

<p><i>Social Services Department</i> <u>Social Housing Division</u></p>	<p><i>The Corporation of the</i> County of Simcoe</p>	
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DIRECTIVE

EFFECTIVE DATE: March 28, 2006

Date Approved by County Council: March 28, 2006

NUMBER: 2006-02

The policies, procedures and County requirements in this Directive will be implemented in respect of housing providers that are funded under the following Programs, which are administered by the County:

Please note if your program is not checked, this Directive is not applicable to your project(s), and is for information purposes only.

<input checked="" type="checkbox"/>	Federal/Provincial Non-Profit Housing Program	<input checked="" type="checkbox"/>	Federal Programs
<input checked="" type="checkbox"/>	Ontario Non-Profit Housing Programs	<input checked="" type="checkbox"/>	Urban Native Programs
<input checked="" type="checkbox"/>	Federal/Provincial & Ontario Co-operative Housing Programs	<input checked="" type="checkbox"/>	Municipal Non-Profit Program
<input type="checkbox"/>	Simcoe County Housing Corporation	<input type="checkbox"/>	Rent Supplement Programs

SUBJECT: **RISK MANAGEMENT POLICY AND PROCEDURE**

Table of Contents

Topic	Page
Introduction	2
Warning Signs	2
Project in Difficulty	4
Triggering Events	5
Remedies Available other than for Federal projects	6
Triggering Events and Possible County Responses	13

Federal Projects	16
Remedies Available for Federal Projects	17
Consideration before exercising Remedies	18
Reporting and Tracking Projects in Difficulty	19
Resources	25
Appendix I Sample Invitational Tender for Receivership Services	26
Appendix II Sample Receivership Agreement	36
Appendix III Sample Supervisory Management Agreement	49
Appendix IV Sample Property Management Invitation to Tender	58
Appendix V Sample Property Management Agreement	67
Appendix VI Sample Triggering Letter	83
Appendix VII Sample Notice to Minister	86

INTRODUCTION

Under the Social Housing Reform Act 2000 (The Act), the County of Simcoe (The County) is responsible for ensuring that social housing providers are managing their assets in a prudent and fiscally responsible manner and further ensuring that providers are meeting and will continue to meet their financial obligations as determined through, for example, operational reviews. In those situations where there are indications or signs that this is not the case, then the County will take steps to manage the associated risks. The Act imposes requirements on a service manager when a housing project is considered to be a 'project in difficulty', and prescribes criteria for what constitutes a 'project in difficulty'. Whether or not a housing project is a 'project in difficulty', the Act prescribes triggering events in relation to a housing project, which allow a service manager to exercise prescribed remedies, the exercise of which must be reasonable in the circumstances. There may be events that are not prescribed as triggering events but which nonetheless give the County cause for concern that a housing project may be operating in a way that could expose the County, or other stakeholders, to some risk. This document sets out the general policy and procedures for risk management of housing projects for which the County has administrative and funding responsibilities.

WARNING SIGNS

Warning signs that the County may need to take some action in respect of the risk management of a housing project include:

- Unauthorized sale/lease/disposition of property.

- Unsatisfactory operational review.
- Persistently late submission of estimates required for subsidy calculation purposes.
- Persistently late submission of audited financial statements and annual information return.
- Results of auditor's management letter.
- Poor financial ratios e.g. liquidity ratio less < 1.
- Operating deficit.
- High vacancy rate.
- Notice of tax or mortgage arrears.
- Utility arrears.
- Code violations.
- High rent arrears with no repayment plans in place.
- Allegations of fraud or mismanagement.
- Requests for permission to dip into capital reserve funds to cover operating expenses.
- Structural/technical issues.
- Project deterioration/inability to fund repairs.
- Not using Centralized Waiting List to fill RGI units.
- Complaints or information received from:
 - current or former employees
 - current or former board members
 - tenants/members
 - anonymous communication
 - supplier
 - any other 3rd party
 - e.g. curb appeal, tenant concerns not being addressed, Board interference with day to day management, routine maintenance not being done, Board member nepotism, Board request for outside chair.

These warning signs can be identified through operational reviews, financial statement reviews and communications received both internally and externally. An example of an external communication would be where a Program Supervisor receives a complaint from a resident of a housing project directly. An example of an internal communication would be where an administrator of the Centralized Waiting List (CWL) informs a Program Supervisor that a particular housing project is not using the CWL.

Once Housing staff identifies any of the above warning signs or any other warning sign that there may be risk management issues, the Program Supervisor will meet with the Social Housing Manager to determine next steps. Questions to consider include:

- Does the project appear to be a statutory project in difficulty?

- Has a triggering event occurred?
- Should the Risk Management Team (see later in this document) be convened?
- Should the Provincial Risk Management Centre be consulted?

Depending on the cause or causes behind the warning sign, the solution that remedies the cause may be as simple as filling a knowledge gap, or the solution may require more intervention, for example, the Program Supervisor may have to attend board meetings. Some other courses of action that can be undertaken by the Program Supervisor include: a requirement for the Board to undergo training, an operational review, a requirement for the provider to revise and implement previously ineffective policies and procedures, request for the board to agree to supervisory management (Board agrees voluntarily to step aside and property manager reports to the County), or a request for the housing provider to provide a deficit reduction plan. The Program Supervisor will monitor the situation to ensure its successful resolution on a spreadsheet that has been prepared to identify and track action plans of projects at risk.

No matter how diligent Housing staff is in identifying warning signs, by the time a warning sign comes to the attention of Housing staff, a housing project may be a project in difficulty, or a triggering event may have already occurred.

PROJECT IN DIFFICULTY

There could be a direct financial impact to the County should a housing provider default on its mortgage, resulting in the lender calling the mortgage due and payable. Since all housing provider mortgages are CMHC insured, a lender is able to recover all of its costs associated with the mortgage default. Any amounts paid to lenders from CMHC's Mortgage Insurance Fund (MIF) will be charged back to the Province, since the Province has contingent liability. The Act allows the Province to charge back to the service manager any monies it pays out to CMHC as a result of a mortgage default (there is no provision in the Act which allows the Service Manager to charge back the provider). Therefore, a mortgage default or the likelihood of a mortgage default is a serious occurrence.

Section 18 (2) of the Act describes situations when the service manager **must notify** the Minister that a housing project is in difficulty:

- a) if the mortgage guaranteed by the Province of Ontario or the Ontario Housing Corporation is in default;
- b) if the service manager is of the opinion that, because of the financial position or the projected financial position of the housing provider that operates the housing project, the mortgage described in clause (a) is likely to go into default within 12 months after year end of the current fiscal year of the housing provider;

- c) if the service manager is of the opinion that, because of the financial position or the projected financial position of the housing provider that operates the housing project, the housing provider is likely to fail to meet a material financial obligation within 12 months after the end of the current fiscal year of the housing provider; or
- d) if the service manager is of the opinion that the housing provider has failed to comply with an obligation under the Act and the failure is material.

Situation a) is readily determinable. However, the other situations will require a judgment call. In making this judgment call, the Program Supervisor, in conjunction with members of the Risk Management Team, can look for evidence and or materiality of:

- mortgage and or tax arrears
- lack of board governance
- financial mismanagement
- alleged fraud
- technical/structural issues
- conflicts of interest
- significant accumulated deficit.

TRIGGERING EVENTS (s.115 of the Act)

The following are prescribed triggering events that necessitate risk management action on the part of the County:

- 1) The housing provider has contravened The Act or its Regulations.
- 2) The housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors.
- 3) Steps are taken or proceedings are commenced by any person to dissolve, windup or terminate the existence of the provider or to liquidate its assets.
- 4) The housing provider ceases or threatens to cease to carry on business in the normal course.
- 5) A trustee, receiver, or a receiver and manager or similar person is appointed with respect to the business or assets of the housing provider.
- 6) The housing provider makes a bulk sale, other than a bulk sale made under the Bulk Sales Act in conjunction with a transfer approved by the Minister.

- 7) Any assets of the housing provider are seized under execution or attachment.
- 8) The housing provider is unable to meet its obligations as they become due.
- 9) The housing provider incurs an expenditure that is material and excessive, having regard to the normal practices of similar housing providers.
- 10) The housing provider incurs an accumulated deficit that is material and excessive, having regard to the normal practices of similar housing providers.
- 11) The housing provider has failed to operate the housing project properly, having regard to the normal practices of similar housing providers.
- 12) In the case of a housing project on land in which the housing provider has a leasehold interest under a ground lease, the housing provider contravenes the ground lease.
- 13) In the case of the housing project comprising one or more buildings in which the housing provider has a leasehold interest under a lease, the housing provider contravenes the lease.

**REMEDIES AVAILABLE TO THE COUNTY FOR HOUSING PROVIDERS
OTHER THAN FOR FEDERAL PROJECTS (s. 116 of the Act)**

The County may exercise one or more of the following remedies to cure a triggering event and the remedy must be reasonable in the circumstances:

1. The service manager may discontinue or suspend the subsidy payments required to be made to the housing provider under section 102.
2. The service manager may reduce the amount of any subsidy payments required to be made to the housing provider under section 102.
3. The service manager may pay directly to a creditor of the housing provider all or part of a debt owing by the housing provider to the creditor and may reduce the amount of any subsidy payments required to be made to the housing provider under section 102 by the amount of the payment made to the creditor.
4. The service manager may perform any of the duties and exercise any

of the powers of the housing provider under this Act. (see Appendix 3)

5. The service manager may appoint a receiver or receiver and manager for a housing project operated by the housing provider (see Appendices 1 & 2).
6. The service manager may seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for a housing project operated by the housing provider.
7. The service manager may remove some or all of the directors or deemed directors of the housing provider, regardless of whether they were elected or appointed or became directors by virtue of their office.
8. The service manager may appoint one or more individuals as directors of the housing provider.
9. The service manager may exercise any other remedy that it has in law or equity.

Waiver

s.116 (2) of the Act

A delay by the service manager in exercising a remedy under this Part does not operate as a waiver of the service manager's right to exercise the remedy at a later time.

(3) A waiver by the service manager of its right to exercise a remedy under this Part does not bind the service manager unless the waiver is in writing and signed by the service manager.

(4) A waiver by a service manager of its right to exercise one remedy in respect of a triggering event does not operate as a waiver by the service manager of its right to exercise another remedy in respect of that triggering event.

(5) A waiver by a service manager of its right to exercise a remedy in respect of a triggering event under one paragraph of section 115 does not operate as a waiver by the service manager of its right to exercise a remedy in respect of,

- (a) a triggering event under another paragraph of section 115;
- (b) a different triggering event under the same paragraph of section 115; or
- (c) the same triggering event, if it reoccurs at a later time.

Discontinuation or suspension of subsidy (s. 118 of the Act)

A service manager shall not discontinue or suspend subsidy payments under paragraph 1 of section 116 (1) unless the service manager is of the opinion that,

- (a) the triggering event is material and substantial; and
- (b) the housing provider has not proceeded diligently to comply with the notice given by the service manager under clause 117 (1) (a).

Performance of duties, etc., by the service manager (s. 119 of the Act)

(1) If a service manager performs any of the duties or exercises any of the powers of a housing provider under paragraph 4 of subsection 116 (1), the housing provider shall, upon request, give the service manager all of the housing provider's records and information relevant to the performance of those duties or the exercise of those powers.

Expenses of service manager

(2) If a service manager performs any of the duties or exercises any of the powers of a housing provider under paragraph 4 of subsection 116 (1), the service manager may bill the housing provider for the expenses incurred by the service manager in performing those duties and exercising those powers.

Payment by housing provider

(3) A housing provider that is billed under subsection (2) shall pay the amount billed at the time specified by the service manager.

Collection of amount owing

(4) An amount billed to a housing provider under subsection (2) is a debt owing by the housing provider to the service manager and may be recovered by any remedy or procedure available to the service manager by law, including reducing the amount of any subsidy payments required to be made to the housing provider under section 102 by the amount billed.

Appointment, etc., of receiver (s. 120 of the Act)

The receiver replaces the Board of Directors and takes over the responsibility for the assets of the housing provider. When a project is in receivership the Board has no authority.

(1) A service manager shall not appoint a receiver or receiver and manager under paragraph 5 of subsection 116 (1) or seek the appointment of a receiver or receiver and manager under paragraph 6 of subsection 116 (1) unless,

- (a) a significant financial or other event has resulted in or, in the

opinion of the service manager, is likely to result in the housing provider being unable to pay its debts as they become due;

(b) the operation by the housing provider of the housing project has resulted in or, in the opinion of the service manager, is likely to result in,

(i) significant physical deterioration of the housing project or its contents, or

(ii) significant danger to the health or safety of the occupants of the housing project; or

(iii) in the opinion of the service manager, there is or is likely to be a misuse of the assets of the housing provider, including a misuse for personal gain by a director, employee, member or agent of the housing provider.

Other Considerations in the Appointment of a receiver

The Housing Department may also consider appointing a receiver:

- When the housing provider is threatened with a lawsuit or other legal action.
- Housing Provider insolvency requires the disposition of assets.
- When the County is considering taking over the project and requires third party experience and advice.

Powers of receiver

(2) A receiver or receiver and manager appointed under paragraph 5 of subsection 116 (1) has the prescribed powers, subject to the conditions and restrictions that are set out in the terms of the appointment.

Remuneration

(3) The remuneration of the receiver or receiver and manager appointed under paragraph 5 of subsection 116 (1) shall be determined by the agreement of the service manager and the receiver or receiver and manager and shall be paid out of the revenues of the housing provider.

Deemed agency

(4) The receiver or receiver and manager appointed under paragraph 5 of subsection 116 (1) shall be deemed to be the agent of the housing provider, and the service manager is not responsible for the acts or omissions of the receiver or receiver and manager.

Deemed ratification

(5) The housing provider shall be deemed to ratify and confirm whatever the receiver or receiver and manager appointed under paragraph 5 of subsection 116 (1) does in the course of receivership, if it is done in accordance with this Act, the regulations and the terms of the appointment.

Deemed release

(6) The housing provider shall be deemed to release and discharge the service manager, the receiver or receiver and manager appointed under paragraph 5 of subsection 116 (1) and every person for whom either of them would be responsible, from every claim of any nature arising by reason of any act or omission on the part of any of them, other than the following claims:

(1) A claim for an accounting of the money and other property received by the receiver or receiver and manager in the course of the receivership.

(2) A claim that is the direct and proximate result of negligence, dishonesty or fraud by the receiver or receiver and manager or by another person for whom either of them would be responsible.

Change of appointment

(7) Subject to subsection (9), the service manager may change, extend, or terminate the appointment of a receiver or receiver and manager appointed under paragraph 5 of subsection 117 (1) and may make a new appointment of the same or different person.

No powers for the housing provider

(8) The housing provider does not have the powers listed in subsection (7).

Period of receivership

(9) The period of time for which a receiver or receiver and manager is appointed under paragraph 5 of subsection 116 (1) for a housing project shall not exceed one year, and the receivership terminates one year after the date of the appointment unless the Superior Court of Justice orders otherwise on the application of the service manager made before the expiry of the one year period.

Replacement of directors (121 of the Act)

(1) A service manager shall not remove a director from the board of directors of a housing provider under paragraph 7 of subsection 116 (1) or appoint a director to the board of directors of a housing provider under paragraph 8 of subsection 116 (1) without the prior written consent of the Minister.

Rules for appointing directors

(2) The following rules apply to the exercise by a service manager of the remedy of appointing one or more directors to the board of directors of a housing provider under paragraph 8 of subsection 116 (1):

1. The service manager may appoint any number of directors, so long as the total number of directors of the housing provider after the appointment does not exceed the maximum number of directors permitted by the provider's articles, letters patent or supplementary letters patent within the meaning of the Business Corporations Act, the Corporations Act or the Co-operative Corporations Act.

2. The service manager shall not appoint a director for a term exceeding three years.

3. The service manager may appoint an individual as a director and the individual may serve as a director, whether or not the individual is at the time of the appointment, and whether or not the individual becomes after the appointment, a shareholder or member of the housing provider, or a director, officer, shareholder, or member of a corporate member of the housing provider. If the individual or corporation of which he or she is an officer, director, shareholder or member ceases to be a shareholder or member of the housing provider, the individual does not cease to be a director.

4. The service manager may appoint an individual as a director and the individual may serve as a director, whether or not the individual meets, at the time of the appointment or after the appointment, the requirements for being a director contained in the provider's articles, letters patent or supplementary letters patent. If the individual ceases to meet the requirements for being a director, the individual does not cease to be a director.

No removal of a director

(3) If a service manager appoints a director to the board of directors of a housing provider under paragraph 8 of subsection 116 (1), the shareholders or members of the housing provider have no authority to remove that director before the expiration of his or her term of office.

No increase or decrease of directors

(4) Neither the housing provider, nor its directors, nor its shareholders or members have the authority to increase or decrease the number, or the minimum or maximum number, of directors of the housing provider during the term of office of any director appointed by the service manager under paragraph 8 of subsection 116 (1).

Indemnity

(5) A service manager who appoints a director to the board of directors of a housing provider under paragraph 8 of subsection 116 (1) may indemnify the director and his or her heirs and legal representatives against any liability sustained by him or her, and costs, charges and expenses reasonably incurred by him or her, in respect of any civil, criminal, or administrative action or proceeding to which he or she is made party by reason of being or having been director of the housing provider, including an amount paid to settle the action or proceeding or to satisfy the judgment,

(a) if he or she acted honestly and in good faith with a view to the best interests of the housing provider; and

(b) if, in case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

Conflict

(6) This section, paragraph 7 and 8 of subsection 116 (1), and any other provisions of this Act relating to the exercise by a service manager of the remedy of removing a director from, or appointing a director to, the board of directors of a housing provider apply despite any provisions to the contrary in the Business Corporations Act, the Corporations Act, the Co-operative Corporation Act, the regulations made under those Acts, the articles, letters patent, supplementary letters patent or by-laws of the housing provider, the resolutions of the directors or shareholders of the housing provider, or an agreement among the shareholders or members of the housing provider.

Consultation with Human Services Committee and Local Municipalities in appointing directors

Whenever the County considers exercising the remedy of appointing directors to the board of a housing provider, members of the Human Services Committee of Council will be given the option of becoming appointees or of recommending appointees from their local municipalities. If no member wishes to be appointed, or no-one else is recommended, the municipality in whose area the housing

provider's project is located will be consulted, to see if local councilors or other suitable persons wish to be considered for appointment as directors.

Table 1- TRIGGERING EVENTS AND POSSIBLE COUNTY RESPONSES (steps or components of an action/stabilization plan)

Triggering Event	Possible County Response
The housing provider contravenes this Act or the regulations.	<p>Triggering letter requiring housing provider to do or not do something in order to come into compliance.</p> <p>Notice to Minister not required. Consent of Minister not required.</p> <p>After notice period, the County can implement any of the remedies available under s. 116 or as outlined in the operating agreements for federal projects.</p>
The housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors.	<p>Triggering letter not required.</p> <p>Notice to Minister is required but not consent.</p> <p>Appoint receiver or receiver and manager.</p>
Steps are taken or proceedings are commenced by any person to dissolve, wind up or terminate the existence of the housing provider or to liquidate its assets.	<p>S. 95 restricts a housing provider from transferring, leasing, or otherwise disposing of or offering, listing, advertising or holding out for transfer, lease or other disposal, a housing project or any part of it, including chattels in it.</p> <p>Triggering letter not required.</p> <p>Notice to Minister not required.</p> <p>Meet with board to determine reasons for this action.</p> <p>Feasibility of transferring housing</p>

	<p>project to County of Simcoe or another housing provider. Ministerial consent required. Business case required.</p>
<p>The housing provider ceases or threatens to cease to carry on business in the normal course.</p>	<p>Triggering letter not required.</p> <p>Meet with board. Board responsible to ensure that it is in compliance with Act and County requirements (s. 93).</p> <p>Gauge issues behind board's actions. Is there any assistance the County can provide?</p> <p>Feasibility of transferring housing project to County of Simcoe or another housing provider. Ministerial consent required. Business case required.</p>
<p>A trustee, receiver, receiver and manager or similar person is appointed to the business or assets of the housing provider.</p>	<p>Triggering letter not required.</p> <p>Notice to Minister required.</p> <p>Consult legal services.</p>
<p>The housing provider makes a bulk sale, other than a bulk sale made under the Bulk Sales Act in conjunction with a transfer approved by the Minister.</p>	<p>Triggering letter not required.</p> <p>Notice to Minister not required.</p> <p>Meet with board. Determine circumstances of sale- lack of board governance, lack of knowledge, mismanagement, fraud.</p> <p>Consult Legal Services.</p>
<p>Any assets of the housing provider are seized under execution or attachment.</p>	<p>Triggering letter not required.</p> <p>Notice to Minister may or may not be required. If seizure is result of housing provider experiencing liquidity problems, then Notice to Minister will be required.</p> <p>Consult legal services.</p>
<p>The housing provider is unable to meet its obligations as they come due.</p>	<p>Triggering letter not required.</p> <p>Notice to Minister is required.</p>

	<p>Ministerial consent not required.</p> <p>Operational review. Financial plan (strategy to manage obligations). Is there a training opportunity? A role for CHF or ONPHA? A business case for additional assistance?</p>
<p>The housing provider incurs an expenditure that is material and excessive, having regard to the normal practices of similar housing providers.</p>	<p>Triggering letter required.</p> <p>Notice to Minister may be required if expenditure impacts liquidity.</p> <p>May include requirement to hire property manager or tender for new property manager.</p> <p>Operational review.</p> <p>If Notice to Minister issued, then Minister's consent required before any remedy under s. 116 is implemented.</p>
<p>The housing provider incurs an accumulated deficit that is material and excessive, having regard to the normal practices of similar housing providers.</p>	<p>Triggering letter is required.</p> <p>Notice to Minister is required. Consent of Minister is required before any remedy under s.116 is implemented.</p> <p>Deficit Reduction plan with quarterly or monthly reporting.</p> <p>Operational review.</p>
<p>The housing provider has failed to operate the housing project properly, having regard to the normal business practices of similar providers.</p>	<p>Triggering letter required.</p> <p>Notice to Minister not required. Minister consent not required.</p> <p>Operational review.</p>
<p>In the case of a housing project on land in which the housing provider has a leasehold interest under a ground lease, the housing provider contravenes the ground lease.</p>	<p>Triggering letter requiring housing provider to do or not do something so that it is in compliance with ground lease.</p> <p>Notice to and consent of Minister not required.</p>

	After notice period in triggering letter, the service manager may perform any of the duties and exercise any of the powers of the housing provider under this Act (paragraph 4 of s. 116).
In the case of a housing project comprising one or more buildings in which the housing provider has a leasehold interest under a lease, the housing provider contravenes the lease.	<p>Triggering letter requiring housing provider to do or not do something so that it is in compliance with the lease.</p> <p>Notice to and consent of Minister not required.</p> <p>After notice period in triggering letter, the service manager may perform any of the duties and exercise any of the powers of the housing provider under this Act (paragraph 4 of s. 116).</p>

Note: 1) The Program Supervisor should review paragraph 3 of s. 117 for exceptions to obtaining Minister's consent and to issuing written notice to provider (triggering letter).

2) If the remedy to cure the triggering event is to remove or to appoint a board member it must not be done without the prior written consent of the Minister.

FEDERAL PROJECTS

Federal projects do not fall under the Operating Framework of the Act. Their operating agreements have not been terminated. When a federal project gives cause for concern in respect of risk management issues, its operating agreement and mortgage must be reviewed for available remedies. The Act requires the County to notify the Minister if the housing project is deemed to be a 'project in difficulty', in the same way and using the same criteria that applies to non-federal housing projects. However, there are no legislative requirements for the County to notify the Minister when a triggering event occurs in a federal project. However, the Program Supervisor will notify the Provincial Risk Management Centre by telephone call if a triggering event has occurred at a federal project. If the solution is ultimately to sell, dispose, transfer, or otherwise encumber the project, then Ministerial consent will be obtained prior to the County taking any of these actions. On the occurrence of a triggering event, a notice will be issued to the housing provider describing the situation (**without** a reference to specific legislation) and what the housing provider must do or refrain from doing in order to stabilize the situation. The notice period will be at least 60 days.

The County of Simcoe has 11 federal housing projects:

1. Brandon St. Community Development Project (*s. 27 Program*)
2. Collier Place (*s. 95 Program*)
3. Coral Charitable Foundation (*s. 95 Program*)
4. Knox Price (*s. 95 Program*)
5. Coldwater Seniors (*s. 95 Program*)
6. Endaad Native Non-Profit (*s.95 post 85 urban native program*)
7. S.U.N. Housing (*s.95 pre-86 urban native program with UNAA*)
8. Orillia Legion (*s.27 & s.95 programs*)
9. Southfields (*tri-partite s. 95 program*)
10. Georgian Bay Native Friendship (*s.95 pre-86 urban native program with UNAA*)
11. Midland-Penetanguishene Urban Native (*s.95 post 85 urban native program*)

Note: 1) The Housing Department will use the same triggering events and warning signs for federal projects that apply to non-federal projects, as indications that a federal provider is in need of risk management assistance.

2) The Province remains the point of contact. The County will not deal directly with Canada Mortgage Housing Corporation (CMHC).

REMEDIES AVAILABLE FOR FEDERAL PROJECTS

Outlined below are the remedies generally available for projects operating under various federal agreements. The Program Supervisor **must** review the particular operating agreement and mortgage to determine what remedies are specifically available.

- 1) Section 26 (Limited Dividend Program)
 - Unpaid principal of the loan may be declared due and payable forthwith.
 - Rents can be adjusted downward effective from the date determined by the service manager.
- 2) Section 26 and 27 Non-Profit programs
 - Unpaid principal of the loan may be declared due and payable forthwith or increase in the interest payable on the unpaid balance.
- 3) Section 95 Non-Profit Program
 - Discontinue subsidy payments
 - Suspend subsidy payments.
 - Discontinue subsidy payments and require the repayment of

- the Subsidy Surplus Fund including accrued interest.
 - Suspend future subsidy payments or reduce further payments.
- 4) Section 95 pre-86 Urban Native with UNAA
- Discontinue subsidy payments
 - Suspend subsidy payments
 - Suspend future assistance payments or reduce further payments
 - Reduce # of units for which the additional contributions may be given
 - Cancel or suspend all additional contributions
- 5) Section 95 post-85 urban native program
- Discontinue subsidy payments
 - Suspend subsidy payments
 - Discontinue contributions in whole or in part
 - Discontinue or suspend payment or reduce contribution without terminating provider's obligations
 - Termination of agreement as well as purchase of property and replacement reserve fund

CONSIDERATION BEFORE EXERCISING A REMEDY AGAINST NON-FEDERAL AND FEDERAL HOUSING PROJECTS

Before the Risk Management team decides on the exercise of a remedy against a housing provider, it will consider the following:

- How has the County come to the conclusion that there is a problem?
- What will happen if nothing is done?
- Can a training opportunity be found?
- Is there a role for sector support organizations to help remedy the situation e.g. ONPHA, CHF?
- What response do we expect from the housing provider to address the non-compliance?
- Is there a need for a forensic audit?
- Have all options/remedies been considered?
- Will this remedy achieve the results necessary to address the problem in an effective manner?
- Is the remedy in proportion to the problem?
- What are the consequences of the remedy?
- Is this remedy consistent with action taken in other similar non-compliance issues?
- Should the Provincial Risk Management Centre/Legal advisor be contacted for advice?

REPORTING AND TRACKING PROJECTS IN DIFFICULTY

Briefing Note

Once a project in difficulty or a triggering event has been identified by a Program Supervisor, in consultation with the Social Housing Manager, or if assistance is needed to make such determinations, the County's Social Housing Risk Management team will be convened. The Risk Management Team (RMT) will consist of the Social Housing Manager, Program Supervisor, Divisional Financial Controller, and Accounting Supervisor. Legal Counsel will be sought as necessary. The Manager of Social Housing will be the team lead. The Provincial Risk Management Centre will be contacted at the same time, for the purpose of consultation on project specific issues and obtaining advice and recommendations related to the nature of triggering events and, where necessary, approvals for the implementation of remedies

Following the recommendations of the RMT, the Program Supervisor will prepare a Briefing Note, to be signed off by the Manager of Social Housing and copied to the General Manager, Social Services. The Briefing Note will include:

1) Project Information

- Name and address of the housing provider.
- Member Municipality
- Project type.
- IAD.
- Number of units.
- RGI target.
- Actual number of units.
- Number of vacant units.
- Property management type i.e. direct or contracted out.
- Date of last operational review.
- Name of the Program Supervisor.

2) Problem

The criteria used to determine that a housing project is a project in difficulty, as set out in section 18(2), or a description of the triggering event(s), as set out in section 115 of the Act, will be identified and discussed. There will be discussion of the severity of the problem/triggering event, how it arose, and how cooperative the Board might be in working with the County in developing and implementing an action plan that will resolve the problem/triggering event.

3) Action Plan/Stabilization Plan

A proposal for an action plan will be put forward that in the opinion of the Risk

Management Team will stabilize the housing project. Depending on the nature of the problem/triggering event, this section may include a discussion of options and their pros and cons. In developing an action plan, the Risk Management Team should consider the following:

- I. Whether a deficit reduction plan is required or is there something else that the housing provider should do or should cease doing in order to stabilize the project.
- II. Whether or not an operational review is required.
- III. If ultimately the housing provider fails to address the County's concerns as spelled out in the written notice (triggering letter) to the housing provider, what remedy under the Act should be implemented thereafter to cure the triggering event.
- IV. Whether this remedy will require the approval of County Council.
- V. Whether ministerial consent will be required prior to exercising the proposed remedy.
- VI. Communication strategy: objectives, how and to who i.e. target audience (Board, residents/members, sector support organizations, media, lending institution,) how the County wants to position itself, key messages, Q & A, fact sheets.

Note: An action plan/stabilization plan may need to be modified through the resolution phase as circumstances change.

The Risk Management team will work closely with the Boards and management of projects at risk to ensure the uptake of action/stabilization plans. For example, this may require the Program Supervisor attending board meetings regularly, or Finance staff helping or even preparing deficit reduction plans, or the Housing Division providing best practices for certain policies and procedures.

The Program Supervisor will monitor, track (on spreadsheet and Status Update Reports) and provide guidance to the project until the resolution of the issue or triggering event.

However, if a housing provider shows an unwillingness to cooperate (if the triggering event is any one described in paragraphs 2 to 8 of section 115, written notice of a triggering event to the housing provider does not have to be given) or if its response to the notice of a triggering event is unsatisfactory, or the housing provider has not responded to the notice of a triggering event within the timeframe required, or if the situation is quickly deteriorating i.e. has become an emergency situation, then the Risk Management team will exercise one or more of the remedies available under s. 116 after a careful review of all of the

ramifications of implementing a particular remedy. The exercise of a remedy, or remedies, must be reasonable in the circumstances. The goal is to exercise remedies that apply an even-handed response to the triggering event, given the nature of the default and its degree of seriousness. Generally speaking, the remedy ought to reflect the nature of the event of default with a view to putting the housing project back on a solid basis (see also questions to consider before exercising a remedy, on page 20).

4) Recommendation

If more than one action plan is presented, then the action plan that best stabilizes the housing project will be recommended for implementation.

Reports to Council

Following signoff of the Briefing Note by the Manager of Social Housing, he/she will meet with the General Manager of Social Services to determine whether or not an information report needs to be provided to County Council. Generally speaking, any such report will be marked 'confidential'. If it is determined that a report will be provided, the Mayor of the municipality in which the project is located will be informed by telephone that a confidential report will be sent to Committee.

Notices

Following consultation on the briefing note by the Manager of Social Housing with the General Manager of Social Services, the following notices will be prepared and issued by the Program Supervisor:

1) Notice to the Minister (s. 18(2 of the Act) (see also Appendix 7)

Notice will be given to the Minister whenever the Risk Management team determines that:

- a) the mortgage guaranteed by the Province of Ontario or the Ontario Housing corporation is in default;
- b) in its opinion, because of the financial position or the projected financial position of the housing provider that operates the housing project, the mortgage described in clause (a) is likely to go into default within 12 months after year end of the current fiscal year of the housing provider;
- c) in its opinion, because of the financial position or the projected financial position of the housing provider that operates the housing project, the housing provider is likely to fail to meet a material financial

obligation within 12 months after the end of the current fiscal year of the housing provider; or

- d) in its opinion, the housing provider has failed to comply with an obligation under the Act and the failure is material.

If the County is required to give written notice to the Minister under s. 18 (2) (a) (b) (c) or (d), then the County must also give written notice to the housing provider, unless there are circumstances contributing to the situation that have been referred to a law enforcement agency. The notice to the housing provider will contain the same information as the notice to the Minister, as described below. The notice to the housing provider will be sent to all board members.

Contents of Notice to Minister (O.Reg. 368/01 section 10)

- The name of the housing project and the housing provider.
- A description of the situation, described in clause 18 (2) (a), (b), (c), or (d) of the Act that requires the service manager to give notice.
- The name of the individual who can communicate, on behalf of the service manager, with the County and details of how that individual can be contacted.
- If notice is not being given to the housing provider, an explanation of why that is not required under subsection 18 (3) of the Act. O.Reg. 368/01, s.10.

Note: If, in addition to the notice to the housing provider that it is a project in difficulty, the housing provider is given notice that a triggering event has occurred (see section on 'Notice to housing provider' below) the notice of triggering event will be included with the Notice to the Minister.

Minister's Consent (s.117 (2) of the Act)

Before, the Risk Management team implements a remedy under s. 116 of the Act, **in respect of a project in difficulty**, the team must obtain written consent from the Minister unless:

- 1) the triggering event is any of the ones listed as #2) to #8) on page 5 above;
- 2) the triggering event is that the housing provider has sold, leased;

or otherwise disposed of or offered, listed, advertised or held out for sale, lease or other disposal, the housing project or any part of it, in a manner contrary to the Act;

3) there is an emergency situation and seeking ministerial consent may materially worsen the situation;

4) a report of an audit or investigation of the housing provider has been, or circumstances identified in such a report have been, referred to a law enforcement agency and the report or the circumstances relate to a triggering event.

II) Notice to housing provider (s. 117(1)(a) of the Act) (see also Appendix 6)

The County **will not** exercise any of the remedies under s.116 of the Act (see page 6 above) before the County gives the housing provider written notice **unless:**

1) the triggering event is any of the ones listed as #2) to #8) on page 5 above;

2) the triggering event is that the housing provider has sold, leased; or otherwise disposed of or offered, listed, advertised or held out for sale, lease or other disposal, the housing project or any part of it, in a manner contrary to the Act;

3) there is an emergency situation and giving written notice to the housing provider may materially worsen the situation;

4) a report of an audit or investigation of the housing provider has been, or circumstances identified in such a report have been, referred to a law enforcement agency and the report or the circumstances relate to a triggering event.

Or Unless (s.117 (b) of the Act)

the housing provider does not, within the period specified in the notice, comply with the notice or, if the notice provides for the submission of a plan by the housing provider, the plan submitted by the housing provider does not address the matters specified in the notice or the service manager is reasonably of the opinion that the plan is not acceptable.

Contents of housing provider notice (s.117 (1) (a) (i)-(iv) of the Act)

When the Program Supervisor gives written notice to the housing provider, it will contain the following:

- The name of the housing project and the housing provider
- The particulars of the triggering event.
- What the housing provider must do (or not do) in order to cure the triggering event.
- The time by which the housing provider must cure the triggering event. The notice period will be at least 60 days from the date that notice is given.
- If the notice contains a request for an action plan, then it will spell out the matters required to be addressed by the plan.
- The name of the individual who can communicate, on behalf of the service manager, with the housing provider and details of how that individual can be contacted.

In order to ensure that the Housing provider is aware of the triggering event(s), the notice will be sent to all board members.

Status Update Reports

Depending on the severity of the problem(s) being experienced by a project, the Program Supervisor will prepare either (i) **Monthly Status Update Reports** or (ii) **Quarterly Status Update Reports** until the triggering event(s) or problem has been cured. Over time, the frequency of a Status Update Report may change from monthly to quarterly depending on how well the housing provider's issues are approaching resolution. The Program Supervisor, in conjunction with the Risk Management Team, will judge the severity of the issue(s) facing the project and determine the appropriate frequency of Status Update Reports by examining:

- I. the materiality of the issue(s).
 - II. The number of problems/issues.
 - III. The willingness of the housing provider to work cooperatively with the Housing Department.
 - IV. the nature of the issue(s) e.g. potential for political fallout/media exposure.
- Status Update Reports will be provided to:

- Social Housing Manager,
- Other members of the Risk Management Team, as appropriate
- Provincial Risk Management Centre, as appropriate
- General Manager of Social Services
- County Council, as appropriate

Status Update Reports will contain:

1) Identification of the housing project

- Name of housing provider.
- Date of Briefing Note.
- Summary of the issue(s) that gave rise to the determination of project in difficulty status or a description of the triggering event.

2) Action to date

This section will contain a chronological listing of completed tasks to date. The most recent completed task will be in bold.

3) Current action plan and next steps

This section will include dates by which tasks are expected to be completed. Once a task has been completed it will be removed from this section and moved to "Action to Date." The most recent item added will be in bold.

Spreadsheet

A spreadsheet will be prepared and located on the common drive in a password protected file. It will be used to track projects in difficulty, projects where a triggering event has occurred, or projects determined to be at risk through identification of warning signs. The spreadsheet will summarize the steps taken to date to address the areas of concern and the next steps.

RESOURCES

The Housing Division may make use of the following resources in its efforts to resolve risk management issues:

- Legal Services
- Financial Services
- Provincial Risk Management Centre
(RiskManagementcentre@mah.gov.on.ca)
- Fleet and Purchasing
- County technical services, e.g. Maintenance Managers
- Communications Services
- Simcoe County Housing Corporation Approved Vendor List

Appendix I

Sample Invitational Tender for Receivership Services

1 Introduction

1.1 The County of Simcoe (hereafter referred to as “the County”) is seeking bids on the provision of receivership services for a non-profit housing corporation (hereafter referred to as the “non-profit”) operating in the County that has failed to meet its service obligations.

1.2 .The non-profit provides modest housing for persons with low to moderate incomes, some of whom pay rent-geared-to-income, others of whom pay market rent. The non-profit must administer its project in compliance with the Social Housing Reform Act, 2000,/ a service manager delegation agreement with the County/its operating agreement.

1.3 The non-profit’s project is comprised of YYY townhouses/apartments for single people/ families/ seniors/ people with special needs. The number of units within the non-profit’s housing portfolios is YYY units. Annual subsidy paid to the non-profit by the County is approximately \$\$\$\$\$\$.

2 Terms of Reference

2.1 Broad Scope of Work

2.1.1 The receiver shall operate under section 120 of the Social Housing Reform Act, 2000, and under the powers prescribed in Ontario Regulation 368/01 s.18, under the Social Housing Reform Act 2000, as follows:

The powers of a receiver or receiver and manager who is appointed for more than one housing project operated by a housing provider apply with respect to all the housing projects for which the receiver or receiver and manager is appointed. O. Reg. 368/01, s. 18 (2).

(3) The receiver or receiver and manager has the exclusive power to act as the housing provider with respect to the housing project and the assets and liabilities of the housing provider relating to the housing project. O. Reg. 368/01, s. 18 (3).

(4) Without limiting the generality of subsection (3), the powers under that subsection include the following:

1. The receiver or receiver and manager may carry on the business of the housing provider.
2. The receiver or receiver and manager may take possession of and operate the housing project and may take possession of, preserve and protect the assets of the housing provider.

3. The receiver or receiver and manager may sell, lease, give as security or otherwise dispose of the housing project and the assets of the housing provider.

4. The receiver or receiver and manager may commence, conduct or defend legal proceedings.

5. The receiver or receiver and manager may borrow money.

6. The receiver or receiver and manager may receive payments or anything else in satisfaction of any obligation to the housing provider and may compromise any such obligation.

7. The receiver or receiver and manager may enter into contracts, sign documents or do anything incidental to the exercise of its other powers. O. Reg. 368/01, s. 18 (4).

(4)(a) The receiver or receiver and manager shall operate under its prescribed powers as the agent of the housing provider, not as the agent of the service manager. The service manager is not responsible for the acts or omissions of the receiver or receiver and manager.

(5) The powers of the receiver or receiver and manager are subject to any conditions and restrictions,

(a) under the Act;

(b) in the appointment of the receiver or receiver and manager by the service manager; or

(c) in an agreement between the receiver or receiver and manager and the service manager relating to the appointment. O. Reg. 368/01, s. 18 (5).

(6) The receiver or receiver and manager shall not exercise any of its powers unless all of the following are satisfied:

1. The receiver or receiver and manager has insurance acceptable to the service manager and has provided the service manager with proof that the receiver or receiver and manager has such insurance.

2. The receiver or receiver and manager provides the service manager with undertakings, satisfactory to the service manager, that the receiver or receiver and manager and all persons who the receiver or receiver and manager procures the assistance of in the carrying out of the powers of the receiver or receiver and manager,

i. shall not do anything that would result in a conflict of interest, and

ii. shall comply with the requirements, to which the housing provider was subject, relating to the collection, use, disclosure and safeguarding of privacy of personal information

and for a person's access to his or her personal information.
O. Reg. 368/01, s. 18 (6).

2.2 Specific Scope of Work

2.2.1 The receiver shall be expected to direct, on behalf of the non-profit, the employees or agents of the non-profit to perform the following functions:

- a) Accounts receivables and payables;
- b) Bookkeeping and monthly financial reports;
- c) Tenant placement;
- d) Rent calculation;
- e) Rent collection;
- f) Maintenance and capital works;
- g) Communication with tenants;
- h) Implementation of the County compliance review recommendations and audit recommendations;
- i) Reporting and liaising with the receiver and the County;
- j) Any other specific functions as directed by the receiver in conjunction with the County.

If the employees or agents of the non-profit are not able to perform these functions the receiver shall be expected to contract, on behalf of the non-profit, the services of a qualified firm to perform these functions.

The term of any of the above services contract(s) shall not exceed one year unless the County agrees to a longer term. In the selection, appointment and contractual terms, the receiver will be guided by the County and all such arrangements must be acceptable to the County.

2.2.2 The receiver will be required to direct the non-profit's auditor in the completion of any outstanding financial statements and Annual Information Returns. (If applicable, insert: **There are currently no outstanding reporting obligations**).

2.2.3 The receiver, during the term of the receivership, shall be expected to act honestly and in good faith and be responsible, as part of his general powers, for the following specific functions:

- a) Providing the County with reports, as requested;
- b) Providing notifications to creditors;
- c) Informing tenants of situation through written notification (after consultation with the County);
- d) Receiving and recording input from tenant accounts;
- e) Contracting and directing property management firm;
- f) Contracting and directing other service firms and staff;
- g) Overseeing the corporations' financial situation;
- h) Reviewing and assessing employment contracts;

2.3 Term of Receivership

2.3.1 The receivership of the non-profit shall terminate one year following the County's appointment unless the Court directs otherwise within that time.

Application may be made to Court to extend the receivership and the Court may vary the terms of the appointment.

3 Instructions

3.1 Bidders shall, on the Bid Form provided, submit their fee for a one year (twelve month) period of receivership expressed in words and figures for the provision of Receivership services as detailed in these tender documents and the attached Receivership Agreement. The bidder's fee is to be exclusive of allowable disbursements such as receiver's out-of-pocket expenses incurred in connection with carrying out the receiver's duties for reasonable travel and meal costs, courier, postage and other similar miscellaneous costs.

3.2 Bidders shall agree to sign an Agreement (the general form of which is attached as Appendix A), which, after approval by the County, will formalize the agreement with the successful bidder. Failure to agree to this provision may result in the bid being declared null and void at the sole discretion of the County.

3.3 All inquiries shall be directed to:

3.4 Bids must be in the Submission Envelope provided and received by the County no later than 2:00 p.m. on (*date*). **LATE BIDS WILL NOT BE ACCEPTED.**

3.5 Only one completed copy of the Bid Form (provided) is required.

3.6 A duly authorized official of the bidder must sign the Bid Form. If the bidder is a limited company, the company's Corporate Seal must also be affixed.

3.7 Each bidder must include in its proposal confirmation of the following:

i) That the proponent does not and will not have any conflict of interest (actual or potential) in submitting its proposal or, if selected, with the contractual obligations of the proponent as receiver under the Receivership Agreement; and

ii) That the bidder neither has nor has access to any Confidential Information as defined below:

“Confidential Information” refers to confidential information of the County (other than confidential information which is disclosed to bidders in the normal course of the Invitational Tender); the Confidential Information is relevant to the Services required by the Invitational Tender; their pricing or the Invitational Tender evaluation process and the disclosure for which could result in prejudice to the County or an unfair advantage to the bidder.

3.8 In addition, the proposal shall include the following information:

a) A list of the names, addresses and telephone numbers of the persons who participated in the development of the bid; and

b) A list of the names of any former employees of the County, with the date of their last pay from the County, which the bidder has either appointed to its Board of Directors or employed within the past two years.

The proposal of any bidder may be disqualified where the proponent fails to provide confirmation of the foregoing or makes misrepresentations regarding any of the above. Further, the County shall have the right to rescind any contract with the selected proponent in the event that the County in its sole discretion determines that the selected bidder has made a misrepresentation regarding any of the above, in addition to or in lieu of any other remedies that the County has in law or in equity.

3.9 Bidders must complete and return the List of References.

3.10 Bidders must provide an outline of the staff expected to be required to complete the services outlined in the Invitational Tender document and Receivership Agreement, the approximate hours to be spent by each staff person working on the assignment during the first sixty (60) days of receivership and for the subsequent one year period.

Bidders should identify the senior staff expected to be responsible for the assignment, for junior staff it is sufficient to identify staff classifications without naming specific individuals. This information should be included in the 'Personnel Information' section of the bid form.

3.11 Bidders must provide a description of their experience, if any, in carrying out similar retainers with non-profit housing providers who administer housing under the Social Housing Reform Act, 2000.

Failure to meet any of the above bid requirements could disqualify your bid.

4 Selection Criteria

The County, in its sole discretion, will determine the criteria used in evaluating the bids, which will include, but are not limited to, the following (not listed in any particular order):

- a) Proposed contract fee
- b) Results of the interview with County staff, if any
- c) References
- d) Conflict of Interest Declaration (see Appendix "B" – to be completed and submitted with the proponent's bid).
- e) Experience, if any, in carrying out similar retainers with non-profit housing providers who administer housing under the Social Housing Reform Act, 2000.

5 Conditions of Tender

The selection of any bid by the County is conditional upon the receiver being appointed by the County and signing a receivership agreement acceptable to the County.

Bid Form (*Name of Group*) to the County of Simcoe

Having examined the Individual Tender documents and having familiarized ourselves with the operation and administration of Non-Profit Housing Providers under the Social Housing Reform Act, 2000/their operating agreements we hereby offer to enter into an Agreement to perform all services specified and/or referred to in this Invitational Tender Submission Package including without limitation, the services described in the Receivership Agreement; provide at our expense the necessary expertise and supervision to ensure compliance with all the terms of the Receivership Agreement and Invitational Tender specifications for a one year (twelve month) term commencing no earlier than (*date*).

Our price for performing the work, for (*name of group*), as described in the Invitational Tender documents for a one year (twelve month) term commencing no earlier than (*date*) is quoted in words and figures as follows (payable in Canadian funds):

_____ \$ _____ Plus GST

ADDITIONAL EXPENSES TO BE BILLED AT THE FOLLOWING RATES:

MILEAGE: _____ cents per Kilometre (\$0.____)

MEALS: _____ maximum per day (\$ _____)

Ensure that all parts of the Bid Form have been completed and are attached, and that all information and documents as required in section 3, 'Instructions', of the Invitational Tender for Receivership Services, are attached.

It is understood that in order to be considered, this tender must be received by the County of Simcoe, _____, ON not later than 2:00 p.m. on _____.

The selection of any bid by the County is conditional upon the receiver being appointed by the County and signing a receivership agreement acceptable to the County.

We certify that all terms and conditions contained herein shall be strictly adhered to if we are appointed as the Receiver.

Bidders, if they are a limited company, should affix their Corporate Seal to all documents.

NAME OF BIDDER:
ADDRESS:
SIGNATURE:
TITLE:
SIGNATURE:
TITLE:
TELEPHONE NUMBER:
FAX NUMBER:

List of References & Required Information

We hereby authorize the County of Simcoe to contract the following individuals and companies to verify the information contained in our bid submission and to ask whatever questions the County deems necessary to determine our suitability as a potential Receiver.

SIGNATURE:
TITLE:
SIGNATURE:
TITLE:

REFERENCE #1

NAME:
ADDRESS:
PHONE NUMBER:
FAX NUMBER:

REFERENCE #2

NAME:
ADDRESS:
PHONE NUMBER:
FAX NUMBER:

REFERENCE #3

NAME:
ADDRESS:
PHONE NUMBER:
FAX NUMBER:

Conflict of interest and Confidentiality Declaration

We hereby confirm that there is not nor has there been any actual or perceived conflict of interest in our submitting the Proposal or performing the services required by the Agreement.

ALSO

In submitting the Proposal, our company has/has no (**strike out inapplicable wording**) knowledge of or the ability to avail ourselves of confidential information of the County (other than confidential information which may have been disclosed by the County or the proponents in the normal course of the Invitational Tender) and the confidential information was/was not relevant to the services, their pricing or the Invitational Tender evaluation process.

The following people participated in the preparation of our proposal (attach a list if space is insufficient):

Name Address Telephone Number

- 1.
- 2.
- 3.

The following is a list of individuals who are former employees of the County of Simcoe whom our company, since (*insert date two years immediately prior to this bid submission*) has either appointed to its Board of Directors or employed (attach list if space is insufficient):

Name	Job Classification of last County Position	Date of last pay from County
------	---	------------------------------

- 1.
- 2.
- 3.

SIGNATURE:

TITLE:

SIGNATURE:

TITLE:

Personnel Information

The Receiver shall cause the Services to be performed by the following personnel at the rates specified.

Receivership:

Property Management:

This assumes that onsite employees of (i.e. part-time property coordinator and / or superintendent, maintenance man, cleaner, etc.) will be maintained and paid from the operations of the non-profit.

(County to attach the following:

APPENDIX A: Sample Receivership Services Agreement

APPENDIX B: Sample Service Manager Delegation Agreement

APPENDIX C: Sample Operating Agreement (if applicable))

Appendix II**SAMPLE RECEIVERSHIP SERVICES AGREEMENT**

THIS AGREEMENT made in duplicate the day of , 20

BETWEEN:

The Corporation of the County of Simcoe

(the "Service Manager")

-and-

(the "Receiver")

WHEREAS The Corporation of the County of Simcoe has been designated as a service manager for the purposes of the Social Housing Reform Act, 2000 and any regulations thereunder;

AND WHEREAS the responsibility for administering those social housing programs which include the Housing Project was transferred to the Service Manager as of April 1, 2002;

AND WHEREAS the Housing Provider has failed to operate the Housing Project properly, having regard to the normal practices of similar housing providers;

AND WHEREAS the Housing Provider is unable to meet its obligations as they come due;

AND WHEREAS the Housing Provider incurs an accumulated deficit that is material and excessive, having regard to the normal practices of similar housing providers;

AND WHEREAS the Housing Provider has failed to operate the housing project properly, having regard to the normal practices of similar housing providers;

AND WHEREAS the Housing Provider has failed to comply with the triggering event notice, dated YYYY, within the time provided for in such notice;

AND WHEREAS it is estimated that the Housing Provider will have accumulated an operating deficit of between (INSERT \$ AMOUNT) since (INSERT DATE);

AND WHEREAS the Receiver is experienced in the business of providing receivership and management services for social housing providers;

AND WHEREAS the Service Manager appointed the Receiver on (INSERT DATE) pursuant to paragraph 5 of subsection 116(1) of the Social Housing Reform Act, 2000 as the Receiver and Manager of the Housing Project and the Service Manager and the Receiver have agreed to execute this Agreement which sets out further terms and conditions of the receivership;

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

1. Definitions

For the purposes of this Agreement, the following terms shall, unless the context requires otherwise, have the meanings specified in this article:

"Housing Project" shall mean all or part of the residential accommodation, including facilities used for ancillary purposes, located in one or more buildings used in whole or in part for residential accommodation, owned and operated by the Housing Provider, located at

"Housing Provider" shall mean

"Party" shall mean either the Service Manager or the Receiver, as those terms have been defined, herein.

"Property Manager" shall mean a company hired under a property management agreement to manage the Housing Project; or staff of the Housing Provider that has been hired under an employment contract to manage the Housing Project.

"Schedule" shall mean those schedules which are attached hereto (as amended or replaced from time-to-time) and which form an integral part of this Agreement.

"Services" shall mean the services described in the Terms of Reference for Receiver attached to this Agreement as Schedule 1.

2. Obligations of the Receiver

The Receiver shall provide the Services described in the Terms of Reference for Receiver attached hereto as Schedule 1.

3. Term

This Agreement shall become effective as and from the date the Receiver was appointed the Receiver and Manager of the Housing Project, and shall terminate

upon the first anniversary of such date; unless the Superior Court of Justice orders otherwise on the application of the Service Manager made before the expiry of the one-year period pursuant to s. 120(9) of the Social Housing Reform Act, 2000.

4. Termination

- (a) The Receiver may terminate this Agreement by providing sixty (60) days prior written notice to the Service Manager. All provisions which by their terms are intended to survive the termination of this Agreement or the appointment of the Receiver as Receiver and Manager of the Housing Project, shall survive the termination of this Agreement or appointment in accordance with their terms.
- (b) The Service Manager reserves the right to terminate this Agreement and the appointment without cause, upon such conditions as the Service Manager may require, on 48 hours written notice to the Receiver.
- (c) If the Service Manager terminates this Agreement and the appointment prior to its expiration, the Service Manager shall only be responsible for ensuring payment, from the revenues of the Housing Project or from funds provided by the Service Manager, of the Receiver's professional fees and disbursements incurred in connection with this Agreement up to and including the date of termination. Notice of termination may be sent by registered mail or hand delivered to the address of the Receiver.
- (d) Notwithstanding termination of this Agreement or any appointment, any outstanding obligations of either Party under this Agreement shall continue until performed or satisfied.
- (e) Upon termination of the appointment pursuant to this Article 4, or the expiry of this Agreement or of the appointment of the Receiver pursuant to Article 3, the Receiver shall return control of all property, assets and books to the Housing Provider, or to another party as directed by the Service Manager, within forty-eight (48) hours of termination. Such property, assets and books include but are not limited to: all keys, invoices, books of account, leases, operating contracts, working papers, data and information which the Receiver may have in its possession pertaining to the Housing Provider and the Housing Project and/or on computer disk(s). The Receiver acknowledges and agrees that these are the sole and exclusive property of the Housing Provider. All data and information on computer

disk shall be returned to the Housing Provider in a form compatible with the operating system and software of the Housing Provider's computer(s).

5. Fees and Disbursements

- (a) The Service Manager shall authorize payment of the Receiver's professional fees and disbursements from the revenues of the Housing Provider derived from the Housing Project, pursuant to subsection 120(3) of the Social Housing Reform Act, 2000, subject to the following conditions:
 - i. The Receiver shall provide the Service Manager with a billing each month showing details of all professional fees and disbursements incurred during the prior month, which is subject to Service Manager's approval;
 - ii. The Receiver's disbursements shall consist of the Receiver's out-of-pocket expenses incurred in connection with carrying out the Receiver's duties under the appointment except for meal costs. The nature of such disbursements shall be mutually agreed to by the Parties, and shall be charged on a direct cost pass through basis with no markup or other charges added.

6. Limitations

- (a) The Receiver shall not terminate any of the Housing Provider's agreements without the prior written approval of the Service Manager nor enter into any new agreements for a term in excess of the term of Receivership without the prior written approval of the Service Manager or as directed in the Terms of Reference for Receiver.
- (b) The Receiver shall not provide a copy of this Agreement to the Housing Provider and will keep its contents and any information or material arising out of this Agreement or the appointment confidential, unless the Receiver has first obtained the written consent of the Service Manager.

7. Assignment

The Receiver shall not assign this Agreement or any part thereof, without the prior written approval of the Service Manager, which may be unreasonably withheld.

8. Communication and Notice

(a) The Receiver shall identify in writing one or more contact persons, who are authorized by the Receiver to accept appointments as a receiver or receiver and manager of a Housing Provider and respond on its behalf and who can respond to requests from the Service Manager and receive information from and transmit information to the Service Manager and shall give notice to the Service Manager of any change in the contact person. The initial contact person shall be:

i) For the Service Manager:

ii) For the Receiver:

b) All communications and notices pertaining to this Agreement shall be in writing and shall be deemed to have been given when actually received if personally delivered or if mailed by first class registered mail or sent by telegram, telecommunication or facsimile transmission, shall be deemed to be received on the second business day following the day on which it is sent, in each case addressed as follows.

i) To the Service Manager:

ii) To the Receiver:

9. Liability and Indemnity

(a) Save and except for the provisions of this Agreement, the Service Manager shall not be liable for any injury (including death) or damage suffered by any officer, employee, consultant or agent of the Receiver, or for the loss or damage to the property of the Receiver or the property of its officers, employees, consultants or agents in any

manner or for any claims, actions, judgments, costs and expenses whatsoever against the Receiver.

- (b) The Receiver agrees to indemnify and save the Service Manager harmless from all claims, liabilities, costs or expenses that the Service Manager may incur or that may be asserted against the Service Manager arising out of this Agreement to the extent that they are attributable to the conduct of the Receiver.

10. Insurance

- (a) The Receiver shall purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Agreement, the following insurance coverage's, under policies in each case in a form and with an insurer licensed to operate in Ontario, and deliver to the Service Manager upon execution of this Agreement by the Receiver, a certificate of each such policy bearing an original signature of an authorized agent of the issuing insurer indicating the extent and terms of coverage, and deliver a similar certificate in connection with, and appropriately in advance of the date of effectiveness of, any replacement, renewal or modification of each such policy:
- i. Professional Liability Insurance in an amount of not less than THREE MILLION DOLLARS (\$3,000,000.00) per claim, which shall be kept in full force and effect for a period of time ending no sooner than Two (2) Years after the termination or expiry of this Agreement, as the case may be;
 - ii. General Liability Insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence showing the Service Manager as an additional insured;
- (b) The Receiver will review the insurance coverages maintained by the Housing Provider and shall ensure that such insurance coverage complies with the mandatory coverages required by the Social Housing Services Corporation for property, business interruption, crime (employee dishonesty), boiler and machinery and comprehensive general liability, with limits and deductibles satisfactory to the Manager of Insurance. The Receiver will ensure that it is a named insured with respect to such insurance. In addition to the foregoing, the Receiver will ensure that the comprehensive general liability insurance policy:
- (i) is in the amount of not less than FIVE MILLION. DOLLARS (\$5,000,000.00) for each occurrence;
 - (ii) adds the Service Manager and any subcontractors of the Receiver as additional insureds;
 - (iii) has provisions for cross-liability as between the Receiver and the Service Manager, blanket contractual liability,

owner's/contractor's protective liability, completed operations liability, contingent employer's liability, premises and operations liability, broad-form property damage liability, occurrence property damage liability, and personal injury liability arising out of false prosecution, libel, slander, defamation of character, invasion of privacy or wrongful eviction; and

(iv) provides for Thirty (30) Days' prior notice of any cancellation, termination or expiry of, or amendment or change (in a material respect) to the policy.

- (c) The Receiver shall provide the Service Manager with proof of Professional Liability insurance maintained by any subcontractor engaged by the Receiver in relation to the Services, where such subcontractor is under a professional obligation to maintain the same, in the amount and for the period specified in clause (a)(i), no later than the execution of this Agreement by the Receiver and in a form and with an insurer acceptable to the Manager of Insurance.
- (d) Notwithstanding subparagraphs (a) and (b), the Service Manager, bearing in mind the Service Manager's reasonable commercial concerns, may require the Receiver to provide a policy of insurance in an amount either greater or less than the applicable amount stated therein, the terms of which and any alteration in the limits of the coverage whereunder shall be subject to sole approval by the Service Manager, on the basis that if the Receiver is required to provide coverage in an amount greater than provided in those subparagraphs, the Service Manager shall reimburse the Receiver for the actual expense of any additional premium incurred by the Receiver in complying with such requirement.

11. Conflict Of Interest

- (a) The Receiver, any sub-contractors and any of their respective advisors, partners, directors, officers, employees agents and volunteers shall not engage in any activity or provide any services to the Service Manager where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the Service Manager) with the provision of services pursuant to this Agreement. The Receiver acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Service Manager relevant to the .Services where the Service Manager has not specifically authorized such use.
- (b) The Receiver shall disclose to the Service Manager without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

- (c) A breach of this Article by the Receiver shall entitle the Service Manager to immediately terminate this Agreement, in addition to any other remedies that the Service Manager has under this Agreement, in law or in equity.

12. Confidentiality

The Receiver agrees that all of its employees and/or agents having access, by virtue of this Agreement and its appointment as Receiver and Manager over the Housing Project, to materials and personal information regarding the tenants of the Housing Provider shall treat same as confidential personal information not to be disclosed to third parties or used in any unauthorized way except in accordance with the provisions of the Social Housing Reform Act, 2000. In addition, the Receiver shall not disclose or use any information that the Service Manager cannot or may not wish to disclose or use under the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M56. The Receiver agrees that it shall employ commercially reasonable efforts so that its employees maintain confidentiality with respect to materials and information they receive related to the Housing Provider.

13. Waiver

The failure by the Service Manager to insist on one or more instances upon the performance by the Receiver of any of the terms or conditions of this Agreement or any appointment shall not be construed as a waiver of Service Manager's right to require future performance of any such terms or conditions, and the obligations of the Receiver with respect to such future performance shall continue in full force and effect. A waiver is binding on the Service Manager only if it is in writing.

14. Enurement

This Agreement will operate to the benefit of and will be binding upon the successors and assigns of the Service Manager and upon the permitted successors of the Receiver.

15. Priority

In the event of a conflict or inconsistencies between the provisions of the various documents which comprise this Agreement, it shall be resolved, in accordance with the following priorities:

- (a) Firstly, the provisions of the Terms of Reference for Receiver;
- (b) Secondly; the provisions of the body of this Agreement;
- (c) Lastly, the provisions of any other material incorporated by reference into this Agreement.

16. Time Of The Essence

Time is of the essence in this Agreement and any dates or deadlines are to be strictly adhered to.

17. Interpretation

- (a) This Agreement shall be construed in accordance with the laws of the Province of Ontario. .
- (b) The headings which precede the paragraphs of this Agreement are merely for the assistance of the reader and do not affect the meaning, effect or construction of the Agreement.
- (c) Whenever words that have well known technical or trade meanings are used in this Agreement, they are used in accordance with such recognized meanings.

18. Authority

Each party stipulates that it has full authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of the named party is properly authorized to sign it, and each party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.

19. General

- (a) If any term, covenant or condition of this Agreement be held in whole or in part invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and each term, covenant and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- (b) This Agreement shall not be modified or amended except, after approval by the Service Manager, by an instrument in writing signed by the parties hereto or by their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the Receiver under corporate seal and the Service Manager pursuant to the Service Manager's delegated authority.

Dated at the County of Simcoe effective the (INSERT DATE).

Per: _____,
Warden

Per _____,
Clerk

EXECUTED ON BEHALF OF THE RECEIVER this ____ day of _____, 200

I/We have the authority to bind the Receiver

Per: _____,

Schedule 1
Terms of Reference for Receiver Services

- 1) This Schedule forms part of the Receivership Services Agreement between the County of Simcoe and (insert name of receiver)

- 2) The Services under this Schedule (hereinafter referred to as "the Services") shall be as follows:
 - a) The Receiver shall operate the Housing Project under the powers granted in the Social Housing Reform Act, 2000 and the regulations made thereunder; in particular the Receiver shall:
 - i) Take control, direction and possession, or any of them, of the Housing Project, the revenue and the assets of the Housing Provider, the operation and books, records and accounts of the Housing Provider or any part of them, pertaining to the Housing Project;
 - ii) Take control and direction of the employees and agents of the Housing Provider performing services on or with respect to the Housing Project;
 - iii) Receive and recover and use all revenues and assets of the Housing Provider relevant to the operation of the Housing Project;
 - iv) Incur and pay liabilities;
 - v) Maintain, operate and repair the Housing Project;
 - vi) Comply with the reporting requirements of the Bankruptcy and Insolvency Act R.S.C. 1995, c.B-3 as amended, should the Receiver determine it is applicable to the receivership;
 - vii) Execute and prosecute all suits, proceedings and actions which the Receiver considers necessary for the proper protection of the Housing Project, defend all suits, proceedings and actions against the Housing Provider or the Receiver, appear in and conduct the prosecution and defense of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action.
 - b) The Receiver shall direct, on behalf of the Housing Provider, the employees or agents of the Housing Provider to perform the following functions:
 - i) Accounts receivables and payables;
 - ii) Bookkeeping and monthly financial reports;
 - iii) Tenant placement;
 - iv) Rent calculation;
 - v) Rent collection;
 - vi) Maintenance and capital works;
 - vii) Communication with tenants;
 - viii) Implementation of the Service Manager governance review recommendations;
 - ix) Reporting and liaising with the Receiver and the Service Manager;
 - x) The duties and responsibilities of the Housing Provider under the RGI Service Agreement between the Housing Provider and the Service Manager dated as of (insert date) ;
 - xi) Investment of capital reserves and any other surplus funds;
 - xii) Any other specific functions as directed by the Receiver in conjunction with the Service Manager.

c) If the employees or agents of the Housing Provider are not able to perform these functions the Receiver shall be expected to contract, on behalf of the Housing Provider, the services of a qualified firm to perform these functions. The term of any of the above services contract(s) shall not exceed one year unless the Service Manager agrees to a longer term. In the selection, appointment and contractual terms, the Receiver will be guided by the Service Manager and all such arrangements must be acceptable to the Service Manager.

d) The Receiver shall direct the Housing Provider's auditor in the completion of any outstanding financial statements and Annual Information Returns.

e) The Receiver, during the term of the Receivership, shall act honestly and in good faith and be responsible, as part of his general powers, for the following specific functions:

- i) Providing the Service Manager with reports, as requested;
- ii) Providing notifications to creditors;
- iii) Informing tenants of the appointment of the Receiver through written notification (after consultation with the Service Manager);
- iv) Receiving and recording input from tenant accounts;
- v) Contracting and directing the Property Manager;
- vi) Contracting and directing other service firms and staff;
- vii) Overseeing the Housing Provider's financial situation;
- viii) Reviewing and assessing employment contracts and collective agreements; .
- ix) Any other specific functions as directed by the Service Manager.

f) In addition to the services described above, the Receiver shall:

i) As soon as possible after the appointment, take control of the assets of the Housing Provider and assume responsibility for property management.

ii) Provide the Service Manager with a written report on the progress of the Receivership as soon as possible following the appointment and written and verbal updates as required and requested by the Service Manager.

iii) Meet with the Service Manager on a regular basis and obtain the Service Manager's instructions on matters of importance.

g) In the event that the Receiver contracts out the property management functions of the Housing Provider, then the Receiver shall pay, from funds available from the Housing Provider and/or as provided by the Service Manager, the professional fees and disbursements of the Property Manager, subject to the following conditions:

i) Property Manager shall provide the Receiver with a billing each month showing in detail all fees and disbursements incurred during the prior month, which is subject to the Receiver's approval.

ii) The fees of the Property Manager do not exceed the fee stated in the Property Manager Agreement.

h) The Receiver, with the assistance of the Property Manager, agrees to operate the Housing Project in accordance with the terms and provisions of the Social Housing Reform Act, 2000, and any other non-profit housing program requirements of the Service Manager which the Service Manager has notified the Receiver of, and otherwise act as would a prudent Receiver of a similar nonprofit housing project.

The Receiver shall cause the Services to be performed by the following personnel at the rates specified.

Receivership:

Property Management:

This assumes that onsite employees of _____ (i.e. part-time property coordinator and / or superintendent, maintenance man, cleaner, etc.) will be maintained and paid from the operations of the non-profit.

Appendix III**Sample Supervisory Management Agreement****MANAGEMENT AGREEMENT**

THIS AGREEMENT MADE THE DAY OF , 20 .

BETWEEN:

(Insert name of group)

Hereinafter called the "Non-Profit"

AND:

THE CORPORATION OF THE COUNTY OF SIMCOE

Hereinafter called the "MANAGER"

WHEREAS the *(Insert name of group)* located at *(Insert corporate address)* in the is to be operated on a "not-for-profit" basis;

AND WHEREAS the Non-Profit agrees to retain the Manager as a supervisory manager and the Manager agrees to serve the Non-Profit, as its agent, and to manage the Non-Profit's Portfolio on behalf of the Non-Profit in a faithful, diligent and honest manner, and in accordance with the terms of this agreement and all applicable laws, regulations or ordinances of all competent authorities having jurisdiction over the Non-Profit's Portfolio;

AND WHEREAS the Non-Profit has also agreed to retain *(Insert name of property management/operational services firm)* as manager under separate agreement pursuant to which *(Insert name of property management/operational services firm)* reports to and takes direction from the Manager under this Agreement, and reports to and takes direction from the Non-Profit directly where so required by the Board of the Non-Profit.

IN CONSIDERATION of the mutual covenants herein contained and the sum of Two Dollars (\$2.00) and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

The terms hereinafter defined shall, for the purposes of this Agreement have the meanings hereinafter specified, unless the context otherwise requires:

1.1 "AGREEMENT" means this agreement and all Schedules, including supplemental and amending agreements and/or addenda hereinafter properly executed to supplement or amend this Agreement

1.2 "BOARD" shall mean the Board of Directors of (insert name)

1.3 "CMHC" means Canada Mortgage and Housing Corporation

1.4 "Non-Profit's PORTFOLIO" means the lands described in **Schedule 1** hereof, together with the residential rental accommodation and other structures, chattels and improvements erected therein or contained therein and including all lands hereafter acquired by the Non-Profit in substitution for or addition to the lands described in **Schedule 1**;

1.5 "MANAGER" means the Corporation of the County of Simcoe, in its capacity as supervisory manager under this agreement;

1.6 "County" means the Corporation of the County of Simcoe.

1.7 "SCHEDULE" means the following appendix that is attached to this Agreement (as amended or replaced from time-to-time) and forms part of this Agreement:

Schedule 1 Description of the Land

2. TERM

2.1 The term of this Agreement is months commencing the day of 20 , and ending on the day of 20 .

2.2 The Manager, in its sole discretion, may extend the term of this Agreement for additional periods not to exceed three (3) months in total by notifying the Non-Profit in writing, and providing the Non-Profit with an interim report prior to the initial extension of the term of this agreement.

3. THE NON-PROFIT'S RESPONSIBILITIES

3.1 The Non-Profit agrees to provide the Manager with the following:

- . A set of Property and unit plans
- . A set of project keys;
- . All correspondence, newsletters/directives, and administration manuals issued to the Non-Profit by the County/CMHC relating to the administration and operation of the project;
- . On-site office facilities, including a lockable desk, desk chair, visitor's chair, telephone and a four-drawer legal size fireproof filing cabinet;

3.2 The Non-Profit shall keep the Manager apprised of the Non-Profit's purposes, policies and objectives for the Non-Profit's Portfolio in the context of the social housing needs and criteria to be satisfied, and legislated requirements;

3.3 The Non-Profit shall keep the Manager fully informed at all times of any developments, information or matters arising with or coming to the attention of the Non-Profit which may reasonably bear upon or be relevant to the management of the Non-Profit's Portfolio;

3.4 The Non-Profit shall furnish the Manager with:

- (a) Copies of the Non-Profit's by-laws and policies
- (b) Agendas and minutes of the meetings of the Board;

3.5 The Non-Profit shall identify a Board liaison person through whom the Manager may make informal contact on matters of immediate concern;

3.6 The Non-Profit shall expeditiously review and consider such documents, matters or issues as referred from time to time by the Manager and issue responses, decisions, instructions or approvals to the Manager in a timely fashion and without unreasonable delay;

3.7 The Non-Profit shall promptly make all necessary payments and satisfy all requirements of the Non-Profit's Portfolio.

3.8 The Non-Profit shall immediately notify the Manager in the event the Non-Profit observes or otherwise becomes aware of any fault or defect in the Non-Profit's Portfolio or any non-conformity with the requirements of this Agreement.

4. THE MANAGER'S RESPONSIBILITIES

4.1 The Manager agrees to be responsible for the performance of all services relating to the day-to-day management of the Non-Profit's Portfolio on behalf of the Non-Profit, subject to the direction of the Board, including but not limited to:

- (a) Entering into contracts, including contracts for management services, in the name of the Non-Profit
- (b) The supervision of the Non-Profit's maintenance staff and any manager retained by the Non-Profit
- (c) The provision of management, financial, maintenance and administrative services for the Non-Profit's Portfolio, and
- (d) Keeping all insurance in good standing

4.2 Notwithstanding the Manager's supervision of the Non-Profit's staff, the Manager will not become or be deemed to be an employer of the Non-Profit's staff or to have established an employer-employee relationship with them. The Non-Profit specifically reserves to itself the authority to hire, fire, discipline and to establish and maintain terms and conditions of employment with the Non-Profit's staff, which authority shall not be assigned to the Manager and any employees hired or fired shall not be County employees but employees of the Non-Profit.

5. MEETINGS & REPORTING

The Manager agrees to:

5.1 Attend as required by the Non-Profit, all monthly Board of Director meetings

5.2 Provide the Non-Profit on at least a monthly basis with written financial data and written property management reports

5.3 Undertake and prepare such special reports, investigations or studies as the Non-Profit may reasonably require from time to time, at a fee to be negotiated before the commencement of such reports, investigations or studies.

5.4 Participate in tenant meetings as required.

5.5 Provide education and training for the Board in the areas of governance, financial, maintenance and legal responsibilities.

5.6 Provide the Non-Profit with a final report not later than sixty (60) days after the expiration of the term of this agreement and any extensions thereof.

6. SPENDING AUTHORITY

6.1 The Manager shall be responsible for the preparation of all cheques required to be drawn on the Non-Profit's bank account and such cheques shall be executed jointly by one of two designated signatories of the Non-Profit and one of two designated signatories of the Manager;

6.2 Subject to the emergency provisions herein set forth, the Manager shall expend no funds, undertake no work or engage any contractors for capital outlay unless the same are set forth and approved in the Non-Profit's annual budget or unless the Manager first obtains the prior approval of the Board to the expenditure.

6.3 In all items of maintenance, capital outlay or the engagement of consultants in excess of TWO THOUSAND DOLLARS (\$2,000) and not exceeding FOURTEEN THOUSAND NINE HUNDRED AND NINETY-NINE DOLLARS (\$14,999), the Manager shall obtain three written competitive quotations from suppliers, contractors and consultants and provide the same to the Non-Profit together with its recommendations prior to engaging a contractor or a consultant or purchasing materials and supplies.

6.4 For contracts exceeding FOURTEEN THOUSAND NINE HUNDRED AND NINETY NINE DOLLARS (\$14,999), or a consistent predetermined lesser amount, the Manager will ensure that a public or invitational tender (minimum 3 invitations) is implemented in accordance with the Non-Profit's approval;

6.5 If a situation arises which in the opinion of the Manager constitutes an emergency, the Manager may take such steps as are required to react to and rectify such emergency and expend such funds as may be necessary. Provided always that in an emergency situation, the Manager must as soon as possible use its best efforts to contact the Non-Profit immediately and in the event of an Emergency situation, the Manager shall provide the Non-Profit promptly with a full written report outlining the emergency, the steps taken to rectify the same and the expenses resulting there from.

7. TERMINATION

7.1 Upon termination of this Agreement, at the end of term, the Manager shall immediately return to the Non-Profit or the Non-Profit's new manager, all keys, files, invoices, books of account, leases, operating contracts, working papers, data and information which the Manager may have in its possession pertaining to its management of the Non-Profit's Portfolio and as well on disk, the cost of which disks will be borne by the Non-Profit. The Manager acknowledges and agrees that these are the sole and exclusive Property of the Non-Profit. The Manager shall as well notify the Non-Profit of the name and model of the Manager's computer and of the operating system and software on which it is currently operating and storing the Non-Profit's data.

7.2 In the event of any re-tendering process prior to the termination of this Agreement, the Non-Profit shall provide to prospective bidders full and free access to the premises for the purposes of site inspection.

8. NOTICES

8.1 Any notice to be given by either party to the other or any document or other instrument hereby provided or permitted shall be deemed to have been sufficiently and effectually given and/or delivered, if delivered on a business day, then on the day of delivery, or if mailed by prepaid registered post, then on the second day following the registration thereof. Either party may from time to time by notice to the other, change the address to which notices, documents or

instruments are to be given, served or delivered. The address at which the persons to whom such notices, instruments or documents are to be given, served or delivered until changed are as follows:

TO THE MANAGER:

(Insert name and address of contact - i.e. Program Supervisor/ /Manager)
County of Simcoe

TO THE Non-Profit:

President/Chair
(Insert name and address)

8.2 The Non-Profit shall furnish to the Manager from time to time as required a list showing the names, addresses and telephone numbers of those Officers, Directors or other representatives who are authorized to act for and on behalf of the Non-Profit whenever the Manager elects or is required under the terms of this Agreement, to consult with the Non-Profit and/or obtain its approval before proceeding with any work, act, or action.

8.3 The Manager shall at all times keep the Non-Profit and tenants advised of a telephone number or numbers at which an agent of the Manager may be reached during normal business hours. The Manager will also post on-site hours and provide a 24 hour emergency system acceptable to the Non-Profit.

9. CONFIDENTIALITY

The Manager agrees that all of its employees having access, by virtue of this Agreement, to materials and information regarding the individual tenants of the Non-Profit's shall treat same as confidential information in accordance with the Municipal Freedom of Information and Protection of Privacy Act, 1990, as amended, and the Social Housing Reform Act, 2000, as amended.

10. ENUREMENT

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

11. ASSIGNMENT

Except as expressly provided herein, this Agreement shall not be assignable by the Manager without the prior written approval of the Non-Profit which approval may be arbitrarily withheld and the Manager shall not delegate its responsibilities, rights and authorities hereunder other than to its employees and as provided herein. It is agreed to by the parties that the Manager may delegate any of its responsibilities, rights and authorities under this Agreement to any manager retained by the Non-Profit reporting to and taking direction from the Manager under this Agreement.

12. INTERPRETATION

In this Agreement, whenever the context requires or permits, the singular shall include the plural, and the plural shall include the singular, and the masculine and the neuter shall include each other and the feminine pronoun.

13. LIABILITY AND INDEMNITY

(a) Save and except for the provisions of this Agreement, the Manager shall not be liable for any injury (including death) or damage suffered by any officer, employee, consultant or agent of the Non-Profit, or for the loss or damage to the property of the Non-Profit or the property of its officers, employees, consultants or agents in any manner or for any claims, actions, judgments, costs and expenses whatsoever against the Non-Profit.

(b) The Non-Profit agrees to indemnify and save the Manager harmless from all claims, liabilities, costs or expenses that the Manager may incur or that may be asserted against the Manager arising out of this Agreement to the extent that they are attributable to the conduct of the Non-Profit.

14. INSURANCE

As of the date of the execution of this agreement by all parties, the Non-Profit shall instruct its insurer to add the Manager as an additional named insured party to the Non-Profit's comprehensive liability insurance policy ("Policy") and will immediately thereafter provide evidence of the amendment to the Policy to the Manager in the form of an endorsement to the Policy or similar evidence which is satisfactory to the Manager, that the Manager has been named as a additional insured party.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seal and respective signatures by the hands of their proper signing officers authorized in that behalf.

EXECUTED ON BEHALF OF THE Non-Profit

This the day of 20 .

We have authority to bind the Non-Profit.

PER:

Name _____

Title _____

PER:

Name _____

Title _____

EXECUTED ON BEHALF OF MANAGER

This the day of ,20.

We have the authority to bind the Manager.

PER:

Name _____

Title _____

**Schedule 1
Legal Description of the Lands**

Appendix IV

Sample Property Management Invitation to Tender

1. Purpose Of The Tender:

The Board of Directors of **(name of group)** is soliciting bids for an experienced property management/operational services firm to efficiently and effectively provides management/operational services to **(groups address)**

2. Background:

(Group name) consists of **(Select and insert unit type - apartment/semi/townhouse/row houses etc.)** units and **(insert additional info i.e., commercial space, non-shelter space etc.)**

Interest Adjustment Date (IAD):

Developed Under: **(Insert program name/type i.e. P3000/Section 95)**

Fiscal Year End

(Insert statement on groups mandate and/or mission statement etc., something that gives the bidder a brief synopsis on the group and any issues that need to be addressed)

EXAMPLE:

Please note that over the past few years (insert name of group) has encountered some operating difficulties. As a result, the successful bidder may be required to work closely with the County of Simcoe, as Supervisory Manager, and the (Insert info on other organizations/providers etc., i.e., Co-operative Housing Federation [CHF] that successful bidder may have to work with), to (briefly describe what relationship/function will be i.e., provide board and member training).

Should you calculate your fee based on the gross market rent potential of the Property, the following is a breakdown of the units by type, and the current market rent(s).

(Insert all unit types, number of units under each type and market rents)

1 Bedroom	units	\$ /month
2 Bedroom	units	\$ /month
3 Bedroom	units	\$ /month
4 Bedroom	units	\$ /month

Building Targeting Plan - insert # market units and **insert #** Rent-geared-to-income (RGI) units

3. Scope Of Work

3.1 Property Management Services

The property management/operational services firm will be required to:

Provide The Following Services:

- Day to day professional property management/operational services, maintenance and community development services;
- Computerized financial systems - proper maintenance of all financial records;
- Preparation of monthly management reports to the Board ***and any other periodic report that the ministry may require in its role as Supervisory Manager;***
- Preparation of yearly budgets for approval by the Board and submission to the County;
- Maintenance of the tenant/member records;
- Maintenance of the maintenance records;
- Ensure proper procedures are in place for:
 - Applicant/transfer waiting lists
 - Unit allocations
 - Daily maintenance and upkeep
 - Preventative maintenance
 - Corrective maintenance
 - Emergency maintenance
 - Administration of RGI and Market Rent program
 - Rent/occupancy charge collection
 - Collection of current and former tenant/member arrears
- Work with any tenant/member association/group already established, and/or establish
- The necessary committee(s) required for the effective management of the property
- Attendance at monthly Board meetings, and any other meetings as required;
- Work with existing groups that non-profit/co-operative has referral agreements with.

Ensure That:

- Property is managed in compliance to the County/CMHC policies and procedures, and legislated requirements;
- All financial obligations of the non-profit/co-operative are met without interest or penalties;
- All legislative requirements of the non-profit/co-operative are met.

In addition to any other responsibilities and duties that are described in the Property Management Agreement attached to this package.

As a condition of the tender, the successful bidder will be required to sign the attached Property Management Agreement.

3.2 Term of Agreement

The Property Management Agreement will be for a ***insert #*** years commencing ***insert date***.

3.3 Exceptional Services

The following service must be completed within the first ***insert #*** months of this contract:

EXAMPLE OF POSSIBLE EXCEPTIONAL SERVICES AND SET-UP.

- ***Address outstanding issues from the County compliance review:***
 1. Incomplete corporate records
 2. Inadequate internal controls and financial monitoring systems
 3. Lack of executed commercial leases and billings for shared facilities
 4. Inadequate verification of gross family income and eligibility of RGI households
 5. Inadequate procedures in the areas of arrears and bad debts
 6. Annual roof anchor inspections
 7. Log books not up to date for furnace and boiler inspections

In addition:

- Work with the Board and the County on the outstanding building deficiencies;
- Work with the Board and the County on recovery of misappropriated funds;
- Work with the County and CHFT on training of board and membership.
- Finalization of the commercial space leases, if not completed by the time tender awarded.

THE PRICE FOR THE ABOVE NOTED EXCEPTIONAL SERVICES IS TO BE QUOTED SEPARATELY ON THE ATTACHED BID FORM.

4. Instructions To Bidders

4.1 Closing Date and Time

Insert # copies of the bid must be submitted to the attention of:

Insert name and address of the recipient of the tender

Please submit bid by *insert time and date*

4.2 Enquiries

Enquiries regarding the proposal, process or submission requirements may be direct to:

Insert name, address and telephone number of contact person.

NB- this person can and may be different from the recipient of the completed tenders

THE FOLLOWING ARE OPTIONAL:

******N.B. - NO ENQUIRIES WILL BE ACCEPTED PRIOR TO THE INFORMATION SESSION.***

4.3 Information Session

Bidders are invited to attend an information session to be held at *(insert name of project and/or location where session will be held, along with address and directions)*, on *(insert date)* at *(insert time indicating a.m./p.m.)* At this time the tender requirements will be discussed in detail and a tour of the property provided. Please confirm the attendance of your firm at the information session by faxing a confirmation with names of potential attendees to *(insert name of contact person - should be the same as that listed in Section 4.2 by (insert date))*.

4.4 Bid Evaluation

Bid will be evaluated for completeness and content.

4.5 Completeness

All bids must include the specifications outlined in the tender package and the correct completion of the bid form according to the following:

- The bidder's name
- The bid amount in words and figures. Where there is a discrepancy between the written amount and the figures, the written amount is used.
- The signature of an official of the bidding company
- The attachment of all required schedules

- Written confirmation of agreement to sign the Conflict of Interest declaration and Property Management Agreement

Bids that are not complete according to the above criteria may, in the County's sole discretion, be disqualified

4.6 Selection Criteria

Selection criteria will include but not be limited to:

- The firm's Property management; maintenance; financial; and administrative systems
- The Property management/operational services firm's experience
- Knowledge and experience in administration of housing under the Social Housing Reform Act, 2000 requirements
- Experience of the individuals assigned to the project
- Quality of the tender submission
- Compliance with the tender requirements
- References
- Proposed fee(s)
- Results of interview, if required

THE LOWEST BID OR ANY BID WILL NOT NECESSARILY BE ACCEPTED

5. Submission Requirements

The following are to be submitted in a sealed envelope:

5.1 Bid submission form - Appendix "A"

All bidders are required to submit the attached Bid Form - Schedule "A", fully completed, dated and signed.

5.2 Management/Operational Services Experience

Submissions must include a description of the qualifications/experience of your firm including:

- Private Market and Non-Profit/Co-Operative experience
- A list of current portfolios under management (Private market and provincial/federal non-profit/co-operative)
- A list of previous portfolios managed (Private market and provincial/federal non-profit/co-operative)
- Names and titles of officers and staff including a description of their qualifications
- technical expertise and previous experience

5.3 Staffing Model

*(You may already know what staffing model you wish to have - i.e., # of staff persons, positions etc., if so indicate the numbers and request that the bidder describe how they will structure the staff and/or what the functions hours of work, reporting requirements will be. You should also include in this section any supervisory services the successful bidder will have to do if the corporation has its own staff i.e., (If applicable, insert the following: **Please note that the non-profit/co-operative currently has one employee or a live-in Superintendent.)*

The submissions must include a description of the staffing arrangements you are proposing for **insert name of group, including** contact names, positions, titles and responsibilities.

- Number of on-site staff directly assigned
- Their job title(s) and job specification(s)
- Their hours of work
- Weekend, statutory holiday and emergency coverage

5.4 Property Management and Administrative Systems

The submissions must include a description of the administrative systems used by your firm including computer software and accounting systems.

5.5 References

References from at least three (3) sources, including non-profit/co-operative and private market sector property owners must be included

5.6 Conflict of Interest

To ensure that there is no conflict of interest your submission must include written confirmation that the enclosed *Conflict of Interest Declaration - Schedule YYY (to be inserted by housing provider)* will be signed if the contract is awarded to your firm

5.7 Operational Service/Property Management Agreement

The submission must include written confirmation that the enclosed *Operational Service/Property Management Agreement* will be signed if the contract is awarded to your firm.

**FAILURE TO PROVIDE ALL OR ANY OF THE ABOVE INFORMATION
COULD DISQUALIFY YOUR BID.**

The owner shall have no obligation whatsoever to any bidder as to the manner of consideration of the bids or any other factor related to the call for bids or the Project save and except obligations it may undertake with any of the bidders (or anyone else) by written notification of acceptance of a bid or by signing a contract/agreement.

The issuance of this call for bids and the submission of any bid by a bidder shall not create any form of contractual obligation on the part of the Owner and the Owner shall have no obligation of any kind or nature whatsoever to anyone arising out of or related to the call for bids or the submission of bids by any party. The only obligation of the Owner will arise at such time as the Owner accepts a bid unconditionally and then such obligation shall be limited to the party whose bid the Owner accepts.

The bid must not be qualified by any condition other than as provided in these instructions by Bidders and in the bid form.

SCHEDULE "A"
Bid Form

I/We have examined the Tender documents and having familiarized ourselves with the operation and administration of ***insert name of group***, hereby offer to enter into contract to perform the property management services required.

My/Our price for performing the work as described in the Operational Service/Property Management Agreement attached as Schedule "B" is as follows:

For the initial first year period commencing _____ and ending _____, our fee is \$ _____ or _____ plus GST in the amount of \$ _____ or _____.
(Please quote in words and numerals)

Our fee for the subsequent year commencing _____ and ending _____ is \$ _____ or _____ plus GST in the amount of \$ _____ or _____.
(Please quote in words and numerals)

EXCEPTIONAL SERVICES

My/Our fee for the exceptional services identified in Section 3.3 of the Tender documents is as follows:

(Insert any and all exceptional services identified in Section 3.3 as follows:)

i.e.: Address outstanding issues from the County compliance review:

is \$ _____ or _____.

i.e.: Work with the Board and the County on the outstanding building deficiencies:

is \$ _____ or _____.
(Please quote in words and numerals)

I/We understand that in order to be considered, the bid must be addressed to and received at:

Insert name and address of recipient of tender as indicated in Section 4.1

No later than _____ local time, on _____ (date)

******Please mark envelope Private & Confidential******

I/We understand that our submission is to include the following information and failure to do so may, in *(insert name of group)* sole discretion render the bid null and void:

- The bidder's name
- The bid amount in words and figures. Where there is a discrepancy between the written amount and the figures the written amount is used.
- The signature of an official of the bidding company
- The attachment of all required schedules
- Written confirmation of agreement to sign the Conflict of Interest declaration and Property Management Agreement
- Description of the firms Property management; financial; and administrative systems
- Description of the property management/operational services firms experience
- Staffing model

I/We certify that all terms and conditions contained herein will be strictly adhered to if awarded the contract.

I/We understand that this Bid is open to acceptance for a period of thirty (30) days from the date of the bid closing.

I/We declare that this bid is irrevocable.

Bidders, if they are a "Limited Company" should affix their Corporate Seal

COMPANY:

ADDRESS:

NAME:

SIGNATURE

NAME:

SIGNATURE:

TELEPHONE NUMBER:

FACSIMILIE NUMBER:

DATE:

Appendix V

Sample Property Management Agreement

THIS AGREEMENT MADE THE DAY OF, 20

BETWEEN: (*Insert name of group*)

Hereinafter called the "NON-PROFIT"

AND: (*Insert name of property management firm*)

Hereinafter called the "MANAGER"

WHEREAS the (*Insert name of group*), located at (*insert corporate address*) Ontario is to be operated on a "not-for-profit" basis;

AND WHEREAS the Non-Profit agrees to retain the Manager and the Manager agrees to serve the Non-Profit, as its agent, and to manage the Non-Profit's Portfolio on behalf of the Non-Profit in a faithful, diligent and honest manner, and in accordance with the terms of this agreement and all applicable laws, regulations or ordinances of all competent authorities having jurisdiction over the Non-Profit's Portfolio;

AND WHEREAS the Manager has agreed to accept those terms and conditions; IN CONSIDERATION of the mutual covenants herein contained, the parties agree as follows:

1. DEFINITIONS

The terms hereinafter defined shall, for the purposes of this Agreement have the meanings hereinafter specified, unless the context otherwise requires:

- 1.1 "AGREEMENT"** means this agreement and all Schedules, including supplemental and amending agreements and/or addenda hereinafter properly executed to supplement or amend this Agreement;
- 1.2 "BOARD"** shall mean the Board of Directors of (*Insert name of group*)
- 1.3 "CMHC"** means Canada Mortgage and Housing Corporation
- 1.4 "MANAGEMENT FEE"** means the fee payable by the Non-Profit to the Manager for management services rendered in accordance with this Agreement, exclusive of salaries of on-site maintenance personnel;

- 1.5 **"MANAGER"** means the management/operational services agent and its employees;
- 1.6 **"County"** shall mean the Corporation of the County of Simcoe
- 1.7 **"OPERATING BUDGET"** shall mean the operating budget approved by the County as of the Effective Date of this agreement and any subsequent operating budget approved by the County during the term of this agreement.
- 1.8 **"NON-PROFIT'S PORTFOLIO"** means the lands described in **Schedule 1** hereof, together with the residential rental accommodation and other structures, chattels and improvements erected therein or contained therein and including all lands hereafter acquired by the Non-Profit in substitution for or addition to the lands described in **Schedule 1**;
- 1.9 **"SCHEDULES"** mean the following appendices that are attached to this Agreement (as amended or replaced from time-to-time) and form part of this Agreement:

Schedule 1 Description of the Land
Schedule 2 Management Fee

- 1.10 **"SUPERVISORY MANAGER"** means the Corporation of the County of Simcoe in its capacity as supervisory manager under its management agreement with the Non-Profit dated the (insert date)

2. TERM

- 2.1 The term of this Agreement is for year(s) commencing , 200
- 2.2 In the event that the term of this Agreement expires and the Non-Profit has not appointed a new manager, the Manager shall continue to perform its duties herein notwithstanding the expiry of the said terms. In such case, this Agreement shall be deemed to have been extended from month to month and the Non-Profit shall compensate the Manager upon the same terms and conditions as herein contained. Either party may terminate the monthly extension of this Agreement by giving the other party ONE (1) month's written notice, provided that such monthly extensions shall not in the aggregate exceed THREE (3) months. This Agreement shall be terminated at the end of the third said month.
- 2.3 The Manager acknowledges that there will be no automatic renewal of this agreement for a subsequent term and that the Non-Profit has the right to tender for the services of a succeeding property manager prior to the expiration of the Term herein.

3. MANAGEMENT FEE

- 3.1** The Non-Profit agrees to pay the Manager an annual management fee as described in Schedule 2, for all management services rendered in accordance with this Agreement, exclusive of the salaries of on-site maintenance personnel. The said fee shall be payable in equal monthly instalments, the first of which shall be made one calendar month from the commencement date of this Agreement.
- 3.2** The Non-Profit reserves the right to withhold the monthly Management Fee payments, or any part thereof, where in the opinion of the Non-Profit, the Manager is not fulfilling or has breached the terms of this Agreement.

4. THE NON-PROFIT'S RESPONSIBILITIES

- 4.1** The Non-Profit agrees to provide the Manager with the following:
- . A set of property and unit plans;
 - . A set of project keys;
 - . All correspondence, newsletters/directives, and administration manuals issued to the Non-Profit by the County/CMHC relating to the administration and operation of the project;
 - . On-site office facilities, including a lockable desk, desk chair, visitor's chair, telephone and a four-drawer legal size fireproof filing cabinet.

5. THE MANAGER'S RESPONSIBILITIES

5.1 General

- 5.1.1** The Manager acknowledges that it is familiar with the property and is fully aware of and understands all requirements and provisions of this Agreement.
- 5.1.1a** The Manager acknowledges that it is familiar with the Supervisory Management Agreement between the Non-Profit and the County, dated (insert date).
- 5.1.2** The Manager agrees to comply with the County guidelines and policies, and legislated requirements.
- 5.1.3** The Manager acknowledges and agrees that it will not undertake any action on behalf of the Non-Profit, which would be in conflict with the guidelines and policies of the County, or legislated requirements.
- 5.1.4** The Manager agrees generally to do and perform all things desirable or necessary for the proper and efficient management of the Non-Profit's Portfolio and to perform every other act in or about the Non-Profit's

Portfolio to carry out the intent of this agreement, as a prudent owner would.

5.1.5 The Manager agrees to manage the Non-Profit's Portfolio on behalf of the Non-Profit in a faithful, diligent and honest manner, subject to the direction of the County in its capacity of Supervisory Manager and the direction of the Board, as set out in Section 6.6.

5.1.6 The Manager agrees to supply at its own expense, the use and services of its own staff, office and equipment to discharge fully and adequately its obligations and responsibilities under this Agreement.

5.2 Contracts/Staffing

5.2.1 The Manager is authorized to obtain and enter into short-term contracts on behalf of the Non-Profit for supplies, materials, equipment and services for and as required in the maintenance, repair and operation of the premises pursuant to the annual Operating Budget. The Manager agrees that it will not enter into any contractual obligations related to this Agreement which will extend beyond the end of the term of this agreement, have the effect of binding the Non-Profit or create any privity of contract between the Non-Profit and any subcontractor of the Manager without the Non-Profit's written consent.

5.2.2 The Manager agrees to provide or cause to be provided competent personnel for operating, leasing, controlling and managing the Non-Profit's Portfolio as would a reasonable and prudent owner of residential investment properties comparable in age, type and class to the Non-Profit's Portfolio. The Manager agrees that such employees, servants, own agents or sub-contractors as the case may be, so engaged in the performance of this Agreement, are hired and dismissed solely by the Manager and shall be the employees, servants, own agents or sub-contractors of the Manager and not employees of the Non-Profit. All costs, damages and /or severance shall be the Manager's sole responsibility.

5.2.3 The Manager agrees to supervise sufficient on-site maintenance staff in order to carry out the duties and responsibilities as contemplated and required under this Agreement, at the expense of the Non-Profit, at an annual cost which is not to exceed that specified in the approved Operating Budget. The aforementioned maintenance staff shall be properly qualified and shall devote their full time, as required to maintain the premises and to provide routine and extraordinary maintenance of the premises.

5.2.4 The Manager agrees to maintain proper payroll records and perform acts required of the Non-Profit as an employer of on-site personnel in respect of Unemployment Insurance, Canada Pension Plan, Income Tax Act and any other employee and employer contributions or payments required under any legislation.

- 5.2.5** The Manager shall ensure that all its employees, agents and any independent contractors retained by the Manager to perform services relating to the Non-Profit's Portfolio either have a Certificate of Clearance or adequate insurance coverage from the Workers' Compensation Board relating to any services performed with respect to the Non-Profit's Portfolio, and such amounts are deemed to be an operating expense.
- 5.2.6** The Manager shall provide an on-site manager or supervisor for the Non-Profit's Portfolio for an average minimum of _____ hours per week for the term of this Agreement.

5.3 Applicants/Tenants

The Manager agrees to:

- 5.3.1** Receive and record all applications for rental in the Non-Profit's Portfolio and maintain a waiting list specifically for the Non-Profit, which waiting list shall be maintained in a current and timely fashion according to any applicable County directives and legislated requirements;
- 5.3.2** Take all reasonable steps to maintain full occupancy of the units, both market and rent-g geared-to-income, including but not limited to, advertising the availability of units for rental, from time to time. Such advertising shall be at the expense of the Non-Profit;
- 5.3.3** Verify the income and calculate the rental charges of all rent-g geared-to-income tenants not less frequently than every 12 months, making such adjustments in the rental charges as shall be required;
- 5.3.4** Review and recommend market rents for the Non-Profit's Portfolio not less frequently than once a year and present the proposed rental charges to the Non-Profit for approval;
- 5.3.5** Provide written notice to each tenant for any tenancy charge increase, as required by the approved by-laws of the Non-Profit, and legislated requirements;
- 5.3.6** List, offer for occupancy and to enter into, on behalf of the Non-Profit, all tenancy agreements, renewals of leases, extensions and termination of tenancy agreements/leases on such terms as are customary for dwelling units similar to the dwelling units of the Non-Profit's Portfolio and in conformity with the by-laws of the Non-Profit, County policies, and legislated requirements;
- 5.3.7** Demand, sue for, enforce payment, receive and give receipts and discharges for rent charge and other monies becoming due in respect of the Non-Profit, subject to the arrears policy set by the Non-Profit;

- 5.3.8** Commence, carry on, prosecute to judgement and defend all actions and other proceedings relating to the Non-Profit's Portfolio, having first obtained the Non-Profit's approval;
- 5.3.9** Promptly advise the Non-Profit of all available details which come to the Manager's attention where a tenant may have knowingly and materially misrepresented his/her income or that of other tenant of his/her family occupying the residential premises, so that the Non-Profit may, in its discretion, conduct or authorize to conduct a further investigation in order to determine whether or not legal action should be taken to terminate the tenancy and to collect the rent lawfully owing to it as a result of the misrepresentation of income;
- 5.3.10** Settle, compound, compromise, or submit to arbitration, if applicable, all accounts, claims and disputes in respect of such rent and other monies, having first obtained the Non-Profit's instructions;
- 5.3.11** Supervise the moving in and moving out of tenants of the Non-Profit's Portfolio so as to result in a minimum of disturbance to the Non-Profit's Portfolio or inconvenience to other tenants;
- 5.3.12** Require the tenant/tenants to reimburse all costs of any repair or replacements necessitated by damage of the property caused by the wilful or negligent conduct of the tenant or that of a person or persons who are permitted on the premises by the said tenant.

5.4 Maintenance

- 5.4.1** The Manager agrees to keep and maintain the Non-Profit's Portfolio in a state of cleanliness as would a prudent owner of a well maintained dwelling comparable in type, age, class and location to the Non-Profit's Portfolio. The Manager agrees to purchase all necessary cleaning materials and other supplies required for this purpose within the approved Operating Budget at the expense of the Non-Profit;
- 5.4.2** The Manager will adequately maintain and care for the landscaping and snow removal of the Non-Profit's Portfolio. All such services shall be at the expense of the Non-Profit;
- 5.4.3** The Manager will carry out regular physical inspections of the Non-Profit's Portfolio and make or arrange for the making of all necessary repairs or alterations to the buildings, grounds and equipment in the Non-Profit's Portfolio, including the maintenance, repair and replacement of appliances or the heating, plumbing and electrical equipment as may be deemed necessary or desirable for its efficient management or operation or to improve the rentability thereof, including those repairs or alterations necessary so as to comply with any and all regulations and requirements of the Police and Fire Departments or any other Municipal, Provincial or

Federal authority having jurisdiction over the Non-Profit's Portfolio, subject to the qualifications contained herein. All such services shall be at the expense of the Non-Profit, excluding the physical inspections conducted by the Manager;

- 5.4.4** The Manager will arrange for and keep the Non-Profit's Portfolio heated to a reasonable temperature and operate and maintain the heating and equipment in accordance with the Non-Profit's obligations to its tenants.
- 5.4.5** The Manager will provide annually to the Non-Profit written confirmation of a physical inventory check of all property belonging to the Non-Profit.

5.5 Financial Management

The Manager agrees to:

- 5.5.1** Maintain appropriate books of account and financial records with respect to all financial operations of the Non-Profit's Portfolio, which books of account shall be kept in accordance with Generally Accepted Accounting Principles and shall be acceptable in form and content to the Non-Profit and the County;
- 5.5.2** Pay from the Non-Profit's account, all mortgage payments payable, and deliver such statements and generally do all things which are or may be required to be done or performed by the Non-Profit pursuant to the provisions of any such mortgage;
- 5.5.3** Pay from the Non-Profit's accounts, all expenses, invoices and charges incurred in the operation of the Non-Profit's Portfolio as they become due including, all municipal realty taxes, rates and assessments, including local improvement rates, utility charges, advertising costs, insurance premiums, heating and cooling charges, costs of repairs, maintenance, landscaping and other operating expenditures incurred in the operation of the Non-Profit's Portfolio and not included in the Management Fee or otherwise provided for in this Agreement;
- 5.5.4** Maintain at the Non-Profit's expense and in accordance with County policies and requirements of the mortgagee, insurance coverage with respect to property and public liability, fire and rental loss;
- 5.5.5.** Collect all rent payments and all other sums required to be paid by the tenants of the Non-Profit's Portfolio and any other sums of any nature or kind which may be receipts due and payable in connection with or incidental to the Non-Profit's Portfolio, including, without limiting the generality of the foregoing, any security deposits, compensation, rent and non-rental income such as parking and laundry, and deposit same into the Non-Profit's bank account on the same day as collected as instructed by the Non-Profit, and provide to the Non-Profit such bank receipts as the Non-Profit shall require;

- 5.5.6 Prepare annually for the Non-Profit's approval, within the time frames described in County policies and legislated requirements, the annual operating budget for the Non-Profit's Portfolio;
- 5.5.7 Prepare for approval of the Non-Profit such financial reports in such format and detail as required with respect to the Non-Profit's Portfolio;
- 5.5.8 Maintain and invest, subject to the direction of the Non-Profit, the capital reserves and any surpluses to be retained by the Non-Profit pursuant to County policies, and legislated requirements.

6. MEETINGS & REPORTING

The Manager agrees to:

- 6.1 Attend as required by the Non-Profit, all monthly Board of Director meetings;
- 6.2 Provide the Non-Profit on at least a monthly basis with written financial data and written property management reports;
- 6.3 Undertake and prepare such special reports, investigations or studies as the Non-Profit may reasonably require from time to time, at a fee to be negotiated before the commencement of such reports, investigations or studies;
- 6.4 Facilitate tenant participation in the functioning of the Non-Profit's Portfolio including attendance on various committees, as applicable;
- 6.5 Provide education and training for tenants in the areas of governance, financial, maintenance and legal responsibilities;
- 6.6 Report to and take direction from the County in its capacity as Supervisory Manager of the Non-Profit in carrying out the provisions of this Agreement, and only take direction from and report directly to the Non-Profit where so required by the Board of the Non-Profit.

7. SPENDING AUTHORITY

- 7.1 All cheques required to be drawn on the Non-Profit's bank account shall be prepared by the Manager and shall be executed jointly by one of two designated signatories of the Non-Profit and one of two designated signatories of the County in its capacity as Supervisory Manager of the Non-Profit;
- 7.2 Subject to the emergency provisions herein set forth, the Manager shall expend no funds, undertake no work or engage any contractors for maintenance or capital outlay unless the same are set forth and approved

in the Non-Profit's annual budget or unless the Manager first obtains the prior approval of the Board to the expenditure.

- 7.3** In all items of maintenance, capital outlay or the engagement of consultants in excess of TWO THOUSAND DOLLARS (\$2,000) and not exceeding FOURTEEN THOUSAND NINE HUNDRED AND NINETY-NINE DOLLARS (\$14,999), the Manager shall obtain three written competitive quotations from suppliers, contractors and consultants and provide the same to the Non-Profit together with its recommendations prior to engaging a contractor or a consultant or purchasing materials and supplies.
- 7.4** For contracts exceeding FOURTEEN THOUSAND NINE HUNDRED AND NINETY NINE DOLLARS (\$14,999), or a consistent predetermined higher amount, the Manager will ensure that a public or invitational tender (minimum 3 invitations) is implemented in accordance with the Non-Profit's approval;
- 7.5** If a situation arises which in the opinion of the Manager constitutes an emergency, the Manager may take such steps as are required to react to and rectify such emergency and expend such funds as may be necessary. Provided always that in an emergency situation, the Manager must as soon as possible use its best efforts to contact the Non-Profit immediately and in the event of an Emergency situation, the Manager shall provide the Non-Profit promptly with a full written report outlining the emergency, the steps taken to rectify the same and the expenses resulting there from.

8. ACCESS TO RECORDS

The Non-Profit shall have full access to the said premises, and to all books, documents, papers and records of the Manager that are pertinent to the operations under the terms of this Agreement, including the right to audit and to make excerpts and transcripts from such books and records. This term shall survive this Agreement for a period of three (3) years from its completion or early termination of this Agreement.

9. TERMINATION

- 9.1** It is hereby expressly agreed that the Non-Profit reserves the right to cancel and terminate this Agreement without cause by giving the Manager SIXTY (60) days written notice of such termination. Such termination shall take effect on the last day of the month at which time accounts between the Parties shall be settled.
- 9.2** It is hereby expressly agreed that the Non-Profit reserves the right to cancel and terminate this Agreement with cause by giving the Manager THIRTY (30) days written notice of such termination. Such termination shall take effect on the last day of the month at which time accounts between the Parties shall be settled.

- 9.3** Upon termination of this Agreement, at the end of term or pursuant to Article 9.1 and 9.2 of this Agreement, the Manager shall immediately return to the Non-Profit or the Non-Profit's new manager, all keys, files, invoices, books of account, leases, operating contracts, working papers, data and information which the Manager may have in its possession pertaining to the Portfolio and as well on disk, the cost of which disks will be borne by the Non-Profit. The manager acknowledges and agrees that these are the sole and exclusive property of the Non-Profit. The Manager shall as well notify the Non-Profit of the name and model of the Manager's computer and of the operating system and software on which it is currently operating and storing the Non-Profit's data.
- 9.4** In the event of any re-tendering process prior to the termination of this Agreement, the Non-Profit shall provide to prospective bidders full and free access to the premises for the purposes of site inspection.

10. INDEMNIFICATION OF MANAGER

- 10.1** The Non-Profit does hereby indemnify and save the Manager harmless from and against any actions, claims, costs, payments or liabilities whatsoever arising out of the use, occupation or management of the Non-Profit's Portfolio, including injury or death to any person or damage to any property, during the whole of the terms hereof, save only for such claims or liabilities arising by virtue of the Manager's or its servants', contractors, agents' or employees' negligent acts, dishonest acts or omissions. Such indemnification shall survive the expiration of the term hereof in respect to payments or liabilities suffered or incurred during the said term.

11. INDEMNIFICATION OF NON-PROFIT

- 11.1** The Manager shall indemnify and save the Non-Profit harmless from and against any loss damage, expense or liability the Non-Profit may suffer or incur by reason of the negligent acts, dishonest acts or omissions of the Manager, its agents, representative, servants or employees. The Manager shall also indemnify and save the Non-Profit harmless from any action, claim, demand and expense or damage the Non-Profit may suffer or incur by reason of the Manager, its servants, agents, representatives or employees exceeding their authority. The Manager warrants to the Non-Profit that it shall be fully liable for the application of the income from the Non-Profit's Portfolio in accordance with the provisions of this Agreement. Such indemnification shall survive the expiration of the term hereof in respect to payments or liabilities suffered or incurred during the said term.

12. INSURANCE/FIDELITY BOND/CERTIFICATE OF CLEARANCE

- 12.1** The Manager shall provide the Non-Profit with evidence that it maintains fidelity bonds in form, substance and amount acceptable to the Non-Profit bonding itself, its employees, agents and contractors and indemnifying the

Non-Profit against loss, theft, embezzlement or other fraudulent acts on the part of the Manager or its employees, agents and contractors who are engaged in carrying out the services covered by this agreement. The Manager shall immediately notify the Non-Profit of any cancellation or amendment of the above Bond.

- 12.2** The Manager will not do or permit to be done anything which may void or render void the policy or policies of insurance covering the Non-Profit's Portfolio.
- 12.3** The Manager shall maintain comprehensive general liability insurance acceptable to the Non-Profit and subject to limits of not less than five million dollars inclusive per occurrence for bodily injury (including death), and damage to property including loss or use thereof which may arise from the services provided under this agreement. The policy of liability insurance shall include the Non-Profit as additional insured but only in respect of and during services performed under this agreement on behalf of the Non-Profit and not in respect of any act or omission of the Non-Profit or any of its officers, employees or agents. In addition, the policy of liability insurance shall contain a cross liability clause endorsement.

13. NOTICES

- 13.1** Any notice to be given by either party to the other or any document or other instrument hereby provided or permitted shall be deemed to have been sufficiently and effectually given and/or delivered, if delivered on a business day, then on the day of delivery, or if mailed by prepaid registered post, then on the second day following the registration thereof. Either party may from time to time by notice to the other, change the address to which notices, documents or instruments are to be given, served or delivered. The address at which the persons to whom such notices, instruments or documents are to be given, served or delivered until changed are as follows:

TO THE MANAGER:

(Insert name, address and phone number)

TO THE Non-Profit:

(Insert name, address and phone number)

- 13.2** The Non-Profit shall furnish to the Manager from time to time as required a list showing the names, addresses and telephone numbers of those Officers, Directors or other representatives who are authorized to act for and on behalf of the Non-Profit whenever the Manager elects or is required under the terms of this Agreement, to consult with the Non-Profit and/or obtain its approval before proceeding with any work, act, or action. Wherever it is provided herein that consent, approval or other action shall be obtained from the Non-Profit, such expression shall be deemed to

include a requirement that such consent, approval or other action or refusal thereof shall not be unreasonably delayed.

- 13.3** The Manager shall at all times keep the Non-Profit and tenants advised of a telephone number or numbers at which an agent of the Manager may be reached during normal business hours. The Manager will also post on-site hours and provide a 24 hour emergency system acceptable to the Non-Profit.

14. CONFLICT OF INTEREST

- 14.1** The Manager acknowledges that prior to executing this agreement, he or she was provided with a copy of the Non-Profit's *Conflict of Interest Requirements*, and that he or she has read the *Requirements* and understands its terms. The Manager acknowledges that the Non-Profit is obligated to comply with these *Requirements* and to this end, the Manager will be obliged to sign the *Conflict of Interest Declaration* from the Non-Profit.
- 14.2** The Manager further agrees to provide such declaration as and when required by the Non-Profit and acknowledges that any conflict of interest in contravention of the *Directive* will be immediately reported to the Non-Profit. If it has been determined in accordance with the County's *Conflict of Interest Directive* or the County has so determined that the Manager is in a conflict of interest, the Non-Profit is entitled to terminate this Agreement without any right or recourse by the Manager against the Non-Profit or County.

15. CONFIDENTIALITY

The Manager agrees that all of its employees and/or agents having access, by virtue of this Agreement, to materials and information regarding the individual tenant/tenants of the Non-Profit's shall treat same as confidential information not to be disclosed to third parties or used in any unauthorized way without the prior consent and knowledge of such individual tenant/tenants of the Non-Profit in accordance with the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O 1990*, as amended, and the *Social Housing Reform Act, 2000*, as ammended. This covenant shall survive the expiration of the term of this Agreement.

16. ENUREMENT

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

17. ASSIGNMENT

Except as expressly provided herein, this Agreement shall not be assignable by the Manager without the prior written approval of the Non-Profit which approval may be arbitrarily withheld and the manager shall not delegate its responsibilities, rights and authorities hereunder other than to its employees and as provided herein.

18. INTERPRETATION

In this Agreement, whenever the context requires or permits, the singular shall include the plural, and the plural shall include the singular, and the masculine and the neuter shall include each other and the feminine pronoun.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seal and respective signatures by the hands of their proper signing officers authorized in that behalf.

EXECUTED ON BEHALF OF THE Non-Profit

This the day of , 200.

We have authority to bind the Non-Profit.

PER:
Name _____

Title _____

PER:
Name _____

Title _____

EXECUTED ON BEHALF OF MANAGER

This day of, 200.

I have the authority to bind the Manager.

PER:
Name _____

Title _____

Schedule 1
Legal Description of the Lands

Schedule 2 Management

The management fee for performing the work as described in the Management for a year period beginning , 200 is

Appendix VI**Sample Triggering Letter****[INSERT DATE]**

_____, President
 ABC Non-Profit Homes Inc.
 123 Any Road, Management Office
 Toronto, ON xxx xxx

Dear Ms. _____:

Notice is hereby given pursuant to subsection 117(1)(a) of the *Social Housing Reform Act, 2000* (“SHRA”) that certain triggering events under the SHRA have occurred with respect to ABC Non-Profit Homes Inc. The particulars of the triggering events are as follows:

ABC Non-Profit Homes Inc. has failed to operate the housing project properly, having regard to the normal practices of similar housing providers. (SHRA, s. 115. (11)). This was determined as a result of an operational review conducted on _____, 20 _____. In particular,

- The Board of Directors has not properly monitored the financial aspects of the corporation.
- The Board of Directors has not ensured that all necessary policies and procedures are in place to address appropriate approvals, monitoring of internal controls, and delegating of management tasks to the staff.

In order to cure the situation, the Board of Directors is directed to ensure that the following are carried out:

- Approve and implement written policies and procedures pertaining to the following:
 - Board of Directors review and approval of monthly financial statements that are prepared by the Property Manager; including approval of Capital Reserve Fund expenditures;
 - Treasurer’s review and approval of monthly bank reconciliations;
 - spending policies, including defining who has the authority to spend and what the limitations are on that authority;
 - purchasing policies, including (but not limited to) maintenance contracts, service provider lists;

- rent and arrears collection policies that should account for segregation of various functions;
- investment policy;
- other financial policies as described in the Operational Review Report dated [REDACTED], 20 [REDACTED];
- petty cash procedures, as well as procedures for writing cheques and making deposits

Copies of all policies are to be forwarded to the County's Social Housing Department for review prior to implementation.

- Approve a plan to appropriately address the administrative workload. The Board of Directors also needs to address the concerns over segregation of duties. If training is required for current staff, ensure that this is included in the plan and carried out.
- In conjunction with the segregation of duties, the Board of Directors shall approve and implement Internal Controls that address the handling and proper storage of cash, cheques for deposit, cash receipts, and computer financial data back-up. Internal Controls for disbursements and rent collection are also required to be established and implemented. In addition, develop and implement Internal Controls for the approval of payments related to payroll.
- Notify the Housing Department of the County of Simcoe at least one week in advance of the dates and times of all future Board of Directors meetings until further notice.
- Provide the Housing Department of the County of Simcoe with monthly financial statements in a form acceptable to the County until further notice.
- As per Section 117(4) of the Act, and O. Reg. 368/01 s. 17, the Board of Directors is directed to ensure that all directors receive financial governance training, in a form acceptable to the County.
- The Board of Directors is directed to submit a plan to the Housing Department outlining a training strategy that ensures that new board members and staff are appropriately trained with respect to the administration, management and operation of a housing project.

The County of Simcoe reserves the right to add to, vary or change the foregoing requirements if it deems it necessary to do so in order to cure the situations that have given rise to the triggering events. The Board of Directors is required to implement or comply with the directions given in this notice by **[INSERT DATE]**. Failure to comply may result in the County of Simcoe exercising any or all remedies available to it under Section 116 of the SHRA:

“If a triggering event occurs, the service manager may exercise one or more of the following remedies and the remedy must be reasonable in the circumstances:

1. The service manager may discontinue or suspend the subsidy payments required to be made to the housing provider under section 102.
2. The service manager may reduce the amount of any subsidy payments required to be made to the housing provider under section 102.
3. The service manager may pay directly to a creditor of the housing provider all or part of a debt owing by the housing provider to the creditor and may reduce the amount of any subsidy payments required to be made to the housing provider under section 102 by the amount of the payment made to the creditor.
4. The service manager may perform any of the duties and exercise any of the powers of the housing provider under this Act.
5. The service manager may appoint a receiver or receiver and manager for a housing project operated by the housing provider.
6. The service manager may seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for a housing project operated by the housing provider.
7. The service manager may remove some or all of the directors or the deemed directors of the housing provider, regardless of whether they were elected or appointed or became directors by virtue of their office.
8. The service manager may appoint one or more individuals as directors of the housing provider.
9. The service manager may exercise any other remedy that it has in law or in equity. 2000, c. 27, s. 116 (1).”

Please direct all correspondence related to this matter to **[INSERT Name of Program Supervisor]**, the Program Supervisor responsible for ABC Non-Profit Homes Inc.

Sincerely,

[INSERT NAME]
Manager of Social Housing

Appendix VII**Sample Notice to Minister****[INSERT Date]****[INSERT Name]**

Director, Social Housing Branch
 Ministry of Municipal Affairs and Housing
 777 Bay Street, 2nd Floor
 Toronto, ON
 M5G 2E5

Dear **[INSERT Name]**:**Re: Notice to Minister under the Social Housing Reform Act, 2000**

The County of Simcoe is hereby giving notice to the Minister as required under s. 18 (2) of the SHRA 2000 that **[INSERT Name of housing provider] is a project in difficulty.**

[INSERT DESCRIPTION OF THE SITUATION DESCRIBED IN CLAUSE 18 (2) (a) (b) (c) or (d) of the Act that requires the service manager to give notice]

Example

S. 18 (2) (c) requires the service manager to give written notice to the Minister that the housing project is in difficulty if,

the service manager is of the opinion that, because of the financial position or the projected financial position of the housing provider that operates the housing project, the housing provider is likely to fail to meet a material financial obligation within 12 months after the end of the current fiscal year of the housing provider.

It is the opinion of the County of Simcoe, that ABC Non-Profit Homes Inc. will not be able to pay its property taxes. ABC Non-Profit Homes Inc. has an accumulated deficit of \$150,000. The project has a current operating deficit of \$32,000. The project only has \$15,000 in cash. However, its property tax bill for the current year is \$160,000.

The County of Simcoe has issued a triggering letter to ABC Non-Profit Homes Inc. requiring it to submit a deficit reduction plan. The County will also permit the provider to use replacement reserve funds to pay the interim property tax bill. Furthermore, the provider has been requested to submit monthly financial statements.

It is believed that the action plan outlined above may stabilize ABC Non-Profit Homes Inc. The situation is being monitored closely. It may be necessary to appoint a receiver, if the provider's Board is unwilling to make the kinds of cuts in expenses as would be required in order to produce a viable deficit reduction plan.

Should you have any questions feel free to contact **[Insert Name of Program Supervisor]** the Program Supervisor for **[Insert Name of Housing Provider]**.

Sincerely,

[Insert Name]
Manager of Social Housing

Enclosure: Notice of triggering events

Note: If notice of triggering event(s) is not being given to the housing provider, an explanation of why that is not required under subsection 18 (3) of the Act. & O.Reg. 368/01, s.10 must be included in the notice to Minister.