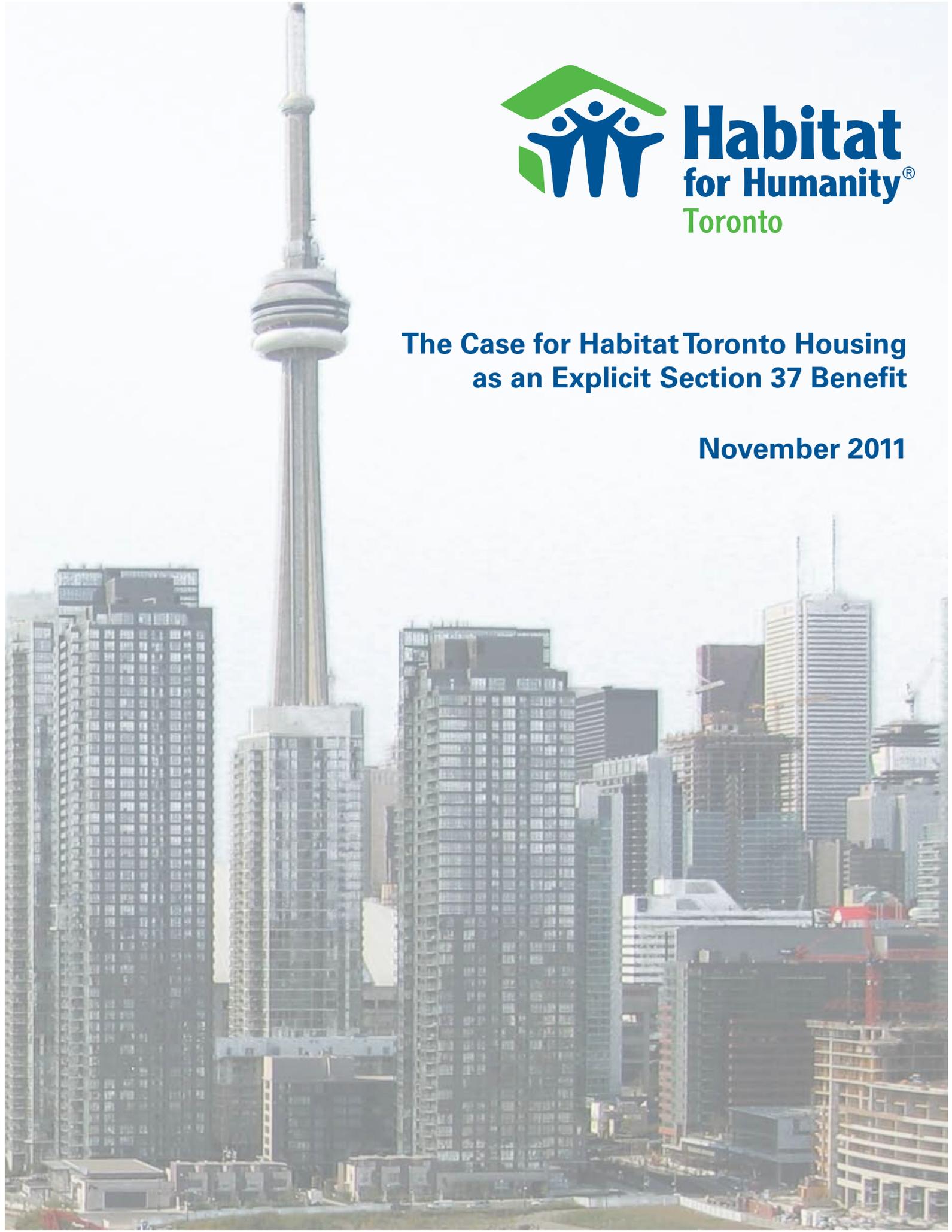




## **The Case for Habitat Toronto Housing as an Explicit Section 37 Benefit**

**November 2011**







Toronto's Official Plan (OP) speaks eloquently to the need to provide a full range of housing to support the well being of communities. "Current and future residents must be able to access and maintain adequate, affordable and appropriate housing. The City's quality of life, economic competitiveness, social cohesion, as well as its balance and diversity depend on it." In particular, the Plan goes on to state, where the conventional market is not capable of delivering a particular kind of housing (type, tenure, or level of affordability), specific policies are needed to address the gaps.

More specifically, the OP, in Policy 3.2.1.4 b), identifies the need to provide municipal assistance to "affordable ownership housing provided on a long term basis by non-profit groups" through "measures such as: land at or below market rate, fees exemption and other appropriate forms of assistance". The Plan goes on to define affordable ownership housing in terms of a price threshold where total monthly shelter costs is at or below the average City of Toronto rent by unit type as reported annually by CMHC.

The Plan does not explicitly identify "affordable ownership" housing as an eligible Section 37 benefit pursuant to policy 5.1.1.6 of the Plan. In fact, the only place where affordable ownership appears in the plan (outside the definition and the above noted Policy 3.2.1.4 b)) is in the "Large Site" policy – Policy 3.2.1.9 b). Policy 3.2.1.9 b) refers to securing a proportion of "affordable housing" in the context of increases in height and or density on sites larger than five hectares. It does not distinguish between ownership and rental affordable housing, so on the face of it, it includes affordable ownership housing, and consistently has been interpreted as such by staff at the City. Since the Large Site policy is one that is predicated on an increase in height and/ or density and relies on Section 37 to be implemented, it is clear that affordable ownership housing is a legitimate Section 37 benefit. But this begs that question why this "benefit" is not explicitly listed in Policy 5.1.1.6.

The Plan's explicit call for incentives for affordable ownership housing (as defined in the Plan), along with the Large Site policy precedent for the use of Section 37, is the starting point for a discussion to expand the list of benefits in Policy 5.1.1.6 to secure affordable ownership housing in the context of site or area specific zoning amendments. What distinguishes the Large Site policy is the fact that the provision of affordable housing is the first priority community benefit on large sites (notably, it is described in that policy as a community benefit). The next logical step is to ask why it should not be explicitly listed in Policy 5.1.1.6., or why it was left out in the first instance.



## Recent City Initiatives

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The City has in the past year (May 11, 2010) adopted a policy of supporting “assisted” home ownership with grants for ownership housing developed by not-for-profit corporations for eligible purchaser households. This program is distinct from support for affordable ownership housing under the OP, since it relies upon a definition of affordability in the Provincial Policy Statement and not the OP’s definition; the maximum income levels and house prices under this definition far exceed those in the OP.

While the new program is a step forward to support relatively affordable home ownership, it falls short of fulfilling the intent of the Official Plan, as it is not focused on the neediest pool of first time home buyers targeted by the OP, but can in theory be accessed by households having incomes substantially above the threshold contemplated by the Plan (in 2010 this was \$78,200, irrespective of household size). This raises the issue of what additional steps the City should take, through its Official Plan or otherwise, to provide additional support for these needier households, which are the households served by Habitat for Humanity Toronto.

One such step is the explicit inclusion of housing produced by Habitat for Humanity Toronto as an eligible benefit under Section 37 and in Policy 5.1.1.6 b), enabling Habitat to partner readily with private developers to secure affordable ownership housing within new developments (irrespective of the size of the lot) where the developer is seeking increased height and/or density.



## Why Habitat?

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As the City has not distinguished among Habitat and other not-for-profit developers of ownership housing in the development of the new “assisted” home ownership program, a first question that must be addressed is why make this distinction in the case of Section 37?

The simple answer is that Habitat for Humanity Toronto’s housing program can meet the more restrictive definition of affordable ownership housing in the Official Plan. The more fulsome answer is set out below. (The chart attached as in the appendix identifies the “built in controls” discussed below.)

Housing produced by Habitat Toronto is distinct from other forms of “low end of market” ownership housing being promoted by the private sector and/or other non-profit housing providers (such as Options for Homes/Home Ownership Alternatives) because Habitat Toronto:

1. Is not just a non-profit organization, but is also a registered charity under the Income Tax Act and is bound by its Affiliates Agreement and Covenant with Habitat for Humanity Canada.
2. Habitat housing is sold exclusively (not just primarily or partially) to low-income households, in accordance with its Letters Patent, among other binding legal instruments.

3. Income levels of households cannot exceed LICO (Low Income Cut Off), as adjusted annually using the Inter-city Indexes of Consumer Price Levels.<sup>1</sup>
4. Habitat targets households that cannot qualify for conventional mortgage financing, and so Habitat holds the interest free mortgage on the properties and establishes monthly payment schedules that can be afforded by the Habitat homeowners. This is a unique feature of Habitat's housing program.
5. Other non-profit "affordable ownership" housing producers (e.g. Options for Homes) are not constrained by the same corporate or legislative framework; but can and do sell product to households of any income, while striving to target moderate income households. Habitat's ability to guarantee a maximum household income level is important as it removes the need for the City to request, confirm or monitor information on the incomes of families. By virtue of its structure and status, purchasers of Habitat homes are a priori low income households.

While Toronto's Official Plan defines affordable ownership by price and not income,<sup>2</sup> implied in the price is a minimum level of household income that can afford to pay that monthly cost. For example, using the City's definition, in 2011 the "affordable ownership" price cannot exceed 12 times the average rents for a 2 bed and 3+ bed unit, or \$1,134/month and \$1,326/ month, respectively. Assuming that these costs are not to exceed 30% of gross household income, the corresponding minimum income levels to be able to carry these units would be \$45,360 for the 2 bed and \$53,040 for the 3+ bed. For a one bed unit the corresponding income level would be \$37,720. While households below this level may be able to afford the units, the carrying costs (assuming these households could qualify for a conventional mortgage) would exceed 30% of gross household income.

Habitat, on the other hand, is constrained by its Charter to set a maximum income level a household can have to be eligible for a Habitat home. As noted above, the objective of Habitat's housing program is to target households whose incomes are low enough that they cannot qualify for a conventional mortgage. The homes are sold for fair market value (appraised once the structure is up). The first mortgage, which is repayable once title is transferred to the new homeowner, is based on unit size so that families know up front how much they need to pay. Therefore, a 2-bedroom first mortgage is \$130,000; a 3-bedroom is \$140,000; a 4-bedroom is \$150,000 and so on. A second mortgage also registered and is the difference between the first mortgage and the fair market value, but no payments are made on this mortgage unless the title is subsequently transferred, in which case it is repayable in full only upon title transfer (or 99 years).

In view of the maximum income levels,<sup>3</sup> first mortgage levels (which reflect the effective carrying costs for the units) and resale controls, Habitat succeeds in achieving the OP's objectives for affordable ownership housing as a matter of course.

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1 For 2010-2011 these levels were: 1 person household - \$23,785; 2 person household - \$29,611; 3 person household - \$36,404; 4 person household - \$44,199; and 5 person household - \$50,130.

2 "Affordable ownership housing is housing which is priced at or below an amount where the total monthly shelter cost...equals the average City of Toronto rent, by unit type, as reported annually by the Canada Mortgage and Housing Corporation." It also includes HST and any other mandatory costs associated with buying the unit.

3 Habitat for Humanity Toronto also sets a minimum income level in order to ensure that a family can carry the mortgage held by Habitat.



One issue that has been of concern to the City relates to on-going affordability of affordable ownership units in the event of future sales and potential windfall profits. Although the current OP definition of affordable ownership does not, in fact, require any on-going affordability whether in the short, medium or long term, and does not refer to the potential for future windfall profits on the sale of initially “affordable” units, the reality is that these concerns have surfaced at both the staff and political levels over the years. It is a legitimate public interest, where the City is conferring financial or planning benefits on housing producers (and in turn the households occupying the units), that there be some assurances that these issues can and will be addressed.

While permanent affordability is not a realistic expectation for ownership units, the longer the initial households occupy Habitat units, the longer these units remain affordable. The structure of Habitat’s housing program is such that the likelihood of flipping units for profit is practically nil. Habitat for Humanity Toronto holds the first mortgage on all homes which must be discharged upon sale. It also holds a second mortgage for which no monthly payment is due, but which must be fully discharged at the time of any sale. The second mortgage is set so that the combined first and second mortgages equal the fair market value of the home at the time of first occupation. Habitat also has the right of first refusal at the time of any resale. The funds from the first and second mortgages are reinvested in Habitat’s housing program.

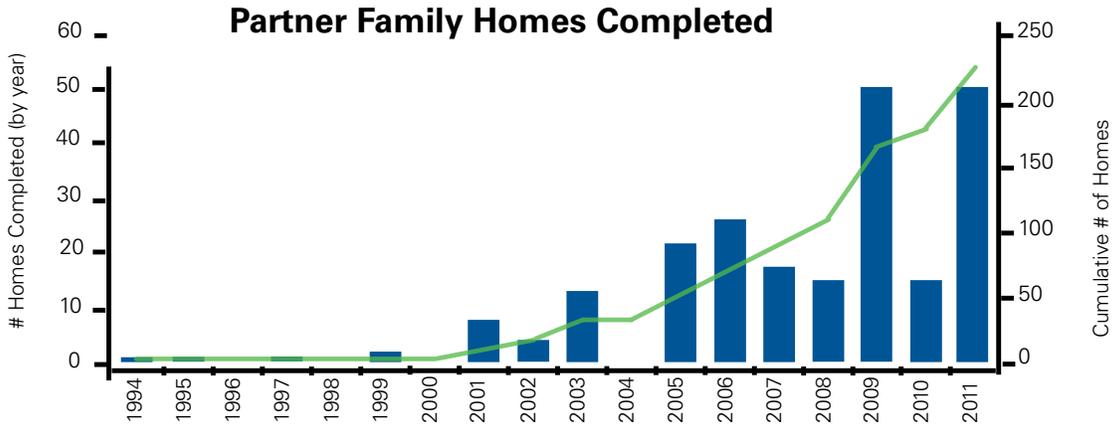
**Table Comparing Maximum Household Income Levels - 2011<sup>4</sup>**

Issuing Authority for Maxima	1 Person Bachelor	2 Person 1 Bedroom	3 Person 2 Bedroom	4 Person 3 Bedroom	5 Person 4 Bedroom
MMAH max for Toronto	\$31,500	\$37,500	\$44,000	\$53,000	\$65,500
Habitat Toronto	\$23,785	\$29,611	\$36,404	\$44,199	\$50,130
MMAH “high need” for Toronto	\$18,900	\$22,500	\$26,400	\$31,800	\$39,300

4 MMAH does not classify by household size but by unit type, while Habitat uses household size. The table attempts to correlate these two based on normal family occupancies – that is a married couple in one bedroom and each additional family member having a bedroom.

5 Reg 370/11 Housing Services Act, 2011 sets out maximum incomes related to eligibility for rent supplements, one of which is for “high need” households, and the other for non-high need

As noted previously, eligible Habitat’s families must meet specific low income criteria, contribute sweat equity and are provided with a helping hand-up with no-interest mortgages. The monthly mortgage payments do not exceed 30% of gross household income, even if that income is reduced in the future. If a family’s income were to increase over the term of the mortgage, so also will the monthly payments of the no-interest mortgage (but not to exceed 30%).



Habitat’s housing model ensures that families will stay in their homes over the long term and Habitat is in the position to provide the City with assurances, based on historical empirical data that Habitat families have rarely sold their homes. Habitat for Humanity Toronto has housed over 250 families since 1988. Since that time, 5 families have sold their Habitat homes. All funds have subsequently been used to build additional housing in the city.



## Habitat’s Future in the City of Toronto

To date, Habitat for Humanity Toronto has generally focused on smaller infill, grade-related (stick-built) projects, for a number of reasons. First, these kinds of projects are highly suited to volunteer builds – a mainstay of Habitat’s program. Second, this form of construction is less costly than other multi-storey concrete building types, and consequently Habitat is able to produce lower cost housing.

While this has been Habitat’s past, its future – like the rest of the City’s development industry – will need to seek opportunities for condominium development in a more intensified form. Given the limited supply of land in Toronto, for Habitat to succeed in the future, it will need to find a means to create homes within a condominium context. However, in general, the development of a substantial condominium development is beyond the scope of Habitat’s current housing model. Securing Habitat units within a condominium built by a third party, on the other hand, would be a simple means for Habitat, and therefore the City, to expand the supply of affordable ownership housing in a variety of locations throughout the City.

By explicitly listing affordable ownership housing as an eligible Section 37 benefit in Section 5.1.1.6 of the Official Plan (beyond the Large Sites policy where it is explicitly an option) the City will be facilitating Habitat’s housing program and advancing its own Official Plan objectives.



## Cost-Related Parameters of a S. 37 Program



While the provision of housing through Habitat for Humanity Toronto's housing program meets the definition of affordable housing in the Official Plan, implementation can only be successful if the partnering private developer offers the units to Habitat under specific conditions, which would have to be set out in the Section 37 Agreement to ensure developer compliance.

The first major concern, of course, is the purchase price of the units by Habitat. They will, of necessity need to be priced well below market value for Habitat's housing program to work. In other words, the private developer will have to be required to sell the units to Habitat for no more than \$130,000 ("all in" – i.e. including HST and Land Transfer Tax, etc). There is no question that there will be a cost to the developer to sell units at this price, but this is entirely appropriate in the context of a Section 37 benefit, where the developer is receiving an increase in density in exchange for the provision of the benefit. The fine balance is to ensure that Habitat's program remains viable, but at the same time the cost to the developer is not such that s/he would choose to offer another less costly benefit to the City in exchange for the density increase.

Another consideration is the current trend in condo developments to sell parking spaces to condo purchasers separately from the units. The cost of a space can be substantial, with a space sometimes selling for as much as \$35,000, or more. Obviously, this additional cost would be prohibitive for Habitat's program, but it is also not necessary that individual parking spaces be provided with the units, since most Habitat purchasers do not own automobiles. However, access to affordable transportation options for Habitat homeowners is a matter that deserves consideration. It would be appropriate in the context of a Section 37 agreement to simultaneously secure the on-site provision of AutoShare or Zip Car programs which Habitat owners could then access on an as needed basis, along with other condominium owners. The pairing of this Official Plan transportation objective (to reduce the reliance on the private automobile) with the City's affordable housing objectives should be a standard term for Section 37 agreements involving affordable ownership housing.

A final pricing consideration for Habitat is the issue of finishing for the units. In a condominium project the ability to have Habitat “builds” involving volunteers may be quite limited. Economies of scale suggest that finishing of the Habitat units would best be done by the developer, but other options may also prove workable. Additional thought should be given to various arrangements, from complete finishing by the developer to provision of the shell only, with Habitat to finish the units through its normal program of volunteers and sweat equity. How this impacts on the sale “price” of the unit to Habitat’s clients is a key consideration. The assumption should be that if the developer finishes the units, it cannot affect the ceiling on the sale price in order that Habitat’s housing program can work. Accordingly, if the unit is provided by the developer unfinished, then the sale price should be correspondingly lower, and reflected in the Section 37 agreement.

## Other Considerations

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A non-financial consideration to be settled in a Section 37 agreement is whether the Habitat units are scattered throughout a building or alternatively consolidated on one floor, for example. From a public policy perspective, scattering the units is preferable. From Habitat’s perspective, scattering is also the desired outcome.

Experience has demonstrated that consistency in the terms and conditions established for various Section 37 benefits is fundamental to maintaining public confidence in the planning process in general and the securing community benefits in particular. In the past, the City has developed model Term Sheets for select community benefits (such as day care centres, for example) enumerating the conditions that must be secured in a Section 37 Agreement to ensure the benefit will be achieved and safeguard the City’s interests. A similar approach would be advisable in the instance of affordable home ownership, to ensure both the City’s interests and the viability of Habitat’s housing program.



## Consolidated Controls, Restrictions and Selection Criteria and the Associated Authorities

The controls, restrictions and selection criteria of Habitat for Humanity Toronto's Housing Program reside in various documents established over time and proscribe its activities in the housing field in unique ways. These source documents (as set out below) are the foundation for ensuring that the ownership housing produced by HFHT is sold to households of low income, that such housing is not readily "flipped"; and funds from the sale of the sale of the houses is reinvested in new affordable housing.

1. The Letters Patent for Habitat for Humanity Toronto, July 5, 1990
2. Registration as a Charitable Corporation under the Income Tax Act, February 25, 1993
3. The Affiliate Covenant between Habitat for Humanity Canada (HFHC) and Toronto Habitat for Humanity (HFHT), signed annually by the Board of Directors.
4. The Affiliation Agreement between HFHC and HFHT, May 27, 2006
5. The Consolidated By-laws & By-law Policies of HFHC, May 27, 2006, as amended
6. The Standards of Excellence of HFHC, signed annually by HFHT confirming compliance.

These documents are inter-related and in some cases nested; a breach of one will cascade to others, with potentially significant penalties. The Table below provides an outline of the various Controls, Restrictions and Selection Criteria and associated authorities that bind the THFH in the provision of affordable housing in Toronto.

<b>Restrictions, Controls, Criteria - General</b>	<b>Authorities</b>
Housing is provided on a non-profit basis exclusively for persons of low income.	1, 2, 3, 4, 5
THFH is and must operate as a Charitable corporation subject to the Charitable Accounting and Charitable Gifts Acts	2, 3, 4, 5
<b>Eligible Households</b>	
Must be low income, and unable to secure adequate housing by conventional means. In addition to setting maximum income levels, Habitat also sets minimum household income levels in order to ensure that the household can carry the no-interest mortgage provided by Habitat.	1, 2
Maximum income levels cannot exceed an independently defined "core need" within the municipality. Habitat bases its maximum income figures on Low Income Cut Offs (LICO) published annually by StatsCan. These are then adjusted relying on the Inter-city Indexes of Consumer Price Levels (also StatsCan). The maximum for a 3 person household in 2011 is \$36,404; for a 4 person household \$44,199.	1, 2
Must directly contribute "sweat equity".	2, 3, 6
Income levels of recipient households are monitored and if incomes rise above "core need" the household must proportionately increase monthly mortgage payments and sweat equity.	2
<b>Resale Controls</b>	
Habitat for Humanity Toronto holds the first mortgage on all homes which must be discharged upon sale. It also holds a second mortgage for which no monthly payment is due, but which must be fully discharged at the time of any sale. The second mortgage is set so that the combined first and second mortgages equal the fair market value of the home at the time of first occupation. Habitat also has the right of first refusal at the time of any resale.	2
Funds from discharged mortgages are reinvested in the Housing Program.	1, 2, 4



Established in 1988, Habitat for Humanity Toronto is a non-profit, non-denominational Christian housing organization. We welcome all people without discrimination to join us as we build simple, decent, affordable homes in partnership with low-income families.

100% of all administrative costs are paid for by the operation of four Toronto ReStores, which sell quality new and gently used donated building materials.

Habitat for Humanity Toronto is proud to be ranked as one of the top 5 medium sized builders by the 2011 Tarion Award of Excellence.

Every 10 minutes, Habitat for Humanity helps a family improve their housing situation in more than 100 countries around the world.

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