SUBJECT: HAHPI Housing Partnership Fund Forgivable Loan Agreements and Establishment of Site Specific Municipal Housing Project Facilities By-laws: 307 John Street South and 450 Cumberland Avenue (Report SPH05043) (Wards 2 and 3)

COMMENDATION:

(a) That the standard form “Forgivable Loan Agreement”, attached as Appendix “A”, be approved for affordable rental housing projects receiving Council-approved financial assistance under the HAHPI Housing Partnership Fund.

(b) That the General Manager, Public Health and Community Services Department and the City Solicitor be authorized to make adjustments to the standard form Forgivable Loan Agreement for future affordable housing projects that receive Council-approved financial assistance under the HAHPI Housing Partnership Fund.

(c) That in accordance with By-law #03-148, site specific municipal housing project facilities by-laws for affordable housing, attached as Appendices “B and C”, be enacted with respect to the following housing providers and respective projects, namely:

   St. Elizabeth Homes Society (Hamilton, Ontario) / 307 John Street South / 26 units; and,
   T. Valeri Construction Limited / 450 Cumberland Avenue / 75 units.

(d) That the housing providers St. Elizabeth Homes Society (Hamilton, Ontario) and T. Valeri Construction Limited be required to enter into the standard form Forgivable Loan Agreement.
(e) That the Mayor and City Clerk be authorized to execute the standard form Forivable Loan Agreements for St. Elizabeth Homes Society (Hamilton, Ontario) (307 John Street South) and T. Valeri Construction Limited (450 Cumberland Avenue).

Joe-Anne Priel, General Manager
Public Health and Community Services

EXECUTIVE SUMMARY:

City Council has previously approved two affordable rental housing projects to receive financial assistance under the HAHPI Housing Partnership Fund in tandem with monies under the Federal-Provincial Community Rental Housing Program. These projects include:

- 307 John Street South / 26 units / St. Elizabeth Homes Society (Hamilton, Ontario); and,
- 450 Cumberland Avenue / 75 units / T. Valeri Construction Limited.

As part of the previous Council approval of these projects, a recommendation noted “that the City Solicitor… prepare Municipal Housing Project Facilities Agreements and any other agreements deemed appropriate… for monies to be disbursed by the City of Hamilton through the HAHPI Housing Partnership Fund”.

This report recommends approval of a standard form Forivable Loan Agreement to protect the City’s financial and legal interests in disbursing funds under the HAHPI Housing Partnership Fund and recommends establishing site specific municipal housing project facilities by-laws to give full effect of Council’s previous recommendations.

BACKGROUND:

The purpose of this report is to follow-up on a specific recommendation of Council’s previous approval of Reports PD03251 (October 29, 2003) and HCS04075 (November 24, 2004). The recommendation in both reports notes “that the City Solicitor… prepare Municipal Housing Project Facilities Agreements and any other agreements deemed appropriate… for monies to be disbursed by the City of Hamilton through the HAHPI Housing Partnership Fund”.

The City of Hamilton as Service Manager delivers the Federal-Provincial Community Rental Housing Program. This Program was introduced in October, 2002 and provides
financial assistance for private sector and community-led not-for-profit housing developers in the form of capital grants to defray construction costs for new rental housing projects. Projects that receive capital funding under the Community Rental Housing Program must maintain monthly market rents at or below the average of the overall City of Hamilton monthly market rent as determined by Canada Mortgage and Housing Corporation.

The City of Hamilton has also recognized that providing financial assistance through capital grants to encourage the construction of new rental housing is desirable. On March 5, 2003, City Council, as part of the 2003 Budget deliberations approved an allocation of $1.5 million to the “HAHPI Housing Partnership Fund” from the Hamilton Future Fund (Report PD02001(a)). Since the introduction of the Community Rental Housing Program and the HAHPI Housing Partnership Fund, Housing Branch staff have issued two Request for Proposals (RFP’s) for affordable rental housing opportunities to utilize these funding opportunities:

- C2-08-03 / closed July 11, 2003; and,

As a result of the two Requests for Proposals, two proponents have been approved by City Council to receive financial assistance under the HAHPI Housing Partnership Fund and these funds will be used in tandem with funds provided by the Federal and Provincial Government under the Community Rental Housing Program:

1) - St. Elizabeth Homes Society (Hamilton, Ontario);
- 307 John Street South / 26 units;
- HAHPI Housing Partnership Fund amount, $130,000;

2) - T. Valeri Construction Limited;
- 450 Cumberland Avenue / 75 units;
- HAHPI Housing Partnership Fund amount, $550,000;
- Council approval November 24, 2004 (Report HCS04075).

It should be noted that Council on November 24, 2004 also approved a third proponent under the Community Rental Housing Program (Taras Shevchenko Home for the Aged / 190 Gage Avenue South / 24 units); however, financial assistance under the HAHPI Housing Partnership Fund was not requested for this development.

As the HAHPI Housing Partnership Fund is a new program initiative of the City of Hamilton, a period of time has been spent determining the appropriate legal mechanism to be established to ensure the City’s financial and legal interests are protected. To this end, Corporate Counsel and Legal Services staff retained the firm Simpson Wigle LLP to assist in creating the appropriate legal documentation. Discussions were also held with Risk Management staff to ensure the most current City protocols and conventions are adhered to in the documents. The attached “Forgivable Loan Agreement” is
modelled after the legal agreements in place for the “Downtown Residential Loan Program” with minor adjustments.

The City is authorized to provide such financial assistance as Council has previously established a “Municipal Housing Facility By-law” (June 11, 2003 / #03-148). This By-law notes that as part of a site specific municipal housing project facility by-law, the City may “provide financial assistance at less than fair market value or at no cost to the housing provider, which assistance may include... giving or lending money and charging interest”.

The recommendations of this report will give effect to Council’s previous approvals for the housing provider to receive financial assistance under the City’s HAHPI Housing Partnership Fund. Parallel and in tandem to these legal approvals, Housing Branch staff will be implementing and overseeing the Provincial Contribution Agreement documents that will allow these housing providers to receive funding under the Federal-Provincial Community Rental Housing Program.

**Analysis of Alternatives:**

Council has previously approved a financial disbursement from the HAHPI Housing Partnership Fund to facilitate the development of these affordable rental housing developments. Non acceptance of the recommendations would prohibit the HAHPI Housing Partnership Fund monies to be disbursed to the proponents and jeopardize the financial viability of these two rental residential development projects to move forward to completion. In addition, approximately $2,727,000 in Federal-Provincial monies under the Community Rental Housing Program would not flow into the community.

**Financial/Staffing/Legal Implications:**

**Financial** – Funding for the HAHPI Housing Partnership Fund has been secured previously through Report PD02001(a); this report was approved by Council on March 5, 2003. The fund amounts to $1,500,000 and is based on a recommendation from the Mayor’s Community Trustee Panel (Hamilton Future Fund). It is not a self-sustaining reserve fund and upon disbursement of the $1,500,000, Council will be requested to provide additional monies.

A commitment was previously approved by Council on October 29, 2003 through Report PD03251 for $130,000 and on November 24, 2004 through Report HCS04075 for $550,000. As these new rental housing developments are not “social housing” in the context of the Social Housing Reform Act, there are no on-going operating subsidies. In addition, the disbursement and accountability of the HAHPI Housing Partnership Fund monies will be based on the practices and protocols already in place for disbursing funds under the Downtown Residential Loan Program.
It is anticipated that the remaining funds ($820,000) will be recommended for disbursement following another “Request for Proposals for Affordable Housing Opportunities” that will be released in late 2005 or early 2006 depending on the timing of the introduction of a revised Federal-Provincial Community Rental Housing Program. **Staffing** – None. Delivery of the Community Rental Housing Program and the HAHPI Housing Partnership Fund is being accommodated within the existing staff complement of the Housing Branch.

**Legal** – There are no legal implications. The report recommendations, preparation of the Forgivable Loan Agreement and the site specific municipal housing project facilities by-laws were overseen by Corporate Counsel and Legal Services staff.

**POLICIES AFFECTING PROPOSAL:**

None

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

Corporate Counsel and Legal Services staff as well as Capital Budgets and Development staff have reviewed this report.

**CITY STRATEGIC COMMITMENT:**

Approval of the recommendations in this report supports the following goals of the City’s Strategic Plan:

1. **A City of Growth and Opportunity**
   d) Attracting and Retaining Business
   “Council will explore the best methods and quantity of resources necessary to attract and retain business.”

2. **A Great City in Which to Live**
   b) Supporting People in Need, with Care
   “Council will seek to work with other levels of Government and the community to ensure that people in need are supported and cared for.”

3. **A Healthy, Safe and Green City**
   i) Municipal Housing Program
   “Develop and implement a municipal affordable housing program.”

Further, the provision of new housing opportunities utilizing the existing community and servicing infrastructure is an example of Sustainable Development and implementing the concepts of Vision 2020. These proposals are consistent with the following “Directions”
developed for the Growth Related Integrated Development Strategy (GRIDS) identified during the “Building a Strong Foundation” (BASF) process:

- Encourage a compatible mix of uses in neighbourhoods that provide opportunities to live, work and play.
- Concentrate new development within the existing built-up areas and within a firm urban boundary.
- Maximize the use of existing buildings, infrastructure and vacant or abandoned land.

KE/ke
Attach (2)
FORGIVABLE LOAN AGREEMENT

This Agreement dated as of the _____ day of ___________ 2005

BETWEEN:

CITY OF HAMILTON

(hereinafter called the “City”)

OF THE FIRST PART

- and –

_________________________

A corporation incorporated under the laws of the Province of Ontario

(hereinafter called the “Borrower”)

OF THE SECOND PART

WHEREAS

A. The Borrower has applied to the City for a loan to assist in the financing of the construction, renovation and/or rehabilitation of __________, Hamilton, Ontario (and more particularly set out in Schedule “A” attached hereto) (the “Project”) for the provision of affordable rental housing accommodation;

B. The City and the Borrower have agreed to a forgivable loan on the terms and conditions set out herein.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

1. The Borrower for value received hereby promises to pay to the City at 71 Main Street West, Hamilton, Ontario, L8P 4Y5 the principal amount outstanding from time to time up to the amount of _______________ Dollars ($ __________) in the manner hereinafter provided together with all other monies which may from time to time be owing hereunder or pursuant hereto;

2. Interest

The principal amount outstanding from time to time shall bear interest both before and after default, maturity or judgment at a variable rate per annum equivalent to the highest rate charged by the City from time to time in respect of property tax arrears calculated and payable monthly (the “Interest Rate”). The rate of interest shall be determined as per the date of the disbursement of the loan by the City. The Borrower shall be advised of the rate of interest by letter by the City. With each change in the Interest Rate charged by the City in respect of property tax arrears there shall be a corresponding change in the
loan rate effective forthwith upon such change in the tax arrears rate and without the necessity of any notice from the City to the Borrower. Interest as aforesaid shall accrue from day to day shall be calculated and payable monthly, in arrears on the first day of each and every month until the full amount of the loan has been repaid in full. Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand.

Notwithstanding the above, provided the Chargor is not otherwise in default under any of the Provincial Contribution Agreement, the Loan Agreement or the First Mortgage registered on title to the premises and any security related to the foregoing (the said security hereinafter defined as the “Security”), failure by the Borrower to pay interest monthly will not constitute a default hereunder and interest shall accrue and be compounded monthly and added to the principal amount Outstanding accrued and unpaid interest will be forgiven annually and will not constitute a default hereunder provided that the Borrower is in compliance with the Provincial Contribution Agreement, the Loan Agreement and the First Mortgage registered on title to the premises. The Borrower’s compliance with the Provincial Contribution Agreement, the Loan or the First Mortgage shall be reviewed annually within 90 days of the Interest Adjustment Date. Interest Adjustment Date means the date on which the final advance is made by the City under Section 4 of this Agreement.

3. **Term**

The maximum loan term is twenty (20) years (subject to prior termination on default) commencing on the Interest Adjustment Date.

4. **Advances**

   (a) Upon completion of sixty percent (60%) of the total work required to complete the proposed Project sixty percent (60%) of the loan amount shall be advanced to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.

   (b) Upon completion of eighty percent (80%) of the total work required to complete the proposed Project a further twenty percent (20%) of the loan amount shall be paid to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.

   (c) Upon completion of one hundred percent (100%) of the total work required to complete the proposed Project the remaining twenty percent (20%) of the loan amount shall be paid to the Borrower subject to required holdbacks pursuant to the *Construction Lien Act*.

   (d) Construction lien holdbacks shall be released to the Borrower in accordance with the provisions of the Construction Lien Act.

   (e) The Borrower shall submit with its request for each loan a certificate, of such architect or consulting engineer as is acceptable to the First Mortgagee or the City if there is no First Mortgagee confirming in accordance with the requirements of subparagraphs (a), (b) and (c) above that at the time of each loan advance the value of the work to be done on a construction contract is sufficient to substantially complete construction for the building or its rehabilitation and
renovation and the value of the said remaining work is less then the aggregate of the Borrower’s equity contribution (if any) the remaining amount to be advanced under the first mortgage, any Provincial contribution and the amount of the City’s loan remaining to be advanced.

(f) The City shall not be required to make any loan advance hereunder until such time as it has received the opinion of the City’s solicitors that, as of the date of such loan advance, there are no construction liens registered against the property, no outstanding arrears of real property taxes for the property and no outstanding work orders.

(g) The Borrower shall have applied for and received a building permit from the City.

(h) Advances are to be made within ten (10) working days of written request. The City’s Corporate Services Department is to receive verification of those items described above, on each such advance. The City shall not be required to make more than one advance in a month.

5. **Postponement to Takeout Financing**

The City agrees to postpone the second mortgage securing this loan agreement to permanent term financing without payment of principal provided the permanent term financing subject to clause 10(f).

6. **Prepayment**

The Borrower may prepay the outstanding indebtedness in whole or in part at anytime or times without penalty or bonus and in the case of payment in whole, all other monies for interest or expense, if any.

7. **Security**

The Borrower shall provide the following security in form satisfactory to the City and registered or recorded as required by the City prior to any advance or availment being made of the loan proceeds:

- (a) second charge/mortgage payable on demand in principal amount of ___________ dollars ($_________), secured against the property; subject to such prior registrations or encumbrances (Permitted Encumbrances as per Schedule “B”);
- (b) assignment of rents;
- (c) site specific security agreement;
- (d) insurance as per attached Schedule “C”;
- (e) such other security or supporting documents as the City or its solicitors may reasonably require to secure its position;
8. Cancellation

a. In the event the first advance contemplated in 4(a) hereof has not been advanced by _____________ or such other date as agreed to by the City then the City may in its sole and absolute discretion terminate this Loan Agreement;

b. In the event the final advance contemplated in 4(c) has not been advanced by _____________ or such other date as agreed to by the City then the City may in its absolute discretion terminate this Loan Agreement and the Borrower shall pay all outstanding principal amounts advanced, accrued and unforgiven interest and any costs provided for in this Loan Agreement

9. General Conditions

Advances will be made upon receipt of and/or satisfaction of the following:

(a) upon receipt of the Borrower’s draw request specifying the dollar amount required;
(b) upon receipt of the architect/consulting engineers’ draw/progress certificate specifying the dollar amount of service and/or materials supplied under the contract with evidence of equity, mortgagee’s bank advances and Provincial Contribution if any;
(c) standard construction terms including statutory holdbacks to be followed;
(d) a 45 day holdback of 10% of the dollar value of services and/or materials supplied as certified in the draw progress certificate. Holdback will be held from each advance until substantial completion is declared and the lien period has expired;
(e) advances will be made and holdbacks released upon receipt by the City of its solicitor’s title opinion ensuring continued ranking of the City’s security interest;
(f) no subsequent encumbrances may be registered on title without the City’s prior written consent, which can be unreasonably withheld. The City’s consent to any subsequent encumbrance shall include the requirement that the encumbrance is fully postponed and subordinate to all City advances, repayments and security through the execution of an inter-lenders agreement satisfactory to the City;
(g) the Borrower is to ensure that any construction liens or other actions registered against the Project are cleared from title immediately. The City is not obligated to make loan advances if there is any construction lien;
(h) the Borrower shall ensure that all municipal realty taxes, development charges, site plan agreement, zoning by-laws and building permits, and any other municipal charges if any are in good standing at the time of each advance failing which the City will be under no obligation to advance;
(i) sale or transfer of property herein or any change in the ownership of the Borrower not approved by the City will cause all monies owing under the loan to become due and payable, plus interest and costs. If the Borrower requests the City’s consent to a transfer of ownership of the property or a change in
ownership of the Borrower then the City will provide its response within fourteen (14) business days of a written request;

(j) the Borrower will ensure that the architect/consulting engineer has full access to the Project as required to monitor construction progress by monthly site visits;

(k) the architect/consulting engineer retained is to be ______________ or such other architect or consulting engineer acceptable to the City.

10. The Borrower covenants that as long as this Agreement is outstanding, the following shall apply:

(a) the Borrower shall pay all amounts owing (including interest, costs and other charges) under this Agreement and any line of credit agreement, loan agreement or any other agreement between the Borrower and the City;

(b) comply with all the terms and conditions of this Agreement, the Provincial Contribution Agreement and in particular any Rent Protocol, (Schedule “D”) and any prior mortgages;

(c) realty taxes must be paid by the Borrower, current and remain in good standing throughout the development process, and during the term of the City loan;

(d) the Borrower shall comply with the laws of the Province of Ontario, the Government of Canada and the City of Hamilton as they pertain to the development of the Property;

(e) the Borrower shall comply with the City’s requirements related to specific insurance terms to be met by Borrower in order to protect the City’s interest.

(f) the Borrower shall have equity of not less than 10% of the appraised value of the property as of the date of commencement and the date of completion of the Project. The Borrower shall maintain not less than 10% equity throughout the Term of this Loan Agreement. An accredited member of the Appraisal Institute shall complete the property appraisal prior to funding within a time frame acceptable to the City, providing opinion as to the value of the property prior to commencement of construction and subsequent to the completion of construction;

11. Default

(a) If default occurs under the terms, covenants and conditions as outlined above or under any security provided to the City or any other event which causes the City in good faith to deem itself unsecured then at the option of the City all monies owing shall immediately become due and payable upon demand; and

(b) In addition to all monies owing becoming due in the event of default, Development Charges calculated as of the date of building permit issuance for the Project shall be immediately due and payable upon demand.

12 Costs

The Borrower and City agree that all reasonable fees and costs incurred by or on behalf of the City, including but not being limited to legal, professional, registration, escrow agent, appraisal and survey costs and fees, independent engineer costs and independent insurance advisor costs, are for the account of the Borrower, whether or not closing occurs.
All costs associated with the conversion or renovations are to be borne by the Borrower, including construction, design, administration fee, appraisals, inspections, legal and registration fees shall be considered eligible costs under the loan. The City retains the right to assess the reasonableness of costs and which costs are eligible under the terms of the program.

13. Acceleration

(a) All indebtedness and liability of the Borrower to the City that becomes payable on demand in accordance with the terms herein, is repayable by the Borrower to the City at any time on demand;

(b) All indebtedness and liability of the Borrower to the City shall, at the option of the City: (1) become immediately due and payable, and/or (2) the security held by the City shall immediately become enforceable, and/or (3) the obligation of the City to make further advances or other accommodation available shall terminate, if any one of the following Events of Default occurs;

(i) the Borrower fails to make when due, whether on demand or at a fixed payment date, by acceleration or otherwise, any payment of interest, principal, fees or other amounts payable to the City;

(ii) there is a material breach by the Borrower of any other term, covenant or condition contained in this Agreement to which the Borrower and the City are parties;

(iii) any bankruptcy, re-organization, compromise, arrangements, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Borrower and, if instituted against the Borrower, are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;

(iv) a receiver is appointed over any property of the Borrower or any judgement or order or any process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;

(v) any material adverse change occurs in the financial condition of the Borrower in the absolute discretion of the City;

(vi) any adverse change occurs in the environmental condition of any property, equipment, or business activities of the Borrower in the absolute discretion of the City;

(vii) construction ceases for a period of 60 days due to the Borrower’s default (strikes and Act of God excepted), and/or the Borrower abandons the site;
(viii) the Borrower is in default of the terms and conditions of the construction financing secured by a first mortgage and or the Provincial Contribution Agreement (if any);

(ix) the Borrower is in default of the Rent Protocol in Schedule “D”.

14. **Forgiveness**

Provided the Borrower has fulfilled all of the requirements of this Agreement, the loan amount shall be fully forgiven on the last day of the month at the end of the term of the loan.

15. **Currency**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian funds.

16. **Insurance**

Not less than 5 business days prior to the initial advance of funds, the Borrower, shall provide the City with original Certificates of Insurance, or if required by the City, certified copies of each insurance policy, in respect of the property in form and content and with Insurers satisfactory to the City as more particularly set forth in Schedule “B”, and provide the City with proof of same on an ongoing basis as reasonably requested by the City.

17. **Interpretation**

In this Agreement:

(i) **Assignment of Rents** means the Assignment of Rents to be entered into as security for this Agreement;

(ii) **Development Charges** means those development charges which would have ordinarily been charged to the Borrower at the time of issuance of the building permit for this project and which were otherwise forgiven provided the project received funding from the City’s Community Rental Housing Program;

(iii) **First Mortgage** means the mortgage registered against the lands described in Schedule “A” in the first position for purposes of financing the project;

(iv) **Loan** means the City Loan contemplated by this Agreement;

(v) **Project** means the development of lands described in Schedule “A” for purposes of an affordable housing project as defined by the City and Province of Ontario which must meet the rental protocols set out in Schedule “C”;

(vi) **Provincial Loan** means any loan from the Province of Ontario for purposes of funding affordable housing projects.
(vii) **Security Agreement** means the security agreement to be executed by the Borrower as security for and in support of the Loan.

CITY OF HAMILTON

Per:

________________________
Name:
Authorized Signing Officer

(BORROWER)

Per:

________________________
Name:
Authorized Signing Officer

We have the authority to bind the Corporation.
SCHEDULE “A”
Legal Description
SCHEDULE “B”
Permitted Encumbrances

1. All mortgages and security collateral thereto totalling principal amounts which do not exceed the permitted amount as set out in this Loan Agreement and incurred in connection with the Project;

2. Such easements and restrictive covenants as do not prevent the Project from being constructed or used as Affordable Housing;

3. Municipal agreements relating to the Development Activities in connection with the Project.
SCHEDULE “C”
Insurance

1. Builder’s risk insurance (property insurance) for the full replacement value of completed construction project, including earthquake and flood.

The Policy must include the following:

(a) replacement cost value;
(b) stated amount co-insurance;
(c) waiver of subrogation; and
(d) loss payable in favour of (insert name of building owner or whoever has a financial interest).

Note: All deductibles and/or self-insured retention’s are the responsibilities of the contractor.

2. Boiler & Machinery Insurance (including pressure objects, machinery objects and service supply objects) on Comprehensive basis.

The Policy must include the following:

(a) repair and/or replacement value;
(b) state amount co-insurance;
(c) waiver of subrogation; and
(d) loss payable in favour of (Contractor and/or Owner).

3. Wrap Up Liability Insurance for Third Party Bodily Injury, Personal Injury and Property Damage to an inclusive limit not less than $5,000,000 per occurrence and $5,000,000 products and complete operations aggregate. The insurance shall be in the joint names of the Municipality, Designated Consultants, Designated Contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants or other person which the Municipality reasonably may require to be added as insured parties.

The Policy must include the following:

(a) premises and operations;
(b) owner’s and contractor’s protective liability;
(c) broad form products and complete operations liability;
(d) cross liability;
(e) blanket written and oral contractual liability;
(f) all risks tenant’s legal liability;
(g) hoist liability;
(h) fire fighting and forest tire fighting expense liability;
(i) employers liability and voluntary compensation;
(j) non-owned automobile liability;
(k) directors, officers, employees, shareholders, legislators, and officials involved in the project added as insureds and/or additional insureds;
shoring, blasting, excavating, under-pinning, demolition, pile driving and caisson work, work below and above ground surface, work below and above water, tunnelling and grading, and similar operations associated with the construction work, as applicable;

sudden and accidental pollution liability with a discovery provision of not less than one hundred and twenty (120) hours and a subsequent reporting provision of not less than one hundred and twenty (120) hours; and

30 day written notice of cancellation.

4. Professional Errors & Omissions Liability Insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this contract, in the amount not less than $2,000,000 per claim and in the annual aggregate.

5. Automobile Insurance as per statutory requirements in Ontario and/or other jurisdictions, Ontario Automobile Policy (OAP 1) Owner’s Policy Sections 3 and 4, auto liability for a limit not less than $2,000,000 per occurrence, including Accident Benefits and where applicable Section 7, Loss or Damage Coverage.

6. Proof of WSIB Coverage- If the contractor does not provide a policy endorsement for Employer’s Liability and Voluntary Compensation, the contractor shall submit a valid Clearance Certificate of WSIB coverage to the City of Hamilton, prior to the commencement date of this contract/agreement. The contractor shall ensure that each subcontractor complies with the WSIB requirements set out in this article.
SCHEDULE “D”

Rent Protocol

1. DEFINITIONS

1.1 In this Schedule “B”, unless the context requires otherwise.

- “Affordability Period” means the [insert “twenty (20) year period” or “twenty-five (25) year period” as established in the Tender Call] following the date of the first (1st) occupancy of a Unit in the Project.
- “Agreement” means the Agreement to which this Schedule “B” is attached.
- “Phase-out Period” means the last five (5) year period of the “Affordability Period” and

When used in this Schedule “B”, the term “rent” includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to the Borrower or the Borrower’s agent for the right to occupy a Unit and for any services and facilities and any privilege, accommodation or thing that the Borrower provides for the tenant in respect of the occupancy of the Unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing.

1.2 The definitions in the Agreement shall apply to this Schedule “B”, in addition to the definitions contained in Section 1.1 above.

1.3 All references to section numbers in this Schedule are references to sections of the Schedule and not sections of the Agreement, unless otherwise explicitly stated.

2. AFFORDABLE RENT

2.1 During the Affordability Period, the Borrower shall not charge rent for a Unit in the Project in excess of the affordable rent permitted under this Schedule “B” nor increase any rent charged for a Unit except as permitted in this Schedule “B”.

3. INITIAL RENTS

3.1 The affordable rent for the first (1st) rental period for each Unit following completion of construction of the Project shall not exceed.

   (b) the average monthly market rent for Units of the same type, based on bedroom count, in the geographical area, as determined in the CMHC Annual Rental Market Survey most recently preceding each of the said first (1st) rental periods, plus

   (c) the optional charges, if any.

The optional charges referred to in Section 3.1(b) mean any amount which the Borrower may charge,

   (a) on account of utility costs directly attributable to consumption by the occupants of a Unit, determined on the basis of separate Unit meters or on the basis of a method of pro rata calculation satisfactory to MMAH, or
on account of the use of one (1) or more parking spaces as requested by the tenant of a Unit and at a rate which is similar to the rate charged to residential tenants by landlords of similar buildings in the municipality.

3.2 The optional charges referred to in Section 3.1(b) mean any amount which the Borrower may charge.
   (a) on account of utility costs directly attributable to consumption by the occupants of a Unit, determined on the basis of separate Unit meters or on the basis of a method of pro rata calculation satisfactory to MMAH, or
   (b) on account of the use of one (1) or more parking spaces as requested by the tenant of a Unit and at a rate which is similar to the rate charged to residential tenants by landlords of similar buildings in the municipality.

4. RENT INCREASES

4.1 The Borrower may increase the rent charged under Section 3.1(a) and 3.2(b) with respect to a Unit only if a least twelve (12) months have elapsed.
   (a) since the day of the last rent increase respecting the Unit, if there has been an increase, or
   (b) since the day the Unit was first rented for the first (1st) rental period following the completion of the Development Activities in connection with the Project.

4.2 Subject to Section 4.3 the Borrower shall not increase the rent pursuant to Section 4.1 during the Affordability Period by more than the then prevailing rent increase guideline established for each calendar year pursuant to the Tenant Protection Act, 1997. The Borrower acknowledges that the rent increase guideline established for each calendar year pursuant to the Tenant Protection Act, 1997, does not apply to the Project pursuant to the Act and its regulations and agrees that the rent increase guideline applies by virtue of the contractual terms of the Agreement and this Schedule “B”.

4.3 From the beginning of the eleventh (11th) year of the Affordability period until the end of the Affordability Period, the Borrower may increase Unit rents pursuant to section 4.1 by zero decimal five-five per cent (0.55%), in addition to the increase permitted by section 4.2.

5. PHASE-OUT PERIOD

5.1 During the Phase-out Period the Borrower shall not increase the rent charged to in-situ tenants of Units by more than the rent guideline increase permitted under Section 4.2 and the additional increases permitted under Section 4.3.

5.2 Upon a Unit becoming vacant during the Phase-Out Period, the Borrower may rent the Unit to a new tenant at any rent agreed to by the Borrower and the new tenant.

6. AFTER PHASE-OUT PERIOD

6.1 After the end of the Phase-Out Period, the Borrower shall be permitted to rent Units in the Project to new tenants at rents agreed to by the Borrower and the new tenants.
CITY OF HAMILTON

BY-LAW NO.

To Authorize the Entering into Agreement(s) for the provision of Municipal Capital Facilities for Affordable Housing

WHEREAS subsection 110(1) of the Municipal Act, S.O. 2001, c. 25, as amended, provides that the Council of a Municipality may enter into agreements for the provision of Municipal Capital Facilities with any person;

AND WHEREAS paragraph 18 of section 2 of Ontario Regulation 46/94, as amended by Ontario Regulation 401/02, prescribes municipal housing project facilities as eligible Municipal Capital Facilities;

AND WHEREAS section 2 of City of Hamilton By-law 03-148 authorizes the City to enter into municipal housing project facilities agreements with housing service providers;

AND WHEREAS by Resolution dated , 2005, the Council of the City of Hamilton approved the common provisions to be contained in site specific agreements to be entered into for the provision of municipal housing project facilities;

AND WHEREAS the City is desirous of entering into agreements for the provision of a municipal capital facility with St. Elizabeth Homes Society (Hamilton, Ontario), the owner of a property located at 307 John Street South, in the City of Hamilton, which facility is a municipal housing project facility.

NOW THEREFORE THE COUNCIL OF THE CITY OF HAMILTON HEREBY ENACTS AS FOLLOWS:

1. The City of Hamilton is hereby authorized to enter into agreements under section 110(1) of the Municipal Act with the owner of property municipally known as 307 John Street South in the City of Hamilton for the provision of a municipal capital facility, namely an affordable municipal housing project facility consisting of at least 26 rental dwelling units.
2. The Mayor and Clerk, and appropriate City staff, are hereby authorized and directed to take any action and execute any documentation, which, in the opinion of the City Solicitor, may be required to give effect to section 1. hereof.

PASSED AND ENACTED this ________ day of ________, 2005.

________________________                                __________________________
MAYOR                                CLERK
CITY OF HAMILTON

BY-LAW NO.

To Authorize the Entering into Agreement(s) for the provision of Municipal Capital Facilities for Affordable Housing

WHEREAS subsection 110(1) of the Municipal Act, S.O. 2001, c. 25, as amended, provides that the Council of a Municipality may enter into agreements for the provision of Municipal Capital Facilities with any person;

AND WHEREAS paragraph 18 of section 2 of Ontario Regulation 46/94, as amended by Ontario Regulation 401/02, prescribes municipal housing project facilities as eligible Municipal Capital Facilities;

AND WHEREAS section 2 of City of Hamilton By-law 03-148 authorizes the City to enter into municipal housing project facilities agreements with housing service providers;

AND WHEREAS by Resolution dated , 2005, the Council of the City of Hamilton approved the common provisions to be contained in site specific agreements to be entered into for the provision of municipal housing project facilities;

AND WHEREAS the City is desirous of entering into agreements for the provision of a municipal capital facility with T. Valeri Construction Limited, the owner of a property located at 450 Cumberland Avenue, in the City of Hamilton, which facility is a municipal housing project facility.

NOW THEREFORE THE COUNCIL OF THE CITY OF HAMILTON HEREBY ENACTS AS FOLLOWS:

1. The City of Hamilton is hereby authorized to enter into agreements under section 110(1) of the Municipal Act with the owner of property municipally known as 450 Cumberland Avenue in the City of Hamilton for the provision of a municipal capital facility, namely an affordable municipal housing project facility consisting of at least 75 rental dwelling units.
2. The Mayor and Clerk, and appropriate City staff, are hereby authorized and directed to take any action and execute any documentation, which, in the opinion of the City Solicitor, may be required to give effect to section 1. hereof.

PASSED AND ENACTED this ________ day of ________, 2005.

________________________                                __________________________
MAYOR                                CLERK