discretion, deems expedient. 5053523 ONTARIO INC. hereby acknowledges that the Municipality or Service Manager's remedies are cumulative and not mutually exclusive.

- 15.2 Repayment. Should 5053523 ONTARIO INC. be in default under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property, the Municipality or Service Manager shall have the right to declare all or part of the unforgiven amount of principle of the Forgivable Loan due and payable immediately. Interest will be payable only from the date of default until the loan is paid in full.

The interest rate shall be the Bank of Canada Prime Rate plus 2% in effect at the time of the loan default.

The amount of the loan that must be repaid is equal to the total amount of the Forgivable Loan less any amount considered forgiven plus a per diem credit up to the date of default.

The Municipality or Service Manager shall have the right to declare the Property Tax Reduction Funding Contribution due and payable immediately and discontinue the funding contribution program immediately.

- 15.3 Costs & Expenses of Collection. 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 Municipality or Service Manager pursuant hereto, shall be for the account of 5053523 ONTARIO INC. and shall be repayable on demand.

16.0 SALE OF THE PROPERTY

- 16.1 Notice of Sale. 5053523 ONTARIO INC. agrees to notify the Municipality and Service Manager in writing at least twenty (20) working days prior to the closing date of any sale, conveyance or transfer of the Property.

- 16.2 Consent. 5053523 ONTARIO INC. covenants that any Purchaser of the property shall agree to be bound by the terms and conditions of this Agreement and shall execute a new agreement in this form before consent to the sale in writing may be given by the Municipality and Service Manager. Rent increases will continue to be permitted in accordance with the terms of the original agreement. No increase in rents will be permitted at the time of sale.

- 16.3 Default. In the event that the Property is sold or otherwise disposed of without the prior knowledge and written consent of the Municipality and Service Manager, and without the provisions of section 16.2 of this Agreement having been complied with, 5053523 ONTARIO INC. shall be considered to be in default and any unearned loan forgiveness shall become due and payable immediately, together with accrued interest thereon calculated from the date of sale. The interest shall be the Bank of Canada Prime Rate plus 2% in effect at the time of the loan default.

17.0 MISCELLANEOUS

- 17.1 Further Assurances. The parties agree from time to time, as may be reasonably required by any party hereto, to execute and deliver such further and other transfers,

assignments and documents and do all matters and things which may be convenient or necessary to carry out the intention of this Agreement more effectively and completely.

17.2 Survival of Agreement. The terms and conditions hereof shall survive the delivery to the Municipality and Service Manager of the Security Documents and all advances made by the Municipality or Service Manager hereunder.

17.3 Notice. Any notice required or permitted to be given by this Agreement shall be given or made in writing and shall be served personally or, other than during a period of general interruption of postal service due to strike, lockout or other cause, mailed in Ontario by prepaid, registered or certified mail:

(i) in the case of the Municipality, addressed to:

The Municipality of West Nipissing
101-225 Holditch Street
Sturgeon Falls, Ontario, P2B 1T1
Attention: Municipal Clerk

(ii) in the case of the Service Manager, addressed to:

District of Nipissing Social Services Administration Board
200 McIntyre St. E.
North Bay, Ontario, P1B 8V6
Attention: Chief Administrative Officer

(iii) in the case of the 5053523 ONTARIO INC., addressed to:

5053523 ONTARIO INC.
308-1030 Upper James Street
Hamilton, Ontario, L9C 6X6
Attention: Mr. Nazbur Rahman

Any notice given in accordance with the provisions of this section shall be deemed to be effective, if delivered on the date of such delivery, or, if mailed, upon the third day next following the date of mailing such notice. Each party may give notice to the other party of a change of its address for the purposes of giving notice under this section which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Agreement.

17.4 Entire Agreement. This Agreement and the agreements and instruments referred to herein constitute the entire agreement between the parties hereto in respect of the subject matter hereof and supersede any and all other written or oral agreements, documents, memoranda, understandings or otherwise between the parties relating to such subject matter.

17.5 Waivers & Assignments. No indulgence or forbearance by the Municipality or Service Manager hereunder shall be deemed to constitute a waiver of the Municipality or Service Manager's right to insist on performance in full and in a timely manner of all covenants of 5053523 ONTARIO INC. hereunder, and such waiver, in order to be binding upon the Municipality or Service Manager, must be express and in writing. No waiver of any provision, condition or covenant shall be deemed to be a waiver of the Municipality or Service Manager's rights to require full and timely compliance with the same term, covenant or condition of this Agreement at any time.

17.6 Assignment. The rights, benefits and obligations of 5053523 ONTARIO INC. under this Agreement and the Security Documents shall not be assignable by 5053523 ONTARIO INC. without the prior written consent of the Municipality and Service Manager, which may be unreasonably withheld.

17.7 Severability. 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.

17.8 Capacity of the Municipality and Service Manager. All rights and benefits and all obligations of the Municipality and Service Manager under this Agreement shall be

rights, benefits and obligations of the Municipality and Service Manager 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 Municipality and Service Manager, its Council or Board, or its elected and appointed officials and representatives in their respective functions and capabilities.

- 17.9 Time of Essence. Time is of the essence of this Agreement.
- 17.10 Binding Agreement. This Agreement shall be binding upon and enure to the benefit of 5053523 ONTARIO INC. and the Municipality and Service Manager and their respective heirs, successors and permitted assigns, as the case may be.
- 17.11 Governing Law. 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.
- 17.12 Discrimination. 5053523 ONTARIO INC. 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*.
- 17.13 Maintenance of Units. 5053523 ONTARIO INC. 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.
- 17.14 Annual Report. 5053523 ONTARIO INC. shall retain the verification of income from Tenants residing in Affordable Units and other such records in a form satisfactory to the Service Manager and shall permit the Service Manager to have access to the Property and to inspect such records at any reasonable time. 5053523 ONTARIO INC. will supply information as may be requested by the Municipality and Service Manager to confirm adherence to this Agreement, including submission of an annual report in a form acceptable to the Municipality and Service Manager and to the satisfaction of the Municipality and Service Manager.
- 17.15 MFIPPA. It is understood that the *Municipal Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the Municipality and Service Manager pursuant to this Agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents under the hand of their officers duly authorized in that behalf at the date first above written.

THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING

Per: _____

Name: Joanne Savage

Position: Mayor

I have the authority to bind the Corporation.

Per: _____

Name: Jean-Pierre (Jay) Barbeau

Position: Chief Administrative Officer

I have the authority to bind the Corporation.

DISTRICT OF NIPISSING SOCIAL SERVICES ADMINISTRATION BOARD

Per: _____

Name: _____

Position: _____

I have the authority to bind the Corporation.

Per: _____

Name: _____

Position: _____

I have the authority to bind the Corporation.

5053523 ONTARIO INC.

Per: _____

Name: _____

Position: _____

I have the authority to bind the Corporation.

Per: _____

Name: _____

Position: _____

I have the authority to bind the Corporation.

SCHEDULE A

Original Proposal Call

(Attached)

SCHEDULE B Original Proposal Submission

(Attached)

SCHEDULE C: LEGAL DESCRIPTION OF PROPERTY

Number of Units: 18 units

PIN: 49079-0578 (LT)

Description: LT 20 W/S MAIN ST, 21 W/S MAIN ST, 22 W/S MAIN ST, 23 W/S MAIN ST, 24 W/S MAIN ST, 23 E/S KING ST, 24 E/S KING ST PL 11 SPRINGER; WEST NIPISSING; DISTRICT OF NIPISSING

Address: 145 MAIN STREET
STURGEON FALLS, ON