

CMHC SEED FUNDING LOAN AGREEMENT

THIS AGREEMENT made this December 21, 2020

BETWEEN

CANADA MORTGAGE AND HOUSING CORPORATION

("CMHC")

- AND -

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION

("Borrower")

(Collectively referred to as the "Parties" and each individually a "Party" under this loan agreement ("Agreement").)

WHEREAS under the Seed Funding Program, established pursuant to Section 76 of the National Housing Act ("Program"), CMHC may provide funding for the development or implementation of proposals to help increase the supply of affordable housing and to assist the continued viability and affordability of existing projects.

AND WHEREAS the Borrower has requested Program funding from CMHC through the submission of a loan application dated April 21, 2020 ("Application"), which was subsequently approved by CMHC on May 13, 2020 ("Application Approval"), for the housing project identified under **Schedule A** of this Agreement (the "Project") and certain eligible costs associated with such projects, as identified under **Schedule A** of this Agreement (the "Eligible Activities");

NOW THEREFORE, the Parties agree to enter into this Agreement in respect of the Project, on and subject to the following terms and conditions:

1. Seed Loan.

Subject to the terms and conditions of this Agreement, CMHC agrees to provide a loan to the Borrower up to an amount of \$99,000.00 (the "Seed Loan"). The Borrower's eligibility for the Seed Loan does not constitute an assurance that the Project or associated Eligible Activities will be approved for CMHC loan insurance, or other forms of CMHC or federal assistance. The Borrower agrees to use the proceeds from the advances under this agreement only for Eligible Activities.

2. Advances.

This Agreement shall become effective on December 21, 2020 ("Effective Date") and the Borrower will submit invoices evidencing expenditure of amounts to pay for the Eligible Activities equal to 100% of the Seed Loan and request advances for such expenditures in each case within 36 months of the Effective date. For greater certainty, if the Maturity Date (as defined below) occurs prior to 36 months following the Effective Date then the Borrower will be required to submit invoices evidencing expenditure of amounts to pay for the Eligible Activities equal to 100% of the Seed Loan and request advances for such expenditures by such earlier date.

The Borrower shall submit detailed invoices or receipts evidencing the actual expense for the Eligible Activities ("Requested Amount") at least ten (10) business days prior to the proposed advance date. Provided CMHC is satisfied, in its sole discretion, that:

- (a) the Eligible Activities have been completed within the timeframes set out under this Agreement;
- (b) the aggregate amount of all advances made under this Agreement will not exceed the maximum amount of the Seed Loan provided under Section 1 of this Agreement; and
- (c) the Borrower is in compliance with all of the provisions of this Agreement,

CMHC will advance an amount not exceeding the Requested Amount. CMHC reserves the right to limit the amount reimbursed with respect to the Eligible Activities, to reasonable amounts charged for comparable services. At any time before or after making any advances under this Agreement, CMHC may, in its sole discretion, without notice, reduce the maximum amount of the Seed Loan to such lesser amount as CMHC may determine in its sole discretion.

3. Approval of Eligible Activities.

Notwithstanding the approval by CMHC of the Eligible Activities or the receipt by CMHC of reports or other documentation in respect of the Eligible Activities, the Borrower will be solely responsible for completing the Eligible Activities and obtaining appropriate professional advice to complete the Eligible Activities. CMHC will not be liable for approving the Eligible Activities, providing a Seed Loan to complete the Eligible Activities or receiving or reviewing any reports or other documentation in respect of the Eligible Activities. Any reports or other documentation delivered to CMHC by the Borrower in respect of the Eligible Activities will be solely for the purposes of confirming compliance with this Agreement and under no circumstances will CMHC be responsible for the content of any such reports or other documentation or ensuring compliance by the Borrower with any such reports or other documentation.

4. Repayment.

- (1) The "**Repayment Amount**" shall include all amounts of the Seed Loan advanced under this Agreement, prior to the "**Maturity Date**". The Repayment Amount shall be repayable on the Maturity Date, which date shall be the earlier of: (i) the date on which the Borrower receives a Project Financing (as defined in Section 7(2)), or (ii) the third (3) year anniversary of the Effective Date or (iii) the date on which the Borrower notifies, in writing, CMHC that the Project has been discontinued or otherwise abandons the Project or (iv) the date of a Notice of Termination (as defined under Section 10(1)) or (v) the date on which CMHC notifies the Borrower, in writing, of its determination that the Borrower has failed to meet its Project objectives in accordance with the "Reports" (as defined herein). CMHC shall maintain, in accordance with its usual practice, accounts evidencing the Repayment amount; and the information entered in such accounts shall constitute conclusive evidence of the Repayment Amount absent manifest error.
- (2) Where the Borrower is in receipt of a "**Project Financing**", the Borrower shall instruct and direct the Project Financing lender to directly disburse to CMHC the entirety of the Repayment Amount in the first advance under the Project Financing, unless otherwise agreed by the Parties hereto in writing. The Borrower shall issue written instructions to such lender to this effect, with a copy to CMHC.
- (3) When a repayment is required under this Agreement, other than pursuant to Sections 7(2), the Borrower shall repay the entirety of the Repayment Amount to CMHC within thirty (30) days of the Maturity Date, unless CMHC, in its sole discretion, agrees in writing to an alternate repayment schedule, not to exceed twenty-four (24) months and interest shall be paid in accordance with Section 5. CMHC, in its sole discretion may agree to extend the repayment period.

5. Interest.

The Borrower will not be required to pay interest to CMHC on the Repayment Amount until the Maturity Date. Interest on the Repayment Amount will commence on the thirtieth (30th) day following the Maturity Date, at a rate per annum equal to Canada Prime Rate¹ plus two percent (2%) as determined on the Maturity Date of this Agreement and calculated semi-annually and not in advance ("**Interest**"). CMHC, in its sole discretion may decide, in writing, to waive the Interest (or any part thereof) following the Maturity Date where the Borrower is in good standing under this Agreement.

6. Costs and Expenses.

The Borrower will bear all of the out-of-pocket costs and expenses incurred by CMHC in respect of the preparation, negotiation, execution, amendment, waiver, or enforcement of this Agreement or any related, including any fees and expenses of legal counsel for CMHC (the "**Fees and Expenses**").

7. Reporting Requirements.

(1) Semi-Annual Reporting.

The Borrower shall provide CMHC with a semi-annual progress report ("**Report(s)**"), which shall include: (i) a detailed report on the progress of the Eligible Activities, accompanied by a schedule outlining the expected timeframes for completion of the next six (6) month's Eligible Activities, (ii) updates on accomplishments that have been completed on the Eligible Activities since the last submitted Report, and (iii) where applicable, a detailed account of the challenges or possible challenges that have impeded or may impede completion of the Project. In reviewing such Reports, CMHC will determine, in its sole discretion, whether the reports indicate the timely realization of the Project and Eligible Activities by the Borrower, as well as the Borrower's continued ability to perform the Project objectives, failing which CMHC may exercise its right to terminate this Agreement in accordance with Section 9 (2) of this Agreement.

¹ The Canada Prime Rate as established by the Bank of Canada shall apply.

Commencing on the Effective Date of this Agreement and until the Maturity Date of this Agreement, the Reports are due six (6) months following the Effective Date and every six (6) months thereafter unless this Agreement is terminated earlier in accordance with its terms.

(2) Project Reporting.

The Borrower shall provide CMHC with immediate written notice if/when the Project proceeds to a commitment for capital financing or a commitment for other funding to be used in the advancement of the Project (the "**Project Financing**"). Such notice shall attach the commitment letter from the lender of the Project Financing and shall specify: (i) the name of the lender of the Project Financing, (ii) the date on which the Project Financing is to be disbursed by such lender, and (iii) the amount of the Project Financing.

8. Representations and Warranties.

The Borrower represents and warrants to CMHC as at the date of this Agreement, and on the date each Requested Advance is submitted that:

- (a) it is duly incorporated, organized, established and validly existing under the laws of its jurisdiction of incorporation, operation, and organization, as the case may be;
- (b) the execution, delivery and performance by the Borrower of the terms of this Agreement and of each document to be delivered by it with respect thereto are: (i) within the Borrower's powers and have been duly authorized by all necessary action; and (ii) do not violate any law, statute, regulation, ordinance or decree applicable to it in the Province of Ontario or the federal laws of Canada applicable therein;
- (c) this Agreement and each document with respect thereto have been duly executed and delivered by the Borrower and constitute direct, legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms;
- (d) there are no legal proceedings pending or, so far as is known to the Borrower, threatened against any of the Borrower which could or would materially adversely affect the Borrower's financial condition or its operations, or its ability to perform its obligations under this Agreement;
- (e) it is not in violation of any term of its documents or of any agreement to which it or its business or assets or the Project are subject; and the entering into, performance of and compliance with this Agreement will not result in any such violation or constitute a default under or be in conflict with any such term; and

The Borrower shall indemnify and hold CMHC harmless on account of any circumstances that make any of the above representations incorrect.

9. Covenants.

The Borrower covenants and agrees to:

- (a) promptly notify CMHC of the occurrence of any Event of Default (as defined under Section 10 of this Agreement) or of any event that with notice, lapse of time or a determination hereunder or any combination thereof would constitute an Event of Default;
- (b) pay when due all taxes payable by it;
- (c) at all times comply with all applicable laws, including all Environmental Laws, and regulations relating to it and its operations;
- (d) Use the Seed Loan only for the approved Eligible Activities carried out after the Borrower's receipt of CMHC's Application Approval Letter confirming the Borrower's eligibility for the Seed Loan;
- (e) ensure that the Project continues to meet, during the life of this Agreement, the minimum "Affordability Criteria" in accordance with any applicable municipal/provincial standards or where such standards do not exist, as determined by CMHC;
- (f) promptly, and in any event within three (3) days of such change, notify CMHC of any change in its name or the location of its chief executive office;
- (g) Complete the Eligible Activities and submit invoices in respect of expenditures to complete the Eligible Activities within the time required pursuant to Section 2.

10. Events of Default.

- (1) The Parties hereto agree that, if any one or more of the following events (each an "Event of Default") has occurred:
- (a) if CMHC considers that the Project no longer satisfies all applicable "Affordability Criteria" in accordance with any applicable municipal/provincial standards or where such standards do not exist, as determined by CMHC;
 - (b) if the Borrower is not in compliance with applicable laws, including all Environmental Laws, and regulations relating to it and its operations and cannot remedy, to the sole satisfaction of CMHC, such non-compliance with laws;
 - (c) if, in CMHC's sole opinion, the Project does not proceed in a timely manner and/or in accordance with the Reports described in Section 7 of this Agreement, or if the Borrower otherwise discontinues or abandons the Project, unless otherwise agreed by CMHC in writing;
 - (d) if any representation or warranty made by the Borrower under this Agreement or in any related document or opinion, was incorrect when made or deemed to be made or becomes incorrect during the duration of this Agreement and is incurable or remains uncured by the Borrower for a period of more than ten (10) business days of the earliest discovery by either of the Parties of such error;
 - (e) if the Borrower has breached or failed to fulfill any one or more of its obligations under this Agreement and has not remedied such breach or failure and to the sole satisfaction of CMHC, within thirty (30) calendar days of the date on which such breach occurred, or within any other timeframe that the Parties have agreed to in writing;
 - (f) if proceedings are started by any person to dissolve, liquidate, or wind up the Borrower or to suspend any of its operations;
 - (g) if the Borrower: (i) makes an assignment for the benefit of its creditors; or (ii) is declared by any competent authority to be bankrupt or insolvent; or (iii) starts any proceeding relating to itself under any present or future reorganization, arrangement, adjustment of debt, dissolution or liquidation law of any jurisdiction;
 - (h) if the Borrower: (i) fails to pay any amount due, under any one or more loans related to the Project or (ii) is in default under any one or more such loans related to the Project;
 - (i) if fraud or misrepresentation as described under Section 17 of this Agreement on the part of the Borrower or its representatives has occurred or is continuing without remedy to the satisfaction of CMHC; and
 - (j) if any other event or circumstance occurs which, in the sole discretion of CMHC, is likely to materially and adversely affect the Borrower's ability to successfully proceed with the Project or otherwise perform all or any of its obligations under this Agreement;

then, CMHC shall make no further advances in accordance with Section 2 of this Agreement and may, by written notice to the Borrower (the "**Notice of Termination**"): (i) terminate this Agreement, and/or (ii) declare all or part of the indebtedness of the Borrower hereunder to be immediately due and payable to CMHC, without any further demand or notice of any kind. In the case of (ii) the Borrower shall return all or part, as determined by CMHC in its sole discretion, of the Seed Loan advanced to the Borrower and any interest permitted by law and in accordance with Section 5 of this agreement by CMHC within thirty (30) calendar days of the date of the Notice of Termination.

- (2) Notwithstanding any other provision of this Agreement, CMHC may terminate this Agreement for any reason upon ten (10) calendar days' written notice to the Borrower, including without limitation, if funding for the Program is no longer available including due to no or insufficient appropriations by the Government of Canada. In such event, CMHC will advance funding for the invoices relating to the Eligible Activities that have been completed up to the date of the Notice of Termination.
- (3) Notwithstanding any other term or condition of this Agreement to the contrary, Section 14 (Intellectual Property), Section 15 (Indemnification), and Section 18 (Confidentiality) of this Agreement, and all other provisions of this Agreement necessary to give effect thereto, shall survive any expiry or termination of this Agreement.

11. Independent Borrower.

It is the intention of the Parties that CMHC is solely a lender to assist the Borrower in the performance of the Eligible Activities and that the Project and the Eligible Activities shall not be a partnership or joint venture between CMHC and the Borrower or any other person.

12. Release Information regarding the Eligible Activities.

The Borrower shall allow CMHC to use any information submitted or provided in connection with the Project in CMHC media releases, publications or other venues as deemed appropriate by CMHC.

13. Acknowledgement of Seed Loan.

Where the Borrower plans to publish any reports and/or materials relating to the Eligible Activities supported by the Seed Loan, the Borrower shall: (i) notify CMHC in writing of any such publication at least fifteen (15) business days prior to such publication, and (ii) if so requested by CMHC in writing, acknowledge CMHC's financial support of the Eligible Activities in such publications in the following manner:

"This [Project name/description] received financing from Canada Mortgage and Housing Corporation (CMHC), however, the views expressed are the personal views of the author and CMHC accept no responsibility for them/Ce [Projet nom/la description] est financé en partie par la Société canadienne d'hypothèques et de logement (SCHL), cependant, les opinions exprimées sont les opinions personnelles de l'auteur et la SCHL accepte aucune responsabilité pour ces opinions."

14. Intellectual Property.

All information and materials produced under this Agreement shall be the exclusive property of the Borrower and the Borrower shall have copyright therein. Subject to the terms and conditions of this Agreement, the Borrower hereby grants to CMHC an exclusive, perpetual, royalty-free licence to use all or part of the information and materials produced under this Agreement world-wide, with the right to modify the information or materials for any purpose related to the current or future operations of CMHC.

15. Indemnification.

The Borrower agrees to indemnify and save harmless CMHC, its officers, directors and employees against all claims demands, actions, suits or other proceedings, including but not limited to environmental actions, of every nature and kind arising from or in consequence of the performance of its obligations or its failure to act under this Agreement or any document related thereto, whether or not CMHC is named a party in such actions, suits or proceedings.

16. Records.

The Borrower will keep proper and detailed records and statements of account, including receipts, vouchers, invoices, and other documents related to the cost of carrying out the Eligible Activities and shall permit CMHC, or its designated representative, to access to such records and statements for audit and inspection purposes within five (5) business days of such written request from CMHC.

17. Fraud, Misconduct, or Misrepresentation.

Notwithstanding Section 10 of this Agreement, if in CMHC's sole discretion, fraud, misconduct, or misrepresentation by the Borrower or its representatives has occurred, then CMHC shall have the right to immediately terminate this Agreement and, all of the Seed Loan disbursed to the Borrower by CMHC shall be immediately repayable by the Borrower to CMHC.

18. Confidentiality.

For the purposes of this Agreement, "Confidential Information" includes, but is not limited to, any information that has been or will be disclosed in any form by one of the Parties under this Agreement to the other Party. The Parties shall hold all Confidential Information in trust and in the strictest confidence, using efforts and a standard of care fully commensurate with those which the Parties employ for protection of their own confidential information and shall employ such precautions as are necessary to prevent unauthorized use, access to and disclosure of the Confidential Information. The Confidential Information may be disclosed by the Parties solely for the purposes of carrying out each Parties obligations under this Agreement and to the extent that such disclosure is required by court or regulatory order or as otherwise required by law or regulation, provided, however, that each Party shall notify the other Party immediately upon learning of the possibility of any such requirement in order to allow that Party a reasonable opportunity to contest or limit the scope of such required disclosure (including application for a protective order or other remedy). The Parties agree to comply with all applicable legal requirements and, without limiting the generality of the foregoing, nothing in this Agreement shall be construed in a manner that would contravene the *Access to Information Act* (Canada) or the *Privacy Act* (Canada).

19. Conflict of Interest.

The Borrower shall avoid any conflict of interest during the life of this Agreement and shall immediately declare any existing, potential or apparent conflict of interest and shall, upon direction of CMHC, take steps to eliminate any conflict of interest, or perception that a conflict of interest exists. In the event that a conflict of interest, real or perceived, cannot be resolved to the satisfaction of CMHC, CMHC shall have the right to immediately terminate this Agreement and the repayment requirements under Section 10 of this Agreement shall apply.

20. Entire Agreement.

- (1) The Parties agree that **Schedule A** (Project and Eligible Activities), **Schedule B** (Defined Terms), and **Schedule C** (Conditions Precedent), form a part of the Agreement and are of full force and effect for the duration of this Agreement. This Agreement contains all of the agreements and understandings between the Parties and no other representatives or warranties, verbal or otherwise, exist between the Parties. If any provision of the Agreement is held by a competent authority to be invalid, illegal or unenforceable for any reason, the remaining provisions of the Agreement and any Schedules attached hereto, will continue to be in full force and effect. In the event of conflict between the terms of this Agreement or any other document relating to this Agreement, the terms of this Agreement shall govern.
- (2) The failure of CMHC to insist on strict compliance with one or more of the terms of this Agreement shall not constitute a waiver of CMHC's right to enforce those terms at a later date. No provision of this Agreement shall be deemed to have been waived as a result of a breach by the Borrower of the provisions of this Agreement, unless such waiver is in writing and signed by CMHC. For greater clarity, the written waiver by CMHC of any breach of any provision of this Agreement by the Borrower, shall not be deemed a waiver of such provision for any subsequent breach of the same or any other provision of this Agreement.

21. Binding Agreement.

This Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by the Borrower without the prior written consent of CMHC. Any amendment to this Agreement must be provided and approved by CMHC in writing.

22. No use of Name or Logo.

It is agreed that the Borrower will make no use whatsoever of the name, logo or initials of CMHC without the express written consent of CMHC.

23. House of Commons.

No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

24. English Language.

The Parties hereto agree that this Agreement and all transaction documents related thereto will be in the English language or will be accompanied by an English translation certified by the Borrower *Les Parties aux présentes conviennent que cette convention de prêt ainsi que tout document qui s'y rapporte et devant être fourni par l'Emprunteur, sera rédigé en langue anglaise.*

25. Governing Law and Jurisdiction.

This Agreement is made under, and will be governed by and construed in accordance with the laws of the province or territory in which the Project is to be located and the federal laws of Canada applicable therein. The courts of such jurisdiction shall exclusively hear any dispute related to the validity, interpretation or performance of this Agreement.

26. Notice.

Delivery of notice under this Agreement shall be effective three (3) days after posting by regular mail, or on the day following transmission by fax or e-mail, to the Parties at the following addresses:

CMHC:
700 Montreal Road,
Ottawa, ON K1A 0P7
Financing Operations
Fax: 613-748-2404
E-mail: ahc_on@cmhc-schl.gc.ca

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION :
32 Mill Street
Thornbury, ON N0H 2P0
Contact : Sharon McCormick
E-mail : smccormick@thebluemountainshousing.ca

27. No Advance Prior to the Signing of this Agreement.

No advance shall be made under this Agreement until a copy of this Agreement is signed by the Borrower and delivered to CMHC.

28. Counterparts and Electronic Delivery.

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and all of which together shall constitute one and the same Agreement. Execution and delivery of this Agreement by electronic mail or other electronic transmission, including portable document format ("pdf"), shall have the same legal effect as physical delivery of this Agreement bearing original signatures and any signature on a pdf form of this Agreement shall be deemed to be equivalent to an original signature for all purposes.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement.

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION

Signature: _____
Name:
Title:

Witness: _____

Signature: _____
Name:
Title:

Witness: _____

I/We have the authority to bind the Borrower.

CANADA MORTGAGE AND HOUSING CORPORATION

Signature: _____
Name:
Title:

Signature: _____
Name:
Title:

I have the authority to bind the Corporation.

**SCHEDULE A
PROJECT AND ELIGIBLE ACTIVITIES**

1. The Project in receipt of the Seed Loan is described as follows:

New Construction of 118 units with 50 affordable units.

2. The CMHC approved Eligible Activities are set out below and are subject to the specific activities approved in the Application:

- Analysis of need and demand for the proposed project
- Special purpose surveys;
- Preliminary financial feasibility;
- Business plan;
- Incorporation;
- Option to purchase (loan only);
- Registration of security (loan only);
- Professional appraisal;
- Site surveys;
- Planning fees (for example, rezoning, development agreement costs);
- Preliminary design;
- Project viability assessment plan/analysis-pro forma;
- Environmental site assessments;
- Geotechnical surveys (soil load-bearing tests);
- Energy/accessibility modelling studies (cost-benefit analyses);
- Engineering studies (for example, wind, shadow and traffic impact analyses);
- Project drawings and specifications;
- Construction cost estimates;
- Quantity Surveyor;
- Contract documents;
- Development permits;
- Final viability / analysis – pro forma;
- Completion appraisal;
- Other (please specify);

**SCHEDULE B
DEFINED TERMS**

“**Environmental Laws**” means all requirements under any provincial or federal law, rule, regulation, order, or judgment, decree, license, agreement or other restriction of any governmental authority relating to the environment, pollution, contamination, or the disposal, storage, and discharge of hazardous or toxic substances into the environment, including environmental assessment reports to the extent such reports are required pursuant to the *Canadian Environmental Assessment Act* and its regulations, as amended from time to time, to the extent applicable.

SCHEDULE C
CONDITIONS PRECEDENT

The conditions referred to in this **Schedule C** are for the sole benefit of CMHC only and may be waived by CMHC in whole or in part, with or without conditions, for any advance of the Seed Loan, without affecting CMHC's right to require that such conditions be fulfilled for any other advance.

1. Documentation required prior to CMHC's initial advance of any of the Seed Loan, in each case in form and substance satisfactory to CMHC:
 - (a) an executed copy of this Agreement;
 - (b) the favourable opinion of a law firm satisfactory to CMHC acting as counsel to the Borrower and CMHC and in the form attached hereto in **Schedule D**;
 - (c) an officer's certificate satisfactory to CMHC, setting out the names of persons authorized to sign this Agreement, and any other documents required thereunder including any Request for Advance, on behalf of the Borrower, with specimen signatures of such persons and attaching certified copies of the constating documents of the Borrower together with all by-laws; and
 - (d) such financial or other information or documents relating to the Borrower as CMHC may reasonably require.

**SCHEDULE D
FORM OF OPINION**