

DEVELOPMENT AGREEMENT

This development agreement is dated for reference _____, 20_____.

BETWEEN:

THE MANITOBA HOUSING AND RENEWAL CORPORATION

(“MHRC”),

- and –

XXXXXX

(the “Developer”).

WHEREAS:

- A. MHRC wishes to have a XXX unit affordable family housing apartment complex developed in the XXXXX neighbourhood of XXXXXXX, Manitoba known as “XXX” that will be owned by MHRC (later defined as the “Housing Complex”); and XXXXXXX
- B. The Developer has agreed to provide MHRC with development services as set out in this Agreement.

NOW, THEREFORE, the parties agree as follows:

PART I - INTERPRETATION

SECTION 1.00 - DEFINITIONS, INTERPRETATION AND SCHEDULES

1.01 Unless the context requires otherwise, in this Agreement:

- (a) **“Actual Project Costs”** means costs of the kind or type itemized and approved by MHRC as set out in Appendix “A”, Part 2 and actually incurred by the Developer;
- (b) **“Bond(s)”** means the performance bond issued by a corporation authorized to carry on a suretyship business in Manitoba, securing the performance of the Construction Contract as required by this Agreement, as well as any and all labour and materials bonds that may be required or obtained by the Developer under the Construction Contract;
- (c) **“Construction Contract”** means the stipulated price construction contract that the Developer has entered into or will enter into with a Third Party contractor acceptable to MHRC to construct or rehabilitate the Housing Complex as described in Appendix “A”, Part 1, and referred to in clause 2.01(d), which stipulated price contract shall require the following:
 - (i) A performance bond issued by a corporation authorized to carry on a surety business in Manitoba, or an irrevocable letter of credit, securing the performance of the stipulated price construction contract; and
 - (ii) A labour and material payment bond issued by a corporation authorized to carry on a surety business in Manitoba securing payment for labour and materials furnished for use in connection with the Project;

Each bond is to be in favour of the Developer, its successor and assigns, and each for an amount not less than 50% of the value of the Construction Contract;

- (d) **“Development Consulting Contract”** means the contract for development consulting services relating to the Project that the Developer has entered into or will enter into with a professional development consultant acceptable to MHRC, as referred to in clause 2.01(b);

- (e) **“Development Services”** means those services relating to the Project to be performed by the Developer as set out in clause 2.01 (a);
 - (f) **“Design Services Contract”** means the contract for services relating to the Project that the Developer has entered into or will enter into with an architect or an architectural firm acceptable to MHRC, as referred to in clause 2.01(c);
 - (g) **“Estimated Project Costs”** means the estimated costs of the Project approved by MHRC as set out in Appendix “A”, Part 2, Column A;
 - (h) **“Housing Complex”** means the residential dwelling units and related structures to be constructed or rehabilitated on the Land in accordance with this Agreement, or once it has been so constructed or rehabilitated, as the context may require, as set out in Appendix “A”, Part 1;
 - (i) **“Land”** means the land owned by MHRC located at XXX, in XXXXXX, Manitoba, and legally described in Appendix “A”, Part 1;
 - (j) **“MHRC Funding”** means the monies to be advanced by MHRC to the Developer for the purposes of the Project, subject to the terms and conditions of this Agreement;
 - (k) **“Pre-Construction Phase Costs”** means those Actual Project Costs approved by MHRC for activities that occur and expenses that are incurred prior to actual construction of the Project;
 - (l) **“Project”** means the design, development and construction or rehabilitation of the Housing Complex, in various phases, and acquisition of land or buildings for this purpose if applicable, all as more particularly described in Appendix “A”, in accordance with the specific terms, conditions and plans set out in this Agreement;
 - (m) **“Term”** has the meaning ascribed to it in section 16.00;
 - (n) **“Third Party”** means any person, corporation, organization or entity other than MHRC or the Developer;
 - (o) **“this Agreement”** means this document and the Appendices listed in subsection 1.04 of this document;
 - (p) **“Total Completion”** means the later of the date on which MHRC verifies that construction or rehabilitation of the Housing Complex has been completed to MHRC’s satisfaction and the date on which a valid final, unconditional occupancy permit for the completed Housing Complex has been issued or the date of a letter from the relevant municipal authority confirming that it does not issue occupancy permits;
 - (q) **“Unavoidable Delay”** means any condition or cause beyond the control of the Developer which prevents the Developer from performing its obligations that is not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by the Developer;
 - (r) **“Unit”** means apartments or other separate living quarters within the Housing Complex.
- 1.02 Words in the singular include the plural and words in the plural include the singular, as required by the context. The neuter gender includes the masculine and feminine genders as may be required.
- 1.03 The headings in this Agreement are for convenience of reference only and may not be used to interpret any provision of this Agreement.
- 1.04 The following appendices form a part of this Agreement:
- (a) Appendix “A” Part 1: Project Description;
 Part 2: Estimated Project Costs;
 Part 3: Sources of Funding for Project;
 Part 4: Project Timeline and Estimated Cash Flow

- (b) Appendix "B" Form of Audited Statement of Actual Costs; and
- (c) Appendix "C" MHRC's Conflict of Interest Policy and Guidelines.

1.05 There are no undertakings, representations or promises, expressed or implied, other than those contained in this Agreement. This document and the attached Appendices contain the entire agreement between the parties, and supersede all prior agreements, arrangements and understandings between the parties.

PART II - THE PROJECT

SECTION 2.00 - OBLIGATIONS AND UNDERTAKINGS OF THE DEVELOPER RELATING TO THE PROJECT

2.01 The Developer agrees and undertakes:

- (a) to develop and complete the Project as contemplated in Appendix "A" by providing the following Development Services:
 - i. initiate, coordinate and guide the development process;
 - ii. prepare concept plans and development options/functional programs, including a basic outline of the square footage required for different building functions, and submit them to MHRC;
 - iii. undertake a geotechnical investigation and an Environmental Site Assessment of the project Land and submit each report to MHRC;
 - iv. prepare any and all necessary applications for zoning (including variances), subdivision and development approvals that may be required for the purposes of the Project and, upon obtaining execution thereof by MHRC, submit such application(s) to the appropriate municipal authority;
 - v. prepare all marketing materials for the initial leasing of the Housing Complex, in accordance with the written direction of MHRC;
 - vi. undertake initial lease-up of the Units, including the following: locating eligible tenants based on criteria established by MHRC; preparing tenancy agreements reflecting rental rates and including such terms and conditions as MHRC may in writing direct; and, until such time as MHRC and the Developer have entered into a separate written agreement respecting the management and operation of the Housing Complex by the Developer pursuant to which the Developer is authorized to enter into tenancy agreements respecting the Units, forward tenancy agreements signed by prospective tenants to MHRC for execution;
 - vii. prepare estimated capital cost budget and submit to MHRC for approval;
 - viii. prepare estimated operating budget and submit to MHRC;
 - ix. prepare all drawings and specifications necessary to tender for a contractor to construct the proposed Housing Complex and submit all tender documents to MHRC for its approval prior to issuing tender documents for the Project to prospective bidders;
 - x. the Developer shall reserve the right in any tender not to make a contract award;
 - xi. tender for a contractor to construct the proposed Housing Complex in accordance with drawings and specifications approved in writing by MHRC;
 - xii. enter into such contracts related to the Project as are contemplated in this section;
 - xiii. prepare and submit all invoices for Project costs to MHRC; and
 - xiv. provide to MHRC an accounting of all Project costs, including a final Audited Statement of Actual Costs in the form attached as Appendix "B";
- (b) to enter into a Development Consulting Contract with a professional development consultant acceptable to MHRC to assist with providing the services as set out in clause 2.01 (a);
- (c) to enter into a Design Services Contract with an architect or architectural firm acceptable to MHRC to assist with providing the services as set out in clause

2.01 (a). Architectural services will include consultant services for structural, mechanical, electrical, civil engineering and landscaping;

- (d) to enter into a Construction Contract for the construction or rehabilitation of the Housing Complex and to ensure that the Bond(s) are issued in favour of the Developer and its heirs, executors, administrators, successors and assigns;
- (e) to ensure that all agreements with the architect and the other consultants are on terms that provide for a release of copyright in plans, designs and other similar property (to the extent that such plans, designs and other similar property may be used in the Project) and on terms that permit MHRC the right to assume such agreements without interference by the other contracting party and without payment of any penalty or charge;
- (f) to ensure, subject to Unavoidable Delay, that Total Completion occurs no later than XXX, or such later date as MHRC may, in its sole discretion, agree to in writing;
- (g) to use MHRC Funding solely to pay for Actual Project Costs;
- (h) to ensure that no tender award made in accordance with this agreement is made without prior written approval from MHRC. If no bid is acceptable to MHRC then the obligation of MHRC to continue with this Agreement shall cease;
- (i) to ensure that the Actual Project Costs do not exceed those identified in Appendix "A", Part 2 without the prior written approval of MHRC;
- (j) to be responsible for all costs pertaining to the proposed Project and all Third Party costs and expenses incurred by, through or on behalf of the Developer in respect of the Project, both during and after the pre-construction phase of the proposed Project, to the extent that they do not qualify as Actual Project Costs;
- (k) to carry out, manage and complete the Project in a professional, safe and prudent manner and in accordance with good business practices;
- (l) not to substantially change any aspect or component of the Project, except with the prior written consent of MHRC;
- (m) to ensure that the Project is carried out, managed and completed in accordance with *The Builders' Liens Act* (Manitoba) and all other applicable laws and regulatory requirements, whether federal, provincial or municipal;
- (n) to ensure that all statutory liens, builders' liens and other liens or trust claims relating to the Project are promptly paid, satisfied, released or otherwise discharged; and
- (o) to obtain such professional advice and services, inspections, certificates and reports as may be necessary to ensure the Project is completed in accordance with this Agreement, and acceptable engineering and construction standards.

2.02 The Developer hereby assigns all rights, title and interest that the Developer now has or may hereafter have in and to the working drawings, plans and specifications for the Project.

2.03 As security for the performance by the Developer of its obligations to MHRC pursuant to this Agreement, the Developer hereby assigns, transfers and sets over unto MHRC and grants to MHRC a security interest in and to and the full benefit of the Bond(s) (hereinafter collectively referred to as the "Assigned Rights"). It is understood and agreed, however, that this assignment shall not obligate MHRC or The Government of Manitoba to assume or perform any obligation of the Developer to any third party in respect of, or arising out of, the Assigned Rights or any of them, and the Developer hereby agrees to indemnify and save harmless MHRC or The Government of Manitoba and its Ministers, and their respective officers, employees and agents from any and all claims of such third parties. MHRC may, at its option, assume or perform any such obligations which MHRC considers necessary or desirable to obtain the benefit of the Assigned Rights, or any of them, free of any set-off, deduction or abatement, and any money so expended by MHRC shall become a debt due immediately by the Developer to MHRC, which shall be payable on demand and may, in MHRC's sole discretion, be

set off against any amounts payable by MHRC to the Developer under this Agreement or any other contract. MHRC may at any time after a breach of, or default under, this Agreement give express notice of this assignment to any person from whom the Developer would have been entitled to receive or claim any benefit pursuant to the Assigned Rights, or any of them, and, after giving such notice, may deal with the other party in respect of the Assigned Right without reference to it or the consent of the Developer, as if MHRC were the absolute owner of the Assigned Right. MHRC agrees that unless and until such time as there is a breach of, or default under, this Agreement, the Developer shall be entitled to any monies that may be payable pursuant to the Assigned Rights.

- 2.04 The Developer covenants and agrees that all guarantees and warranties received by the Developer in connection with the Housing Complex and the equipment therein are hereby assigned to MHRC. The Developer further covenants and agrees that if any such guarantees and warranties are not assignable, such guarantees and warranties shall be held by the Developer in trust for MHRC.
- 2.05 The Developer undertakes and agrees to execute such further and other documentation as may be requested by MHRC in order to give effect to the provisions of subsections 2.02, 2.03 and 2.04.
- 2.06 If the Developer commences construction of the Housing Complex and thereafter determines that it will not complete the Housing Complex, or that it is unable to, the Developer may not demolish any part of the Housing Complex that has been constructed without the prior written consent of MHRC.

SECTION 3.00 - OBLIGATIONS AND UNDERTAKINGS OF MHRC RELATING TO THE PROJECT

- 3.01 MHRC agrees and undertakes:
- (a) to consult with the Developer, to the greatest extent possible, before MHRC makes any final decisions with respect to the Project; and
 - (b) subject to the terms and conditions of this Agreement, to be responsible for financing all costs related to the Project, including land acquisition (if applicable), and to reimburse the Developer for any Actual Project Costs other than the amount specified in Appendix "A", Part 3, item 1.
 - (c) to fund all Eligible Costs incurred by the Developer related to the Project up to the date that MHRC terminates this Agreement as outlined in 2.01 (h).

SECTION 4.00 - PROJECT COSTS AND PRE-CONSTRUCTION AND CONSTRUCTION PHASE DISBURSEMENTS

- 4.01 As of the date of this Agreement, the Estimated Project Costs are as set out in Appendix "A", Part 2.
- 4.02 The parties acknowledge that the Estimated Project Costs may change after the date of this Agreement. If the total Estimated Project Costs change, the Developer must, as soon as possible, advise MHRC of the change and obtain MHRC's written approval prior to incurring any additional costs.

Advance on Account of Pre-Construction Phase Costs

- 4.03 MHRC agrees to advance MHRC Funding to the Developer, upon request, for any Pre-Construction Phase Costs incurred during the pre-construction phase provided that the Developer provides MHRC with the following:
- (a) a copy of the executed Development Consulting Contract;
 - (b) a copy of the executed Design Services Contract;
 - (c) an itemized list of the Pre-Construction Phase Costs being claimed by the Developer; and
 - (d) any other information and documentation as may be requested by MHRC.

Every Request After Commencement of Actual Construction

- 4.04. Every request by the Developer for MHRC to advance MHRC Funding must be in writing and include:
- (a) a written report detailing the status of the Project;
 - (b) an itemized list of Actual Project Costs incurred between the date of the last request and the current request, with supporting invoices and, if applicable, the progress payment certificate issued by the payment certifier attached; and
 - (c) architectural and engineering reports certifying that the completed work on the Project conforms with (i) the approved plans and specifications, (ii) the national building code and regulations, and (iii) applicable municipal and provincial codes, regulations and by-laws, and that the work complies with any approved change orders. In cases of conflict between codes, regulations and by-laws, the most stringent as determined by MHRC shall apply. Architectural or engineering reports shall indicate the percentage of work completed by item and compliance with the approved plans and specifications.

First Request After Commencement of Actual Construction

- 4.05 MHRC will not advance MHRC Funding on account of actual construction costs of the Housing Complex until the Developer provides MHRC with the following:
- (a) copies of the fully executed Development Consulting Contract and Design Services Contract referred to in clauses 2.01 (b) and 2.01 (c) (if not already provided as part of a request for an advance on account of Pre-Construction Phase Costs);
 - (b) a copy of the fully executed Construction Contract as set out in clause 2.01 (d);
 - (c) a copy of the Bond(s), issued in favour of the Developer and its heirs, executors, administrators, successors and assigns;
 - (d) the certificate(s) of insurance required under subsection 7.07;
 - (e) evidence satisfactory to MHRC that the Developer has used the entire amount of the Developer's own contribution consisting of funding to be obtained by the Developer, by way of fundraising or donations, for the purposes of the Project, in the amount set out in Appendix "A", Part 3, item 1;
 - (f) written consent and agreement from the architect(s) for the Project to the assignment by the Developer in favour of MHRC of all rights, title and interest that the Developer now has or may hereafter have in and to the working drawings, plans and specifications for the Project, as referred to in subsection 2.02;
 - (g) a written undertaking and agreement by the architect(s) that in the event the Project is abandoned or aborted, or both, or if MHRC notifies the architect in writing that the Developer has otherwise breached or is in default of its obligations under this Agreement, the architect shall, upon the written request of MHRC, complete the work described in the Design Services Contract, under the terms and conditions of that contract;
 - (h) a written undertaking and agreement by the professional development consultant that in the event the Project is abandoned or aborted, or both, or if MHRC notifies the professional development consultant in writing that the Developer has otherwise breached or is in default of its obligations under this Agreement, the professional development consultant shall, upon the written request of MHRC, complete the work described in the Development Consulting Contract, under the terms and conditions of that contract; and
 - (i) a written undertaking and agreement by the contractor that in the event the Project is abandoned or aborted, or both, or if MHRC notifies the contractor in writing that the Developer has otherwise breached or is in default of its obligations under this Agreement, the contractor shall, upon the written request of

MHRC, complete the work described in the Construction Contract, under the terms and conditions of that contract.

- 4.06 The Developer acknowledges that MHRC has provided Proposal Development Funding, in respect of the Project, \$XXXXXX, and that the Developer is aware that the funding is repayable to MHRC in situations where the proposed project for which funding has been provided is proceeded with. The Developer hereby irrevocably authorizes and directs MHRC to repay the Proposal Development Funding provided by MHRC in respect of the Project, by deducting the Proposal Development Funding amount from the first advance of MHRC Funding to be made by MHRC under this Agreement, and from further advances if necessary.

Every Request After First Request

- 4.07 With every request for advance made after the first request on account of actual construction costs, the Developer must include a copy of a statutory declaration made by the contractor in form and content satisfactory to MHRC declaring:
- (a) that all sub-contractors, suppliers and other parties retained by the contractor and involved in the Project have been paid in full for work, materials or equipment performed or provided before the date on which the immediately preceding request for advance was made to MHRC by the Developer except for lien holdback monies properly retained; and
 - (b) that the contractor is not aware of any liens that have been registered or trust claims made in relation to the Project up to the date of the request, or that any liens registered or trust claims made in relation to the Project as of the date of the request have been discharged or satisfied or adequate provision for the discharge or satisfaction thereof has been made.

Request Made After Completion of Roof and Eaves

- 4.08 With the first request for advance made after the roof and eaves of the Housing Complex have been constructed, the Developer must also include:
- (a) a current building location certificate prepared by a qualified Manitoba land surveyor confirming that, with the exception of any encroachments that may have existed prior to commencement of construction of the Project, there are no encroachments by buildings or other structures from the Land onto adjoining properties; and
 - (b) either:
 - (i) a zoning memorandum or a letter issued by the relevant municipal authority confirming that, based upon the surveyor's building location certificate referred to above, the Housing Complex and all other structures on the Land comprising the Project comply with all applicable zoning by-laws or regulations as to yards and alignments; or
 - (ii) a letter from the relevant municipal authority confirming that there are no current zoning by-laws or regulations in effect with respect to yards and alignments affecting the Land, the Housing Complex or any other structures on the Land.

Final Request

- 4.09 With the final request for advance, or in any event before the last advance is made, the Developer must provide or have provided a copy of a valid final, unconditional occupancy permit for the Housing Complex issued by the municipal authority having jurisdiction, or a letter from the municipal authority having jurisdiction confirming that the municipality does not issue occupancy permits, as well as copies of all licences and permits (if any) required to operate the Housing Complex.

Inspections, Approvals and Advances

- 4.10 Every time MHRC receives a request for advance that includes the requisite documentation, MHRC may inspect one or more of the Land, the Housing Complex and the Developer's Project records to determine if the work completed is consistent with the

status report and itemized listing of Actual Project Costs submitted with the request and otherwise complies with this Agreement. If MHRC is satisfied that the work is consistent with the request and is satisfied that the Developer is not then in breach of or in default of this Agreement, MHRC will approve the request.

- 4.11 If MHRC is not prepared to approve a request for advance, MHRC will advise the Developer of the deficiencies, concerns, breaches or defaults that the Developer must correct or address, and will advise the Developer of the amount of funds being withheld, if any, as permitted by subsection 4.19.
- 4.12 MHRC agrees to make advances as soon as possible after it approves a request.
- 4.13 Without limiting any other provision contained in this Agreement, MHRC shall be entitled to refuse to advance funds if MHRC, in its sole opinion, determines that the Developer, or any contractor, subcontractor, trade, supplier or worker:
- (a) has been adjudged bankrupt; or
 - (b) has made a general assignment for the benefit of creditors; or
 - (c) has had a receiver appointed; or
 - (d) has failed to make payments due to its subcontractors, suppliers or workers; or
 - (e) has persistently disregarded laws or ordinances; or
 - (f) has otherwise violated any one or more of the terms and conditions set out in this Agreement; or
 - (g) has had a claim made against it,

or if there is reasonable doubt that the Project will be completed within the time specified or in accordance with the terms and conditions set out in this Agreement.

- 4.14 Advances of MHRC Funding shall be made to the Developer through its solicitor. Advances will be remitted to the Developer's solicitor in trust and upon such trust conditions as MHRC and its solicitors shall consider **reasonable** including, without limitation, the following:
- (a) that the Developer's solicitor shall make any and all necessary holdbacks in connection with such advances in accordance with *The Builders' Liens Act* (Manitoba) and, in particular, section 24 thereof; and
 - (b) that the lien holdbacks shall only be released in accordance with section 25 of *The Builders' Liens Act* and provided that:
 - (i) no builders' liens have been filed, nor any notices of claim for lien received by MHRC, within the statutory lien period provided for in that Act; and
 - (ii) neither the Developer nor its solicitor has received notice of any trust claims pursuant to *The Builders' Liens Act* relating to the Land or the Housing Complex prior to the expiration of the statutory lien period and release of the applicable lien holdback(s).

Inspections

- 4.15 MHRC may inspect the Land, the Housing Complex and the Project records at any other times to determine whether or not to approve a request to advance MHRC Funding.
- 4.16 The Developer agrees to cooperate in any inspections, and to grant MHRC and its representatives access at all reasonable times to the Land, the Housing Complex, the Project records, and to the Developer's premises for these purposes if the premises are not situated on the Land.

Unaudited and Audited Statements of Project Costs

- 4.17 Thirty days before the date by when Total Completion is required to occur according to clause 2.01(f), the Developer must provide MHRC with an unaudited statement of the Actual Project Costs incurred to that date, and the Estimated Project Costs still to be incurred, up to Total Completion.
- 4.18 Within 90 days after Total Completion, the Developer must provide MHRC with an audited statement of the Actual Project Costs as compared to the Estimated Project Costs ("Audited Statement of Costs"), prepared by a chartered accountant (CA), certified general accountant (CGA) or certified management accountant (CMA) registered for practice in public accounting, who is a member in good standing of a Canadian organization authorized to regulate the profession, in the form attached as Appendix "B".

Holdback and Excess Advances

- 4.19 MHRC may withhold all or part of the MHRC Funding the Developer requests MHRC to advance until the Developer corrects deficiencies or addresses concerns identified in an inspection carried out under subsection 4.10 or subsection 4.15.
- 4.20 In addition to any funds held back under subsection 4.19, MHRC will not release the last \$XXXXXXX until the Developer has:
- (a) provided the Audited Statement of Costs referred to in subsection 4.18 and it is satisfactory to MHRC; and
 - (b) otherwise complied with all of the provisions of this Agreement.
- 4.21 If the Audited Statement of Costs indicates that the net Actual Project Costs are less than the total Estimated Project Costs, instead of releasing the last \$XXXXXX, MHRC will only release an amount equal to the net Actual Project Costs less what MHRC has already advanced.
- 4.22 If, when the Audited Statement of Costs is received by MHRC, MHRC has already advanced funds in an amount that is greater than the net Actual Project Costs set out in the Audited Statement of Costs,
- (a) the last \$XXXXXX will not be released, and
 - (b) the difference between the amount already advanced by MHRC and the net Actual Project Costs becomes a debt due immediately to MHRC, payable on demand, and may, in MHRC's sole discretion, be set off against any amounts payable by MHRC to the Developer under this Agreement or any other contract.

If this is the case, MHRC will provide written notice to the Developer of the amount due.

General

- 4.23 The Developer may amend a request for advance, but all amendments must be in writing.
- 4.24 At any time during the Term, MHRC may in its sole discretion request any other documentation and information relating to the Project, the Land, the Housing Complex or the Developer, including (without limitation) evidence that the requisite insurance is in force. The Developer agrees to provide the requested documentation and information to MHRC.
- 4.25 MHRC may in its sole discretion waive the requirement, or extend the time, to provide one or more of the documents referred to in this section.

PART III – GENERAL

SECTION 5.00 - RECORDS, REPORTS, MONITORING AND AUDITS

- 5.01 Throughout the Term and for at least seven (7) years following the end of the Term, the Developer agrees to keep the records necessary to properly manage the Project, including accurate and complete financial and accounting records, prepared in accordance with generally accepted accounting principles. The Developer agrees to provide these records to MHRC on MHRC's request.

5.02 The Developer agrees that MHRC and its representatives may inspect and audit all records relating to the Project and the Housing Complex, or this Agreement, at all reasonable times. The Developer, and its officers, directors, shareholders and employees, shall cooperate in any such inspection or audit by MHRC, and neither the Developer, nor any of its officers, directors, shareholders or employees, shall interfere with any such inspection or audit by MHRC, or its authorized representatives or agents, either directly or indirectly, nor will they take any action during the course of any inspection or audit that may prejudice the outcome of that inspection or audit. The Developer further agrees to provide reasonable facilities for such inspections and audits, and provide copies of or extracts from any records that MHRC or its representatives may request.

SECTION 6.00 - CONFLICT OF INTEREST POLICY

6.01 The Developer agrees to have a conflict of interest policy in place at all times while this Agreement is in effect, and to ensure that its conflict of interest policy meets or exceeds the standards and requirements set out in MHRC's Conflict of Interest Policy and Guidelines attached as Appendix "C". The Developer agrees to abide by its policy and to require all of its officers, employees and agents to abide by such policy as a condition of their employment with or engagement by the Developer. The Developer agrees to provide a copy of its conflict of interest policy to MHRC, upon request by MHRC.

SECTION 7.00 - INSURANCE

7.01 The Developer agrees to purchase and maintain, or ensure that the following insurance coverage is purchased and maintained, and continued for the period specified:

- (a) until construction of the Housing Complex has been fully completed, commercial general liability insurance against claims for personal and bodily injury, death, or damage to property of others, arising out of all operations of the Developer, its officers, employees, contractors or agents that are funded by this Agreement; and
- (b) prior to commencement of the construction phase of the Project and until construction of the Housing Complex has been fully completed, "builder's risk" insurance covering the Housing Complex for the full replacement value in an amount not less than the Estimated Project Costs, with a deductible not exceeding \$10,000.00.

7.02 Without limiting or restricting the generality of subsection 7.01 above, such insurance must:

- (a) name MHRC, its officers, employees, and agents as Additional Insureds with respect to the commercial general liability insurance coverage relating to the operations performed under this Agreement;
- (b) show MHRC as a loss payee with respect to the "builder's risks" Property insurance coverage by virtue of its financial interest in the Project and the Land;
- (c) if the Developer is a non-profit organization, provide \$2,000,000.00 aggregate non-profit organization directors' and officers' liability insurance;
- (d) provide \$2,000,000.00 per occurrence minimum limits of third party liability coverage; and
- (e) contain a clause which states that the insurer will not cancel the policy without giving thirty (30) days prior notice in writing to MHRC.

7.03 MHRC shall be entitled to require coverage for such other risks and perils as it may from time to time consider advisable or desirable and in respect of which insurance coverage may be available.

7.04 The Developer agrees that it will not cancel, materially alter, cause or allow the insurance coverage required under this Agreement to lapse without giving 30 days prior written notice to MHRC.

7.05 The Developer agrees to waive any rights of subrogation it may have in respect of the insurance coverage referred to in this section, in favour of MHRC.

- 7.06 It is the responsibility of the Developer to determine the appropriate amount and terms of the insurance coverage required under clauses 7.01(a) and (b) and whether errors and omissions or professional liability insurance or any other insurance is necessary or advisable, but the amounts and terms must be consistent with the requirements of subsections 7.01 and 7.02.
- 7.07 Prior to making the first request for advance of the MHRC Funding, and thereafter on or before each policy expiry date until construction of the Housing Complex has been fully completed, the Developer must submit a certificate of insurance to MHRC, evidencing the required insurance.
- 7.08 The Developer shall immediately notify MHRC in the event of any loss or damage.
- 7.09 MHRC shall not be responsible for the payment of any deductible that may become due and payable as a result of any claim that may be made with respect to any of the insurance coverage required to be placed and maintained by the Developer pursuant to this Agreement.
- 7.10 In the event of any loss or damage to the Housing Complex, whether before or after the completion of construction of the Housing Complex, no repair or reconstruction shall be effected without the prior written approval of MHRC, in its sole discretion.
- 7.11 The Developer must ensure that all of its employees and all contractors, subcontractors and their employees:
- (a) involved in the construction, rehabilitation or conversion are covered by workers' compensation insurance as required under *The Workers Compensation Act* (Manitoba); and
 - (b) working in the Housing Complex or on the Land are covered by workers' compensation insurance as may be required under *The Workers Compensation Act* (Manitoba).
- 7.12 The Developer must not do or omit to do anything or permit anything to be done or not to be done which will in any way impair or invalidate its insurance coverage.

SECTION 8.00 - WORKPLACE SAFETY AND HEALTH

- 8.01 The parties acknowledge that MHRC meets the definition of "Owner" as defined in *The Workplace Safety and Health Act* (Manitoba) (the "WSH Act") in respect of the Project.
- 8.02 The parties acknowledge that the Developer shall be required to designate XXXXXXXXXXXX, who shall take on the role of "prime contractor" as defined in the WSH Act and shall assume all the duties and responsibilities of a prime contractor under the WSH Act.
- 8.03 The Developer may be an "employer" or "contractor," as those roles are defined in the WSH Act, in relation to the prime contractor, or employees, agents, contractors or subcontractors undertaking work relating to the Project, and shall have all the duties and responsibilities of an employer or contractor under the WSH Act in relation to the prime contractor or those undertaking work relating to the Project, as the case may be.
- 8.04 The Developer shall immediately notify and provide MHRC with copies of any notices, orders or charges issued in relation to the Project under the WSH Act.
- 8.05 Except to the extent that the Developer is permitted to, and does, delegate its duties under the WSH Act as prime contractor to the contractor under the Construction Contract, the Developer shall be solely responsible for workplace safety and health at the construction site and at any other locations where the Developer's employees, agents, contractors or subcontractors may be undertaking work relating to the Project or its day to day operations and for compliance with all laws, rules, regulations and practices required by the applicable construction and workplace safety legislation.
- 8.06 The Developer agrees to indemnify and save harmless MHRC, The Government of Manitoba and its Ministers, and their respective officers, employees and agents from any and all losses, costs, claims, damages and expenses arising out of the Developer's performance of, or its failure to perform, any of its obligations as an employer or

contractor under the WSH Act including, without limitation, any fines or penalties, the cost of compliance with any court or governmental direction or order, and the costs of responding to, investigating and defending any claim, action, administrative action or order or charge, including the costs of consultants, experts and legal advisors, all on a full indemnity basis. This indemnification shall survive the termination or expiration of this Agreement.

SECTION 9.00 - NON-LIABILITY OF MHRC

9.01 MHRC shall not be liable for any injury to or loss or damage suffered by the Developer, or the Developer's officers, employees, agents or contractors, including (without limitation) death or economic loss, caused by or in any way related to the performance of this Agreement or the carrying out of the Project.

SECTION 10.00 - INDEMNIFICATION BY DEVELOPER

10.01 The Developer shall use due care in carrying out the Project, and in the performance of its obligations under this Agreement, to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

10.02 The Developer shall be solely responsible for and shall save harmless and indemnify MHRC, The Government of Manitoba and its Ministers, and their respective officers, employees and agents from and against all claims, liabilities and demands with respect to any injury to persons (including, without limitation, death), damage or loss to or destruction of property, economic loss or infringement of rights caused by, or related to:

- (a) the Project;
- (b) the performance of this Agreement or any other agreement with MHRC relating to the Land or the Housing Complex or the breach of any term or condition of this Agreement, or any other agreement with MHRC relating to the Land or the Housing Complex, by the Developer, or its officers, employees, agents or contractors; and
- (c) any omission or wrongful or negligent act of the Developer, or its officers, employees, agents or contractors,

together with all costs, expenses and fees associated therewith including, without limitation, legal costs on a solicitor and own client basis, except to the extent that such claims arise directly from any omission or wrongful or negligent act of MHRC, or its officers, employees or agents while acting within the scope of their employment with or engagement by MHRC. This indemnification shall survive the termination or expiration of this Agreement and any other agreement that may be in effect between the Developer and MHRC with respect to the Land or the Housing Complex.

SECTION 11.00 - THIRD PARTY CONTRACTS

11.01 The Developer shall ensure that any contracts it enters into with any Third Party in respect of the Project or the Housing Complex shall:

- (a) be in accordance with good business practices and any requirements which may be stipulated by MHRC;
- (b) be consistent with the terms and conditions of this Agreement;
- (c) provide that the Third Party shall comply with all applicable legislation and standards, whether federal, provincial or municipal, including, without limitation, labour, environmental, human rights and workers' compensation legislation;
- (d) provide that the Third Party shall be solely responsible for and shall save harmless and indemnify MHRC, The Government of Manitoba and its Ministers, and their respective officers, employees and agents from and against all claims, liabilities and demands of any kind with respect to any injury to persons (including, without limitation, death), damage or loss to or destruction of property, economic loss or infringement of rights caused by, or related to:
 - (i) the performance of the contract, or the breach of any term or condition of the contract by the Third Party or its officers, employees or agents; and

- (ii) any omission or wrongful or negligent act of the Third Party or its officers, employees, agents or subcontractors,

together with all costs, expenses and fees associated therewith including, without limitation, legal costs on a solicitor and own client basis, except to the extent that such claims arise directly from any omission or wrongful or negligent act of MHRC, or its officers, employees or agents while acting within the scope of their employment with or engagement by MHRC; and

- (e) provide that the Third Party shall maintain all of its records relating to the contract between the Developer and the Third Party and that, on MHRC's request, the Third Party shall provide MHRC with invoices and any other supporting documentation required by MHRC relating to the contract including, if applicable, verification of the Actual Project Costs itemized in a request for advance made in relation to the Project.

11.02 Upon the request of MHRC, the Developer shall provide MHRC with a copy of any contract entered into with a Third Party respecting the Project or the Housing Complex.

11.03 Any Third Party with which the Developer enters into a contract in relation to the Project or the Housing Complex that is a corporation shall be registered and in good standing under the laws of Manitoba.

11.04 The contracts referred to in subsection 2.01 (b), (c) and (d) shall be assignable to MHRC in the event of any breach or default as described in section 13.00 herein.

11.05 The Developer must not assume or create any obligations or responsibility on behalf of MHRC, except as may be set out in this Agreement or otherwise authorized in writing by MHRC.

SECTION 12.00 - REPRESENTATIONS AND WARRANTIES

12.01 The Developer represents and warrants that, as of the date of this Agreement:

- (a) it possesses all rights, interests, powers and expertise necessary to properly undertake the Project and perform its obligations under this Agreement;
- (b) there are no actions, suits or any legal proceedings pending or, to the knowledge of the Developer, threatened against or adversely affecting the Developer which might materially affect the financial condition of the Developer or its ability to complete the Project; and
- (c) if the Developer is a corporation:
 - (i) it is a valid and existing corporation, duly registered under *The Corporations Act* (Manitoba) to carry on business in Manitoba;
 - (ii) it has the corporate power and authority to enter into and deliver, and perform the obligations of the Developer under, this Agreement; and
 - (iii) all necessary corporate actions or other proceedings have been taken to authorize the Developer to enter into and deliver, and perform the obligations of the Developer under, this Agreement.

12.02 The Developer acknowledges that MHRC has entered into this Agreement relying on the above representations and warranties. The Developer agrees to advise MHRC of any event, condition or circumstance occurring during the Term that would make a representation or warranty made in subsection 12.01 untrue or misleading if the Developer were required to make it at the time of the occurrence.

SECTION 13.00 - EVENTS OF DEFAULT

13.01 The Developer shall be in breach of and in default under this Agreement if at any time:

- (a) the Developer becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;

- (b) an order is made or resolution is passed for the dissolution or winding-up of the Developer or it is otherwise likely to lose its corporate status;
- (c) the Developer ceases to provide Development Services as identified in subsection 2.01, carry out, develop or complete the Project;
- (d) the Developer knowingly makes false statements or entries in any invoices, documents or records required to be presented, kept, maintained or provided under this Agreement;
- (e) the Developer is in default under any other agreements, present or future, relating to the Project, the Housing Complex or the Land which could adversely affect MHRC;
- (f) any creditor of the Developer attaches or garnishes any Project funds, or seizes or encumbers the Housing Complex, or the Land or any substantial asset used in connection with the Housing Complex, or the Land, or the Project;
- (g) any representation or warranty made by the Developer is false or misleading in any material respect;
- (h) in the opinion of MHRC, the Developer has failed to proceed diligently with the Project, including, but not limited to, failure to meet deadlines or milestones stipulated in this Agreement except where such failure is due to Unavoidable Delay;
- (i) in the opinion of MHRC, there is a material adverse change in risk in the Developer's ability to carry out, develop or complete the Project; or
- (j) MHRC is of the opinion that:
 - (i) the Developer is not carrying out, managing or completing the Project in accordance with the terms and conditions of this Agreement; or
 - (ii) the Developer has failed to comply with, or is about to fail to comply with, any of its obligations or undertakings under this Agreement.

13.02 The Developer agrees and undertakes to give MHRC prompt written notice of the occurrence of any event which constitutes or may, with the passage of time, constitute a breach or default under this Agreement.

SECTION 14.00 - CONSEQUENCES OF DEFAULT

14.01 If the Developer is in breach of or in default under this Agreement, MHRC may do or require one or more of the following:

- (a) withhold all or part of any advance under this Agreement until the Developer has remedied the breach, default or failure to the satisfaction of MHRC;
- (b) set off against any advance under this Agreement by MHRC any amount payable by the Developer to MHRC under this Agreement or under any other contract;
- (c) demand in writing that the Developer promptly pay any amount due and payable under this Agreement; and
- (d) immediately terminate this Agreement by notice in writing to the Developer, effective on receipt.

14.02 Upon MHRC providing notice of termination of this Agreement, MHRC shall be under no obligation to make further advances to the Developer.

SECTION 15.00 - PUBLIC ANNOUNCEMENTS

15.01 The Developer must ensure that no communication, publication, advertising or news release referring to the Project or the MHRC Funding occurs unless approved by MHRC. MHRC will coordinate with the Developer an official event or announcement, or both, of the Project and may require additional announcements or events be coordinated with the

Developer including, but not limited to, a groundbreaking event and an official opening of the completed Project. Any and all communication activities, publications, advertising and news releases referring to the Project shall include appropriate acknowledgment of MHRC, in terms satisfactory to MHRC.

- 15.02 Where directed to do so by MHRC, the Developer shall erect such signs, including a permanent interior sign or plaque, which signs or plaque shall be maintained by the Developer until permission for its removal is given by MHRC.

SECTION 16.00 - TERM OF AGREEMENT

- 16.01 This Agreement comes into effect on the date it is executed by both parties and shall remain in force until the Developer has performed all of its obligations under this Agreement, unless terminated earlier in accordance with this Agreement.

SECTION 17.00 - GENERAL

- 17.01 This Agreement shall enure to the benefit of MHRC, its successors and assigns, and be binding upon the heirs, executors, administrators, successors and permitted assigns of the Developer.
- 17.02 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.
- 17.03 Any waiver by MHRC of any failure, default or breach under this Agreement by the Developer shall not be effective unless given in writing by an authorized person and shall not constitute a subsequent waiver of a similar or any other failure, default or breach.
- 17.04 If any provision of this Agreement is for any reason held to be invalid or unenforceable, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid or unenforceable provision had never been included in this Agreement.
- 17.05 If the Developer is more than one entity, person or individual, the obligations of the Developer in this Agreement are joint and several obligations of each of them. Liability for a single Developer's breach can be enforced against all of the Developers or any one or more of them.
- 17.06 The Developer shall not assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of MHRC, which consent may be withheld by MHRC in its sole discretion. No assignment or transfer of this Agreement shall relieve the Developer of any obligations under this Agreement, except to the extent that they are properly performed by the Developer's permitted assigns or transferees.
- 17.07 Nothing in this Agreement shall be construed as implying an agency, joint venture or partnership relationship between the parties, nor between MHRC and any agents or subcontractors of the Developer. The relationship of the Developer to MHRC is that of an independent contractor.
- 17.08 Those sections containing obligations and indemnifications that by their very nature are intended to survive the termination or expiration of this Agreement shall survive the expiration or termination of this Agreement.
- 17.09 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba and of Canada as may be applicable. Any disputes in relation to this Agreement that MHRC and the Developer seek to resolve through the courts shall be brought exclusively in a court of applicable jurisdiction located in Manitoba.
- 17.10 Time is of the essence of this Agreement.

SECTION 18.00 – NOTICES

- 18.01 Any notice or other communication under this Agreement shall be in writing and shall be addressed and personally delivered, sent by prepaid registered mail, or sent by facsimile transmission to the parties as follows:

- (a) To MHRC: The Manitoba Housing and Renewal Corporation
700 – 352 Donald Street
Winnipeg MB R3B 2H8
Attention: Director, Financial Services
Facsimile Number: (204) 945-4710
- (b) To the Developer: XXXXXX.
XXXXXX
XXXXXX
Attention: XXXXXX
Facsimile Number: (204) XXX-XXXX
Phone Number: (204) XXX-XXXX

18.02 Any notice or communication that is:

- (a) delivered, shall be deemed to have been received on the date of the delivery; or
- (b) sent by registered mail, shall be deemed to have been received on the third business day of MHRC following the date of mailing; or
- (c) sent by facsimile transmission, shall be deemed to have been received on the next business day of MHRC following the date of transmission.

18.03 If mail service is disrupted by labour controversy on or within three (3) business days from the date of mailing, the notice or communication shall be delivered or sent by facsimile transmission.

18.04 MHRC or the Developer may change its own address and other information set out in subsection 18.01 by giving notice in writing to the other party.

THIS AGREEMENT has been executed on behalf of The Manitoba Housing and Renewal Corporation, by its duly authorized representatives, and on behalf of XXXXXX by its duly authorized representatives, on the dates noted below.

THE MANITOBA HOUSING AND RENEWAL CORPORATION

Per: _____

Per: _____

DATE: _____

SIGNED IN THE PRESENCE OF:

XXXXXX XXXXXX
I/we have authority to bind the Developer.

Witness

Per: _____
Signature

Position

Witness

Per: _____
Signature

Position

DATE: _____

PART IV - DESCRIPTION OF APPENDICES

APPENDIX "A":

PART 1: PROJECT DESCRIPTION	2 pages
PART 2: ESTIMATED PROJECT COSTS	1 page
PART 3: SOURCES OF FUNDING FOR PROJECT	1 page
PART 4: PROJECT TIMELINE AND ESTIMATED CASH FLOW	1page

APPENDIX "B":

FORM OF AUDITED STATEMENT OF ACTUAL COSTS	1 page
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APPENDIX "C":

MHRC'S CONFLICT OF INTEREST POLICY AND GUIDELINES	3 pages
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