

**THIRD AMENDMENT TO  
OPERATING AGREEMENT**

**THIS THIRD AMENDING AGREEMENT** made effective the 1st day of January, 2007

**BETWEEN:**

**CITY OF TORONTO**  
(the "City")

OF THE FIRST PART

and

**TORONTO COMMUNITY HOUSING CORPORATION**  
(“TCHC”)

OF THE SECOND PART

**WHEREAS:**

- A. the City and TCHC are parties to an Operating Agreement made effective the 1<sup>st</sup> day of May 2002 as amended by an amending agreement dated as of June 30, 2003 (the “**Second Amending Agreement**”) and a letter dated July 3, 2007 (the “Letter Amendment”) from the City accepted by TCHC on July 16, 2007 (as so amended, the “Operating Agreement”);
- B. In the Letter Amendment the parties stated their intent to meet and develop a new funding formula that recognizes the potential for rent geared to income gaps;
- C. The Operating Agreement provides that in each **Fiscal Year** subsequent to 2005, a portion of the subsidy payable by the City shall be determined by the Residual Operating Cost of the prior **Fiscal Year** adjusted by the cost index for such **Fiscal Year** prescribed by the Minister pursuant to clause 2 of subsection 106(3) of the Act;
- D. By Ontario Regulation 535/07 the indexed benchmark operating cost of a housing provider for a **Fiscal Year** commencing in 2008 or later is determined by reference to eight different indices applicable to various categories of operating costs;
- E. The parties wish to further amend the **Property Tax Subsidy**;

**NOW THEREFORE, THIS AGREEMENT WITNESSETH** that in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as hereinafter set forth:

**1.0 INTERPRETATION**

**1.1 Definitions**

In this Amending Agreement, unless there is something in the subject-matter or context inconsistent therewith, terms and expressions used that are defined terms and expressions under the Act or Regulations shall have the same meaning as in the Act or Regulations; and terms and expressions used that are defined terms and expressions under the Operating Agreement shall

APPROVED AS TO FORM

For Anna Kinastowski  
City Solicitor

have the same meaning as in the Operating Agreement. Reference to an Appendix shall mean reference to an appendix attached to the **Second Amending Agreement** unless otherwise specifically stated;

## 1.2 Definitions under this Amending Agreement

**“Average RGI”** means the amount of \$ 1,380 per unit in 2007, as thereafter adjusted each Fiscal Year by the Change in the CPI.

**“Benchmarked RGI Revenue”** means the rent-geared-to-income charged by TCHC in the 2007 Fiscal Year;

**“Change in the CPI”** means the year-over-year change in the Ontario Consumer Price Index (all items) as published by Statistics Canada in May of each year, expressed as a percentage;

**“CMHC Rent”** means the average rent for private rental apartments or townhouses by unit type for a district or zone in the City of Toronto as reported annually by Canada Mortgage and Housing Corporation in its Rental Market Survey; provided that if such Rental Market Survey does not report an average rent for a particular unit type in a relevant district or zone, then the City-wide average rent for that unit type shall be deemed to be the **CMHC Rent** for the purposes of this Third Amending Agreement;

**“Mortgage Subsidy”** means the subsidy referred to in clause 2.3(a)(i);

**“Property Tax Subsidy”** means the subsidy referred to in clause 2.3(a)(ii);

**“Rent Supplement”** means the difference between the Market Rent attributable to a **Unit** and the geared-to-income rent charged to the occupant of such **Unit**;

**“Residual Operating Subsidy”** means the subsidy referred to in clause 2.3(a)(iii);

**“Residual Operating Subsidy Index”** means the index determined in accordance with clause 2.1(d)(ii); and

**“Tax Reduction Event”** means a reduction in the amount of property taxes payable with respect to a **Housing Project** arising from

- a) a decision by Council made pursuant to the provisions of the *City of Toronto Act, 2006* to cancel or reduce the property taxes levied in a year with respect to a part or the whole of any **Housing Project** undergoing redevelopment;
- b) a decision by Council to exempt the **Housing Project** from taxation for municipal and school purposes under a City of Toronto by-law made pursuant to City of Toronto By-law No. 282-2002, as the same may be amended, superceded or replaced; or
- c) a reduction in the current value assessment of a **Housing Project** undergoing redevelopment arising from a current value reassessment or supplementary property assessment by the Municipal Property Assessment Corporation.

“Unit” means a unit intended for use as residential accommodation in a **Housing Project**.

### 1.3 Scope of Agreement

The parties acknowledge that the City is entering into this Agreement as Program Administrator as required by the Shareholder Direction.

## 2.0 FUNDING

### 2.1 Amendment

This Section 2.0 represents the parties’ agreement pursuant to subsection 4.5 of the Operating Agreement with respect to funding for the years 2007 and beyond on a multi-year basis and supercedes and replaces Section 3.3 of the **Second Amending Agreement**, as of the effective date first above written. In accordance with such subsection, all estimates, budgets and approvals will be made, provided, or given in adherence to the principles contained in the Shareholder Direction and the goals and objectives of TCHC’s Community Management Plan. **Rent Supplement** payments under the **Rent Supplement** programs administered by the City with respect to **Units** in **Housing Projects** owned, leased or operated by TCHC will be reported on and funded separately under separate agreements between TCHC and the City.

### 2.2 Funding Levels for 2007 and beyond

Subject to the approval by City Council of each annual budget submitted by Shelter, Support & Housing Administration Division of the City of Toronto and to any consents or approvals required from the Minister, funding levels for the 2007 **Fiscal Year** and each **Fiscal Year** thereafter will be based on the following:

- a) The subsidy for the **Housing Projects** described in Appendices “1” and “2” to the **Second Amending Agreement** for any **Fiscal Year** which commences after December 31, 2006, shall be the total of:
  - i) the **Mortgage Subsidy** as calculated in sub-section (b);
  - ii) the **Property Tax Subsidy** as calculated in sub-section (c); and
  - iii) the **Residual Operating Subsidy** as calculated in sub-section (d).
- b) The **Mortgage Subsidy** shall be equal to the total amount of principal and interest payments to be made during the **Fiscal Year** under the mortgages described in Appendix “1” as the same may be renewed, replaced, amended or supplemented.
- c) Subject to section 2.3, the **Property Tax Subsidy** shall be equal to the actual amount of property taxes payable by TCHC in respect of the **Housing Projects** described in Appendix “2” for the **Fiscal Year**.
- d) The **Residual Operating Subsidy** is intended to fund a portion of the remaining operating costs of the **Housing Projects** described in Appendices “1” and “2” excluding

mortgage costs and property taxes ("Residual Operating Costs"). TCHC is expected to fund from other sources of revenue that part of its Residual Operating Costs not covered by the **Residual Operating Subsidy**. Subject to Section 2.3, the **Residual Operating Subsidy** shall be equal to:

- i) in the 2007 **Fiscal Year**, the amount of \$ 73,761,691; and
- ii) in each **Fiscal Year** subsequent to 2007, the **Residual Operating Subsidy** of the prior **Fiscal Year** adjusted by the Change in the CPI.

Such adjustments are intended to include any increased operating costs of the **Housing Projects** described in Appendices "1" and "2".

### 2.3 Adjustments to Funding Levels

- a) **Changes to Shelter Assistance** In the event the maximum amount payable to a benefit unit for shelter assistance is increased or decreased pursuant to regulatory amendments under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, or the rent scales for the rent attributable to a benefit Unit is increased or decreased pursuant to regulatory amendments to the Act, the parties agree to meet at the request of either party, within three (3) months following receipt of written notice of such request, to negotiate an adjustment to the amount of the **Residual Operating Subsidy** to take into account the increase or decrease in the rental income of TCHC as a result of such regulatory amendment.
- b) **Property Tax Exemption** Effective the date TCHC provides the City with written notice of a **Tax Reduction Event** with respect to a **Housing Project** described in Appendix "2" the amount of the **Property Tax Subsidy** shall be reduced and the amount of the **Residual Operating Subsidy** shall be increased by the entire amount of the property taxes that would otherwise be payable with respect to such **Housing Project**, based upon the property tax bill for the **Fiscal Year** immediately prior to the **Fiscal Year** in which the **Tax Reduction Event** occurred. In the **Fiscal Year** in which such **Housing Project**
  - (1) ceases to benefit from a reduction or cancellation of property taxes in accordance with the *City of Toronto Act, 2006*;
  - (2) ceases to be exempt from taxation for municipal and school purposes under a City of Toronto by-law made pursuant to City of Toronto By-law No. 282-2002; or
  - (3) is assessed at its current value as a multi-unit residential property following completion of redevelopment;

the **Property Tax Subsidy** will be increased by the amount payable as taxes for municipal and school purposes with respect to such **Housing Project** and the **Residual Operating Subsidy** will be reduced by an amount based upon the original increase in the **Residual Operating Subsidy** pursuant to clause (b) above, as such amount has been adjusted each **Fiscal Year** by the Change in the CPI in accordance with clause 2.2(d) (ii);

- c) **Termination of Subsidy Funding** Effective the date of
- i) termination of a **Federal Operating Agreement** governing a **Housing Project** referred to in clause (b); or
  - ii) termination of the City's duty to pay a subsidy for a **Housing Project** referred to in clause (b) as prescribed by the Minister pursuant to subsection 102(2) of the Act;
    - (1) the **Residual Operating Subsidy** will be reduced by an amount based upon the original increase in the **Residual Operating Subsidy** pursuant to clause (b) above, as such amount has been adjusted each **Fiscal Year** by the Change in the CPI in accordance with clause 2.2(d) (ii); and
    - (2) the City shall pay to TCHC a **Rent Supplement** for each **Unit** in such **Housing Project**. The rent supplement funding will (i) be based upon the difference between the rent-geared-to-income paid by the household occupying a Unit and a market rent deemed to be ten (10%) percent less than the **CMHC Rent**; and (ii) be governed by a separate mutually acceptable agreement entered into between the parties.
- d) **Benchmarked RGI** Each **Fiscal Year** commencing in 2007 TCHC shall provide the City with its estimate of the amount of rent-geared-to-income revenue receivable by TCHC in the following **Fiscal Year** along with its estimates and its Board-approved budgetary requirements provided in accordance with paragraph 4.1 of the Operating Agreement. If the estimated amount of rent-geared-to-income revenue receivable by TCHC in a **Fiscal Year** following 2007 is less than the Benchmarked RGI Revenues, the City will pay as part of the **Residual Operating Subsidy**, the difference between the Benchmarked RGI Revenue and the estimated amount of rent-geared-to-income to be charged by TCHC in that **Fiscal Year**. The amount of the **Residual Operating Subsidy** will be reconciled following the end of each **Fiscal Year** to reflect the actual rent-geared-to-income charged by TCHC in that **Fiscal Year** without allowance for tenant defaults in payment.
- e) **Sale of a Housing Project** Subject to Council's direction, upon the effective date of any sale, transfer, lease or other disposition of a **Housing Project** with the prior written consent of the Service Manager and the Minister that has the result of TCHC ceasing to provide rent-geared-to-income assistance to residents of such **Housing Project** and that through prior agreement with the Service Manager is not going to be replaced:
- i) the aggregate **Residual Operating Subsidy** shall be reduced by the amount of the Average RGI per unit;
  - ii) reference to such **Housing Project** in Appendices "1" or "2" to the **Second Amending Agreement** shall be deemed to be deleted;
  - iii) the amount of the **Property Tax Subsidy** and the **Mortgage Subsidy** shall be reduced by the amount of mortgage principal and interest payments and property tax payments formerly made with respect to such **Housing Project**.
- f) **Rent Supplement Funding** Effective the date of
- i) termination of a **Federal Operating Agreement** governing a **Housing Project**; or

- ii) termination of the City's duty to pay a subsidy for a **Housing Project** as prescribed by the Minister pursuant to subsection 102(2) of the Act:
  - (1) the aggregate **Residual Operating Subsidy** shall be reduced by the Average RGI per unit;
  - (2) reference to such **Housing Project** in Appendices "1" or "2" to the **Second Amending Agreement** shall be deemed to be deleted;
  - (3) the amount of the **Property Tax Subsidy** and the **Mortgage Subsidy** shall be reduced by the amount of mortgage principal and interest payments and property tax payments formerly made with respect to such **Housing Project**; and
  - (4) the City shall pay to TCHC a **Rent Supplement** for each **Unit** in such **Housing Project**. The rent supplement funding will (i) be based upon the difference between the rent-gear-to-income paid by the household occupying a Unit and a market rent deemed to be ten (10%) percent less than the **CMHC Rent**; and (ii) be governed by a separate mutually acceptable agreement entered into between the parties.
- g) **Reduction in Service Levels** Notwithstanding subsections 2.1 and 2.3 of the Operating Agreement, TCHC may from time to time propose and the City may accept a reduction in the number of households to whom TCHC will provide rent-gear-to-income assistance under Part V of the Act, in which case the aggregate **Residual Operating Subsidy** shall be reduced by the Average RGI.
- h) **New Taxes** If the City enacts a by-law imposing a new tax pursuant to the provisions of the *City of Toronto Act, 2006* that materially increases the operating costs of TCHC the parties agree to meet at the request of either party, within three (3) months following receipt of written notice of such request, to negotiate an adjustment to the amount of the **Residual Operating Subsidy** to take into account the increase in operating costs.

### 3) GENERAL

#### a) Compliance with Shareholder Direction, etc.

Nothing in this Amending Agreement shall relieve TCHC from its obligations and duties under the Shareholder Direction, the Act, the Regulations, its incorporating documents and bylaws, the Federal Operating Agreements and the Non-Profit Rent Supplement Agreements.

#### b) No Restrictions on City

Nothing in this Amending Agreement shall be construed as limiting the powers and remedies of the City under the Shareholder Direction, the Act, the Regulations, the Federal Operating Agreements and the Non-Profit Rent Supplement Agreements or otherwise available to the City, from time to time.

#### c) Amendments to Federal Operating Agreements and Non-Profit Rent Supplement Agreements

The parties agree that if any provisions of this Amending Agreement are inconsistent with Federal Operating Agreements or Non-Profit Rent Supplement Agreements, such Federal Operating Agreements and Non-Profit Rent Supplement Agreements shall be deemed to have been amended by the parties in accordance with the provisions of this Amending Agreement.

**d) Amendment to Provincial Accountability Rules**

The parties agree that if any provisions of this Amending Agreement are inconsistent with the provincial accountability rules prescribed in Ontario Regulation 644/00 pursuant to Section 32 of the Act, such provisions of this Amending Agreement shall be deemed to be amendments, deletions or additions to the provincial accountability rules and shall be effective as of the Effective Date. To the extent that any provincial accountability rule is not inconsistent with the provisions of this Amending Agreement, the parties shall continue to be bound by such provincial accountability rule.

**e) Amendments**

No modification or amendment to this Amending Agreement shall be made unless agreed to by the parties in writing.

**f) Successors**

This Amending Agreement shall be binding and enure to the benefit of the parties and their respective successors.

**g) Assignment**

TCHC shall not assign any or all of its rights or any or all of its obligations under this Amending Agreement to any person without the prior written consent of the City.

**h) No Interference**

All rights and benefits and obligations of the City under this Amending Agreement shall be rights, benefits and obligations of the City in its capacity as a service manager under the Act and shall not derogate from or interfere with or fetter the rights, benefits and obligations of the City in its functions and capacity as a municipal corporation.

**i) Further Assurances**

TCHC shall execute and deliver all such further documents and do such further acts and things as the City may reasonably request from time to time to give full effect to this Amending Agreement.

**j) Waivers and Consents**

No term or provision of this Amending Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by an authorized member or staff of the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under this Amending Agreement shall constitute a consent to, waiver of, or excuse for any other, different or subsequent breach.

**k) No Partnership or Joint Venture**

This Amending Agreement is not intended to create, nor does it create, a joint venture or partnership between TCHC and the City. It is acknowledged and agreed that TCHC does not acquire any right, title or interest in any property of the City by virtue of this Amending Agreement.

**l) Invalidity**

If any part of this Amending Agreement is held or rendered invalid or illegal by a court of competent jurisdiction, the remainder of this Amending Agreement continues to apply.

**m) Headings**

The headings in this Amending Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement.

**n) Time**

Time shall be of the essence of this Amending Agreement.

**o) Number and Gender**

In this Amending Agreement, words in or implying the singular include the plural and *vice versa*, and words having a gender include all genders.



**p) Effective Date**

Notwithstanding the actual date of execution of this document, this Amending Agreement shall be in effect as of the date first above mentioned.

The parties have executed these presents by their respective duly authorized officers.

**CITY OF TORONTO**

Per: \_\_\_\_\_

Name: Phil Brown

Title: General Manager, Shelter, Support &  
Housing Administration

I/We have authority to bind the City.

**TORONTO COMMUNITY HOUSING  
CORPORATION**

Per: \_\_\_\_\_

Name: Derek Ballantyne

Title: Chief Executive Officer

I/We have authority to bind the Corporation.