

HOUSING ACCELERATOR FUND GRANT AGREEMENT

BETWEEN:

THE TOWN OF TORBAY

(hereinafter referred to as the “**Town**”)

-and-

[DEVELOPER NAME], a corporation duly incorporated under the laws of
[Newfoundland and Labrador]

(hereinafter referred to as the “**Developer**”)

WHEREAS the Town seeks to incentivize the development of new “missing middle” residential units to address housing availability and affordability;

AND WHEREAS the Developer has applied for financial assistance for the Project (as defined below) as part of the Town's Housing Accelerator Fund (HAF) Grant & Incentives program;

AND WHEREAS the Town has agreed to provide financial assistance subject to the Developer meeting specific criteria set forth in this Agreement;

AND WHEREAS a footing permit has been issued by the Town in respect of the Project;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the terms in quotation marks which are set out below, shall have the following meanings:

- (a) “Affordable Rent Threshold” means rent which is set at a 2025 rate not exceeding \$1,225.00 per month, POU, and which may increase by an amount not to exceed two percent (2.0%) per year;
- (b) “Affordability Incentive” has the meaning ascribed thereto in Section 3.1;
- (c) “Affordability Incentive Conditions” has the meaning ascribed thereto in Section 3.2;
- (d) “Affordable Rent Threshold Proof of Compliance” has the meaning ascribed thereto in Section 3.2(b);
- (e) “Agreement” means this agreement and all schedules thereto;
- (f) “Apartment Building / Condo / Multi-Unit / Mixed Use Building” means a building containing three or more dwelling units, but does not include a Row Dwelling, Double Dwelling or a single dwelling with a Secondary Suite;

- (g) “Approvals” means all approvals, authorizations, consents, licenses, permits, qualifications or orders of any Government Authority required by Laws in connection with the development of the Project;
- (h) “Approved Incentives” means the Incentives which have been approved for the Project, as outlined in the Project Details, subject to the terms and conditions contained herein;
- (i) “Development Timelines” has the meaning ascribed thereto in Section 2.4;
- (j) “Double Dwelling” means one building containing two dwelling units, placed one above the other, side by side, or joined by a carport with separate lot areas and ownership dedicated to each unit, and does not include a single dwelling containing a secondary suite or in-law suite.
- (k) “Eligible Unit” means a self-contained dwelling unit consisting of one or more habitable rooms used or designed as the living quarters for one or more persons, constructed within the municipal boundaries of the Town of Torbay, contained within either of:
 - (i) an Apartment Building / Condo / Multi-Unit / Mixed Use Building;
 - (ii) a Double Dwelling;
 - (iii) a Row Dwelling; or
 - (iv) a Secondary Suite;
- (l) “Fee Waivers” has the meaning ascribed thereto in Section 6.1;
- (m) “Government Authority” means any federal, provincial or municipal government and any agency, authority, body, board, commission or entity thereof, including without limitation, the Town;
- (n) “Housing Incentive” has the meaning ascribed thereto in Section 2.1;
- (o) “Law” or “Laws” means the common law and any statute, regulation, ordinance, standard, code, order, permit, license, rule, by-law, guideline or policy of any Government Authority, as the same may be amended, substituted, replaced or enacted from time to time, including but not limited to the *Town of Torbay Municipal Plan 2015-2025* and the Town of Torbay Development Regulations 2015-2025, as amended and/or replaced;
- (p) “POU” means, with respect to rent, that the tenant pays for utilities;
- (q) “Project” means the project by which one or more Eligible Units will be constructed by the Developer, as more particularly described in the Project Details;
- (r) “Project Details” means the details of the Project, as described in Schedule “A” hereto;

- (s) "Row Dwelling" means three or more dwelling units at ground level in one building, each unit separated vertically from the others; and
 - (t) "Secondary Suite" means a separate dwelling unit constructed within, below, above or attached to a single dwelling, and subsidiary to the main dwelling unit.
- 1.2** The division of this Agreement into separate Articles, Sections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.3** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and, except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations, warranties, and agreements of the respective parties with respect to the subject matter hereof. There are no verbal representations, undertakings or agreements of any kind between the parties except as set out herein.
- 1.4** If any covenant, obligation or agreement of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- 1.5** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Newfoundland and Labrador and the applicable laws of Canada.
- 2. HOUSING INCENTIVE**
- 2.1** Subject at all times to the terms and conditions of this Agreement, the Town will provide housing incentives (the "**Housing Incentive**") to the Developer in the amount of \$10,000.00 per Eligible Unit constructed by the Developer, in accordance with the Project Details, to the maximum Housing Incentive detailed in the Approved Incentives.
- 2.2** All Housing Incentives to be paid pursuant to this Agreement shall be paid upon the Developer's satisfaction of all conditions necessary for the issuance of an occupancy permit.
- 2.3** The availability of the Housing Incentive shall be conditional upon the Developer meeting the following timeline conditions (the "**Development Timelines**"):
- (a) the Developer commencing construction of the Development within one year (1) of the date of this Agreement; and
 - (b) completion of the Development, with Developer's satisfaction of all conditions necessary for the issuance of an occupancy permit(s) in respect of the Project, within forty-eight (48) months from the date of this Agreement.

For the purposes of subparagraph (a) above, "*commencing construction*" shall mean:

- with respect to a Secondary Suite, that the Town has received a copy of the electrical permit issued in respect thereof; and
- with respect to a Double Dwelling, Row Dwelling, or Apartment Building / Condo / Multi-Unit / Mixed Use Building, that the footings/foundations in respect thereof have been completed and the Town has received a real property report (location certificate) as prepared by a surveyor licensed to practice in Newfoundland and Labrador depicting the location thereof.

2.4 If the Developer fails to meet either of the Development Timelines:

- (a) this Agreement shall be null and void;
- (b) without limitation to the generality of subparagraph (a), the entitlement of the Developer to receive any Housing Incentive and/or Fee Waivers shall be terminated, and there shall be no liability by either party to the other arising from such termination of this Agreement; and
- (c) the Developer will be able to re-apply for Housing Incentives, however, such application will be subject to available Housing Accelerator Fund (HAF) funding at the time of re-application.

3. AFFORDABILITY INCENTIVE

3.1 Subject at all times to the terms and conditions of this Agreement, including but not limited to the conditions for qualification for the Housing Incentive (i.e., in order to qualify for the Affordability Incentive, all conditions for the payment of the Housing Incentive must be met), the Town will provide an affordability incentive of \$15,000.00 (the “**Affordability Incentive**”) per Eligible Unit, if the Eligible Unit meets the Affordability Incentive Conditions.

3.2 The availability of the Affordability Incentive shall be conditional upon the Developer meeting the following conditions (the “**Affordability Incentive Conditions**”):

- (a) the Developer covenants and agrees that the Eligible Unit shall be actively marketed for lease for a minimum three (3) year period;
- (b) the Developer covenants and agrees that the rental rate for each Eligible Unit shall be set at or below the Affordable Rent Threshold for a period of three (3) years (the “Affordability Covenant”); and
- (c) the Developer covenants and agrees to provide to the Town, on an annual basis for a period of three (3) years, an annual filing (the “**Affordable Rent Threshold Proof of Compliance**”) substantiating compliance with the Affordability Covenant, which shall include the following:
 - (i) a certified rent roll for the prior year, listing all occupied units, rental rates, and tenant information; and
 - (ii) associated bank statements verifying deposit records for all rental transactions.

3.3 All Affordability Incentives to be paid pursuant to this Agreement shall be paid upon:

- (a) issuance of an occupancy permit in respect of the Eligible Unit; and
- (b) submission to the Town, within three (3) months of the issuance of the occupancy permit, of a signed rental agreement between the Developer and an arm's length tenant in respect of the Eligible Unit.

3.4 If the Developer breaches the Affordability Covenant, the following shall apply:

- (a) The Affordability Incentive shall be amortized on a straight-line basis over the three (3) year period;
- (b) Upon default of the Affordability Covenant, the unamortized portion of the Affordability Incentive shall become immediately due and payable as a debt due from the Developer to the Town, and, until repaid to the Town, shall attract interest at a rate equal to the Royal Bank of Canada prime rate for commercial customers plus five (5%) per annum.

4. PERMIT FEE WAIVER

4.1 The Town shall waive those of the following fees in respect of the Project (collectively, the **"Fee Waivers"**) as detailed in Schedule "A":

- (a) development application fees;
- (b) building permit fees;
- (c) occupancy permit fees; and
- (d) discretionary use processing fees.

4.2 The Fee Waivers shall be subject to repayment should the Developer fail to meet the Development Timelines.

5. REPORTING & COMPLIANCE

5.1 Proof of Compliance

The Developer must provide documentation confirming compliance with rental rate conditions, program eligibility, and construction standards as outlined in this Agreement or as may otherwise be requested by the Town. Failure to provide such documentation shall constitute sufficient grounds for the Town to terminate benefits provided for hereunder.

5.2 Verification

The Town reserves the right to conduct inspections and audits at any time during the incentive period(s) as set out herein to ensure compliance with all program conditions.

6. GENERAL TERMS

6.1 General Compliance – Building Standards

The Developer shall be responsible for ensuring that the Project is completed in accordance with all Laws and that all Approvals are received in respect thereof. Without limitation to the foregoing, nothing herein shall be construed as relieving the Developer from applying for, and receiving, all Approvals necessary from the Town in respect of the commencement and completion of the Project, which shall be independent from the entering into of this Agreement.

Without limitation to the foregoing, the Developer acknowledges and agrees that an extension by the Town of any timeline related to the Project (including, but not limited to, an extension of time pursuant to a permit related to the Project) shall not be construed, and shall not constitute, an extension of any timeline set out in this Agreement. This Agreement may not be amended or altered except by agreement in writing signed by the Town and the Developer.

6.2 Payments

All payments to be made by the Town to the Developer hereunder shall be paid to the account of the Developer, the details of which are contained in the Vendor Sheet attached as Schedule "B" hereto. It shall be the responsibility of the Developer to notify the Town in writing of any changes to the information contained within the Vendor Sheet.

6.3 Assignment and Transfer

This Agreement shall not be assigned by the Developer without the prior written consent of the Town, which consent shall be at the sole discretion of the Town.

6.4 Amendments

Any amendments to this Agreement must be in writing and signed by both parties.

6.5 Time

Time shall be of the essence of this Agreement.

6.6 Governing Law

This Agreement shall be governed by the laws of Newfoundland and Labrador.

6.7 Agreement Review

Both the Town and the Developer acknowledge having read and received a copy of this Agreement at the time of signing and having been provided with an opportunity to have this Agreement reviewed by legal counsel of their choice.

6.8 Counterparts and Electronic Execution

This Agreement may be executed in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute one and the same instrument. This Agreement may be delivered by electronic transmission and such delivery shall be deemed to be an original.

6.9 Enurement

This Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns.

[Remainder of page intentionally blank. Signature page follows]

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

EXECUTED by the Town before me:

THE TOWN OF TORBAY

Witness

Name:

Name:

EXECUTED by the Developer Name before me:

[DEVELOPER NAME]

Witness

Name:

Schedule "A"
Project Details

The Project consists of the construction of [enter description], containing [enter number] Eligible Units.

[The Developer has qualified for and will receive an Affordability Incentive for each of the Eligible Units, subject to the terms of this Agreement, including the Developer's provision of, annually, the Affordability Program Proof of Compliance.]

Total approved incentives for the Project (subject to the terms and conditions contained in this Agreement):

Housing Incentive: \$ _____

Affordability Incentive: \$ _____

Total Incentives: \$ _____

Total Fee Waivers for the Project (subject to the terms and conditions contained in this Agreement):

Development application fees: \$ _____

Building permit fees: \$ _____

Occupancy permit fees: \$ _____

Discretionary use processing fees: \$ _____

Schedule "B"
Vendor Sheet

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