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FINANCIAL ASSISTANCE AGREEMENT

This financial assistance agreement dated for reference _____, 20 [insert year]

BETWEEN:

THE MANITOBA HOUSING AND RENEWAL CORPORATION
(“MHRC”)

- and -

[NAME OF RECIPIENT]

(the “**Recipient**”).

WHEREAS Pursuant to subsection 37 (1.1.1) of *The Child Care Regulation 62/86 (M.R. 123/2020) under The Community Child Care Standards Act (C.C.S.M. c. C158)*, the Province of Manitoba (Manitoba) may make grants to licensees of child care centres for the purpose of constructing or renovating centres or purchasing equipment;

AND WHEREAS The Government of Manitoba, through its Early Learning and Child Care Division, is providing capital building funding for this purpose;

AND WHEREAS MHRC has been appointed by Manitoba’s Department of Education and Early Childhood Learning, as its agent to administer and manage the Early Learning and Child Care (ELCC) Community-based Capital Building Fund for approved capital projects to develop new child care spaces in new child care centres or additions to existing child care centres;

AND WHEREAS the Recipient either owns or leases the Land (defined below), or will, for the purpose of operating a Child Care Centre (defined below).

The parties agree as follows:

PART I – INTERPRETATION

SECTION 1.00 - DEFINITIONS, INTERPRETATION AND APPENDICES

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 Recipient;
- (b) **“Approved Lender”** means a lender designated as an approved lender at the relevant time by Canada Mortgage and Housing Corporation under the National Housing Act (Canada) for all types of lending in Manitoba or such other lender as MHRC may, in writing, approve;
- (c) **“Child Care Centre”** has the meaning defined in the The Community Child Care Standards Act, CCSM c C158;
- (d) **“Construction Contract”** means the contract referenced in clause 2.01(g) that the Recipient has entered into or will enter into to construct or modify the Premises as described in Appendix “A”, Part 1;
- (e) **“Design Services Contract”** means the contract for services relating to the Project entered into by the Recipient and an architect or an architectural firm;
- (f) **“Estimated Project Costs”** means the estimated costs of the Project approved by MHRC as set out in Appendix “A”, Part 2, Column A;
- (g) **“Final Holdback Release”** means either the date MHRC releases the holdback pursuant to subsection 6.15, 6.16 or 6.17, or the date MHRC provides written notice under subsection 6.18;

- (h) **“Fiscal Year”** means the period beginning on April 1 of any year and ending on March 31 of the immediately following year;
 - (i) **“Forgivable Grant”** means the financial assistance, which shall be forgivable if the terms of this agreement are met, to be advanced by MHRC to the Recipient as described in section 4.00;
 - (j) **“Forgiveness Date”** means the later of the Recipient obtaining a license to operate the Child Care Centre or the Final Holdback Release date.
 - (k) **“Land”** means the land located at [insert civic address of location of proposed project] , in [insert name of place] , in Manitoba, and legally described in Appendix “A”, Part 1;
 - (l) **“Land Being Used As Security”** is either (enter legal description) or Land as defined above, being using as security for the Mortgage.
 - (m) **“Mortgage”** means the demand mortgage referred to in subsection 5.01;
 - (n) **“Premises”** means the building or portion thereof on the Land where the Recipient is, or will be, operating a Child Care Centre;
 - (o) **“Project”** means the design, financing, development and construction, or modification of an approximately XXX square foot Child Care Centre at XXXX, Manitoba, as more particularly described in Appendix “A”;
 - (p) **“Term”** has the meaning given to it in section 18.00;
 - (q) **“Third Party”** means any person, corporation, organization or entity other than MHRC or the Recipient;
 - (r) **“this Agreement”** means this document and the Appendices listed in subsection 1.04 of this document;
 - (s) **“Total Completion”** means the later of the date on which MHRC verifies that the Child Care Centre has been completed to MHRC’s satisfaction and the date on which a permit for the completed Child Care Centre has been issued.
- 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;
 Part 4: Project Timeline and Estimated Cash Flow;
 - (b) Appendix “B” Form of Mortgage and Schedule to Mortgage;
 - (c) Appendix “C” Form of Audited Statement of Actual Costs;
 - (d) Appendix “D” 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 (B) – THE PROJECT

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

2.01 The Recipient agrees and undertakes:

- (a) to start construction within one (1) year of receipt of ELCC capital building funding approval for continued eligibility of funding support for the capital project. Failure to meet this timeline may result in grant approval being withdrawn.
- (b) to complete the Project as contemplated in Appendix “A” and within two years of grant approval;
- (c) to ensure that Total Completion occurs no later than [insert date] , or such later date as MHRC may, in its sole discretion, agree to in writing;
- (d) to use the Forgivable Grant funds solely to pay for Actual Project Costs;
- (e) to use reasonable efforts to ensure that the Actual Project Costs are kept to a minimum;
- (f) to carry out, manage and complete the Project in a professional, safe and prudent manner and in accordance with good business practices;
- (g) not to substantially change any aspect or component of the Project, except with the prior written consent of MHRC;
- (h) to enter into a stipulated price contract with a Third Party for the construction or rehabilitation of the Child Care Centre;
- (i) to carry out, manage and complete the Project in accordance with *The Builders’ Liens Act* (Manitoba) and all other applicable laws and regulatory requirements, whether federal, provincial or municipal;
- (j) 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;
- (k) to obtain such professional advice and services, inspection, certificates and reports as may be necessary to ensure the Project is completed in accordance with this Agreement, and acceptable engineering and construction standards, including Building Code, Fire Code, Public Health and Early Learning and Child Care Licencing requirements;
- (l) to ensure the Project involving construction greater than 600 square meters (6,458 square feet) of space (new buildings or additions to existing buildings) must be constructed adhering to the requirements of The Green Building Program for Government of Manitoba Funded Projects. Refer to website <http://www.gov.mb.ca/finance/greenbuilding>.
- (m) to ensure the Project must be designed to be eligible for Manitoba Hydro’s Energy Efficiency Programs;
- (n) to provide MHRC and/ or ELCC an opportunity to review and approve all drawings and specifications necessary to construct the Project. Such approval does not warrant adequacy of drawings but is only to confirm they meet MHRC’s internal requirements; and
- (o) to begin construction only when:
 - (i) MHRC has provided their consent in writing by executing this agreement, and
 - (ii) The recipient has secured all funding for the Project and provided confirmation of sources of funding satisfactory to MHRC.

- (p) Financial Records:
- (i) The Recipient must establish and maintain accurate and complete accounting and other records (including supporting documents), prepared in accordance with the general accepted accounting principles, to properly account for amounts received or paid for services or goods provided or acquired in carrying out the project;
 - (ii) The Recipient agrees to make the financial records as per item (p(i)) available until at least three (3) years after completion of the Project, and be available for inspection and audit by Manitoba and its representatives and auditors, and must be produced by the Recipient on demand;
 - (iii) The Recipient agrees to provide reasonable facilities for such inspections and audits, to provide copies of and extracts from the accounts, financial documents and other records requested by Manitoba and its representatives or auditors, and agrees to promptly provide such other information as may be reasonably requested by Manitoba and its representatives or auditors, from time-to-time.

SECTION 3.00 - COSTS AND FUNDING SOURCES FOR THE PROJECT

As of the date of this Agreement, the Estimated Project Costs are as set out in Appendix "A", Part 2,

- 3.01 The sources for financing the Actual Project Costs and responsibility for paying them are as set out in Appendix "A", Part 3.
- 3.02 The Recipient's estimated cash flow requirements for the Project are as set out in Appendix "A", Part 4.
- 3.03 The parties acknowledge that the Estimated Project Costs may change after the date of this Agreement. If the total Estimated Project Costs change, the Recipient must, as soon as possible, advise MHRC of the change.
- 3.04 The Recipient shall be solely responsible for any cost over-runs it may experience in the course of undertaking the Project.
- 3.05 The Recipient must obtain MHRC's written consent before borrowing funds that exceed the total amount being financed as set out in Appendix "A", Part 3, items 2 and 3.
- 3.06 The Recipient agrees to provide MHRC with updated Appendix "A" Part 2 and Part 3 and Part 4 acceptable to MHRC, that reflect changes in the total Estimated Project Costs, and the corresponding changes in the amounts being financed and estimated cash flow requirements, promptly after they change.

SECTION 4.00 - FORGIVABLE GRANT

- 4.01 MHRC agrees to make a Forgivable Grant to the Recipient of up to the amount set out in Appendix "A", Part 3, item 4 for the purpose of paying Actual Project Costs for the construction of the child care centre. The Forgivable Grant funds shall not be used for
- (i) Costs related to property acquisition or construction work undertaken prior to notice of grant approval;
 - (ii) Costs of land or acquiring land;
 - (iii) Costs of leasing land, building, equipment (not related to construction of child care centre) and other facilities
 - (iv) Financing and interest costs, except those related to financing for the capital project;
 - (v) Acquiring or leasing of furniture, fitments, and/or equipment, for operational use.
 - (vi) Any Third Party's legal fees

- 4.02 Notwithstanding any other provision of this Agreement, the Recipient must use the Recipient's own contribution in the amount set out in Appendix "A", Part 3, item 1 before making any requests for advance of the Forgivable Grant.
- 4.03 Nothing in this Agreement creates any undertaking, commitment or obligation on the part of MHRC to provide additional funding to the Recipient for the Project.
- 4.04 Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that in the event the Recipient realizes actual funding for the Project from sources other than the FMHRC in excess of the amounts set out in Appendix "A", the amount of the Forgivable Grant may be adjusted and reduced by the amount of such excess.

SECTION 5.00 - MORTGAGE

- 5.01 As security for complying with its obligations under this Agreement, the Recipient agrees to grant a:
- (a) If the Recipient owns real property in Manitoba, a demand mortgage against the interest, whether freehold or leasehold, of the Recipient in the Land Being Used As Security to MHRC securing a principal sum in the maximum amount that MHRC will advance under the Forgivable Grant as set out in Appendix "A", Part 3, item 4. The demand mortgage shall be a [first or second] mortgage on the Land Being Used As Security. The Recipient agrees to prepare or cause the Mortgage to be prepared in the form attached as Appendix "B" and register or cause the Mortgage to be registered in the appropriate Land Titles Office against the title to the Land; and
 - (b) As security for complying with its obligations under this Agreement, the Recipient agrees to execute a demand promissory note in the form attached As Appendix B securing a principal sum in the maximum amount that MHRC will advance under the Forgivable Grant as set out in Appendix "A", Part 3, item 4.
- 5.02 MHRC agrees to postpone the Mortgage in favour of the Approved Lender in the amount of financing committed by the Approved Lender as set out in Appendix "A", Part 3, item 2 and any increase in that amount consented to by MHRC under subsection 3.06.
- 5.03 MHRC may, but is not required or obligated to, agree to postpone the Forgivable Grant for the following purposes:
- (c) to permit refinancing of a mortgage registered in priority to the Mortgage to obtain more favourable terms in respect of interest rate, monthly payment, or other reasons agreed to by MHRC;
 - (d) to finance, at rates no greater than current market rates, cost over-runs or the cost of repairs; or
 - (e) to facilitate the making of advances on a mortgage registered in priority to the Mortgage which was not fully advanced at the time of registration of the Mortgage, if the principal amount of such prior mortgage has not been increased.
- 5.04 The Parties acknowledge and agree that as contemplated in Clause 15.01(f) hereof, default under the Mortgage also constitutes default under this Agreement.

SECTION 6.00 - RELEASE OF FORGIVABLE GRANT FUNDS

Every Request

- 6.01 Every request for MHRC to authorize release of Forgivable Grant funds 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.

- 6.02 Upon approval by MHRC, MHRC will authorize release of the funds stipulated in the Appendix "A", Part 2 of the amount of the invoice(s) to the maximum approved funding.

First Request

- 6.03 MHRC will not authorize the first release until the Recipient provides MHRC with:
- (a) a copy of the signed commitment letter from the Approved Lender committing to finance the amount set out in Appendix "A", Part 3, item 2, and from any other lenders committing to finance an amount set out in Appendix "A", Part 3;
 - (b) the results of a Phase I Environmental Site Assessment of the Land and any existing structures, indicating that the Land and any existing structures are safe for the proposed use, and if a Phase II Environmental Site Assessment is recommended in the Phase I assessment, the results of a Phase II Environmental Site Assessment indicating that the Land and any existing structures are safe for the proposed use;
 - (c) a copy of the Design Services Contract;
 - (d) a copy of the Construction Contract;
 - (e) a copy of the performance bond issued by a corporation authorized to carry on a suretyship business in Manitoba, or of an irrevocable letter of credit in favour of the Recipient, securing the performance of the Construction Contract in an amount not less than 50% of the value of the Construction Contract;
 - (f) evidence that the Mortgage has been registered in the appropriate Land Titles Office and that it has the priority of registration called for in subsection 5.01; and
 - (g) the certificate of insurance required under subsection 10.06.

Every Request After First Request

- 6.04 With every request for release of funds made after the first request, the Recipient 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 Recipient 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 has been made.

First Request after Commencement of Construction

- 6.05 With the first request for release of funds after the commencement of construction, the Recipient must include:
- (a) a completed Appendix "A" based on tender pricing, as approved by MHRC; and
 - (b) evidence that the Recipient has obtained, or made binding arrangements to obtain the Land.

Request Made After Completion of Roof and Eaves

- 6.06 Where the project includes construction, repair or modification of, or replacement of, roof and eaves, the first request for release of funds made after the roof and eaves of the Child Care Centre have been constructed, the Recipient must also include:
- (a) a current building location certificate prepared by a qualified Manitoba land surveyor confirming that there are no encroachments by buildings or other structures from the Land onto adjoining properties nor by buildings or other structures from adjoining properties onto the Land; 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 Land, Child Care Centre and all other structures on the Land 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, Child Care Centre and all other structures on the Land.

Final Request

- 6.07 With the final request for release of funds, or in any event before the last release of funds is made, the Recipient must provide or have provided a copy of a valid, final and unconditional occupancy permit for the Child Care Centre 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 required by the Recipient for it to operate the Child Care Centre.

Inspections, Approvals and Advances

- 6.08 Every time MHRC receives a request for release of funds that includes the requisite documentation, MHRC may inspect one or more of the Land, the Child Care Centre and the Recipient'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 Recipient is not then in breach of or in default of this Agreement, MHRC will authorize the release of funds up to the percentage indicated in Appendix "A," Part 2.
- 6.09 If MHRC is not prepared to approve a request for release of funds, MHRC will advise the Recipient of the deficiencies, concerns, breaches or defaults that the Recipient must correct or address, and will advise the Recipient of the amount of funds being withheld, if any, as permitted by subsection 6.18.
- 6.10 MHRC agrees to make authorize release of funds as soon as reasonably possible after it approves a request.

Inspections

- 6.11 MHRC may inspect the Land and the Premises, as well as the Project records at any time, and as frequently as it deems necessary, to determine whether or not to approve a release of Forgivable Grant funds.
- 6.12 The Recipient agrees to cooperate in any inspections, and to grant MHRC and its representatives access at all reasonable times to the Land and the Premises, as well as the Project records, and to the Recipient's premises for these purposes if the premises are not situated on the Land.

Unaudited and Audited Statements of Project Costs

- 6.13 Thirty days before the date by when Total Completion is required to occur according to clause 2.01(b), the Recipient 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.

- 6.14 Within 90 days after Total Completion, the Recipient 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 professional accountant (CPA) 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 “C”.

Holdback and Excess Advances

- 6.15 MHRC may decline to authorize release of all or part of the Forgivable Grant funds a Recipient requests MHRC to release until the Recipient corrects deficiencies or addresses concerns identified in an inspection carried out under subsection 6.11 or subsection 6.12, to the satisfaction of MHRC.
- 6.16 In addition to any funds not authorized to be released under subsection 6.15, MHRC will not authorize release of the last 10 per cent of the approved funding (\$XXXXX – 10% value) until the Recipient has:
- (a) provided the Audited Statement of Costs referred to in subsection 6.14 and it is satisfactory to MHRC; and
 - (b) otherwise complied with all of the provisions of this Agreement.
- 6.17 If the Audited Statement of Costs indicates that the net Actual Project Costs are less than the total Estimated Project Costs, or the Recipient has realized additional sources of funding, or both, instead of releasing the last [\$0.00 (same sum as ss.6.16)], MHRC will only authorize release an amount equal to the balance of the net Actual Project Costs then outstanding or the Forgivable Grant as adjusted pursuant to subsection 4.04, whichever is lesser amount. In no case shall MHRC be obligated to provide funds in excess of the Forgivable Grant amount.
- 6.18 If, when the Audited Statement of Costs is received by MHRC,
- (a) The Forgivable Grant funds that have already been released, together with all other sources of project funding, total an amount greater than the net Actual Project Costs, set out in the Audited Statement; or,
 - (b) MHRC has authorized release of funds greater than the Forgivable Grant, as may be adjusted pursuant to subsection 4.04; then,
 - (c) the last ten per cent of the approved funding (\$XXXXX – 10% value) will not be released, and
 - (d) the difference between the amount already advanced from all sources, including MHRC and the net Actual Project Costs; and, any amounts in excess of the Forgivable Grant, as may be adjusted, 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 Recipient under this Agreement or any other contract.

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

General

- 6.19 The Recipient may amend a request for release of funds, but all amendments must be in writing.
- 6.20 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 Child Care Centre, the tenants of the Child Care Centre or the Recipient, including (without limitation) an appraisal as to the value of the Child Care Centre, evidence that real property taxes have been paid or that the requisite insurance is in force. The Recipient agrees to provide the requested documentation and information to MHRC.
- 6.21 MHRC may in its sole discretion waive the requirement, or extend the time, to provide one or more of the documents referred to in subsections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.13 and 6.14.

PART III – OPERATING AND MANAGING THE CHILD CARE CENTRE

SECTION 7.00 - OBLIGATIONS AND UNDERTAKINGS OF THE RECIPIENT RELATING TO THE CHILD CARE CENTRE UPON COMPLETION OF PROJECT

7.01 The Recipient agrees and undertakes:

- (a) to commence operating a Child Care Centre within six months of obtaining a Child Care Centre license, and thereafter to continue to operate, manage, maintain and repair the Child Care Centre for a period of fifteen (15) years.
- (b) the Recipient must maintain the following for at least fifteen years (15) after the Project has been completed and the occupancy permit for the child care centre has been issued:
 - (i) ownership or tenancy, as the case may be, of the resulting child care centre
 - (ii) status as a valid and existing non-profit corporation; and
 - (iii) child care centre licensing under The Community Child Care Standards Act in good standing
- (c) to collaborate with Manitoba government officials, and MHRC regarding Ministerial visit, news releases, and similar events, planned by and at Manitoba Department of Education and Early Childhood Learning' sole discretion, of the opening of the new Child Care Centre or the expansion of the existing Child Care Centre

7.02 Nothing in this Agreement creates any undertaking, commitment or obligation on the part of MHRC to provide future or ongoing funding to the Recipient to operate or manage the Child Care Centre.

SECTION 8.00 - REPAYMENT AND CONDITIONS OF FORGIVENESS

8.01 The Forgivable Grant or any portion thereof released to the Recipient shall be repayable in full by the Recipient to MHRC in the event of default as per Section 15.

8.02 The Forgivable Grant shall be forgiven on the Forgiveness Date if the Recipient has complied with all its obligations under this Agreement that were required to be complied with prior to the Forgiveness Date.

PART IV – GENERAL

SECTION 9.00 - CONFLICT OF INTEREST POLICY

9.01 The Recipient 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 "D". The Recipient 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 employment or engagement by the Recipient. The Recipient agrees to provide a copy of its Conflict of Interest Policy on request of MHRC.

SECTION 10.00 - INSURANCE

10.01 The Recipient agrees to purchase and maintain throughout the Term:

- (a) 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 Recipient, its officers, employees, contractors or agents that are funded by this Agreement;
- (b) prior to commencement of the construction phase of the Project and until construction is completed, "builder's risk" insurance covering the Child Care Centre for the full replacement value in an amount not less than the Estimated Project Costs; and
- (c) from and after completion of the construction phase of the Project, "all risks" property insurance covering the Child Care Centre for the full replacement cost.

- 10.02 Without limiting or restricting the generality of subsection 13.01 above, such insurance must:
- (a) name MHRC, its officers, employees, and agents and the Government of Manitoba as Additional Insureds with respect to the commercial general liability insurance coverage relating to the operations performed under this Agreement;
 - (b) indicate MHRC's financial interest in the "builder's risks" and "all risks" property insurance coverage as a mortgagee, which insurance coverage shall be subject to the standard mortgage clause approved by the Insurance Bureau of Canada;
 - (c) provide \$2,000,000.00 aggregate 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.
- 10.03 The Recipient 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.
- 10.04 The Recipient 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.
- 10.05 It is the responsibility of the Recipient to determine the appropriate amount and terms of the insurance coverage required under clauses 10.01(a), (b) and (c), 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 10.01 and 10.02.
- 10.06 Prior to making the first request for release of funds of the Forgivable Grant, and thereafter on each anniversary of the policy renewal date during the Term, the Recipient must submit a certificate of insurance to MHRC, evidencing the required insurance.
- 10.07 The Recipient 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 Child Care Centre or on the Land are covered by workers' compensation insurance as may be required under *The Workers Compensation Act* (Manitoba)
- 10.08 The Recipient 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 11.00 - NON-LIABILITY OF MHRC

- 11.01 MHRC's responsibility with respect to the Land, the Project and the Child Care Centre is limited to providing financial assistance to the Recipient in accordance with the terms and conditions set out in this Agreement.
- 11.02 MHRC shall not be liable for any injury to or loss or damage suffered by the Recipient, or the Recipient'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, the carrying out of the Project or the operation of the Child Care Centre.

SECTION 12.00 - INDEMNIFICATION BY RECIPIENT

- 12.01 The Recipient shall use due care in carrying out the Project, in the performance of its obligations under this Agreement, and in the operation of the Child Care Centre to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

12.02 The Recipient 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 the breach of any term or condition of this Agreement by the Recipient, or its officers, employees, agents or contractors;
- (c) the on-going operation, maintenance or repair of the Child Care Centre or any activities related to the operation of the Child Care Centre; and
- (d) any omission or wrongful or negligent act of the Recipient, 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 negligent act or omission 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.

SECTION 13.00 - THIRD PARTY CONTRACTS

13.01 The Recipient shall ensure that any contracts entered into with any Third Party in respect of the Project or the Child Care Centre shall:

- (a) be in accordance with good business practices and any requirements which may be reasonably 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, agents; and
 - (ii) any omission or wrongful or negligent act or omission of the Third Party or its officers, employees or agents;

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 wrongful or negligent act or omission 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 Recipient 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.

13.02 Upon the request of MHRC, the Recipient shall provide a copy of any contract entered into with a Third Party respecting the Project or the Child Care Centre.

13.03 Any Third Party with which the Recipient enters into a contract in relation to the Project or the Child Care Centre that is a corporation shall be registered and in good standing under the laws of Manitoba.

SECTION 14.00 - REPRESENTATIONS AND WARRANTIES

14.01 The Recipient represents and warrants that, as of the date of this Agreement:

- (a) it is the registered owner, or lessee of the Land, or is entitled to be the registered owner, or lessee of the Land, or a lessee of the Premises;
- (b) it possesses all rights, interests, powers and expertise necessary to:
 - (i) properly undertake the Project;
 - (ii) properly operate and manage the Child Care Centre; and
 - (iii) perform its other obligations under this Agreement;
- (c) if the Premises are leased, that it has the written consent of the landlord to carry out the Project;

if the Premises are leased, the Recipient is to provide:

- (i) a copy of the signed lease agreement that is acceptable to ELCC that provides for:
 - (i-a) the construction of a XX-space child care centre by the Landlord (or Third Party acceptable to MHRC) in accordance with the approved architectural drawings and specifications for the Project;
 - (i-b) the payment of the Recipient's share of the Project costs by the Landlord, on behalf of the Recipient;
 - (i-c) a lease period for no less than fifteen (15) years respecting the exclusive use and occupancy of the resulting child care centre by the Recipient; and
 - (i-d) an option for the Recipient to purchase the resulting child care centre and the land on which it is situated at the end of the fifteen (15) year lease period or earlier; and
 - (i-e) where the Land Being Used As Security, is owned under a leasehold title, the landlord consents to a charge being registered against the leasehold interest of the Recipient
- (d) to the best of the Recipient's knowledge, the Recipient has funds available from its own sources or through financing arranged by the Recipient, free of any pre-conditions other than as disclosed by the Recipient to MHRC, which, together with the Forgivable Grant funds, will be sufficient to cover the cost to complete the Project;
- (e) there are no actions, suits or any legal proceedings pending or, to the knowledge of the Recipient, threatened against or adversely affecting the Recipient which might materially affect the financial condition of the Recipient or its ability to complete the Project; and
- (f) If the Recipient is a non-profit corporation:
 - (i) it is a valid and existing non-profit 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 Recipient under, this Agreement and the Mortgage; and
 - (iii) all necessary corporate actions or other proceedings have been taken to authorize the Recipient to enter into and deliver, and perform the obligations of the Recipient under, this Agreement and the Mortgage.

- (iv) [the Recipient] is an existing licensee of a non-profit child care centre, OR [the Recipient] is in the process of becoming a non-profit corporation established to provide child care, and applies to be licensed when child care physical space is identified.

14.02 The Recipient acknowledges that MHRC has entered into this Agreement relying on the above representations and warranties. The Recipient agrees to advise MHRC of any event, condition or circumstance occurring during the Term that would make a representation or warranty made in subsection 14.01 untrue or misleading if the Recipient were required to make it at the time of the occurrence.

SECTION 15.00 - EVENTS OF DEFAULT

15.01 The Recipient is in breach of and in default under this Agreement if at any time:

- (a) the Recipient 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 Recipient or it is otherwise likely to lose its corporate status;
- (c) the Recipient ceases to carry out, manage or complete the Project;
- (d) the Recipient ceases to operate or manage the Child Care Centre;
- (e) the Recipient knowingly makes false statements or entries in any invoices, documents or records required to be presented, kept, maintained or provided under this Agreement;
- (f) the Recipient is in default under, or has breached, this Agreement or the Mortgage;
- (g) the Recipient is in default under any other agreements, present or future, relating to the Project, the Child Care Centre or the Land which could adversely affect MHRC's security;
- (h) any creditor of the Recipient attaches or garnishes any Project funds, or seizes or encumbers the Child Care Centre, or the Land or any substantial asset used in connection with the Child Care Centre, or the Land, or the Project;
- (i) any representation or warranty made by the Recipient is false or misleading in any material respect;
- (j) in the opinion of MHRC, the Recipient 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;
- (k) in the opinion of MHRC, there is a material adverse change in risk in the Recipient's ability to carry out, manage or complete the Project or to operate or manage the Child Care Centre; or
- (l) MHRC is reasonably of the opinion that:
 - (i) the Recipient is not carrying out, managing or completing the Project in accordance with the terms and conditions of this Agreement; or
 - (ii) the Recipient has failed to comply with, or is about to fail to comply with, any of its obligations or undertakings under this Agreement.

15.02 The Recipient 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 16.00 - CONSEQUENCES OF DEFAULT

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

- (a) decline to authorize release of all or part of any funds under this Agreement until the Recipient 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 Recipient to MHRC under this Agreement or under any other contract;
- (c) demand in writing that the Recipient promptly pay any amount due and payable under this Agreement including the balance of the Forgivable Grant funds including any interest accrued held in trust by the Recipient's lawyer; and
- (d) immediately terminate this Agreement by notice in writing to the Recipient, effective on receipt.

16.02 Upon MHRC providing notice of termination of this Agreement:

- (a) the portion of the Forgivable Grant that has not been forgiven shall become immediately due and payable and such amount shall constitute a debt due and owing to MHRC; and
- (b) MHRC shall be under no obligation to make further advances to the Recipient.

SECTION 17.00 - PUBLIC ANNOUNCEMENTS

17.01 The Recipient shall ensure that any and all communications, publications, advertising and news releases referring to the Project include appropriate acknowledgement, in terms satisfactory to MHRC, of MHRC's contribution. The Recipient shall notify MHRC in advance of any and all such communication activities, publications, advertising and news releases.

17.02 MHRC in collaboration with Department of Education and Early Childhood Learning and Recipient may make public announcements and hold official ceremonies and special events respecting the Project where such announcements, ceremonies or events are indicated and appropriate, and shall endeavor to arrange such announcements, ceremonies or events jointly with the Recipient.

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

SECTION 18.00 - TERM OF AGREEMENT

18.01 This Agreement comes into effect on the date it is executed by both parties and shall remain in force until the Forgiveness Date.

SECTION 19.00 - GENERAL

19.01 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 Recipient.

19.02 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

19.03 Any waiver by MHRC of any failure, default or breach under this Agreement by the Recipient 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.

19.04 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.

19.05 If the Recipient is more than one entity, person or individual, the obligations of the Recipient in this Agreement are joint and several obligations of each of them. Liability for

a single Recipient's breach can be enforced against all of the Recipients or any one or more of them.

- 19.06 The Recipient 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 shall not unreasonably be withheld. No assignment or transfer of this Agreement shall relieve the Recipient of any obligations under this Agreement, except to the extent that they are properly performed by the Recipient's permitted assigns or transferees.
- 19.07 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. Without limitation, this includes Sections 7.00 and 12.00.
- 19.08 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 Recipient seek to resolve through the courts shall be brought exclusively in a court of applicable jurisdiction located in Manitoba.
- 19.09 Time is of the essence of this Agreement.

SECTION 20.00 - NOTICES

- 20.01 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 Recipient: [insert name of Recipient]
[insert civic address or post office box number of Recipient]
[insert name of place, Province and postal code]
Attention: [insert office or title of person to whom
notices are to be directed]
Facsimile Number: (204) [insert facsimile number]

20.02 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.

20.03 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.

20.04 MHRC or the Recipient may change its own address and other information set out in subsection 20.01 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 [insert name of Recipient], by its duly authorized representatives, on the dates noted below.

THE MANITOBA HOUSING AND RENEWAL CORPORATION

Per: _____

Per: _____

DATE: _____

SIGNED IN THE PRESENCE OF:

[INSERT NAME OF RECIPIENT]

Witness

Per: _____
Signature

Position

Witness

Per: _____
Signature

Position

I/we have authority to bind the Recipient.

DATE: _____

PART V - DESCRIPTION OF APPENDICES

APPENDIX "A"

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

APPENDIX "B" - FORM OF MORTGAGE AND SCHEDULE TO MORTGAGE	3 pages
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APPENDIX "C" - FORM OF AUDITED STATEMENT OF ACTUAL COSTS	1 page
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APPENDIX "D" - MHRC'S CONFLICT OF INTEREST POLICY AND GUIDELINES	3 pages
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