

COST OVERRUN AND COMPLETION AGREEMENT

THIS AGREEMENT is dated the _____ day of _____ 20_____.

BETWEEN:

 (the “**Borrower**”)

OF THE FIRST PART

AND:

 (the “**Indemnifier**”)

OF THE SECOND PART

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
 of Suite 1701 - 4555 Kingsway, Burnaby, British Columbia
 V5H 4V8
 (the “**Lender**”)

OF THE THIRD PART

WHEREAS:

- A. The Lender has agreed to make a **Construction Loan** available to the Borrower on the terms and conditions set out in the **Commitment Letter**, as hereinafter defined.
- B. It is a condition of the Lender making the **Construction Loan** available to the Borrower that this Agreement be executed by the Borrower and the Indemnifier.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration and of the sum of \$10.00 now paid to the Borrower and the Indemnifier by the Lender, the receipt and sufficiency of which is hereby acknowledged by the Borrower and the Indemnifier, the Borrower and the Indemnifier hereby irrevocably covenant and agree with the Lender as follows:

1. DEFINITIONS

1.1 Where used in this Agreement the following words shall have the meanings set out below:

- a) “**Agreement**” means this Cost Overrun and Completion Agreement;

- b) **"Budget"** means the capital cost budget attached hereto as Schedule "A" (and any amendments thereto) for the Project prepared by the Borrower and approved by the Lender;
- c) **"Budget Shortfall"** means the amount by which the aggregate cost as determined by the Lender acting on the advice of its quantity cost surveyor, to complete the construction of the Project after applying any cost savings to Cost Overruns, including hard and soft costs and the interest estimated to accrue due on the Construction Loan up to the date of completion of the Project, exceeds the unadvanced portion of the Construction Loan at such time;
- d) **"Commitment Letter"** means that letter which sets out the terms of the Construction Loan issued by the Lender dated _____, accepted by the Borrower and all amendments thereto, setting out the terms and conditions of the credit facility offered to the Borrower;
- e) **"Construction Loan"** means the Construction Loan made or to be made by the Lender to the Borrower pursuant to the Commitment Letter;
- f) **"Cost Overrun"** means an amount determined at the sole discretion of the Lender, acting on the advice of its quantity cost surveyor, by which the actual cost of construction of a portion of the Project (determined on a line-by-line basis) exceeds the amount established for construction of that portion of the Project (determined on a line-by-line basis) in the Budget;
- g) **"Lands"** means the property owned by the Borrower located in the City of _____, British Columbia, and legally described in the attached Schedule "B";
- h) **"Project"** means the _____ unit _____ project to be constructed on the Lands; and
- i) **"Project Time Lines"** means the time lines (and any amendments thereto) for the completion of the Project prepared by the Borrower and approved at the sole discretion of the Lender.

2. **Guaranteed Payment of Budget Shortfall Amounts and Completion of Project**

- 2.1 If during the term of the Construction Loan the Lender determines that a Cost Overrun has occurred or is about to occur it will provide notice of the Cost Overrun to the Borrower and the Indemnifier which notice shall require that the Borrower and the Indemnifier prepare a revised Budget for review by the Lender within five (5) business days of receipt of the notice by the Borrower and the Indemnifier. If the Borrower and the Indemnifier fail to submit the revised Budget to the Lender, the Lender will, at the expense of the Borrower and the Indemnifier, have its quantity cost surveyor prepare a revised Budget. Upon review of the revised Budget, the Lender acting on the advice of its quantity surveyor, will determine if a Budget Shortfall has occurred or is about to occur.
- 2.2 If a Budget Shortfall is deemed by the Lender to have occurred or is about to occur, the Borrower and the Indemnifier shall on demand by the Lender, forthwith pay to the Lender such monies as are required to satisfy the Budget Shortfall amount, so that the unadvanced portion of the Construction Loan will be sufficient to complete the Project in accordance with the revised Budget.

- 2.3 The monies paid to the Lender pursuant to Section 2.2 shall be held by the Lender as cash collateral to secure the obligations of the Borrower and the Indemnifier to the Lender until released by the Lender in its discretion for injection by the Borrower into the Project to satisfy the Budget Shortfall.
- 2.4 The Borrower and the Indemnifier shall complete the Project in accordance with the terms and conditions of the Budget (or revised Budget, if applicable) and the plans, drawings and specifications approved in writing by the Lender.
- 2.5 The Borrower and the Indemnifier shall complete the Project promptly and in any event within the Project Time Lines.
- 2.6 The Borrower will provide the Lender with written confirmation of the Borrower's equity contributions, if applicable, to the Project on a regular basis and in any event not less than quarterly.
- 2.7 The Lender may make more than one demand under Section 2.1 or Section 2.2.
- 2.8 The records of the Lender shall be prima facie evidence of the amount payable under Section 2.2 from time to time, and of the failure of the Borrower and the Indemnifier to pay any such amount on time.

3. Postponement

- 3.1 The Borrower and the Indemnifier each acknowledge, agree and confirm to and with the Lender that the liability of the Borrower to the Indemnifier with respect to any and all monies advanced by the Indemnifier to the Borrower or to the Lender for the benefit of the Borrower, including, without limitation those monies advanced or paid to the Lender pursuant to the terms of section 2.2 of this Agreement, are deferred and postponed to the debts and liabilities of the Borrower to the Lender and that until all of the debts and liabilities of the Borrower to the Lender are paid in full no payment shall be made to or received by the Indemnifier on account of any of the debts and liabilities of the Borrower to the Indemnifier. Any payment made to or received by the Indemnifier on account of any of the debts and liabilities of the Borrower to the Indemnifier contrary to the above, shall be made or received in trust for and on behalf of the Lender.

4. Indemnity

- 4.1 The Borrower and the Indemnifier hereby promise and agree to indemnify and hold harmless the Lender from any and all loss, costs, damages, liabilities, debts, demands and expenses (including without limitation solicitor's fees and disbursements on an indemnity basis) due to, arising from or in any manner whatsoever relating to any default hereunder by the Borrower or the Indemnifier or any failure of the Borrower or the Indemnifier to satisfy any payment obligation under section 2.2 hereof.

5. Default

- 5.1 Any breach or default by any of the Borrower or the Indemnifier hereunder shall constitute an event of default under the Construction Loan and the Security Documents.

6. Miscellaneous

- 6.1 This Agreement shall be in addition to and not in substitution for the security documents and additional security (as contemplated in the Commitment Letter") or other security now

held or hereinafter provided by the Borrower and the Indemnifier to the Lender (collectively the "Security Documents") and the Lender may do all or any of the following:

- a) grant time, renewals, extensions, indulgences, releases and discharges to;
- b) take securities from;
- c) abstain from taking additional security from;
- d) abstain from perfecting securities of;
- e) accept compositions from; and
- f) otherwise deal with;

the Borrower and the Indemnifier and all other persons and securities, including the Security Documents as the Lender may see fit and without prejudice to the rights of the Lender under this Agreement or any other securities, including the Security Documents held by the Lender from time to time.

- 6.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- 6.3 The taking of judgment on any covenant contained herein shall not operate to create any merger or discharge of any liability or obligation of the Borrower and the Indemnifier to the Lender.
- 6.4 If any one or more of the provisions contained in this Agreement should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions herein shall not in any way be affected or impaired thereby.
- 6.5 This Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the Borrower and the Indemnifier and their respective successors and assigns.
- 6.6 Save and except as otherwise set forth in this Agreement, all covenants and agreements herein of each of the Borrower and the Indemnifier are made jointly and severally.
- 6.7 Whenever the singular number or the masculine gender is used in this Agreement, it shall be deemed to include the plural or the feminine or the body corporate where the context or the parties so require.
- 6.8 The headings of this Agreement have been inserted for convenience of reference only and do not form part of this Agreement.
- 6.9 This Agreement may be executed in counterparts and all counterparts so executed (including those executed and delivered by fax) will constitute one Agreement binding on the parties effective upon execution.
- 6.10 All reasonable legal costs (if any) incurred by the Lender in the enforcement of this Agreement shall be for the account of the Borrower and the Indemnifier.
- 6.11 All rights, powers and remedies of the Lender hereunder and under any other agreement now or at any time hereafter in force between the Lender and the Borrower and the Indemnifier shall be cumulative and shall be in addition to and not in substitution for all rights, powers and remedies of the Lender at law or in equity.
- 6.12 This Agreement shall not be amended or varied or deemed to be amended or varied unless amended or varied by written instrument signed by a duly authorized signatory of the Lender.

7. NOTICE

Any notice, demand or document referred to herein may be delivered, transmitted by facsimile machine ("fax") or may be mailed by prepaid ordinary mail to the Lender, the Borrower or the Indemnifier at the number or address set out below, and the Lender, the Borrower or the Indemnifier shall be deemed to have received such notice, demand or document on the date of delivery, if delivered, on the day following transmission, if transmitted by fax, or three (3) days after mailing, if mailed.

Lender: Mail to: Address noted on page 1 of this Agreement
Fax to: (604)

Borrower: Mail to: Address noted on page 1 of this Agreement
Fax to: (604)

Indemnifier: Mail to: Address noted on page 1 of this Agreement
Fax to: (604)

IN WITNESS WHEREOF this Agreement has been executed by the Borrower and the Indemnifier as of the day and year first above written.

_____)
by its authorized signatory(ies):)

_____)
Authorized Signatory)

_____)
Authorized Signatory)

_____)
by its authorized signatory(ies):)

_____)
Authorized Signatory)

_____)
Authorized Signatory)

SCHEDULE "A"
CONSTRUCTION BUDGET

APPRAISALS/STUDIES	
ACQUISITION AND SERVICING	
MUNICIPAL FEES	
DESIGN CONSULTANTS	
CONSULTANTS	
MISCELLANEOUS SOFT COST	
BORROWING COSTS	
CONSTRUCTION	
CONTINGENCIES	
GROSS BUDGET	
Land Equity	
CMHC Grant	
City of Abbotsford	
Society Equity	
Brownfield Renew Fund Grant	
Total Deductions	
NET CAPITAL BUDGET	

SCHEDULE "B"
LEGAL DESCRIPTION

DRAFT