

**TAKE NOTICE THAT the following describes a right or interest in the land against which this notice is registered which may arise in the event of default – namely a lien in favour of the Corporation of the City of Owen Sound arising pursuant to section 32 of the Development Charges Act, 1997, S.O. 1997, c. 27 and subsections 1(2.1) and 349(3) of the Municipal Act, 2001, S.O. 2001, c. 25, such lien having priority to every claim, privilege, lien or encumbrance of every person except the Crown.**

THIS DEFERRAL AND CONDITIONAL EXEMPTION AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

between:

**The Corporation of the City of Owen Sound**, a municipality within the meaning of the *Municipal Act, 2001*

(hereinafter referred to as the "**City**"),

-and-

**XXX**

(hereinafter referred to as the "**Owner**"[Click here to enter short-form reference name for legal entity.](#));

**WHEREAS** the *Development Charges Act, 1997*, S.O. 1997, Chapter 27, as amended (hereinafter referred to as the "**Act**"), authorizes municipalities to pass by-laws for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which each by-law applies;

**AND WHEREAS** the City, pursuant to the Act, enacted Development Charges By-law No. 2023-112 (hereinafter referred to as the "**Development Charges By-law**"), which imposes development charges on certain developments, which development charges are normally payable upon issuance of the first building permit to a building or structure on land to which the development charge applies;

**AND WHEREAS** the Development Charges By-law establishes that rental housing developments, as defined in the Development Charges By-law, are exempt from the payment of development charges, provided that a written agreement between the City and Owner is entered into wherein, among other terms and conditions, the Owner commits to having the development remain a rental housing development for a length of time to be specified in the agreement and that the agreement shall be registered on title and be binding on any and all successors and assigns of the Owner;

**AND WHEREAS** the written agreement to be entered into between the City and Owner is known as a Deferral and Conditional Exemption Agreement (hereinafter referred to as the "**Agreement**");

**AND WHEREAS** the Owner has received the necessary approvals from the City to develop a SEVEN HUNDRED AND TWELVE (712) unit rental housing development in the City on the lands described in Schedule "A" (the "**Rental Housing Development**"), in accordance with the site plan attached hereto as Schedule "C" (hereinafter referred to as the "**Site Plan**");

**AND WHEREAS** the City has received a request from the Owner to defer development charges for each rental residential premises in the Rental Housing Development for a period of time and to conditionally exempt such units from the payment of such development charges, upon satisfaction of certain conditions required or authorized by this Agreement or by the Development Charges By-law;

**AND WHEREAS** the City, having reviewed the Owner's proposal for the Rental Housing Development, is agreeable to enter into this Agreement in respect of the Rental Housing Development;

**AND WHEREAS** section 27 of the Act authorizes a municipality to enter into an agreement with a person required to pay a development charge whereby all or any part of a development charge may be paid later than it would otherwise be payable under the applicable by-law and to correspondingly defer the date on which such charges are assessed.

**NOW THEREFORE** pursuant to the authority of the City under section 27 of the Act and in consideration of the mutual terms, conditions and covenants contained herein, the sum of Ten Dollars (\$10.00) now given by each party to the other, and the exchange of other good and valuable consideration (the receipt and sufficiency of all of which is confirmed) the Parties agree and covenant with each other as follows:

## 1.0 Interpretation

### 1.1 In this Agreement:

- a) "Act" means the *Development Charges Act, 1997*, S.O. 1997, Chapter 27 as it may be amended from time to time, and any successor legislation to the Act;
- b) "Agreement" means this Deferral and Conditional Exemption Agreement and its appending schedules;
- c) "Building Code Act" means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended from time to time, and any successor legislation thereto;
- d) "Business Day" means a day on which the City's administrative office in Owen Sound is open for the conduct of administrative business;
- e) "Conditional Exemption" means the exemption provided for by section 17(f) of the Development Charges By-law;
- f) "Development Charge" means the applicable development charges in accordance with the Development Charges By-law as further outlined in Article 3.0 of this Agreement;
- g) "Development Charges By-law" means By-law No. 2023-112, as amended from time to time;
- h) "Development Charges Determination Date" means the date on which development charges would first be payable under the Development Charges By-law in respect of the Rental Housing Development in the absence of this agreement or any other made with the City pursuant to section 27 of the Act;

- i) "Director of Corporate Services" means the Director of Corporate Services for the City from time to time, and includes any lawful delegate, and any successor officer authorized to exercise such authority;
- j) "Dwelling Unit" has the meaning given to it in the Development Charges By-law;
- k) "Exemption Conditions" means the conditions set out in Article 5.0 of this Agreement;
- l) "Event of Default" means an event of default established by Sections 6.1 of this Agreement;
- m) "Municipal Act" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time, and any successor legislation thereto;
- n) "Occupancy Date" means the first day on which the Rental Housing Development may be lawfully occupied pursuant to the Building Code Act;
- o) "Occupied", with respect to the Rental Housing Development, means that one or both of the following is true:
  - i) any part of the Rental Housing Development may be lawfully occupied pursuant to the Building Code Act, and
  - ii) any part of the Rental Housing Development is in actual occupation for any purpose other than development and construction of the Rental Housing Development;
- p) "Owner", with respect to the Rental Housing Development, includes any person entitled to a beneficial interest to the land comprising the Rental Housing Development or any part thereof, and also includes any person entitled to the use or right of the Rental Housing Development or any part thereof under an agreement granting such use or right directly or by renewal for a period of twenty-one (21) years or more but provided that it shall not apply to any lease or tenancy agreement made with respect to residential occupancy of any Residential Unit, and "Ownership" shall be interpreted correspondingly;

- q) "Permitted Uses" means the use of the Property as rented residential premises and all uses ancillary thereto, except any use for Short-Term Accommodation";
  - r) "Property" means to the subject lands described in Schedule "A";
  - s) "Rental Housing Development" means development of buildings or structures with four or more dwelling units all of which are intended for use as a rented residential premises. For greater clarity, this does not include apartment condominiums, life-lease units, hotels, motels, time-share units, fractured ownership units, or short-term accommodation units. Rental Housing Developments must result in four or more additional self-contained units that are intended for use as rented residential premises;
  - t) "Rented Residential Premises" means a residential premises that is subject to a written rental agreement between the Owner and a tenant;
  - u) "Residential Premises" means any part of the Rental Housing Development comprising a Dwelling Unit for Residential Use;
  - v) "Residential Use" has the meaning given to it in the Development Charges By-law;
  - w) "Short-Term Accommodation" means to provide for residential occupancy of property either:
    - i) by any tenant under any agreement, written or otherwise, providing for a period of occupancy for less than thirty days, or
    - ii) by any person under any agreement or arrangement which would provide for occupancy of that dwelling unit without the protections of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 for the person's security of tenure applicable to that property under that Act;
  - x) "Term" means the term of this agreement as established by Section 2.1 of this Agreement.
- 1.2 The following Schedules appended to this Agreement each comprise part of this agreement
- a) Schedule "A" – Land;

- b) Schedule "B" – Estimated Development Charges; and
- c) Schedule "C" – Approved Site Plan

## 2.0 Term

- 2.1 This Agreement shall be effective as of the date of execution and run until the earliest of the following dates:
  - a) the day that is twenty-five (25) years from the Development Charge Determination Date;
  - b) the day following the day on which the Exemption Conditions are fully satisfied; and
  - c) the day on which all obligations under this agreement are satisfied regarding payment of the Development Charges determined in accordance with Article 3.0 of the Agreement.

## 3.0 Determination of Development Charges

- 3.1 The Owner acknowledges that the amount of development charges in respect of the Rental Housing Development is the amount determined in accordance with the Act and the Development Charges By-law. An estimate of the development charges in respect of the Rental Housing Development, if the Rental Housing Development was not eligible for a Conditional Exemption, is attached as Schedule "B". The Owner confirms that the amounts of the Development Charges shown in Schedule "B" are correct for the Rental Housing Development as it was submitted to the City in consideration of the preparation of this Agreement.
- 3.2 The Owner acknowledges that if building permits or other approvals are applied for on the basis of plans that differ from those contemplated in the preparation of Schedule "B", then the amount of the Development Charges may differ from what is provided in that Schedule.
- 3.3 The Owner acknowledges that the Rental Housing Development may be eligible for a Conditional Exemption, and that pursuant to the Development Charges By-law, satisfaction of the terms of this Agreement, and in particular satisfaction of the Exemption Conditions, is necessary for a Conditional Exemption.

- 3.4 The Owner represents and warrants to the City that it is aware of the content of the Development Charges By-law and that the Rental Housing Development as represented to the City for its consideration in the preparation of this Agreement is a rental housing development within the meaning of that term as defined in the Development Charges By-law and this Agreement.
- 3.5 The Owner agrees that if the Rental Housing Development does not qualify for a Conditional Exemption, then the amount of any Development Charges that would be payable in respect of the Rental Housing Development is the amount of such charge as determined on the Development Charge Determination Date.

## 4.0 Payment

- 4.1 The Owner covenants and agrees, subject to Section 4.2 below, to pay to the City the total amount of the Development Charges payable in respect of the Rental Housing Development, immediately on such date as they are payable under this Agreement.
- 4.2 The City agrees that no Development Charges in respect of any dwelling unit that is a rented residential premises in the Rental Housing Development shall be payable prior to the last day of the Term.
- 4.3 The City agrees that if the Exemption Conditions have been fully satisfied, and if all dwelling units remain as rented residential premises, then for the purposes of the Development Charges By-law this Agreement shall be considered fully satisfied and the Rental Housing Development shall qualify for a Conditional Exemption, and no Development Charges shall be payable in respect of the Rental Housing Development.
- 4.4 If, at any time during the Term, a dwelling unit is used for a use other than a rented residential premises, then this Agreement shall not be considered fully satisfied, the amount of Development Charges as determined under this Agreement, together with all applicable interest, shall be immediately payable on any dwelling unit no longer used as a rented residential premises, and thereafter Sections 4.2 and 4.3 above shall cease to have any effect with respect to said unit.

- 4.5 The Owner agrees that any amount of Development Charges payable under this Agreement is subject to interest commencing on the Development Charges Determination Date, at a rate equal to the borrowing rate in effect to municipalities at the time the Development Charges are payable, for a twenty (20) year amortizing debenture through Infrastructure Ontario.

## 5.0 Development Charge Exemption Eligibility (Exemption Conditions)

- 5.1 The City acknowledges that the Owner received conditional site plan approval on **insert date**. The City agrees that, in order to postpone the commencement of the time periods for the payment of development charges established in the Act and the Development Charges By-law, the execution of the site plan agreement and stamping of drawings will take place on a date chosen by the Owner, provided that such date is no later than March 1, 2026.
- 5.2 Notwithstanding the provisions of 5.1, the Owner acknowledges and agrees that it must submit a complete application, including an executed site plan agreement and stamped drawings, for the Rental Housing Development's first building permit, no later than March 1, 2028 to qualify for a Conditional Exemption.
- 5.3 The Owner agrees that all building permits associated with the entire Rental Housing Development must be applied for, in a form acceptable to the City's Chief Building Official, within ten (10) years of the Development Charges Determination Date.
- 5.4 The Owner agrees that for a period of twenty (20) years commencing on the Occupancy Date, no part of the Rental Housing Development shall be used for any purpose other than a rented residential premises, except as may be required to complete development and construction of any part of the Rental Housing Development which may not yet be lawfully occupied pursuant to the Building Code Act
- 5.5 The Owner agrees that at no time shall there be an Uncured Default of this Agreement.
- 5.6 The Owner acknowledges and agrees that it must complete, to the satisfaction of the City, acting reasonably, all obligations with respect to the provisions of the conditions in this Article 5.0 in order for the Rental Housing Development to qualify for a Conditional Exemption.



## 6.0 Default

### 6.1 The following are Events of Default:

- a) any part of the Rental Housing Development is used for other than a rented residential premises;
- b) any part of the Rental Housing Development is used for Short-Term Accommodation;
- c) all or any part of the Rental Housing Development has been destroyed such that it is not safe for occupation;
- d) any breach of a condition of this Agreement;
- e) all building permits have not been applied for in a form satisfactory to the City's Chief Building Official within ten (10) years of the Development Charges Determination Date;
- f) any by-law is enacted pursuant to the *Planning Act*, R.S.O. 1990, c. P.13 that would permit the Rental Housing Development or a part thereof to be used for any use other than a rental residential premises;
- g) any approval is issued pursuant to the *Planning Act*, R.S.O. 1990, c. P.13 by the relevant authorizing or approval authority, including the City, authorizing the separate conveyance of any part of the Rental Housing Development, including a plan of subdivision, a draft plan of subdivision, a "part-lot control by-law" enacted pursuant to section 50(7) of that Act, or any "consent" within the meaning of sections 50 and 53 of that Act; and
- h) any approval is issued pursuant to the *Condominium Act, 1998*, S.O. 1998, c. 19, by the relevant approval authority, including the City, of a plan of condominium in respect of any part of the Rental Housing Development, including a draft plan of condominium.

### 6.2 It is agreed that if an Event of Default described in Section 6.1 occurs, it shall constitute an Uncured Default unless one of the following applies:

- a) the Owner corrects the subject matter of the Event of Default such that the defaulting condition fully ceases within thirty (30)

days of notice being given by the City of the Event of Default;  
or

- b) if the subject matter of the Event of Default is incapable of being fully ceased within thirty (30) days of such notice being given, the Owner commenced actions to cause it to cease within that time period, and then proceeded thereafter with reasonable diligence to cause it to fully cease; or

the City, in its sole and unfettered discretion, gives notice to the Owner that the Event of Default is waived.

## 7.0 Enforcement

- 7.1 The Owner acknowledges that should any amount of the Development Charges become payable and remain unpaid, then the City may, in addition to any other remedy available to it at law, require that the unpaid amount and any interest thereon be added to the tax roll by the City pursuant to section 32 of the Act and be collected as realty taxes.
- 7.2 The Owner further acknowledges that such amount may, pursuant to the provisions of the Municipal Act, 2001, constitute a special lien against the Property.
- 7.3 The Owner further acknowledges that such a special lien as described in Section 7.2 herein may, pursuant to the provisions of the Municipal Act, stand in priority to every claim, privilege, lien or encumbrance of every person on the Rental Housing Development except the Crown, that the potential for this lien may be a matter of concern for the Owner's proposed mortgagees and encumbrancers, and that such a lien or the prospect of such a lien may persist until such time as any Development Charges in respect of the Rental Housing Development are paid or exempted from payment upon full and complete satisfaction of this Agreement. In the event the City does register a special lien on title to the Property in accordance with section 7.2, upon full payment of the Development Charges and any interest thereon by the Owner, the City shall forthwith discharge such lien

## 8.0 Indemnification

- 8.1 The Owner will and herein does indemnify, save, defend and keep harmless at all times the City of, from and against all actions, causes of action, interest, claims, demands, cost, charges, damages, expenses and loss which the City may at any time bear, incur, be liable for, sustain or be put into for any reason or on account of or by reason of or in consequence of entering into this Agreement. This section shall survive the termination of the Agreement.

## 9.0 Registration and Release

- 9.1 The City may register notice of this Agreement on title to the Property.
- 9.2 The Owner represents and warrants to the City that the description of the Property provided in Schedule "A" is a complete and registerable legal description of all of the land which comprises the Rental Housing Development, and agrees to provide to the City, upon request, written confirmation thereof from its solicitor.
- 9.3 Upon full satisfaction of the Owner's obligations under this Agreement, written request of the Owner, and payment of the City's then prevailing fee therefor, the City shall apply for the discharge of notice of this Agreement from title to the Property.

## 10.0 Termination

- 10.1 This agreement shall not be terminated until all obligations of the Owner with respect to the payment of any Development Charges in respect of the Rental Housing Development have been fully satisfied.
- 10.2 Upon the expiry or termination of this Agreement, any obligation of the Owner under this Agreement that remains unsatisfied, in whole or in part, shall, nevertheless, continue until it is satisfied or until it is released in writing by the City.

## 11.0 Independent Legal Advice

- 11.1 The Owner confirms that it has obtained independent legal advice, or that it has had the opportunity to obtain such advice but has chosen not to, in respect of its obligations under this Agreement, and the implications of it on the title and marketability of the Rental Housing Development during its Term of the lien that may arise should any amount of Development Charges in respect of the Rental Housing Development be unpaid.

## 12.0 Notice

- 12.1 Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

### **For the City:**

City Clerk  
Owen Sound City Hall  
808 2nd Avenue East  
Owen Sound, ON N4K 2H4  
Fax Number: 519-371-0511  
Email: [clerks@owensound.ca](mailto:clerks@owensound.ca)

### **For the Owner:**

XXX

Email: [XXX](#)

- 12.2 Any Notice given by either party to the other shall, in the absence of proof to the contrary, be deemed to have been received by the addressee:
- a) if delivered personally on a Business Day, then on the day of delivery, and if delivered personally on a day other than a Business Day, then on the first Business Day following the day of delivery;
  - b) if sent by mail, then on the fifth Business Day following the mailing thereof; and
  - c) if transmitted by facsimile or email on a Business Day, then on the day of sending, and if sent on a day other than a Business

Day, then on the first Business Day following the day of sending, provided that if the sender knows or ought to have known that such transmission was not received or would not be received by its intended recipient, then it shall not be deemed to have been given.

### **13.0 Agreement not Waiver**

- 13.1 This Agreement is made entirely for the convenience and benefit of the Owner and is in no way to be construed as a waiver or surrender of any rights or remedies that the City may have to recover its Development Charges by any lawful means from present and future owners of the Property or as taxes upon the Property.

### **14.0 Governing Law**

- 14.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

### **15.0 Severability**

- 15.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

### **16.0 Entire Agreement**

- 16.1 This Agreement constitutes the entire agreement between the parties with respect to the Development Charges and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the Development Charges except as provided in this Agreement and the attached Schedule(s).

## 17.0 Amendment of Agreement

- 17.1 None of the terms, conditions or provisions of this Agreement shall be held to have been changed, waived, varied, modified or altered by any act or statement of either party, their respective agents, servants or employees unless done so in writing signed by both parties.

## 18.0 Successors and Assigns

- 18.1 All covenants and conditions contained in this Agreement shall be deemed to the maximum extent possible to be covenants running with the Property and shall be binding on the Owner and the Owner's heirs, executors, administrators, successors, permitted assigns, and upon all future owners and occupants of the Property.

## 19.0 No Partnership

- 19.1 Nothing in this Agreement gives rise to a partnership, joint venture or an employment relationship between the City and the Owner.

## 20.0 Time is of the Essence

- 20.1 Time is of the essence in this Agreement and every part of this Agreement and no extension or variation of this Agreement shall operate as a waiver of this provision.

## 21.0 Freedom of Information and Protection of Privacy

- 21.1 The Owner acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, and that this Agreement and any information provided to the City in connection with the Rental Housing Development or in connection with this Agreement may be subject to disclosure in accordance with such Act.

## 22.0 Counterparts

- 22.1 This Agreement and any amendment or other document related to the Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement.

## 23.0 Photographic, Facsimile and Electronic Signatures and Electronic Delivery

- 23.1 Each party agrees that a photographic or facsimile copy of a signature evidencing a party's execution of this Agreement or any amendment or other document related to the Agreement, will have the same force and effect as a manual signature. This Agreement and any amendment or other document related to the Agreement may be signed electronically. Each Party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record. Delivery of an executed copy of this Agreement or any amendment or other document related to the Agreement, by facsimile or electronic transmission constitutes valid and effective delivery.

IN WITNESS WHEREOF THE PARTIES hereunto attested by the hands of the proper officers duly authorized in that behalf as of the day and year first written above.

### **The Corporation of the City of Owen Sound**

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Kate Allan, Director of Corporate Services

I have the authority to bind the City

**XXX**

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Name:

Title:

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Name:

Title:

I/we have the authority to bind the Owner

NOTE: Second signatory to be completed by the Owner only if the Owner requires two signatories (and by leaving the second signatory blank and returning the Agreement to the City, the Owner and the first signatory represent that no additional signatories are required).



### **Schedule "A"**

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Owen Sound, County of Grey, Province of Ontario, municipally known as XXX and comprised of:

XXX

Instrument No.

XXX

**Schedule "B"**  
**Development Charge Amounts**

Amounts payable pursuant to By-law No. 2023-112:

[insert formula]

**Schedule "C"**  
**Approved Site Plan**

