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Staff Report

Legal Services

Report To: Council
Meeting Date: October 19, 2020
Report Number: FAF.20.169
Subject: The Blue Mountains Attainable Housing Corporation ("BMAHC")
Operating Loan Agreement
Prepared by: Will Thomson, Director of Legal Services

A. Recommendations

THAT Council receive Staff Report FAF.20.169 entitled "The Blue Mountains Attainable Housing Corporation ("BMAHC") Operating Loan Agreement";

AND THAT Council authorizes the Mayor and Town Clerk to execute the Operating Loan Agreement between The Blue Mountains Attainable Housing Corporation and The Corporation of The Town of The Blue Mountains in a form satisfactory to the Chief Administrative Officer, the Director of Legal Services and Director of Finance and IT.

B. Overview

Staff are seeking authorization from Council for the Mayor and Clerk to execute the Operating Loan Agreement between BMAHC and the Town in the form as attached at Schedule A to this report ("Agreement"), subject to minor housekeeping edits or revisions.

The execution of this Agreement will enable the Town to lend operating funds to BMAHC under the terms of the Agreement.

C. Background

At the June 29, 2020 meeting of Council, Council adopted the deputation of Sharon McCormick, the executive director of BMAHC and adopted the following motion:

THAT Council receives Item C.1 The Blue Mountains Attainable Housing Corporation Operational Cash Flow and approves a working capital loan in an amount of \$100,000 to The Blue Mountains Attainable Housing Corporation until such time as Grey County transfers attainable housing funds, which will be provided upon the completion of the Town of The Blue Mountains Community Improvement Plan;

AND THAT Council authorizes the Town to work with the Executive Director to complete the appropriate documents to execute the loan.

Staff and BMAHC have drafted the Agreement and are seeking Council authorization for the Mayor and Clerk to sign the Agreement, on the advice of the CAO, Director of Legal Services, and Director of Finance and IT Services.

D. Analysis

The Agreement will provide interim operating cash flow for BMAHC until such time as funds from the County of Grey become available to BMAHC.

It is the expectation of Staff that funds will be dispersed in minimum increments of \$25,000.00 as per the terms of the Agreement, and Staff intend to disperse a portion of the total available funds (being \$100,000.00) forthwith upon execution of the Agreement by the Town and BMAHC.

The execution of the Agreement and allocation of funds will support BMAHC's immediate operating expenses.

E. Strategic Priorities

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

F. Environmental Impacts

NA

G. Financial Impact

A repayable loan of up to \$100,000.00 subject to an interest rate equal to the Town's cost of borrowing plus 200 basis points.

H. In Consultation With

Shawn Everitt, CAO

Ruth Prince, Director of Finance and IT

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Comments regarding this report should be submitted to Will Thomson, Director of Legal Services.

J. Attached

1. Operating Loan Agreement

Respectfully submitted,

Will Thomson
Director of Legal Services

For more information, please contact:
Will Thomson, directorlegal@thebluemountains.ca
519-599-3131 extension 258

OPERATING LOAN AGREEMENT

BETWEEN:

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION

(hereinafter referred to as the "Borrower" incorporated as a non-profit corporation under the laws of Ontario and having its registered office at 32 Mill Street, Thornbury, Ontario N0H 2P0)

-and-

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter referred to as the "Lender" being incorporated as a municipal corporation under the laws of Ontario and having its registered office at 32 Mill Street, Thornbury, ON N0H 2P0)

WHEREAS in September 2013 the Borrower was established as a not-for-profit Corporation to augment the supply of healthy and sustainable ownership housing units in The Town of The Blue Mountains, and

WHEREAS The Borrower is actively engaged in developing a site in the Town of The Blue Mountains to help alleviate this urgent need for attainable housing, and

WHEREAS The County of Grey has agreed to provide funds to The Town of The Blue Mountains to then be used by the Borrower for working capital and other capital needs to achieve its attainable housing objectives, and

WHEREAS the funds from the County of Grey will not be released by the County of Grey until certain events have occurred, including the preparation of a Community Investment Plan by the Town of The Blue Mountains with such plan expected to be finished by the end of 2020, and

WHEREAS The Borrower is in need of the funds for working capital and capital needs,

NOW THEREFORE in consideration of the advance contemplated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower and the Lender hereby agree that:

1. Definitions:

- a) **"Authorization"** means:
 - i. an authorization, consent, approval, resolution, license, exemption, filing, notarization, order, lodgment or registration, and, if the same is conditional, the compliance with all the conditions stipulated therein; or
 - ii. in relation to anything which will be fully or partly prohibited or restricted by law or regulation if a governmental agency intervenes or acts in any way;
- b) **"Business Day"** means a day (other than a Saturday or Sunday) on which the Lender is open for normal business transactions.
- c) **"Demand Promissory Note"** means Security provided to the Lender by the Borrower and substantially in the form found in Schedule B of this Agreement.
- d) **"Drawdown Amounts"** means funds advanced by the Lender to the Borrower under the Terms and conditions of this Agreement, is evidenced by a Demand Promissory Note, and is further defined in Section 5 of this Agreement.
- e) **"Event of Default"** means any of the Events of Default specified in Clause a)iv.14 of this Agreement.
- f) **"Encumbrance"** includes a mortgage, charge, lien, pledge, hypothecation, security interest or any encumbrance of any description whatsoever.

- g) **"Existing Encumbrances"** means the Security described in Schedule A;
- h) **"Indebtedness"** means any indebtedness whatsoever of the Borrower owed to any person at any time for or in respect of monies borrowed, contracted or raised (whether or not for cash consideration).
- i) **"Law"** includes any constitution, statute, law, rule, regulation, ordinance, judgement, order, decree, authorization, or any published directive, guideline, requirement or governmental restriction having the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, whether in effect as of the date of this Agreement or thereafter and each as amended from time to time.
- j) **"Lenders Cost of Funds"** means the rate of interest that the Lender would pay to any commercial lender to the Lender from time to time.
- k) **"Loan"** means the amount of funds available to the Borrower in accordance with this Agreement.
- l) **"Loan Agreement" or "this Agreement"** means this particular agreement entered into between the Borrower and the Lender in respect of the Loan and includes all schedules and amendments to such Loan Agreement.
- m) **"Material Adverse Effect"** means the effect or consequence of any event or circumstance which is or is likely to be:
 - i. adverse to the ability of the Borrower or any person to perform or comply with any of their respective obligations under this Agreement.
- n) **"Party" and "Parties"** shall individually refer to each party to this Agreement and collectively to two or more parties to this Agreement as the context may so require.
- o) **"Person"** includes an individual, corporation, partnership, joint venture, association of persons, trust, unincorporated organization, government (federal, provincial or otherwise), sovereign state, or any agency, department, authority or political subdivision thereof, international organization, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and assigns and in case of an individual shall include his legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being
- p) **"Repayment"** includes "redemption" and vice-versa and repaid, repayable, repay, redeemed, redeemable and redemption shall be construed accordingly.
- q) **"Security"** means the Demand Promissory Note issued in favor of Lender for the Drawdown Amount advanced by the Lender to the Borrower in accordance with the terms of this Agreement.
- r) **"Security Documents"** means:
 - i. any document created as contemplated by Clause 7 and Clause 9; and
 - ii. any other document created from time to time which may create or evidence any Security to be provided by any person as security for any of the Borrower's obligations under any Transaction Document.
- s) **"Transaction Documents"** includes this Agreement, and all other agreements, instruments, undertakings, indentures, deeds, writings and other documents (whether financing, security or otherwise) executed or entered into, or to be executed or entered into, by the Borrower or as the case may be, any other person, in relation, or pertaining, to the transactions contemplated by, or under this Agreement.
- t) **"Total Loan Amount"** means the maximum amount of \$100,000.00 available under

this Agreement and is defined further in Section 3 of this Agreement.

2. General Provisions:

- a) a reference to a Sub-clause, Clause or a Schedule of this Agreement shall denote a reference to such Sub-clause, Clause or Schedule as specified, of this Agreement.
- b) the singular includes the plural (and vice versa).
- c) Clause and Schedule headings are for ease of reference only and shall not affect the interpretation of any term of this Agreement.
- d) reference to the words “include” or “including” shall be construed without limitation.
- e) reference to a gender shall include references to the female, male and neuter genders.
- f) all approvals, permissions, consents or acceptance required from the Lender for any matter shall require the “prior”, “written” approval, permission, consent or acceptance of the Lender.
- g) the words ‘hereof’, ‘herein’, and ‘hereto’ and words of similar import when used with reference to a specific Clause or Sub-clause in, or Schedule to, the Loan Agreement shall refer to such Clause or Sub-clause in, or Schedule to, this Agreement and when used otherwise than in connection with specific Clause, Sub-clauses or Schedules, shall refer to this Agreement as a whole.
- h) in the event of any disagreement or dispute between the Lender and the Borrower regarding the materiality of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Lender as to the materiality of any of the foregoing shall be final and binding on the Borrower.

3. Total Amount and Purpose:

- a) The Loan shall be for a maximum of \$100,000 Canadian dollars (the “Total Amount”),
- b) The Loan is being availed to the Borrower for the purpose of providing working capital for the Borrower,
- c) The Loan shall not be utilized to repay any term loans or long-term borrowings of the Borrower from any other lender or financial institution and shall only be utilized as indicated in this Section 3.

4. Interest:

- a) The loan shall attract interest at the rate of the Lender’s Cost of Funds plus 200 basis points payable monthly in arrears.
- b) The interest rate shall be set by the Lender on a quarterly basis upon advice to the Borrower by the Lender.

5. Drawdown Amounts:

- a) During the Term of this Agreement, the Borrower may draw down up to the Total Amount in minimum amounts of \$25,000.

6. Repayment:

- a) Any and all funds outstanding under this Agreement are to be repaid in full before the Term of this Agreement.
- b) The Borrower has the right to repay any and all amounts outstanding under this Loan at any time and without any notice.

7. Security:

- a) The Borrower shall provide to the Lender the following security:
 - i. A General Security agreement, and
 - ii. A Demand Promissory Note in a form similar to that found in Schedule B to this Agreement, for each of the Drawdown Amounts.

8. Term:

- a) This agreement shall terminate on May 30, 2022. ("Term")

9. Evidence of Indebtedness:

- a) The Borrower shall provide the Lender with a Demand Promissory Note for each and all of the Drawdown Amounts under this Agreement,
- b) The Borrower agrees that the Loan shall be repaid in the manner herein stated and that the aforesaid Demand Promissory Note(s) and and/or any other Promissory Note to be hereafter executed by the Borrower in favor of the Lender is to stand and is to be regarded as a continuing security and will be enforceable for any or all moneys which are now or which may at any time hereinafter become due and owing by the Borrower to the Lender under this Agreement.

10. Representations and Warranties:

- a) The Borrower hereby represents and warrants to the Lender as follows:
 - i. It is a corporation duly incorporated and validly existing under the Laws of Ontario and it has the power to own its assets and carry on its businesses as it is being conducted,
 - ii. Each document that the Borrower is executing under this Agreement will when executed, constitute legal, valid and binding obligations on the Borrower enforceable in accordance with its respective terms and would be so treated in the courts and or tribunals of Ontario and Canada, and
 - iii. The entry into and performance by it is and the transactions contemplated by the Transaction Documents do not and will not conflict with any Laws or regulations applicable to it, its constitution or charter documents, any agreement or instruments binding upon it or any of its assets, or any of its borrowing limits or powers in connection herewith, and
 - iv. It has the power to enter into, perform and deliver and has taken all necessary action to authorise its entry into, performance and delivery of the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents, and
 - v. All authorizations required or desirable, to enable it to lawfully enter into, exercise its rights and comply with its obligations in the Transaction Documents to which is a party and to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation/registration/formation, have been obtained or effected and are in full force and effect, and
 - vi. No Event of Default is continuing or might reasonably be expected to result from the making of any drawdown and no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on the Borrower or to which its assets are subject which might have a Material Adverse Effect, and

- vii. Any factual information provided by the Borrower for the purposes of availing the Loan was true and accurate and not misleading as at the date it was provided or as at the date (if any) at which it is stated and no information has been given or withheld that could result in this information being incorrect, untrue or misleading in any respect, and
- viii. The Borrower shall ensure that its obligations under any Transaction Document do and will rank at least pari passu with the claims of all its unsecured and unsubordinated creditors, present and future, and
- ix. No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it, and
- x. No action has been taken by the Borrower, nor have any other steps been taken or legal proceedings been started or threatened against the Borrower for its winding-up, dissolution, administration or reorganization or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower or of any or all of the assets or revenues of the Borrower, and
- xi. Save for the Existing Encumbrances and any Security permitted to be created by the Transaction Documents, no Security exists over any of the present and future assets of the Borrower, and
- xii. The Borrower has good, valid and marketable title to all or substantially all its assets, free from any restriction or onerous covenants, and free from any Security save for the Existing Encumbrances and any Security permitted to be created by the Transaction Documents, and
- xiii. The Borrower is in compliance in all respects with all laws to which it may be subject, where failure so to comply would impair its ability to perform its obligations under the Transaction Documents to which it is a party or would result in a Material Adverse Effect, and
- xiv. The above representations and warranties shall be deemed to have been made by the Borrower by reference to the facts and circumstances existing on the date of each request for drawdown, the date of each drawdown, the day on which any payment/ disbursement is made or to be made by the Borrower hereunder. The representations, warranties and undertakings shall survive the execution and delivery of this Agreement and will cease upon repayment/payment in full of the Loan and all monies in respect thereof.

11. Indemnities:

- a) The Borrower shall indemnify the Lender against any cost, damage, loss or liability incurred by the Lender (including but not limited to legal costs and expenses) as a result of:
 - i. the occurrence of any Event of Default;
 - ii. any information provided or approved by the Borrower being (or being alleged to be) incorrect, misleading and/or deceptive in any respect; and
 - iii. any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Borrower or with respect to the transactions contemplated or financed under this Agreement.

12. Undertakings:

- a) The Lender may at its sole discretion deduct from sums to be lent and advanced to the Borrower any monies then remaining due and payable by the Borrower to the Lender, whether under this Agreement or otherwise, and
- b) The Borrower shall pay all costs, charges (including legal fees, cost of investigation of title to the Borrower's assets and protection of the Lender's interest, if any) and expenses in any way incurred by the Lender and such stamp duty, other duties, authorization fees, taxes, charges and penalties if and when the Borrower is required to pay according to the laws for the time being in force, and
- c) The Borrower shall reimburse all sums paid and/or expenses incurred by the Lender under this Agreement within 2 Business Days from the date of notice of demand by the Lender. All such sums shall be debited to the Borrower's Account and shall carry interest as noted in Section 4 a. of this Agreement or any another rate at the discretion of the Lender from the date of payment till such reimbursement, and
- d) The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction without the prior written approval of the Lender which approval shall not be unreasonably withheld, and
- e) The Borrower shall ensure that no substantial change is made to the general nature of its business from that carried on at the date of this Agreement, and
- f) The Borrower shall obtain the consent of its existing lenders if any for any Security provided or to be provided pursuant to the Security Documents, and
- g) The Borrower shall not without the prior written consent of the Lender declare or pay any dividend or authorize or make any distribution to its shareholders if an Event of Default has occurred and is subsisting or would occur as a result of such declaration or payment of dividend or Authorization or making of distribution, and
- h) The Borrower shall keep proper books of record and account and maintain proper accounting, management information and control systems in accordance with Generally Accepted Accounting Principles for the time being in force in the relevant jurisdiction applicable to it from time to time, and
- i) The Borrower shall ensure that all the proceeds of each Loan advanced under this Agreement are used strictly in accordance with the purpose set out in Clause 1.2 herein above, and
- j) The Borrower shall ensure that each Loan will be borrowed in accordance with all applicable approvals, guidelines, circulars, regulations and laws, and
- k) The Borrower shall obtain the consent of its existing lenders if any for any Security provided or to be provided pursuant to the Security Documents, and
- l) The Borrower shall not dissolve / reconstitute itself without the approval of the Lender which approval shall not be unreasonably withheld, and
- m) Any modifications / amendments carried out in the constitution/structure/members and ownership of the Borrower shall not be binding on the Lender if made without the prior written approval of the Lender which approval shall not be unreasonably withheld.

13. Conditions Precedent:

- a) The utilization of the Loan by the Borrower shall be subject to various conditions being satisfied and documents being provided as mandated by the Lender, including those mentioned herein below, by the Borrower:
 - i. Supply to the Lender of a copy of the constitutional/charter documents of the

Borrower, as may be applicable;

- ii. Supply to the Lender of a copy of a resolution of the board of directors of the Borrower, or such other authorizing document of the Borrower, as may be applicable and acceptable to the Lender:
 - 1. approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party, and
 - 2. authorizing a specified person or persons to execute the Transaction Documents to which it is a party on its behalf, and
 - 3. authorizing a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices (including, if relevant, any draw down request) to be signed and/or dispatched by it under or in connection with the Transaction Documents to which it is a party; and
 - 4. authorizing the transactions contemplated by the Transaction Documents.
- iii. Supply to the Lender of a specimen of the signature of each person authorized by the resolution referred to in paragraphs 13 (a) (ii) above, and
- iv. The Transaction Documents and any other documents necessary to give effect to or perfect the Lender's interests under the Transaction Documents being duly executed by the Borrower and any other security provider as relevant.

14. Events of Default:

- a) The Borrower does not pay on the due date any amount payable pursuant to a Transaction Document at the place and in the currency in which it is expressed to be payable. In case of a payment default by the Borrower, the Lender can immediately without further notice, effect any actions as provided for in clause 12 herein.
- b) Default (other than a payment default) has occurred in the performance of any covenant, condition or agreement on the part of the Borrower under this Agreement or by the Borrower or any other person under the Transaction Documents.
- c) Any representation or statement made or deemed to be made by the Borrower in the Transaction Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Transaction Document is or proves to have been incorrect or misleading when made or deemed to be made or repeated.
- d) If the Borrower's assets have not been kept insured by the Borrower or depreciate in value to such an extent that such depreciation in value could in the opinion of the Lender, have a Material Adverse Effect.
- e) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect at any time when it is required to be in effect or any insurance is avoided, or any insurer or re-insurer avoids or suspends or becomes entitled to avoid or suspend, any insurance or any claim under it or otherwise reduce its liability under any insurance or any insurer of any insurance is not bound, or ceases to be bound, to meet its obligations in full or in part under any insurance.
- f) The Borrower, has voluntarily or involuntarily become the subject of proceedings under any bankruptcy or insolvency law, or is voluntarily or involuntarily dissolved, or if the Borrower has taken or suffered to be taken any action for its reorganization, liquidation or dissolution or if a judicial manager, administrator, receiver, or liquidator, custodian or similar official has been appointed or allowed to be appointed

of all or any part of the assets of the Borrower or if an attachment, distress, charging order, garnishee order, execution dstraint or other process has been levied on the Borrower's assets or any part thereof or certificate proceedings have been taken or commenced for recovery of any dues from the Borrower or if one or more judgments or decrees have been rendered or entered against the Borrower and such judgments or decrees are not vacated, discharged or immediately stayed, and such judgments or decrees involve in the aggregate, a liability which in the opinion of the Lender, could have a Material Adverse Effect.

- g) If the Borrower ceases or threatens to cease to carry on any of its businesses or gives notice of its intention to do so or if all or any part of the assets of the Borrower required or essential for its business or operations are damaged or destroyed. If in the opinion of the Lender, there occurs any change from the date of this Agreement in the general nature or scope of the business, operations, management, ownership and shareholding of the Borrower, which, in the opinion of the Lender, could have a Material Adverse Effect or if any person acting singularly or with any other person (either directly or indirectly) acquires control of the Borrower or of any other person who controls the Borrower, without prior the approval of the Lender.
- h) If, the Security for the Loan has not been created or perfected, for any reason whatsoever, within the timeline(s) provided by the Lender or if in the opinion of the Lender, the Security for the Loan is in jeopardy or ceases to have effect or if any Transaction Document including any security document executed or furnished by or on behalf of the Borrower becomes illegal, invalid, unenforceable or otherwise fails or ceases to be in effect or fails or ceases to provide the benefit of the liens, rights, powers, privileges or security interests purported or sought to be created thereby or if any such Transaction Document shall be assigned or otherwise transferred, amended or terminated, repudiated or revoked without the approval of the Lender.
- i) Any government (including any political or administrative sub-division thereof), governmental authority, agency, official or entity takes or threatens any action:
 - i. or the dissolution of the Borrower, or any action which deprives or threatens to deprive the Borrower: (a) from conducting any of its businesses or carrying out its operations in the manner it is being conducted or carried out, or (b) of the use of any of its assets;
 - ii. to revoke or terminate or to refuse to provide or renew any Authorization or to impose onerous conditions on or on the grant or renewal of any Authorization; or
 - iii. with a view to regulate, administer, or limit, or assert any form of administrative control over the rates applied, prices charged or rates of return achievable, by the Borrower in connection with its business;
 - iv. which, in each case, in the opinion of the Lender, could have a Material Adverse Effect.
- j) It is or becomes unlawful for the Borrower or any person (including the Lender) to perform any of their respective obligations under this Agreement or any Transaction Document.
- k) The Loan Agreement or any Transaction Document or any provision thereof are required by any law to be amended, waived or repudiated.
- l) Any obligation under the Loan Agreement or any Transaction Document is not or ceases to be a valid and binding obligation of any person party to it or becomes void, illegal, unenforceable or is repudiated by such person (other than the Lender).
- m) The Borrower is unable or has admitted in writing its inability to pay any of its Indebtedness as they mature or when due.

- n) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of default) occurs under any agreement or document relating to any Indebtedness of the Borrower or if any other lenders of the Borrower including financial institutions or Lenders with whom the Borrower has entered into agreements for financial assistance have recalled its/their assistance or any part thereof.
- o) The Borrower or any person, other than the Lender is in breach of, or does not comply with, any term or condition (whether, financial, performance or otherwise) of any Transaction Document including any security document or undertaking.
- p) One or more events, conditions or circumstances (including any change in law) shall occur or exist which in the opinion of the Lender, could have a Material Adverse Effect.

15. Consequences of Default:

- a) On and at any time after the occurrence of an Event of Default the Lender may, without prejudice to any other rights that the Lender may have under law and/or the other Transaction Documents, by written notice to the Borrower:
 - i. cancel the Loan whereupon they shall immediately be cancelled, or
 - ii. declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Transaction Documents be immediately due and payable, whereupon they shall become immediately due and payable, or
 - iii. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender, or
 - iv. without prejudice to the terms of the relevant Security Documents, declare any Security created in terms of the Transaction Documents to be enforceable., Further the Lender or such other person in favor of whom such Security wherever applicable or any part thereof is created shall have inter alia, the following rights (anything in the Transaction Documents to the contrary notwithstanding) namely
 - 1. to enter upon and take possession of any of the secured assets; and/or
 - 2. to transfer any of the secured assets in favor of the Lender or such other person by way of lease, leave and license, sale or otherwise.

16. Assignment and Participation:

- a) The Borrower shall not assign or transfer all or any of its rights, benefits or obligations under this Agreement and the Transaction Documents without the approval of the Lender.
- b) The Lender may, at any time assign (in whole or in part) all or any of its rights and benefits hereunder without requiring the prior consent of the Borrower.
- c) The Borrower acknowledges that the Lender may sell, transfer, assign, part with any or all of its rights or obligations under this Agreement (in whole or in part) or other ancillary documents, if any, to any third party, in any manner whatsoever including by the process of securitization. The Borrower also irrevocably and unconditionally confirms that it shall continue to be bound by the terms of this Agreement and other ancillary documents notwithstanding such transfer or assignment by the Lender and that the transferee shall acquire an interest in this Agreement and other ancillary documents, if any, upon the transfer taking effect. All rights of the Lender would be transferred to the transferee and its designated representative.

- d) The Borrower acknowledges that the Lender has the right, during the subsistence of the said credit facilities, to shift at its discretion without notice to the Borrower, from time to time, a part or a portion of the out standings in the said Loan under a participation arrangement to one or more participating Lenders.

17. Right of Set off and Lien:

- a) the Lender shall have the paramount right of set-off and lien, irrespective of any other lien or charge, present as well as future on the deposits of any kind and nature (including fixed deposits) held/ balances lying in any accounts of the Borrower, and on any monies, securities, bonds and all other assets, documents and properties held by/ under the control of the Lender (whether by way of security or otherwise pursuant to any contract entered/ to be entered into by the Borrower in any capacity) to the extent of all outstanding dues, whatsoever, as a result of any facilities that may be granted by the Lender to the Borrower. The Lender is entitled without any notice to the Borrower to settle any Indebtedness whatsoever owed by the Borrower to the Lender (whether actual or contingent, or whether primary or collateral, or whether joint and/or several) hereunder or under any other document/ agreement, by adjusting, setting-off any deposit(s) and/or transferring monies lying to the balance of any account(s) held by the Borrower with the Lender notwithstanding that the deposit(s)/ balances lying in such account(s) may not be expressed in the same currency as such Indebtedness. The Lender's rights hereunder shall not be affected by the winding-up, bankruptcy, death of the Borrower.
- b) In addition to the above mentioned right or any other right which the Lender may at any time be entitled whether by operation of law, contract or otherwise, the Borrower authorizes the Lender: (a) to combine or consolidate at any time all or any of the accounts and liabilities of the Borrower with the Lender; (b) to sell any of the Borrower/s securities or properties held by the Lender by way of public or private sale without having to institute any judicial proceeding whatsoever and retain/appropriate from the proceeds derived there from the total amounts outstanding to the Lender from the Borrower/s, including costs and expenses in connection with such sale; and (c) in case of cross currency set-off, to convert an obligation in one currency to another currency at a rate determined at the sole discretion of the Lender.

18. Governing Law and Jurisdiction:

- a) This Agreement shall be governed by the laws of Ontario.

19. Notice:

- a) Any notice and other communications provided for in this Agreement shall be in writing and shall be first transmitted by facsimile/electronic transmission, and then confirmed by postage, prepaid registered airmail or by internationally recognized courier service to the following addresses.
 - i. To the Borrower: 32 Mill St. Box 310. Thornbury, ON. N0H2P0.
smccormick@thebluemountainshousing.ca
 - ii. To the Lender: 32 Mill St. Box 310. Thornbury, ON. N0H2P0.
townclerk@thebluemountains.ca
- b) Any notice, demand or other communication so addressed to the other party shall be deemed to have been delivered:
 - i. if personally delivered, upon delivery at the relevant address, written acknowledgement taken;
 - ii. if sent by pre-paid local post, 2 Business Days after the date of posting;
 - iii. if sent by pre-paid airmail or by air courier, in the case of airmail, 5 Business Days after the date of posting or, in the case of air courier, 2 Business Days

after the date of delivery to the courier by the sender;

- iv. If the Borrower be more than one individual any notice served on any one of such individuals shall be deemed to be service of such notice on all such individuals.
- c) Any party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to the other parties not less than 3 Business Days prior written notice.

20. Waiver:

- a) No waiver by any party of any default with respect to any provision, condition or requirement hereof shall be deemed to be a continuing waiver in the future thereof or a waiver of any other provision, condition or requirement hereof; nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

21. Severability:

- a) If any term, provision, covenant or restriction of this Loan Agreement is held to be invalid, void or unenforceable, such provision shall be amended by the parties only to the extent necessary to be enforceable consistent with the parties' intent, and the remainder of the terms, provisions, covenants and restrictions of this Loan Agreement shall remain in full force and effect, unless such action would substantially impair the benefits to any party of the remaining provisions of this Loan Agreement.

22. Entire Agreement:

- a) This Loan Agreement and the other agreements referred to herein contain the entire understanding of the parties with respect to the matters covered hereby and supersede any and all prior understandings and agreements, oral or written, in relation hereto which may exist between the parties
- b) This Loan Agreement may be amended only by an agreement in writing executed by the Borrower and duly accepted by the Lender.

23. Cumulative Rights:

- a) All remedies available to any party under this Agreement, whether provided herein or conferred by statute, civil law, common law, custom, trade, or usage, are cumulative and not alternative and may be enforced successively or concurrently.

Signature Page to Follow

IN WITNESS WHEREOF the Borrower has caused this agreement to be executed on this ____ day of October, 2020.

Alar Soever, Mayor, The Corporation of the Town of The Blue Mountains

Corrina Giles, Clerk, The Corporation of the Town of The Blue Mountains

Sharon McCormick, Executive Director, Blue Mountains Attainable Housing Corporation
I have the authority to bind the Corporation

Rob Sampson, Chair, Blue Mountains Attainable Housing Corporation
I have the authority to bind the Corporation

SCHEDULE "A"
EXISTING ENCUMBRANCES

SCHEDULE "B"

SAMPLE DEMAND PROMISSORY NOTE

Borrower: _____

Lender: _____

Principal Amount _____

1. FOR VALUE RECEIVED, the Borrower promises to pay to the Lender at such address as may be provided in writing to the Borrower, the principal sum of \$ _____ CAD, with interest payable on the unpaid principal amount at the rate of the Lenders cost of Funds plus _____, beginning on _____
2. This Note will be repaid in full by _____.
3. All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Lender in enforcing this Note as a result of any default by the Borrower, will be added to the principal and will immediately be paid by the Borrower.
4. If any term, covenant, condition or provision of this Note is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provision on this Note will in no way be affected, impaired or invalidated as a result.
5. This Note will be construed in accordance and governed by the laws of the Province of Ontario.
6. This note will endure to the benefit and be binding upon the respective heirs, executors, administrators, successors and assigns of the Borrower and the Lender. The Borrower waives presentment for payment, notice of non-payment, protest and notice of protest.

IN WITNESS WHEREOF the parties have duly affixed their signatures under seal on this _____ day of _____

SIGNED, SEALED AND DELIVERED

This _____ day of _____

The Blue Mountains Attainable Housing Corporation