Heritage Park Case Study Documents

This is one in a 4-part series of case study documents from the Heritage Park redevelopment. These documents are intended to provide detailed information on the Heritage Park project and serve as model documents for practitioners. The documents are not intended for reproduction or use in their current form.

PART II: RFPs, Development Agreements, and Program Descriptions

Development Request for Proposals
Master Developer Request for Proposals
For-Sale Housing Developer Request for Proposals
Public Improvements Request for Proposals

Development Agreements
Master Development Agreement
Phase I Rental Development Agreement
Heritage Housing LLC Redevelopment Contract

Program Descriptions and Policies
Heritage Park Tenant Screening Criteria
Twin Cities Habitat for Humanity Pricing and Financing and Home Resale Policy
SumnerField at Heritage Park Program Guidelines and Buyer Restrictions
PART II. RFPs, Development Agreements, and Program Descriptions

Development Request for Proposals

→ Master Developer Request for Proposals

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City of Minneapolis
Request for Proposals

Development Objective: To create a mixed-income neighborhood, including extensive public amenities and a wide range of housing types and community services.

Near Northside Implementation Committee

November 1998
City of Lakes

Parks, lakes and trail systems contribute to the quality of life in Minneapolis. They connect neighborhoods and provide residents access to jobs, goods, services and transit.

For a lead developer to assist in the creation of a mixed-use, mixed-income, high-amenity community on the near northside of Minneapolis

Pre-Proposal Conference: December 7, 1998 at 10:30 a.m.

Proposal Submittal Deadline: January 15, 1999 by 4:30 p.m.

Contact Administrator and Inquiries:
Please submit questions regarding this Request for Proposals (RFP) in writing to:
Charles T. Lutz, Project Director
Near Northside Implementation
1001 Washington Avenue North
Minneapolis, MN 55401
Summary
This Request for Proposals is being issued by the Near Northside Implementation Committee to locate an experienced lead developer for a significant development project on a 73-acre site located one mile from downtown Minneapolis. The objective of the development is to create a mixed-income neighborhood, including extensive public amenities and a wide range of housing types and community services. When completed, this project will stand as both a local and national model for mixed-income community development.

Connecting the Northside
The new housing development will center around a 36-acre park containing recreational facilities and a wetland system. The park will connect the northside neighborhood to the city’s renowned park system and network of trails.

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This site is the largest redevelopment area in the city. It is adjacent to major transportation routes and is easily accessible from all parts of the metropolitan area.
**Vision**
A new mixed-income community will emerge - a vital, diverse community in which public housing is interspersed with market-rate housing. This new development will surround a 36-acre park, part of the city's world-renowned park system. A new parkway will achieve an historic link between residential communities in north and south Minneapolis, connecting residents of the near northside neighborhoods to the Guthrie Theater and Walker Art Center, the Sculpture Garden, the Loring Park college campuses and to the heart of downtown.

The site area as it exists today.
This drawing shows the new north/south connection linking the redevelopment to Hennepin Avenue and the heart of downtown, East/west connections will re-link the site to adjacent residential neighborhoods.
The Community
The development site is just one piece of a larger strategy for the near northside. The following development objectives reflect the Implementation Committee's priorities of community connection, housing development and job creation.

North/south connection along a parkway, open space or cultural corridor
- Create a new front door to the northside along an extension of the park and institutional corridors that converge on Bassett Creek valley.
- Develop a park amenity of sufficient width—at least a block—to create a continuous greenway with usable spaces and water features, which is also narrow enough to allow surveillance, comfortable walking loops and close proximity to nearby residential and commercial areas.
- Create a road connection that extends the character of the southern end of the corridor.

Jobs and training in the mixed-use area
- Capitalizing on the unique features of the site, create a mix of industrial, office, commercial and educational facilities to serve the local community and the city.
- The scale and design of new developments should be based on historic buildings in the area, as well as cultural and educational facilities nearby.
- New and rehabilitated facilities should be oriented towards adjacent recreational and cultural amenities through the placement of windows, pathways to parks, trails and parkways.

Continuous neighborhood development
- Tailor the neighborhood to be compatible with the fabric of the Harrison and Near North neighborhoods.
- Create a network of local streets and sidewalks with the approximate scale and dimension of adjacent grids.
- Build housing with windows and doors oriented to the street and park.
- Develop extensive planted vegetation on both residential and non-residential properties.
- Preserve and enhance the scenic views of downtown, park land and local landmarks.

Development Framework Report
A full discussion of these development objectives can be found in the Development Framework for the Near Northside. This document outlines a vision for the area immediately surrounding the redevelopment site.
The Site
Located in the heart of the city, the development site consists of 73 acres and is easily accessible from anywhere in the metropolitan area via major transportation routes.

Development contemplated in this RFP is only for the Action Plan site area as shown and described here. The area consists of the Sumner Field, Glenwood, Lyndale and Olson public housing developments and parts of adjacent blocks, and is roughly bounded by Lyndale Avenue North on the east, 12th Avenue North on the north, Humboldt Avenue North/Girard Terrace North on the west, and 3rd Avenue North on the south. Except for two private homes, all the land is publicly owned.

The site has seen many changes–from swampy creek bed, to downtown neighborhood, to the first public housing in Minnesota. Most recently, the housing development was part of a 1992 lawsuit, Hollman vs. Cisneros. Responding to a unique consent decree, extensive community planning developed the Action Plan that will guide the newest transformation of this neighborhood.

The Action Plan is a product of neighborhood planning, and cooperation among city departments and agencies. It was approved by the Minneapolis City Council on December 12, 1997, as clarified by the Agreement Regarding Plaintiff’s Objections to Action Plan for Sumner-Glenwood Redevelopment, dated April 22, 1998. The Development Framework for the Near Northside immediately surrounding the Action Plan site was approved by the Minneapolis City Council on September 18, 1998. The developer will be working with the Implementation Committee on recommendations for further action.

As noted in the Action Plan, one of the chief constraints to new development is the soil condition in the area. The poorest soil, defined by deep deposits of unstable clay, will be used primarily for open space amenities and storm water management. The surrounding areas of better soil are reserved for housing development.
Site assembly, including property acquisition, relocation of residents and demolition of structures, will primarily be the responsibility of the Minneapolis Public Housing Authority (MPHA) and the Minneapolis Community Development Agency (MCDA).

More than half the existing structures will be demolished by 1998. Units south of Olson Highway will be demolished by April 2000. The only public housing structure that will remain is the 66-unit general occupancy high-rise at 800 5th Avenue North.

Open space and public amenities are a key to building a vital, connected community. The northside development will feature a 36-acre park, cutting diagonally from the southwest to northeast through the public housing area with a significant lobe on the Superblock. The park will feature wetland and ponds, recreation fields, walking and biking paths, and new lighting for improved safety.

**The Site Development Objectives**

- Develop approximately 450 units of new mixed-income housing, 75 percent of which will be priced to serve a community where a broad and continuous range of incomes is represented and 25 percent will be public housing.
- Develop facilities for institutions currently located in the area and those which may locate here in the future.
- Develop appropriate commercial facilities.
- Develop parkland that includes recreational areas, wetlands and storm water ponds.
- Develop infrastructure, including streets, sewers and a new boulevard connecting the site to adjacent neighborhoods to the south. Create links to the regional network of hiking and bike trails.
The Implementation Committee
A unique partnership of elected officials and public agencies, the Near Northside Implementation Committee will be the primary advocate for the development's successful completion. The committee is composed of the following individuals:

- The Mayor of Minneapolis
- 5th Ward City Council Member (who represents the Action Plan site area)
- Executive Directors of the Minneapolis Public Housing Authority (MPHA) and the Minneapolis Community Development Agency (MCDA)
- City Coordinator
- A private sector housing expert
- Representatives of the Minneapolis Planning Commission, Park Board and Public Works Departments
- Representatives of the Plaintiffs to the Consent Decree (Minneapolis Legal Aid and the NAACP)

The Implementation Committee has appointed a project director who has day-to-day responsibilities for the redevelopment. The project director's role will be to ensure the successful completion of the entire development. The director will also coordinate the work of city departments and agencies. Though the director will be the developer's primary contact, the developer will also meet regularly with the Implementation Committee.

Responsibilities of the Implementation Committee
The responsibilities of the Implementation Committee include, but are not limited to, the following:

1. Negotiations with developer
   - Authorizing the project director to negotiate a scope of services with the developer that will be part of a development agreement.
   - Authorizing the project director to negotiate a development agreement with the developer.

2. Project review and oversight
   - Recommending the hiring of a developer to the City Council, and the boards of the Minneapolis Community Development Agency and the Minneapolis Public Housing Authority.
   - Recommending redevelopment contracts to the appropriate policy makers.
- Reviewing and approving all aspects of the development plan, including density and design of units.
- Approving financial strategies for public and private elements of the development.
- General project oversight, including timelines and availability of funds.
- Overseeing performance of the developer in meeting Section 3 goals. This will involve review by the Minneapolis Civil Rights Department and MPHA’s Manager of Welfare-to-Work.

3. **Land assembly**
   - Overseeing land assembly for all parcels of land in the Action Plan site area, unless specifically delegated to the developer.
   - Overseeing the mitigation of any soil pollution in the Action Plan site area.

4. **Development**
   - Overseeing the development of the park, street system and other infrastructure.
Storm and sanitary sewer lines (in purple) converge on the site. The new ponds will be integrated into the existing system and constructed on the low points of the site and on the deepest pockets of poor soils.
Infrastructure investments include construction of new streets and alleys (in green) and enhancement of existing streets (in purple).
The Developer
The Implementation Committee has elected to use a lead developer for several reasons:

- A lead developer, working with a team of subdevelopers, will yield more variety and creativity in design than a single developer.
- The development approach will allow greater development opportunities for smaller firms, including non-profits and women and minority business enterprises.
- The lead developer will be reviewing and commenting on the design of the parkland and infrastructure to ensure maximum marketing potential for housing units.
- Development activities will be coordinated by a single entity rather than by various city staff members or the Implementation Committee.

The developer must have experience in developing mixed-income, mixed-use housing in a variety of medium-to-high-density forms, a commitment to quality design, an ability to work with other developers and community organizations, and a thorough understanding of HUD rules and regulations regarding development financing.

Responsibilities of the Developer
The developer will work closely with the project director and Implementation Committee, and will have responsibilities including, but not limited to, the following:

1. Studies and development strategies
   - Undertaking marketing or other studies, including absorption studies to support the proposed mix of housing types and commercial services.
   - Recommending strategies for commercial development.
   - Participating as requested by the project director in providing analysis and recommendations regarding the Development Framework for the Near Northside.

2. Site design
   - Recommending methods of integrating housing types, including recommendations for the design, ownership and management of both public housing and privately owned housing.
   - Recommending appropriate densities for housing. Recommending an implementation schedule for the development.
   - Recommending the location and design of facilities that will be used by institutions and commercial services that may locate in the area.
   - Reviewing and commenting on the design of the park system and infrastructure.

3. Development financing
   - Developing financing plans for all non-public project elements, including analysis of the financial feasibility of the proposed mix of uses and phasing and coordination of the private financing plan and public financing.
4. **Subdevelopers and contractors**
   - Proposing qualified subdevelopers for specific sites or project elements, subject to the approval of the Implementation Committee, the MPHA Board, the MCDA Board and the City Council. Negotiating development agreements. It is expected that local developers will serve as subdevelopers for a significant portion of the site.
   - Potentially serving as the developer of a portion of the site, subject to negotiations with the Implementation Committee.
   - Recommending design elements of each subdeveloper's plans for approval by the Implementation Committee, although if the developer also serves as a subdeveloper, another undetermined party will review plans.
   - Encouraging involvement of community-based development partners.
   - Paying prevailing wages to all subcontractors retained.
   - Encouraging subdevelopers to partner with local entities for a significant portion of the work to be undertaken, including Section 3 and Women and Minority Business Enterprises.

5. **Section 3**
   - Complying with, and ensuring that subdevelopers comply with, all requirements of the Implementation Committee's Section 3 Plan.

6. **Women and Minority Business Enterprises**
   - Complying with the Implementation Committee's contracting goals of 20 percent participation for Minority Business Enterprises (MBE) and 7 percent participation for Women Business Enterprises (WBE). These goals are currently under review by the City of Minneapolis and will likely be increased. Any development agreement will reflect the new goals.

7. **Community participation**
   - Meeting regularly with established neighborhood groups, service groups and community organizations, as well as participating in community meeting that review or comment on the developer's work.
The Implementation Committee will be responsible for the development of the park. The developer will review and comment on the design of the park system and surrounding infrastructure. Active use parks are shown in lightest green, wetlands in yellow-green, the parkway in dark green and water in blue.
Proposal Requirements

A. Letter of Interest
A letter of interest should accompany the proposal and should include the following information:

1. A brief history of the developer.
2. A listing of team members, including the primary contact person and each team member's responsibilities with respect to the development project. Resumes of key participants and principals should be included.
3. A summary of the developer's qualifications and past experience relevant to the proposed redevelopment activity.
4. An indication of the developer's interest in developing a portion of the site.

B. Description of Relevant Experience
The following information is required:

1. Housing programs, financing tools and leveraging financing
The proposal should demonstrate knowledge of applicable rules and regulations regarding development financing; familiarity with federal and state regulations and laws governing public and affordable housing programs and other financing programs; tax increment financing; and knowledge of and experience with programs for the public and private financing of development projects.

The proposal shall also describe the developer's proven ability to facilitate private sector and public sector financing, and knowledge of developing alternative financing.

2. Housing/urban development experience
The proposal should demonstrate the developer's experience integrating public housing and market-rate housing in the same development. It should also demonstrate the developer's experience with projects involving a mixture of housing types and ownership, including single family homes, town homes and multi-family units in central urban settings. The proposal must incorporate illustrations, photographs and narrative that describes the developer's experience in these areas. It must include a statement of sources and uses of funds for each project referenced. In addition, the proposal should contain a description of the developer's approach to property management, including management plans for referenced projects and employment of public housing residents and other low-income residents.

3. Commitment to quality design
The Action Plan contains Design Principles for the Action Plan site area. The proposal must demonstrate the developer's commitment to quality design in mixed-income, mixed-finance developments based on similar principles.
4. Creating open space that works
The proposal must demonstrate the developer's experience with development that centers on amenities, or which involves associated park land and residential development. Past projects involving the design of water features are of particular relevance.

5. Work with community-based organizations
The proposal must demonstrate the developer's experience in working and partnering with community-based organizations, including collaboration with both public and private partners. In addition, it should detail previous success in engaging the participation of adjoining neighborhoods and communities in the redevelopment process, particularly public housing residents, and low-income, multi-cultural and multi-lingual communities.

6. Legal experience
The proposal should describe the developer's legal experience in structuring and negotiating complex real estate and financial agreements.

C. Ability to Meet Project Goals
In addition to relevant housing and urban development experience, the developer should choose one previous project and briefly describe how they met the needs of clients and the project's specific goals.

D. Approach to Redevelopment Issues
While the Action Plan is a unique opportunity for Minneapolis, it also poses significant challenges for the Implementation Committee, city policy makers and the developer. In the proposal, each developer should outline a general approach to the following issues:

1. Mix of housing units and types
The Action Plan site will contain 25 percent public housing units and 75 percent priced to serve a community where a broad range of incomes is represented. The market-rate units will likely be a mix of unit types, including single family and townhouses, as well as owned and rental property. The project's goal is to integrate the units so that public housing and market-rate units are physically indistinguishable. The developer should offer comments on the feasibility of this integration based on relevant experience from other developments.

2. Density of units
The Action Plan calls for average housing density of 14.5 units per acre. The plan identifies 31 acres for housing development. Therefore, approximately 450 units will be developed. The developer should comment on whether this projected density is appropriate to the site. If not, is there a different density that would improve the quality of the development and facilitate the creation of a vital mixed-income community?
3. Open space
The Action Plan area covers land over which Bassett Creek once flowed. Now piped to the Mississippi River, water from Bassett Creek will be resurfaced as a pond or stream. Stormwater treatment, habitat restoration and recreational facilities will all center on the new water features. In addition, the park will add economic value to the housing developed around its perimeter. The housing should, in turn, ensure the security of the park. The developer should comment on how to balance these various purposes.

4. Commercial services
An issue related to the mix and quantity of housing units is the feasibility of commercial development in or adjacent to the Action Plan site area. The near northside community, which includes this area, has a dearth of commercial services. The developer should comment on any experience with the development of commercial services in other locations and how the issue should be addressed on the near northside. The analysis should take into account current commercial developments on Plymouth Avenue, West Broadway and Glenwood Avenue.

5. Community-based economic development
One of the concerns of the near northside neighborhood is community-based economic development, businesses which are owned and operated by residents and community partners. The developer should address ways in which this redevelopment could achieve its goal of capacity building and economic self-sufficiency for the community.

6. Compatibility with surrounding developments
Surrounding the Action Plan site are 570 subsidized housing units in seven developments. The developer should review this housing and discuss possible alternatives, considering both long-term viability and future use.

E. Financial Information
This section is applicable only if the developer is also interested in participating as a sub developer. This information should be submitted in a separate sealed envelope.

1. Current financial statements
The developer should submit a current financial statement, plus a financial statement for the previous year. In the case of a newly-formed development entity, the proposal should include a financial statement of the general partners or corporate affiliate, prepared by a Certified Public Accountant and including the most recent audit of all parties. The statement should show the assets, liabilities and net worth of the developer.

2. Other disclosures
The proposals should include any prior negative financial history involving the developer and/or its owners, partners, shareholders and board members. In the body of the proposal, the developer must address the following questions:
- Has the developer or any of the affiliated individuals listed above defaulted on a real estate obligation? If so, please explain.

- Has the developer or any of the affiliated individuals listed above been delinquent on a housing development debt? If so, please explain.

- Has the developer or any of the affiliated individuals listed above been the defendant in any legal suit or action? If so, please explain.

- Has the developer or any of the affiliated individuals listed above declared bankruptcy or made compromised settlements with creditors? If so, please explain.

- Are there any judgments recorded against the developer or any of the affiliated individuals listed above? If so, please explain.

F. Resident Employment: Contracting With Women and Minority Business Enterprises
The proposal must describe the developer’s previous experience in training and employing Section 3 residents in the development and management of housing developments and projects, as well as the team’s understanding of HUD’s Section 3 requirements (12 USC Section 1701u (c); 24 CFR Part 13). The proposal must also describe the procedures the developer has used in the past to contract with Women and Minority Business Enterprises.

G. Past Development Agreement
The proposal should include one development agreement to which either the developer or a team member of the developer is a party. This development agreement may be used as a basis for the ultimate development agreement between the Implementation Committee and the developer. Inability to supply a development agreement (in cases where none of the team has entered into one in the past) will not result in disqualification from the selection process.

H. References
The proposal must contain the names of a minimum of three professional references: organizations for which the developer has performed similar work, including but not limited to local units of government, public housing authorities and redevelopment agencies.
Pre-Proposal Conference
Developers interested in making a proposal are encouraged to attend an optional pre-proposal conference that will be held on December 7, 1998 at 10:30 a.m. This conference will answer any questions you might have regarding the proposal. The conference will also include a tour of the site. If you are interested in attending, please call Charles T. Lutz, (612) 342-1471 no later than Monday, November 30. Each developer should send no more than three people. In lieu of attending, the developer may send a letter to Mr. Lutz prior to the conference stating that they will not be able to attend, but are interested in submitting a proposal. A written response will be made to questions raised at the conference as necessary.

Sets of Materials
The proposal should include 40 sets of all required materials.

Proposal Deadline
40 copies of the proposal must be delivered to the Minneapolis Public Housing Authority no later than January 15, 1998 at 4:30 p.m. Proposals should be addressed to City of Minneapolis, Procurement Division of the Finance Department, 250 South Fourth Street, Room 414, Minneapolis, MN 55415.

Proposal Format
Responses should be submitted in a sealed envelope. Faxed proposals will not be accepted. All proposals must be received by the due date and time stated above for inclusion in the selection process. Please mark the outside of the proposal envelope with "Request for Proposal Near Northside Development" and the due date and time.

Evaluation Process
Evaluation of submissions will proceed in two stages:

A. Preliminary Consideration and Ranking of Proposals
After the proposal deadline, a staff-level review committee will review each proposal based on but not limited to, the following criteria:

- Developer's qualifications.
- Developer's previous experience in similar public housing and mixed-income/mixed-finance developments.
- Developer's experience with a wide range of medium- to high-density urban housing developments; rental and home ownership.
- Assessment of developer's ability to maximize private sector financial participation, as well as demonstrated knowledge of alternative financing strategies for public housing developments.
- Assessment of developer's ability to negotiate and structure complex real estate and financial deals.
- Developer's previous success in training and employing public housing residents,
as well as their proposed strategy to achieve W/MBE participation goals.

- Developer's previous success in meeting client and developer goals for a specific project.

Based on its assessment of the above criteria, the review committee will recommend proposals for consideration by the Implementation Committee. The Implementation Committee will, however, see all proposals.

B. Interviews. Final Ranking of Proposals. Negotiations

1. The Implementation Committee will determine the list of developers to interview, taking into account the ranking provided by the staff committee in stage one, as well as the Committee's analysis of the financial information submitted.

2. The interview process will consist of several parts:

   - Each finalist will be asked to prepare a detailed scope of services for work to be performed and fee proposal in separate sealed envelopes. The fee proposal should discuss possible methods of payment, including upfront, billing on an hourly basis, as a fee-for-service or as part of the total development cost for the project.
   - Each finalist will meet with established neighborhood organizations, and service and community groups to share ideas, articulate their vision and respond to questions. All the finalists will meet with the same groups. The meetings will be organized by project management staff and will be held over a limited amount of time. Each of the groups will submit comments to the Implementation Committee regarding the developer's performance.
   - After the community process, the developers will participate in an interactive work session with the Implementation Committee to:

     a) Articulate their qualifications.
     b) Communicate what they have learned about the site, the development goals for the area, the community's needs, and their role in the implementation.
     c) Describe the specific project they used as an example in their proposal.
     d) Summarize the scope of services they propose to perform.

Each finalist may be asked a specific set of questions by the Implementation Committee that will allow them to further articulate their vision.

3. Upon completion of the interview, the Implementation Committee will rank the finalists, taking into account all the information received. Proposed fee-for-service envelopes will be opened.

4. The Committee will recommend to the Minneapolis City Council and the boards of the MPHA and MCDA that negotiations begin with one or more of the finalists on a development agreement that contains a detailed scope of services and fees for services.
General Requirements
All developers are hereby notified that the following general requirements will be part of any agreement between the developer and the City of Minneapolis. "Contractor" refers to the developer with whom the development agreement was entered into.

The City's Rights
The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in this Request for Proposal, or the respondent's reply based on the component prices submitted. The City also reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the City from completing the project.

Interest of Members of City
The contractor agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

Equal Opportunity Statement
Contractor agrees to comply with the provisions of all applicable Federal, State and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including without limitation Minnesota Statutes, Section 181.59 and Chapter 363 and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

Affirmative Action
The contractor shall agree in writing to comply with all affirmative action laws, directives and regulations of the Federal, State and local governing bodies or agencies thereof, specifically including Section 139.50 of the Minneapolis Code of Ordinances. A pre-compliance review may be required. For further information contact the Civil Rights Department at 673-3012.

Non-Discrimination
The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national original, affectional preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
The contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as a disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements of the Minneapolis Code, Chapter 139.

**Contract Incorporation of Proposal Contents**
The contents of the Proposal and any clarifications or modifications to the contract thereof submitted by the successful proposer may, at the City’s option, become part of the contractual obligation and be incorporated by reference into the ensuing contract.

**Hold Harmless**
The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act of omission of the contractor, its employees, agents or employees of subcontractors, in the performance of this contract or by reason of the failure of the contractor to fully perform, in any respect, all of its obligations under this contract.

The City agrees to defend and hold harmless insofar as the law allows the Contractor, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act or omission of the City or its employees in the performance under this contract or by reason of the failure of the City to fully perform its obligations under this contract.

**Insurance**
This contract shall be effective only upon the approval by the City of acceptable evidence of the insurance detailed below. Such insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the contract and shall remain continuously in force for the duration of the contract.

The Contractor and its contractors shall secure and maintain the following insurance:
• Worker's Compensation insurance that meets the statutory obligations with Coverage B - Employer's Liability limits of at least $100,000 each accident, $500,000 disease - policy limit and $100,000 disease each employee.
• Commercial General Liability insurance with limits of at least $1,000,000 general aggregate, $1,000,000 products and completed operations, $1,000,000 personal and advertising injury, $1,000,000 each occurrence, $100,000 fire damage, and $10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.
• Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least $1,000,000 per accident.
• Professional Liability Insurance providing coverage for the claims that arise from errors of the Contractor or its consultants, omissions of the Contractor or its consultants, failure to render a professional service by the Contractor or its consultants, or the negligent rendering of the professional service by the Contractor or its consultants in the amount of $500,000 per accident each occurrence and $500,000 annual aggregate. The insurance policy must provide protection for two years after completion of work.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage.

Evidence of coverage is to be provided on a City-provided Certificate of Insurance. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed.

The Contractor shall require any of its subcontractors, if allowable under this contract, to comply with these provisions.

Transfer of Interest
The contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the City, provided, however, that claims for money due or to become due to the contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City.
Compliance with the Law
Contractor agrees to abide by the requirements and regulations of the Americans with Disabilities Act (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363), the Minneapolis Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability and religion, and with sexual harassment. In the event of questions from Contractor concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to the termination of this agreement.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or part, and the contractor may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

Data Practices
The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor shall immediately report to the contract monitor any requests from third parties for information relating to this agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, department heads and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.

Anticipated Development Costs and Timetable
The anticipated total cost of the development detailed in the Action Plan will be $135 million. Approximately 50 percent of the funds will come from various public sources, which may include:

- Tax increment financing
- Financing from watershed districts
- Wetland mitigation funds from the Metropolitan Airports Commission
- Hennepin Community Works
- Minneapolis Public Housing Authority
- Minneapolis Community Development Agency

The Action Plan will proceed in phases. Complete development may take five years or more.
Other Information
The Implementation Committee is not bound to accept any proposal and reserves the right to consider any, none or all of the proposals in whole or in part or to discuss different or additional terms than those contained in this RFP or to cancel this RFP and issue a new RFP. The Implementation Committee shall not be bound by any provision in this RFP in negotiating agreements with selected developers. All costs incurred by the developer in preparing a proposal shall be borne directly by the developers.

Documents Available Upon Request
These are the key documents that will guide redevelopment:
- Summary of Action Plan for Sumner Field, Glenwood, Lyndale and Olson Public Housing Developments and Adjacent Land in Minneapolis
- The Sumner, Glenwood and Environs Small Area Plan
- Housing Principles of the City of Minneapolis
- Development Framework for the Near Northside
- Implementation Committee’s Section 3 Plan

Other Information
- A list of city-approved Minority Business Enterprises and Women Business Enterprises Professional Services Firms
- An organizational chart of the Implementation Process
Request for Proposals
Near Northside Implementation Committee

Back cover photo

The site is located north of the Guthrie Theater and Walker Art Center sculpture garden, Bryn Mawr Meadow Park, and Bassett Creek Valley.

Front cover photo

Looking south from Plymouth Avenue, the site is between downtown and near northside neighborhoods of homes, schools, parks and businesses.
PART II. RFPs, Development Agreements, and Program Descriptions

Development Request for Proposals

→ For-Sale Housing Developer Request for Proposals

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Minneapolis Community Development Agency
Heritage Park

REQUEST FOR PROPOSALS

**Development Objective:** to develop for sale mixed-income housing at Heritage Park

The Minneapolis Community Development Agency (MCDA) in cooperation with the Minneapolis Public Housing Authority (MPHA), and with assistance from McCormack Baron/Legacy, is accepting proposals for construction of the first two phases of mixed-income, for sale housing to be developed on land situated in the newly established Heritage Park development. This development project is located in the Near North community of Minneapolis, one mile northwest of downtown. Approximately 135 units of for sale housing were envisioned in the Minneapolis near Northside Master Plan for the first two phases, with a total of 360 ownership units to be built as part of the Heritage Park Development.
Contents:

I. Introduction/Project History
II. Description of Area
III. Ownership Units
IV. Development Objectives and Guidelines
V. Eligible Applicants
VI. Contents of Proposal
VII. Submission Requirements
VIII. Land Valuation
IX. Future Ownership Development Phases
X. Selection Process and Criteria
XI. Other Information

Exhibits:
A. City of Minneapolis Map
B. Near Northside Master Plan
C. Near Northside Pattern Book
D. Heritage Park – Map
E. Heritage Park Redevelopment Residential Phasing
F. Heritage Park Development: Housing Areas Working Map
The following documents will be on reserve for viewing until the RFP due date between the hours of 8:00 a.m. to 4:30 p.m. at the City of Minneapolis Municipal Information Library, Room 300, City Hall, 350 South 5th Street, (612.673.3029) or at the MCDA Contract Services Department, Second floor, Crown Roller Mill, 105 5th Avenue South, (612.673.5119):

1. Phase I and Phase II Environmental Reports
2. Geotechnical Preliminary Assessment

Equal Housing Opportunity
I. Introduction/Project History

Background
The City of Minneapolis, the Minneapolis Community Development Agency (MCDA) and the Minneapolis Public Housing Authority (MPHA) have collectively embarked upon a major redevelopment effort located in north Minneapolis on the site that formerly contained the Sumner-Olson and Glenwood-Lyndale family public housing developments. In April 1999, the Near Northside Implementation Committee selected McCormack Baron & Associates (MBA) in partnership with Legacy Management and Development Corporation as the lead developer for the Near Northside Redevelopment Project. The development has subsequently been renamed Heritage Park.

When fully developed, Heritage Park will contain 900 new mixed-income, rental and ownership housing units to be built using the traditional architectural styles found in surrounding Minneapolis neighborhoods and the principles of “new urbanism.” A Master Development Agreement was adopted on June 1, 2000 for the entire 900-unit site. Under this agreement, McCormack Baron in partnership with Legacy, will develop 440 mixed-income rental units, will participate in the selection of the for-sale developer(s) and will assist with coordinating the for-sale activity with those of the rental development. The 360 ownership units will be constructed by developer(s) selected through a Request For Proposal (RFP) issued by MCDA in cooperation with the MPHA. In addition, Heritage Park will include 100 units of senior housing to be developed by MPHA.

A. Heritage Park Master Plan
The Heritage Park development is guided by the Minneapolis Near Northside Redevelopment Master Plan (“Master Plan”) prepared for the City of Minneapolis by McCormack Baron & Legacy Management; Urban Design Associates and SRF Consulting Group (exhibit B). This collaborative effort included extensive community participation. The Master Plan established a goal to rebuild a quality, mixed-income, mixed-density, culturally diverse, amenity-rich neighborhood. The complete Master Plan for Heritage Park is located on MCDA’s Web site at www.mcda.org under “Development Projects.”

B. Housing Design Concepts
Three key design concepts for the redevelopment are identified in the Master Plan:

1. First, to provide a mix of housing types: garden style buildings, townhouses, condominiums, duplex units, carriage housing and single-family homes providing both rental and ownership opportunities at a variety of price points.
The Near Northside Pattern Book, developed by Urban Design Associates for the City of Minneapolis and McCormack Baron & Associates, establishes specific design guidelines for both the rental and ownership housing units (exhibit C). All new buildings shall adhere to the style, massing, composition, architectural details and design elements, and landscaping patterns of this document.

2. Second, to create a street network that reconnects the site to adjacent neighborhoods and complements the park and parkway system. This will be accomplished in three significant ways:

   a) Extending existing streets in the Oak Park area to the Heritage Park Development, creating a seamless connection with the adjacent neighborhoods.

   b) The reconfiguration of Olson Memorial Highway as proposed in the Master Plan to slow traffic and creates a formal landscaped gateway to downtown by widening the median and adding curvature to the roadway.

   c) Construction of Van White Memorial Boulevard (“Boulevard”), a parkway-style street that will form the “backbone” of Heritage Park, linking the community with neighborhoods to the north and south.

3. Third, to establish a strong parks and open space system that is connected to the city and regional park system and creates quality-housing addresses around an open space network with sustainable designs.

C. Site Infrastructure
Following the adoption of the Master Plan by the City Council in 2000, the City of Minneapolis, MCDA, and MPHA assembled a variety of funding sources to develop a refurbished infrastructure network, including new streets, public utilities, and parkland areas. The City also entered into an agreement with McCormack Baron & Associates to develop 440 mixed-income rental apartments to be constructed in four phases beginning in November 2001. The first and second phase of ownership housing is located in the immediate vicinity of the Phase 1 & 2 rental units. Streets and public utilities for the Phase 1 ownership blocks are essentially functional now, with lights, paving and landscaping to be completed by summer 2003. Street and utility construction has begun in the Phase 2 ownership blocks and will be completed by November 2003, with some segments on-line significantly earlier. Construction of new parkland areas with a connecting Boulevard, beginning near 12th Avenue North moving south through
the site connecting to Dunwoody Boulevard in the Parade area, will begin once the infrastructure is completed (exhibit D).

D. Rental Housing
Construction of the 232 Phase 1 mixed-income rental apartments are underway, with initial occupancy occurring in November 2002. The first phase of ownership housing is in the immediate vicinity of the Phase 1 rental apartments. Site preparation activities for the 113 Phase 2 rental apartments is in process. The second phase of ownership housing is adjacent to the Phase 2 rental apartments. The rental apartments will all be owned by limited partnerships whose general partners are affiliates of McCormack Baron and Legacy. McCormack Baron Management Services will manage all the apartments.
II. Description of Area
Heritage Park is located adjacent to the Near North and Harrison neighborhoods, one mile northwest of downtown Minneapolis (refer to exhibit A). The area has excellent freeway access and is served by a variety of bus routes. Olson Memorial Highway (Highway 55), a heavily traveled transportation route into downtown divides Heritage Park. Metro Transit service is provided along 7th Street North, Plymouth Avenue, Glenwood Avenue, and Olson Memorial Highway, with additional limited north-south service through the area. Major transportation routes close by are Highway 55, Interstate 94, and Interstate 394. The entire site is currently zoned R-4 for multiple residential units.

Heritage Park is situated on the historical floodplain of Bassett Creek. Initially a swampy creek bed, much of the site is located in a buried valley that was formed by glacial meltwaters and later filled with unstable soils, including sands, silts, clays and organic material. Over the last century, much of the area was filled in for development, the creek was first channelized and then routed into a tunnel, and the wetland areas eliminated. As explained in the Master Plan, streets and open spaces are generally being situated where the soil types are most problematic, allowing the new housing to be located in buildable areas (refer to the geotechnical preliminary assessment for more information). For the Phase 1 and 2 ownership areas, two known contamination problems have already been dealt with under a Response Action Plan (RAP) approved by the Minnesota Pollution Control Agency: 1) leaking storage tanks at
the former Public Housing heating plant, and 2) removal of asbestos containing steam pipe insulation and electrical conduit. All future excavation will also be monitored according to the RAP using a Construction Contingency Plan, and if unforeseen contamination is found, a mitigation plan will be needed. This will be a developer’s responsibility, however, the MCDA will assist the developer in securing additional funding for remediation. Complete copies of the Phase I and Phase II environmental reports, geotechnical assessments, and related materials will be on reserve through the due date of the RFP at the City of Minneapolis Municipal Library (612.673.3029), and are available for viewing between the hours of 8:00 a.m. to 4:30 p.m.

III. Ownership Units
The Heritage Park Development was planned to contain 360 ownership units. These units will be constructed in four phases beginning in spring 2003 with completion and occupancy of all ownership units by the end of December 2009. Phases 1 and 2 are located north of Olson Memorial Highway and have been envisioned to contain approximately 135 units. Phases 3 and 4 are located south of Olson Memorial Highway and shall contain the remaining ownership units, the number of which are dependent upon acquiring and/or relocating existing buildings. The Heritage Park Redevelopment Residential Phasing schedule establishes the minimum number of units that must be under construction by the end of the year indicated on the proposed construction schedule (exhibit E).

Of the total units planned for Phase 1 and 2, fifteen percent shall be sold to households with incomes at or below 60% of the area median income (AMI). These households will be selected by Twin Cities Habitat for Humanity (Habitat) according to Habitat’s standard selection criteria. The selected developer shall work collaboratively with Habitat, mutually agreeing upon the design, location, and construction of Habitat units that will be sold to households at or below 60% of the AMI. All units, including Habitat units are subject to the Pattern Book guidelines described in Section I. Habitat has secured substantial resources to produce units that will be affordable to households with incomes at or below 60% of AMI. Another fifteen percent of the for sale units shall be sold to households with incomes between 60%-80% of AMI. Additional resources may be needed for the construction of these units. The remaining units (seventy-percent) shall be sold without income restrictions and offered publicly to the general public.

The Heritage Park Development map (exhibit F) illustrates the current configurations of the ownership and rental parcels for Phases 1 and 2 of the Heritage Park Development.

A. Description of Phase 1 ownership parcels
The first phase of the project contains two sites referred to on Exhibit F as Development Blocks 1, and 2. These parcels have been platted.
• Development block 1 is located south of 8th Avenue North, east of the new Van White Boulevard and Bryant Avenue North, west of Aldrich Avenue North and north of Gertrude Brown Place. This parcel is 1.04 acres (45,302 sq. ft.) and shares a block with ten rental townhouses. The ownership portion of this block wraps around the rental housing’s parking area and infiltration basin/rain garden.

• Development blocks 2a and 2b are separated by a public alley and are bounded by 10th Avenue to the north, 8th Avenue to the south, Emerson Avenue to the west, and Van White Memorial Boulevard to the east. Block 2a is 1.59 acres (69,401 sq. ft.) and Block 2b is 1.75 acres (76,554 sq. ft.). Single family detached dwellings are envisioned for these two blocks.

B. Description of Phase 2 ownership parcels
Six development blocks will be available in this phase, with some blocks subdivided by public alleys. Developers should refer to the Heritage Park Development: October 2002 Housing Areas Working Plan Map (exhibit F). Acreage shown is approximate.

• Block 3 is located north of 10th Avenue, west of Aldrich Avenue North and east of Van White Memorial Boulevard. This parcel is 1.05 acres and will share a block with rental housing, and wrap around the parking/open space for the rental housing.

• Block 4 is located north of 11th Avenue North and east of Van White Memorial Boulevard. The parcel is 1.12 acres and is located adjacent to Phase II rental apartments.

Blocks 5, 6, 7, and 8 are located west of Van White Memorial Boulevard along 10th and 11th Avenues North. Acreage shown is approximate.

• Block 5a is 1.2 acres and 5b is 0.3 acres.

• Block 6a, 6b, and 6c are each 0.6 acres.

• Block 7 is 0.6 acres.

• Block 8a is 2.8 acres, 8b is 0.8 acres, and 8c is 1.8 acres. Location of the public alleys for this block has not been finalized.

IV. Development Objectives and Guidelines
New ownership housing development shall address the following objectives:

A. The design of the new housing shall conform to the Near Northside Pattern Book (exhibit C).

B. The plan should provide maximum front door exposure along the Boulevard to take advantage of this new greenway and other amenities within the project area.

C. The for sale units, regardless of affordability levels, shall be built to the same high quality standards and be mixed throughout the entire Heritage Park development.
D. The developer shall recommend a land use plan for the first two phases of the project in recognition of the development guidelines as set forth in the Near Northside Pattern Book:

1. Density/Mix: Developer should recommend a mix of units, types and styles appropriate for urban neighborhoods and consistent with the Near Northside Pattern Book.

2. Massing and Composition: Housing designs shall conform to the architectural patterns and materials described in Section C of the Near Northside Pattern Book.

3. Zoning: Current zoning district is R4, described in the Minneapolis Zone Code, as "single family and two-family dwellings and cluster developments, on lots with a minimum of 5,000 square feet of lot area and at least 1,500 square feet of lot area per dwelling unit." The adjacent residential area is zoned R2B, residential single family, and duplex districts.

4. Building Types: Allowable unit types may include single family detached dwellings, townhouses, twinhomes, duplexes, rowhouses, condominiums, and/or cluster housing with a recommended mix of two, three and four bedroom units. Refer to Near Northside Master Plan, and Near Northside Pattern Book, for approved sample plans.

5. Garages: Garage doors opening onto public streets are not permitted. Garages may be either detached or attached.

6. Accessibility and Visitability: Depending upon financial resources provided, the following requirements and regulations may apply. Five percent of all one-story for-sale units (or 5% of the approximately one fourth of the total for-sale units) will be offered as accessible to mobility-impaired individuals. Another 2% of these one-story for-sale units will also be adaptable to visual and hearing-impaired individuals. All unit entry and interior passage doors on the first floor will be a minimum of 2 feet 10 inches wide. Designers should refer to: The Architectural Barriers Act (1968), Section 504 of the Rehabilitation Act (1973), The Fair Housing Act of 1968 (as amended), The Americans with Disabilities Act (1990), ANSI and UFAS, and applicable state and local codes. Please also refer to Near Northside Pattern Book (section D).

7. Landscaping: Landscape patterns, fencing, retaining walls, and mobility ramps shall conform to Section D of the Near Northside Pattern Book.

8. Parking: Off-street parking will be accommodated at grade, and in detached or attached garages.
9. Market: The approved Near Northside Master Plan envisions a total of 360 for sale housing units constructed in four phases of which:

   a. Fifteen percent of these units must be sold to households with incomes at or below 60% of the area median income (AMI). The selected developer shall work collaboratively with Habitat, mutually agreeing upon the design, location, and construction of these units throughout the project.
   
   b. An additional fifteen percent of the for sale housing units must be sold to households with incomes at or below 80% of AMI. The remaining units will be sold without income restrictions.
   
   c. Developers must provide marketing materials in several languages and conduct outreach efforts to attract interested purchasers from various socio-economic, cultural and/or ethnic groups.

10. The developer shall identify and secure funding sources to cover the difference between the first mortgage and the total development costs of the units that are to be sold to households with incomes at or below 80% of AMI. The developer shall be responsible for submitting applications, when necessary, to secure these financial resources. Potential sources are available from the Minnesota Housing Financing Agency, Minneapolis Empowerment Zone, Neighborhood Revitalization Program, and Hennepin County. MCDA staff is available to assist in identifying additional potential funding sources.

11. Developer shall create a homeowners association as outlined in appendix 4, of the Near Northside Master Plan, item 3. Home Ownership. The association documents shall address architectural controls for future exterior building changes, additions, along with site improvements for fences, satellite dishes, street and driveway parking. The homeowner’s association documents shall include projected initial monthly association fees and should also address long term maintenance and management goals for the common and public areas.

12. Special Assessments will be levied against the real estate for infrastructure improvements made by the City, payable in 2004 for Phase 1 blocks and in 2005 for Phase 2 blocks.
V. Eligible Applicants
Applicants may be either for-profit or non-profit developers and may include either a joint venture, partnership or both. If possible, for-profit developers are encouraged to partner with a local non-profit developer. Applicants must be proven housing development entities and must demonstrate professional housing development experience, a proven ability to undertake development projects of this type and size, and the ability to obtain sufficient financing.

VI. Contents of Proposal
A. The developer shall prepare an overall conceptual land use plan incorporating the Near Northside Master Plan with the proposed ownership development for the entire Heritage Park site and a more detailed land use plan for the Phase 1 and Phase 2 ownership housing development with recommendations regarding phasing, unit types, density, landscaping, and the placement of Habitat properties.

B. The developer shall undertake a market analysis and recommend a marketing strategy for the project. In January 2000, Development Strategies prepared a residential market analysis for McCormack Baron that is included as Appendix 1 in the Near Northside Master Plan.

C. To the extent known, identify all major entities of the development and marketing team, including owner/developer, partners, condominium manager, architect, contractor, legal counsel, accounting firm, owner (if different from developer), property manager, financing sources, and other team members. If the development entity is a joint venture or partnership, provide a copy of the partnership agreement.

D. Identify the principal person who will speak for the development team, as well as the principals from each entity of the team who will be involved in developing the proposal.

E. Specify whether the development entity anticipate forming a corporation, a general or limited partnership, a joint venture, or other type of business association to carry out the proposed development.

F. For each major entity, list and describe comparable prior developments, including any continuing financial or operational interest in each.

G. If an architect is not identified as part of the development team, give examples of design firms or building plans used on prior or current projects of similar scope and describe your architect or building plan selection process.
VII. Submission Requirements
The developer shall submit ten (10) copies of the proposal consisting of two parts:

A. Overall Conceptual Land Use Plan:
   1. Illustrative site plans and land use recommendations for Phase 1 and Phase 2 parcels
   2. Market analysis and proposed strategy
   3. Narrative description and recommended phasing plan

B. Phase 1 and Phase 2 Development Proposals
   1. Description of Materials
   2. Typical floor plans & elevations
   3. Site plans showing building locations, parking, landscaping and access
   4. Description of financing and sources of funds
   5. Detailed project budget
   6. Detailed development schedule
   7. Marketing Plan
   8. Developer’s financial statements for 2000 and 2001
   9. Previous development experience & developer qualifications
   10. Developer team list

VIII. Land Valuation
The land is estimated to have a current value of approximately $6.00 to $8.00 per square foot.
IX. Future Ownership Development Phases
The selected developer shall implement the first two phases of the development in a timely manner. Based upon performance in Phases 1 and 2, it is anticipated that the selected ownership developer shall have the first option to develop additional for-sale homes in the remaining phases of the Heritage Park project.

X. Selection Process and Criteria
A. Selection Process

1. Proposals will be reviewed and ranked by MCDA, MPHA, City Staff, and McCormack Baron/Legacy. McCormack Baron/Legacy will be limited to one vote, with no veto rights, and will have no vote if an affiliate of McCormack Baron & Associates or Legacy Management and Development submits a proposal. Developers may be asked to give a brief presentation to staff.

2. Representatives from Northside Residents Redevelopment Council (NRRC) and Harrison Neighborhood Association (HNA), and Twin Cities Habitat for Humanity will review proposals and make a recommendation to the MCDA. This must occur within 45 days of notification. An alternative neighborhood review process may be initiated if NRRC submits a proposal for this development.

3. The MCDA will present a recommendation to the Community Development Committee of the City Council and to its Board of Commissioners regarding developer selection and approval of the concept plan approximately 60 days after the application deadline.

4. MCDA staff shall work towards the execution of a Redevelopment Contract.

5. The right of any selected developer to purchase and redevelop the site shall be contingent on a public hearing, MCDA Board (and City Council, if necessary) approval and the successful negotiation and execution of a Redevelopment Contract.

B. Selection Criteria

1. The extent to which the proposal achieves the Development Objectives and Guidelines described herein.

2. Experience and qualifications of the development and marketing team with similar developments;

3. Land use plan and Site design;
4. Compatibility of Architectural design and quality with the *Near Northside Pattern Book*;

5. Realism of budget and financial feasibility; and


**XI. Other Information**

1. **Guarantees of Performance:** The selected developer may be required to post an irrevocable letter of credit or other form of security to assure acquisition and a performance and payment bond will be required from the construction contractor(s).

2. **Soils Conditions:** Land will be sold “as is” and it will be the developer’s responsibility to correct and pay for all costs associated with soil problems.

3. **Replat and Rezoning Responsibility:** It is the developer’s responsibility to undertake and finance any necessary replatting, and to rezone the property to the appropriate proposed land use.

4. **Utilities:** It is the developer’s responsibility to identify the locations of and provide for the installation of water, and sewer service from the public mains to the individual units and obtain service from private utilities. It is the developer’s responsibility to provide storm water management that is consistent with the City’s Storm Water Management Ordinance and is consistent with the Heritage Park open space/storm water amenity network.

5. **Standards:** Projects must meet FHA minimum property standards, all Minneapolis City codes, the *Near Northside Pattern book* design guidelines for Heritage Park and will be reviewed for energy efficiency.

6. **Resale:** Fifteen percent of the for-sale units shall be sold to households with incomes at or below 60% of the area median income (AMI) and another fifteen percent of the for-sale units shall be sold to households with incomes between 60%-80% of AMI. The remaining completed units shall be advertised, offered publicly and sold to the general public at market rate prices determined by the developer. MCDA will assist in identifying potential second mortgage funding sources and recommend a structure for the second mortgage assistance.

7. **Neighborhood Review:** The Near North and Harrison neighborhood groups will review all acceptable proposals pursuant to MCDA citizen participation guidelines.
8. **Confidentiality:** All developer financial information submitted is for confidential use only by the MCDA except that, if developer is selected, all data submitted becomes public data except business plans, income and expense projections not related to the project, customer lists, income tax returns and design, marketing and feasibility studies not paid for with public funds. Any information, which the developer believes must be treated as confidential may be submitted directly to the Interim MCDA Executive Director in a sealed envelope clearly marked “confidential data enclosed.”

9. **Agency rights:** the MCDA reserves the right to reject any or all proposals or parts of proposals and to negotiate modifications of proposals submitted.

10. **Non-Discrimination:** The Applicant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affecional preference, disability, age, marital status, status with regard to public assistance or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay of other forms of compensation, selection for training, including apprenticeship. The Applicant shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the MCDA setting forth the provisions of this nondiscrimination clause. In addition, the Applicant will, in all solicitations or advertisements for employees placed by or on behalf of the Applicant, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, national origin, affecional preference, disability, age, marital status, status with regard to public assistance or status as a disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements of the Minneapolis Code, Chapter 139, Supp. 1976. All materials produced will include proper Equal Opportunity Housing Logotypes and information as required by the Department of Housing and Urban Development.

11. **Affirmative Action and Equal Employment requirements:** The Applicant shall agree to comply, in writing, with all applicable equal opportunity and affirmative action laws, directives and regulations of the federal, state and local governing bodies or agencies thereof, specifically including Chapters 139 and 141 of the Minneapolis Code of Ordinances. The selected developers will be required to submit an Affirmative Action plan for approval by the Minneapolis Civil Rights Department.

12. **Affirmative Marketing:** The Applicant shall agree to comply in writing with Affirmative Marketing requirements.

13. **Program requirements:** Funded projects must adhere to certain requirements, when applicable, which include the following: Prevailing wage requirement, affirmative action plan, emerging small business participation, apprentice certification, public bidding, performance and payment bond, insurance coverage, Section 3 and conformance with the Americans with Disabilities Act. The Near
Northside Master Plan, appendix 2 establishes goals for Section 3, Minority- and Women-owned Business & Employment Participation, Diversified Office Workforce, and an Apprenticeship program. Developers should state how they will meet each of these goals. In addition, the developer must provide ongoing recordkeeping/project monitoring to meet the Program requirements.

14. **Hold Harmless:** At and from the date hereof, the Applicant agrees to defend, indemnify and hold the Agency harmless from any and all claims or lawsuits that may arise from the Applicant’s activities under the provisions of this Agreement, that are attributable to the negligent or otherwise wrongful acts or omissions, including breach of specific contractual duties of the Applicant or the Applicant’s independent contractors, agents, employees or delegates. Nothing herein shall be construed to obligate the Applicant to protect, indemnify and save the Agency, its officers and employees harmless from and against liabilities, losses, damages, costs, expenses (including attorney’s fees), causes of action, suits, claims demands and judgments arising from or by reason of the negligent or wrongful acts or omissions of the Agency, or any of its agents, employees or officers.

15. **Interest of Member of the Agency:** No member of the governing body of the Agency and no other officer, employee or agent of the Agency who exercises any function or responsibilities in connection with the carrying of out of the project to which this Proposal pertains, shall have any personal interest, direct or indirect, in the Agreement.

16. **Insurance:** The Applicant is required to furnish the Agency with certificates of insurance showing coverage is in force throughout the time of the contract, in the amounts and types as specified below.

Types of insurance required include general liability, auto, builder’s risk, worker’s comp, and any other insurance related to the project. On all insurance certificates and/or policies provided for this contract, the Applicant shall name the Minneapolis Community Development Agency as additional insured by endorsement to the policy.

The policies of insurance required to be maintained and paid for by the Applicant shall provide protection against claims which may arise out of or result from the rendering of or the failure to render services under this Agreement, whether such services be rendered by the Applicant or by any subcontractor or by anyone directly employed by any of the, or by anyone for whose acts any of them may be liable and shall include the minimum coverage’s and limits specified below.
The following insurance policies, each of which shall be in form and content satisfactory to the MCDA shall contain a provision to the effect that the policy may not be cancelled or revoked by the insurer until 30 days from the date of delivery to MCDA of notice of cancellation or revocation:

1) comprehensive general liability insurance in a combined single amount not less than $1,000,000;
2) worker’s compensation insurance in amounts and coverages required by law;
3) builder’s risk completed value non-reporting form of fire, extended coverage, vandalism and malicious mischief hazard insurance covering the full replacement value of the project; and
4) any other insurance related to the project that the MCDA may reasonably request.
Exhibit A
City of Minneapolis Map
Exhibit D
Heritage Park Master Plan Map
### Heritage Park Redevelopment Residential Housing

**Dates indicate when units will be ready for occupancy**

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#### Type Description
- **A**: Market Rate
- **B**: 80% of Median
- **C**: 60% of Median

#### Approximate Bedroom Distribution
- **1BR**: 38
- **2BR**: 62
- **3BR**: 62
- **4BR**: 62

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### Mixed Finance Rental Housing

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#### Type Description
- **D**: Market Rate
- **E**: Tax Credit
- **F**: Public Housing

#### Bedroom Distribution
- **1BR**: 21
- **2BR**: 24
- **3BR**: 24
- **4BR**: 24

---

### Elderly Public Housing

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<th>E</th>
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#### Type Description
- **D**: Market Rate
- **E**: Tax Credit
- **F**: Public Housing

---

**Exhibit E**

Residential Phasing Schedule
Exhibit F
Housing Areas Working Map
PART II. RFPs, Development Agreements, and Program Descriptions

Development Request for Proposals

→ Public Improvements Request for Proposals

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**Overall Development Objective**  To create a mixed-income neighborhood, including extensive public amenities and a wide range of housing types and community services.

**REQUEST FOR PROPOSALS**
For a Design Consultant for public realm improvements including parks, open space and infrastructure to support a mixed-use, mixed-income, high-amenity community to be developed on the Near Northside of Minneapolis.

**City of Minneapolis**
NEAR NORTHSIDE IMPLEMENTATION COMMITTEE

May 1999
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<td>• The Staff Steering Committee and Open Space &amp; Infrastructure Work Groups</td>
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<td>• The Community Advisory Committee, Neighborhood Organizations, and Community Participation</td>
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<td>• The Lead Developer</td>
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<tr>
<td>• The Open Space &amp; Infrastructure Design Consultant</td>
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<td><strong>PART III</strong>  <strong>SCOPE OF WORK</strong></td>
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PART I  BACKGROUND AND CONTEXT

Summary
This Request for Proposals is being issued by the City of Minneapolis Near Northside Implementation Committee to locate an experienced Design Consultant team (“Consultant”). The Consultant will provide services related to the planning and design of public realm improvements including parks, open space and infrastructure as part of a significant development on a 73-acre site one mile from downtown Minneapolis. The Consultant will work closely with the Lead Developer to ensure that the overall design supports and enhances marketing of mixed-income housing. When completed, this project with its range of housing types and high level of amenities, will stand as both a local and national model for mixed-income community development.
Vision: Connecting the Northside

The area consists of the Sumner Field, Glenwood, Lyndale and Olson public housing developments and parts of adjacent blocks, and is roughly bounded on the east by Lyndale Avenue North, on the north by 12th Avenue North, on the west by Humboldt Avenue North/Girard Terrace North, and on the south by 3rd Avenue North. Except for two private homes, all the land is publicly owned.

Open space and public amenities are a key to building a vital, connected community. Redevelopment will include new mixed-income housing and a 36-acre open space amenity with playfields, walking and bike trails, wetlands and other water features, and lighting for improved safety. A new boulevard connection will link the area to the parkway system, recreational and cultural resources, and downtown via Hennepin Avenue. East/west connections will re-link the site to adjacent residential neighborhoods.
A new mixed-income community will emerge – a vital, diverse community in which public housing is interspersed with housing priced for a broad range of incomes. The new housing development will center around a 36-acre park containing recreational facilities and a wetland system. The park will connect the Near Northside to the city’s renowned park system and network of trails.

A new boulevard connection will achieve an historic link between residential communities in north and south Minneapolis, connecting residents of the Near Northside to the Guthrie Theater and Walker Art Center, the Sculpture Garden, Loring Park, college campuses, and the heart of downtown.

Parks, lakes and trail systems contribute to the quality of life in Minneapolis. They connect neighborhoods and provide residents access to jobs, goods, services and transit.
The Site

The 73-acre development site, located in the heart of the city and close to major transportation routes, is located in the historical floodplain of Bassett Creek. The site has seen many changes – from swampy creek bed, to downtown neighborhood, to the first public housing development in Minnesota.

When Minneapolis was established, Bassett Creek meandered through the area with tributary streams, spring-fed ponds, marshes, floodplain forests and meadows. Early in this century, the creek was routed underground and housing and commercial buildings were constructed on fill over the unstable soils. Many of these structures were razed in the 1930’s and replaced by public housing.

Most recently, the public housing developments were part of a 1992 lawsuit, Hollman vs. Cisneros. As part of the Hollman vs. Cisneros Consent Decree, the work of a community-based focus group in 1996 resulted in a set of recommendations for the site’s re-use. These recommendations were developed into an Action Plan, approved by the Minneapolis City Council in 1997 and clarified by the April 1998 Agreement Regarding Plaintiffs’ Objections to Action Plan for Sumner-Glenwood Redevelopment that will guide the newest transformation of this neighborhood. The Development Framework for the Near Northside area immediately surrounding the Action Plan site was approved by the City Council in September 1998.

One of the chief constraints to redevelopment is the area’s soil conditions. The areas of better soils are reserved for housing development. The Lead Developer will develop a master plan for approximately 450 units of new mixed-income housing. Seventy-five percent of the units will be priced to serve a community with a broad and continuous range of incomes. Twenty-five percent will be developed as public housing.

The shaded area in the diagram at the right indicates the zone of poor soils for housing. Within the zone, buildings of any type would require deep foundations.
The areas of better soils are reserved for housing development. The poorest soils, defined by
deep deposits of unstable clay, lay in a diagonal path from southwest to northeast with a
significant lobe on the Superblock, are most problematic for housing development and will be
used primarily for storm water management and an open space amenity. (See plan view
diagram on page 8.) Approximately 36 acres, the open space amenity will be central to the
viability of the community and may be part of the city’s park system.

The site is located in a buried valley that was formed by glacial meltwaters and filled over time
with sands, silts and clays. (See plan view and section view diagrams, below.)

Right:
Plan view of extent of buried valley, which is also occupied by the Chain-of-Lakes.

Below:
Section view diagram of buried valley, indicating zones of fill, gravel, and organic silts
and clays in the project area.

Two reports accompany this Request for Proposals and provide additional critical site information:


Bassett Creek Wetland Park: Redevelopment in a Landscape of Wetland Soils (Design Center for the American Urban Landscape, 1996).
Site and Community Development Objectives
Water features, recreation and safety objectives and guidelines include the following:

- Develop parkland that includes recreational areas, wetlands and storm water ponds.
- Create a series of wetland ponds. Locate ponds on the soils least suitable for housing or active recreation.
- Design wetlands to be recognizable sources of neighborhood pride.

- Develop a continuous greenway with sufficient width for usable spaces and water features, yet narrow enough to allow surveillance, comfortable walking loops and close proximity to nearby residential and commercial areas.
- Locate playfields on higher ground so that proper drainage can be designed for easier long-term maintenance.
- Involve the community in the design of park features and management planning to help create a long-term commitment to the park.

- Include a centrally located larger shelter that includes an all-weather gathering place with bathroom facilities. This multi-purpose facility should be available for meetings and events.
- Face housing units toward the park to the greatest extent possible to allow informal policing of the park.
- Locate activity areas such as soccer fields and picnic shelters near the roads and on the higher ground to allow surveillance.

- Maintain clear site lines into the park: shrubs and tall grasses in the lower wetland area should be cleared and mowed on either side of pathways to prevent hiding places.
- Light the paths on the exterior of the park. Do not light interior paths to discourage nighttime use.
- Align a well-lit parkway-style road on the east side of the wetlands to enhance security.
- Maintain the park to the highest degree to show it is cared for and under supervision.

Note: Additional surface water system analysis and water system performance standards are being developed for application to this project. They will be discussed at the Pre-Proposal Conference.
Objectives and guidelines for circulation, neighborhood development, and street and sewer components include the following:

- Develop circulation that supports overall Near Northside strategy of community connection, housing development and job creation.
- Develop a network of local streets and sidewalks that reconnects the city’s grid pattern and is in accord with the scale and dimension of neighboring areas.
- Use new east/west connections to re-link the site to adjacent neighborhoods.
- Integrate redevelopment into the fabric of the Harrison and Near North neighborhoods.
- Extend and integrate park and institutional resources and amenities into the Northside.
- Create links to the regional network of parks, trails and parkways.
- Preserve and enhance the scenic views of downtown, park land and local landmarks.
- New parkway-style roads on the Sumner Field and Glenwood sites.
- New streets, curbs, gutters and sewers on the Superblock.
- Enhance remaining roads with trees, lights and surfacing.
- New storm and sanitary sewers on the east parkway-style road, between Olson Highway and 7th Avenue North.
- Preserve existing system of storm and sanitary sewers through the site to allow bypassing of ponds during heavy storm events.
- New connection to boulevard from the Near Northside to the Dunwoody Boulevard / Loring Park area.

Above: Parkway-style road in south Minneapolis.

Left: View of Olson Memorial Highway through project area. **Objective:** Develop safe, at-grade pedestrian crossings.
Infrastructure investments include construction of new streets and alleys and enhancement of existing streets.

Storm and sanitary sewer lines converge on the site. The new ponds will be integrated into the existing system and constructed on the low points of the site and on the deepest pockets of poor soils.

List of Reference Materials

The following documents will be on reserve in the Municipal Information Library between May 20th and June 29th. The library is located in Room 300 City Hall, 350 South 5th Street, Minneapolis MN 55415 (Phone 612-673-3029).

#  Copies of these items were mailed with the RFP.

*  Photocopies of these items will be mailed upon written request to Contract Administrator (address on page 32).

#  Action Plan for Redevelopment of the Sumner Field, Glenwood, Lyndale and Olson Public Housing Developments and Adjacent Land in Minneapolis in accordance with: Hollman Vs. Cisneros Consent Decree (Summary Report). Minneapolis Public Housing Authority, Minneapolis Community Development Agency, Minneapolis Planning Department, December 1997.

Bassett Creek Watershed, Hennepin County, Minnesota: Feasibility Report for Flood Control.

Bassett Creek Wetland Park: Redevelopment in a Landscape of Wetland Soils.
Design Center for American Urban Landscape, Regina Bonsignore, 1996.


Boring Logs and Geologic Profile in As Built Drawings of Bassett Creek Flood Control Project

Building Foundation Cost Study: Sumner Field, Glenwood, Lyndale and Olson Areas.
GME Consultants, 1996.


Geology of the Bassett Valley Area.

A Geotechnical Evaluation Report for BRW Architects, Inc.: Sumner Field Housing Project in

A Geotechnical Evaluation Report for Minneapolis Public Housing Authority: Phase I Geotechnical
Evaluation Report of Available Soils Information on the MPHA Projects on the Near North Side in

Limited Phase I Environmental Site Assessment: Hollman/Near North Side Study Area,

Design Center for American Urban Landscape, 1996.


Re-Envisioning Public Housing Within the Neighborhood: A Design Study Process: Presentation to
R., Design Center for American Urban Landscape.


Sumner-Glenwood and Environ Conceptual Small Area Plan.
Minneapolis Planning Department, 1997.

Supplemental Subsurface Exploration: Sumner Field, Bryants, Lyndale, Olson Areas Minneapolis

Urban Watershed Profile A Look at Bassett Creek Minneapolis, Minnesota:
An Assessment of the North Minneapolis Section of Bassett Creek and Its Watershed.
PART II  PARTIES AND THEIR RESPECTIVE ROLES

The Implementation Committee
A partnership of elected officials and public agencies, the Near Northside Implementation Committee will be the primary advocate for the development’s successful completion. The committee is composed of the following individuals:

- 5th Ward City Council Member, Chair
- Mayor of Minneapolis
- Executive Directors of the Minneapolis Public Housing Authority (MPHA) and the Minneapolis Community Development Agency (MCDA)
- City Coordinator
- A private sector housing expert
- Representatives of the Minneapolis Planning Commission and Department of Public Works
- Representative of Minneapolis Park & Recreation Board
- Representative of Housing and Urban Development
- Representatives of the Plaintiffs to the Consent Decree (Minneapolis Legal Aid and NAACP).

The responsibilities of the Implementation Committee include, but are not limited to, the following:

**Project Review And Oversight**

- Recommending hiring of the Consultant to the MPHA Board, MCDA Board, and the City Council.
- Reviewing and approving all aspects of the development plan.
- Approving financial strategies for both public and private elements of the development.
- General project oversight, including timelines and availability of funds.

**Negotiations**

- Authorizing the Project Director to negotiate a scope of services with the Consultant.
- Authorizing the Project Director to negotiate a contract with the Consultant.

**Land Assembly**

- Overseeing land assembly for all parcels of land in the Action Plan site area, unless specifically delegated to others.
- Overseeing the mitigation of any soil pollution in the Action Plan site area.

**Development**

- Overseeing the development of the park, street system and other infrastructure.

The Implementation Committee has appointed a Project Director who has day-to-day responsibilities for the redevelopment. The Project Director’s role is to ensure the successful completion of the entire development and coordinate the work of city departments and agencies. A Project Manager for the Open Space & Infrastructure portion of the development will be the Consultant’s primary contact. In addition, the Consultant will meet regularly with the Lead Developer, the Implementation Committee, and a Staff Steering Committee and its Open Space & Infrastructure Work Group.
Staff Steering Committee and Open Space & Infrastructure Work Groups

Staff Steering Committee
This committee is composed of representatives from key departments and agencies, including City of Minneapolis Department of Public Works, City Coordinator, Finance Department, City Attorney, Mayor’s Office, City Council, Planning Department, Minneapolis Park & Recreation Board, Minneapolis Community Development Agency, Minneapolis Library Board, and Hennepin County’s Community Works program.

Infrastructure & Open Space Work Groups
Members of these groups will provide technical expertise, assistance, or guidance to the Staff Steering Committee. These focused groups will be composed of staff and experts from a variety of departments, agencies, and institutions, and will meet or act on an as-needed basis to address specific project needs.

Community Advisory Committee, Neighborhood Organizations, And Community Participation
A Community Advisory Committee composed of representatives of the Plaintiffs, surrounding neighborhood organizations and a public housing resident meet regularly to review and comment on implementation issues. Neighborhood organizations, social service agencies, block clubs, neighborhood media, and other groups also meet as needed related to implementation issues.

The Lead Developer
The process to select a Lead Developer for housing and commercial development began with a Request For Proposals in November, 1998 and will be completed during May-June, 1999.

The Lead Developer will have responsibility for review and comment on the design of the park system and surrounding infrastructure.

The Lead Developer will recommend project schedules and stages to the Implementation Committee.

The Lead Developer will work closely with the selected Open Space & Infrastructure Design Consultant to ensure maximum marketing potential for housing units.

The Open Space & Infrastructure Design Consultant (“Consultant”)
The Consultant will provide services related to the planning and design of public realm improvements including parks, open space and infrastructure.

The overall design must support and enhance housing redevelopment. The Consultant’s schedule shall be in accord with project progression as recommended by the Lead Developer and approved by the Implementation Committee. Close coordination of Consultant and Lead Developer activities will be essential and will be further specified in the Contract for Professional Services.

Design of public realm improvements must also serve long-term public ownership and public interest needs. Consultant will work closely with Staff Steering Committee to address management concerns and needs of operating agencies, and to ensure high levels of durability and sustainability for public facilities.
PART III  SCOPE OF WORK

Types of Services
At a minimum, the project is expected to involve the following services:

• landscape architecture
• master planning and site design
• urban design
• streetscape design
• recreation planning
• plant ecology, landscape ecology
• hydrology
• wetlands engineering and design

• civil engineering
  (including street and transportation systems, sanitary and storm sewer systems, and water distribution systems)
• traffic and transportation engineering
• soil science, soils engineering
• geotechnical and environmental consulting services
• land surveying and property services

Project Progression and General Tasks

The project schedule will be coordinated with the Lead Developer’s schedule for master planning, site planning, building construction and other development activities. Generally, design activities will occur in 1999-2000, followed by construction in 2000-2002.

The following phases and associated tasks and products constitute a potential project approach. Proposers may offer alternative approaches and processes.

  Communications Standards for All Phases
  Start-Up, Inventory and Analysis (Phase I)
  Development of Alternative Design Concepts (Phase II)
  Design Development of Selected Concept (Phase III)
  Construction Documentation and Site Readiness / Site Improvement (Phase IV)
  Construction and Implementation (Phase V)
Communications Standards for All Phases

The following are standards for communicating project approach and progress and eliciting feedback throughout the project:

Attend selected meetings of Implementation Committee.

Meet regularly with Lead Developer, with Project Manager, and with Staff Steering Committee or its Work Groups.

Meet on as ‘as needed’ basis with other public agency staff, with community leaders, residents, and property owners, and with other stakeholders.

Recommend approaches to community participation process; lead or participate in workshops, charrettes, or public meetings at which community participation is solicited.

Make presentations at key decision points to decision makers including, but not limited to, the Implementation Committee, the City Planning Commission, City Council and its committees, the Minneapolis Community Development Agency Board of Commissioners, the Minneapolis Public Housing Authority Board of Commissioners, the commissioners of the Minneapolis Park & Recreation Board, and the general public.

Provide clear, concise, and thorough textual and graphical resources to facilitate decision-making and implementation.

Utilize automated design techniques as appropriate.

As requested, export plans to City to display on digital orthophotography for purpose of viewing design status.

Produce graphics and accompanying text in both presentation and reproducible formats, unless otherwise directed.

Provide written summaries of public meetings.

Perform other related work as directed.
Startup, Inventory and Analysis (Phase I)

Work Tasks and Products
Communicate project approach and progress and elicit feedback through standards specified on page 18.
Review and evaluate background information, previous planning activities and reports, locations and functions identified during preliminary design activities, available data, and existing conditions; develop additional baseline information as needed. Such information includes, but is not limited to, the following:

- development history and preliminary redevelopment concepts
- neighborhood and regional amenity goals
- recreation needs analysis
- relationships and linkages to recreational opportunities and cultural and social resources
- viewshed analysis
- existing and proposed street systems
- traffic, transit, and transportation issues, including parking, vehicular and non-vehicular movement
- location of private utilities, storm sewer, sanitary sewer, water mains, location and condition of “old” Bassett Creek tunnel (1920’s) and “new” tunnel (1992)
- land surveys
- topography
- geologic history
- site interpretation
- soil conditions
- subwatershed catchment areas and runoff conditions
- groundwater location and recharge conditions
- area plant communities
- area wildlife communities
- wetland mitigation potential
- water quantity and water quality goals and standards
- known or suspected site contamination
- all relevant ordinances, rules, laws and other regulations

Prepare brief written report to demonstrate understanding of project status and to facilitate agreement about project approach. Include general profile of existing conditions, synthesis of existing materials and information, and analysis graphics that summarize study area issues, opportunities and constraints.

Identify need for additional data collection and analysis.

Assemble data necessary to complete informational database and prepare basemap for use in subsequent phases.

Perform analysis to appropriate level for proceeding to next phase.

Perform other related work as directed.
Development of Alternative Design Concepts (Phase II)

Work Tasks and Products
Communicate project approach and progress and elicit feedback through standards specified on page 18.

Using existing schematic site plan as starting point, develop programming and schematic design alternatives for open space and infrastructure in accordance with timing and objectives of Lead Developer's master plan development. Components of each alternative design concept include:

**Parkland and open space development**
- Community and area amenities
- Recreational areas and facilities
- Destination greenspace areas at various scales, along with program elements to be included in these areas
- Management plan and evaluation of estimated maintenance costs
- System of trails and bikeways within the project area with linkages to existing and proposed regional hiking and bike trail network
- Water features for recreational and aesthetic enhancement, storm water management, and wetland reconstruction
- Ecosystem-based plant and wildlife community design

**Circulation**
- Vehicular (auto, truck, transit, emergency)
- Non-vehicular (bicycle, pedestrian including safe crossings)
- Parkway / boulevard /cultural corridor
- Open space connections
- Traffic management and control
- Reconnecting the street grid where possible to better serve Near Northside neighborhoods

**Street systems**
- New street systems and enhancement of existing street systems
- Level of service
- Alignment
- Signage, signals
- Character and streetscaping (widths, materials, lighting, planting)
- New boulevard connection
- Parking
- Ongoing operation and maintenance issues

**Services and utilities**
- Storm sewer, sanitary sewer
- Integrated storm water management, including pollutant removal and runoff volume control
- Water distribution
- Private utility readiness
- Property services
- Environmental issues
Phase II Work Tasks and Products, con’t.

Ensure that design supports and enhances a successful residential development that is well-connected to city and area resources.

Identify appropriate location, nature, functional zones, and program elements of public spaces and green areas.

Develop cultural corridor vision plan for boulevard connection.

Identify street system additions and enhancements. Analyze applicable City, State and Federal standards. Develop concepts for character, alignment, and level of service.

Define primary and secondary non-motorized routes for bicycles and pedestrians.

Pursue strategies that correct and improve environmental conditions and promote community well-being and sense of place.

Receive input from a variety of stakeholder groups and develop strategies to resolve potential conflicts.

Engage residents from surrounding community in process of programming and design.

Review plans for other nearby areas. Identify opportunities for developing a shared vision for area. Identify potential conflicts.

Develop preliminary cost estimates, phasing, and implementation methodologies for each concept plan.

Produce illustrative concept sketches, plans, section/elevations perspectives, photosimulations and other images that clearly illustrate proposed design concepts and their context.

Make presentations explaining alternative scenarios and elicit evaluation of desirability and feasibility of each concept plan.

Produce materials required for assessment of alternatives and selection by Implementation Committee of preferred concept. Identify critical components of each alternative. Produce written report of cost estimates and implementation and phasing considerations. Produce graphics in both presentation and reproducible formats.

Perform all other work needed for selecting preferred concept and proceeding to next phase.

Perform other related work as directed.
Design Development Of Selected Concept (Phase III)

**Work Tasks and Products**

Communicate project approach and progress and elicit feedback through standards specified on page 18.

Refine site design, cost estimates and implementation methodologies for selected concept.

Continue engagement of residents in programming and design process.

Perform site planning and design services. Design and prepare utility, grading and drainage plans.

Commence comprehensive or limited environmental services related to assessment, remediation or geotechnical correction plans and specifications.

Prepare written Implementation Plan.

Produce preliminary and final design graphics, including plans, sections, perspective renderings, and any necessary explanatory text in presentation and reproducible form. Three-dimensional models may be required of areas of particular interest.

Perform all other work preliminary to proceeding to next phase.

Perform other related work as directed.
Construction Documentation & Site Readiness / Site Improvement (Phase IV)

Work Tasks and Products
Communicate project approach and progress and elicit feedback through standards specified on page 18.

Within dedicated street rights-of-way, layout design, plans & specifications must meet the applicable city standards as determined by Engineering Services Division and subject to approval by the City Engineer.

Prepare construction plans, specifications and construction estimates in accordance with city, county, and state guidelines.

Provide construction document preparation and submit for review.

Obtain some or all permits for construction from local, county, state, and federal regulatory agencies.

Complete comprehensive or limited environmental services related to assessment, remediation, or geotechnical correction plans and specifications, including regulatory approvals.

Perform full or partial land survey services related to acquisition, disposition, and transfer of property.

Perform all other work preliminary to proceeding to next phase.

Perform other related work as directed.

Construction And Implementation (Phase V)

Consultant services for the construction and implementation phase will be determined at a later time. Any services related to this phase will be covered under a separate contract.
PART IV  PROPOSAL REQUIREMENTS and INFORMATION

PROPOSAL REQUIREMENTS
All proposal materials must be organized in precisely the following order:

1. Table of Contents.

2. Name and Address Roster, Proposal Contact, and Local Contact Person.
List of firm(s) that compose proposed team, including addresses and telephone numbers.
Name and phone number of person designated to answer questions about the proposal.
Name and phone number of local contact. All proposers are required to have a local contact person.

3. Overview of Firm(s).
A summary of overall capabilities of firm or firms, history, and organizational structure.

4. Disclosures.
Proposers must identify 1) past or present involvement in project area, and 2) all current projects within the City of Minneapolis that are public in nature.

5. Organizational Chart and Approach to Project.
5a) All proposers are required to supply an organizational chart that clearly shows the relationship among members of the proposer team.
5b) Types of Services, pages 17-23: State whether proposal demonstrates expertise in and capacity for performing list of services in its entirety or in part.
5c) Describe how the team is organized.
5d) List individuals, their responsibilities with respect to the project, and experience.
5e) Describe previous associations of firms and key personnel that comprise team.
5f) Include resumes of key personnel.
5g) Project Progression and General Tasks, page 17: Describe any alternative approaches and processes.

Describe how team members will communicate with other team members, with the lead developer, with the Implementation Committee, with the Staff Steering Committee and its Work Groups, with community and neighborhood groups, and with the public at large.

7. Description of Relevant Experience, Qualifications and Capacity to Meet Project Goals.
7a) Provide examples of projects similar in size or scope. Identify client and describe project size, budget, client goals, design solution, and date of design and construction. Specify services provided by team members and identify roles of key personnel.
7b) Demonstrate automated design techniques.
7c) Provide concise report of qualifications and how Consultant is uniquely qualified to assist the City in this effort.
7d) Explain the role of any non-local team members, including the number of meetings they will attend.
7e) Indicate if firm expansion is required to provide needed services.
7f) Explain contractor/sub-contractor relationships and capacity for change, expansion, or diminution of scope throughout term of project.
7g) Describe ability to meet and maintain the project schedule.
8. Statement of Project Understanding.
Provide description of project, project site, and project context that demonstrates team’s understanding of the project. Limit statement to approximately 250 words, or one-half page.

9. Approach to Open Space and Infrastructure Design.
The approach to design will be considered a critical component of all proposals. In no more than three pages, describe the philosophy and approach to the project that is being proposed. Specifically address each of the following:

- Providing amenities that support and enhance mixed-income housing development.
- Designing for long-term public benefit.
- Improving ecological systems while providing open space for recreation.
- Designing for sustainability by balancing environmental needs, social well-being, and economic factors.
- Designing to restrain costs of construction, materials and maintenance.
- Designing boulevards, greenways, and trails as cultural and recreational linkages.

10. References.
Provide a list of clients for whom similar work has been performed. For each reference, briefly state how work was similar in nature or scale. Provide as many references as necessary to ensure at least three references for each type of service being proposed. Include contact names, titles, and phone numbers.

Describe your approach to providing opportunities for training or employment to lower income residents of the project area.

12. MBE/WBE/SBE.
Describe participation on your team by minority-owned business enterprises, women-owned business enterprises, or small business enterprises.

13. Cost.
In a single, sealed envelope labeled with name that identifies Consultant and the words “ESTIMATED FEE AND BILLING RATE SCHEDULE”, provide the following:

13a) An estimated fee for the project based upon your understanding of the Project and Services included herein. Itemize the estimate according to project phases and types of services.

13b) An Hourly Rate Schedule for all personnel that will be assigned to the project.

13c) An estimate based upon the Consultant’s experience of Reimbursable Expenses.

The Implementation Committee reserves the right to negotiate the final fee and services to be provided to best match the needed services with available resources.

The Implementation Committee reserves the right to negotiate alterations in the final consultant team as necessary to provide the proper range of expertise.

Any additional proposed tasks or activities that may improve the project results.
Any exceptions to Project and Services contained herein.
Any other relevant supplemental information.

Submittals become the property of the City of Minneapolis and will not be returned.
EVALUATION CRITERIA

• Quality, thoroughness and clarity of proposal.
• Understanding of the project, project site, and project surroundings.
• Demonstration of necessary expertise within the proposer team.
• Previous experience with relevant planning, design, and engineering projects.
• Qualifications and experience of personnel.
• Capacity of firm or association of firms to perform required tasks.
• Fitness and completeness of the proposal to the Scope of Services.
• Demonstrated ability to work collaboratively with city and agency staff, developers, neighborhood and community groups, and other pertinent individuals or groups of individuals.
• Organization and management approach.
• Orientation to community and environmental sustainability.
• Commitment to quality design.
• Creativity of the proposal.
• Project philosophy and approach.
• Availability of key personnel and ability to attend all scheduled meetings.
• Capacity of local team members to make decisions, respond to requests, conduct on-site reconnaissance and conduct site visits as needed.
• Approach to providing opportunities for training or employment to lower income residents of the project area.
• Participation by minority-owned business enterprises, women-owned business enterprises, or small business enterprises.
• Reference checks.
• Reasonableness of cost estimates for services proposed, including travel costs.
EVALUATION PROCESS

After the proposal deadline, a list of proposer teams will be furnished to the Implementation Committee.

A review committee consisting of the Staff Steering Committee, the Lead Developer, and a Community Advisory Committee representative will review each proposal based on, but not limited to, the Evaluation Criteria.

The review committee will select and interview finalists.

The review committee will rank finalists and forward recommendations to the Implementation Committee.

The Implementation Committee may conduct additional interviews.

The Implementation Committee will recommend to the Minneapolis City Council that negotiations begin with one or more of the finalists on a detailed scope of services and fees for services. Final authorization to enter into a contract can only be made by the City Council.

Consultants submitting proposals will be notified in writing of the City’s decision.

Selection Timeline

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing of Request For Proposals</td>
<td>May 7, 1999</td>
</tr>
<tr>
<td>Deadline for proposals</td>
<td>June 29</td>
</tr>
<tr>
<td>Notification of finalists</td>
<td>July 14</td>
</tr>
<tr>
<td>Interviews of finalists</td>
<td>July 27</td>
</tr>
<tr>
<td>Second interviews, if necessary</td>
<td>to be determined</td>
</tr>
<tr>
<td>Project commencement</td>
<td>September 7 (approximate)</td>
</tr>
</tbody>
</table>
GENERAL REQUIREMENTS

Note: “Contractor” refers to the Consultant.

City’s Rights
The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in this Request for Proposals, or the respondent's reply based on the component prices submitted. The City also reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the City from completing the project.

Interest of Members of City
The contractor agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

Equal Opportunity Statement
Contractor agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including without limitation Minnesota Statutes, Section 181.59 and Chapter 363 and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

Affirmative Action
The contractor shall agree in writing to comply with all affirmative action laws, directives and regulations of the Federal, State and local governing bodies or agencies thereof, specifically including Section 139.50 of the Minneapolis Code of Ordinances. A pre-compliance review may be required. For further information contact the Civil Rights Department at 673-3012.

Non-Discrimination
The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as a disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements of the Minneapolis Code, Chapter 139.
Contract Incorporation of Proposal Contents
The contents of the Proposal and any clarifications or modifications to the contract thereof submitted by the successful proposer may, at the City's option, become part of the contractual obligation and be incorporated by reference into the ensuing contract.

Hold Harmless
The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney’s fees, resulting directly or indirectly from an act of omission of the contractor, its employees, agents or employees of subcontractors, in the performance of this contract or by reason of the failure of the contractor to fully perform, in any respect, all of its obligations under this contract.

The City agrees to defend and hold harmless insofar as the law allows the Contractor, its officers and employees, from any liabilities, claims, damages, costs, judgements, and expenses, including attorney’s fees, resulting directly or indirectly from an act or omission of the City or its employees in the performance under this contract or by reason of the failure of the City to fully perform its obligations under this contract.

Insurance
This contract shall be effective only upon the approval by the City of acceptable evidence of the insurance detailed below. Such insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the contract and shall remain continuously in force for the duration of the contract.

The Contractor and its contractors shall secure and maintain the following insurance:

Worker's Compensation insurance that meets the statutory obligations with Coverage B - Employer's Liability limits of at least $100,000 each accident, $500,000 disease - policy limit and $100,000 disease each employee.

Commercial General Liability insurance with limits of at least $500,000 general aggregate, $500,000 products - completed operations $500,000 personal and advertising injury, $500,000 each occurrence $50,000 fire damage, and $5,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.

Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least $500,000 per accident.

Professional Liability insurance providing coverage for the claims that arise from errors of the Contractor or its consultants, omissions of the Contractor or its consultants, failure to render a professional service by the Contractor or its consultants, or the negligent rendering of the professional service by the Contractor or its consultants in the amount of $500,000 each occurrence and $500,000 annual aggregate. The insurance policy must provide protection for two years after completion of work.
Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage.

Evidence of coverage is to be provided on a City provided Certificate of Insurance. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed.

The Contractor shall require any of its subcontractors, if allowable under this contract, to comply with these provisions.

Transfer of Interest
The contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City, provided, however, that claims for money due or to become due to the contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City.

Compliance With The Law
Contractor agrees to abide by the requirements and regulations of the Americans with Disabilities Act (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363), the Minneapolis Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event of questions from Contractor concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to the termination of this agreement.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or part, and the contractor may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

Data Practices
The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor shall immediately report to the contract monitor any requests from third parties for information relating to this agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, department heads and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.
Year 2000 Compliance
Contractor represents, warrants, and covenants that the services and/or products are designed to be used prior to, during, and after the calendar year 2000 A.D., and that the services and/or products will operate during such time period without error relating to date data.

In the event that the Contractor is entitled to modify any software pursuant to the Contract Agreement, Contractor agrees not to modify the software in any manner that would affect the performance of the software in such a manner as to cause it to fail to meet the Year 2000 Compliance set forth herein. There shall be no liability on the part of the City for any failure of the software to conform to the Year 2000 Compliance to the extent that any such failure is attributable to a modification of software by the Contractor.
Pre-Proposal Conference
An optional pre-proposal conference will be held at Hennepin County Government Center Auditorium, 300 South Sixth Street, Lower Level, on June 3, 1999 at 1 PM. In order to plan for proper seating, FAX confirmation of attendance, along with number of attendees, NO LATER THAN May 22nd.

FAX Confirmation of attendance: (612) 342-1407 ATTN: Lois Eberhart

The City’s purpose for this meeting is to exhibit a site model, provide additional information related to water system performance standards and surface water analysis, provide any up-to-date information about project schedule or other issues, and answer questions related to the Project and Services covered by the Request for Proposals.

A written response in the form of an addendum will be sent to all parties attending the pre-proposal conference and all parties mailed an RFP. Other interested parties can receive a copy by sending a written request to Project Manager (address below).

Proposal Deadline and Address
no later than Tuesday, 29-June-99 at 4:30 p.m. CDT.

City of Minneapolis
Procurement Division of the Finance Department
250 South 4th Street, Room 414
Minneapolis, MN 55415

Proposal Format
Responses should be submitted in a sealed package. Telefaxed proposals will not be accepted. All proposals must be received by the due date and time for inclusion in the selection process. Mark the outside of proposal package with RFP title, as follows:

Request For Proposals: Near Northside Open Space & Infrastructure Design Consultant

Sets of Materials
The proposal should include 40 sets of all required materials.

CONTRACT ADMINISTRATOR AND INQUIRIES
Please submit questions regarding the Request for Proposals (RFP) in writing by mail or facsimile to:

Lois Eberhart, Near Northside Open Space & Infrastructure Project Manager
Fax (612) 342 - 1407
Mail MPHA, Near Northside Implementation Committee
1001 Washington Avenue North
Minneapolis, MN 55401

Responses to inquiries will be in writing, with the questions and responses being sent to all persons attending pre-proposal conference.
Heritage Park Case Study Documents

PART II. RFPs, Development Agreements, and Program Descriptions

Development Agreements

→ Master Development Agreement

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Neither the City of Minneapolis, nor any of its officers or employees, shall be held liable for any use of the documents and no warranty, express or implied is made regarding the adequacy, completeness, legality, reliability or usefulness of the documents.
MASTER DEVELOPMENT AGREEMENT
(Near Northside Development)

THIS AGREEMENT, made as of the _______ day of __________________ 2000 by and among the CITY OF MINNEAPOLIS, a Minnesota municipal corporation and home rule charter city (the “City”); the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a Minnesota public body corporate and politic (the “MCDA”); the MINNEAPOLIS PUBLIC HOUSING AUTHORITY, a Minnesota public body corporate and politic (the “MPHA”); and MCCORMACK BARON & ASSOCIATES, INC., a Missouri corporation (“MBA”).

RECITALS

In November 1998 a consortium of elected officials, public agencies and others known as the “Near Northside Implementation Committee” issued a request for proposals (“RFP”) for a lead developer to assist in the creation of a mixed use, mixed income, high amenity community (the “Project”) on a 73-acre site located on the near north side of Minneapolis (the “Site”).

In response to the RFP, MBA submitted a proposal dated January 13, 1999, as amended by correspondence dated March 17, 1999, and April 1, 1999. The Near Northside Implementation Committee recommended and the City, the MCDA and the MPHA approved the selection of MBA, in joint venture partnership with Legacy Management and Development Corporation, as the lead developer.

In a separate RFP process, the City selected SRF Consulting Group, Inc. to design the open space and infrastructure for the Site.

Pursuant to a Master Planning Agreement dated July 1, 1999, and amended April 25, 2000, MBA, in collaboration with SRF, developed that certain Minneapolis Near Northside Master Plan dated March 2000 (the “Master Plan”) for the Site.

In March 2000, the governing bodies of the City, the MCDA and the MPHA all approved the Master Plan, with two amendments. MBA has agreed to produce certain additional documents to complete the Master Plan by May 31, 2000.

The purpose of this Agreement is to grant to MBA certain rights regarding development of the Project, to establish a scope of work to be performed by MBA and to establish a schedule of compensation to MBA for the performance of such scope of work.

Now, Therefore, in consideration of the foregoing recitals and following terms, conditions and mutual promises contained herein, the parties agree as follows:

1. EXCLUSIVE RIGHTS. Subject to the terms and conditions in this Agreement, the City, the MCDA and the MPHA hereby grant to MBA the exclusive right to negotiate development agreements with the City, the MCDA and/or the MPHA for the phased development of the housing component of the Project on the Site in accordance with the Master Plan, as amended. The parties intend to develop the Project in up to 4 phases. The general composition of and schedule for each phase is set forth in Exhibit A attached hereto and incorporated herein by reference. A development agreement (or agreements) for each phase will include provisions for timing,
predevelopment and development financing, site control, design development, form of ownership, financing and other contingencies, and property management. Each development agreement shall be subject to approval by the governing bodies of the City, the MCDA and/or the MPHA, as appropriate, and conditioned upon the City’s ability to finance the public infrastructure components of such phase of the Project. It is expected that sub-developers will develop some elements of the Project.

2. **TERM.** This Agreement shall terminate upon the earlier of the following events:

   (a) Failure to reach agreement on a development agreement for any phase of the Project within 6 months after the date set forth below for commencement of that phase (unless a date is extended by mutual agreement of the parties):

   (i) Phase I 6/30/00
   (ii) Phase II 8/30/01
   (iii) Phase III 3/30/03
   (iv) Phase IV 8/30/04; and

   (b) An uncured event of default under a development agreement for any phase of the Project; and

   (c) Closing on the final phase of the Project.

3. **ASSIGNMENT.** MBA may assign or transfer its exclusive rights under this Agreement to entities that it controls without obtaining the prior written consent of the City, the MCDA and the MPHA. MBA shall be deemed to control the assignee if either:

   (a) MBA or officers and owners of MBA own more than 50% of all classes of (i) voting common stock of the assignee, if a corporation; (ii) voting partnership interests of the assignee, if a partnership; or (iii) voting membership interests of the assignee, if a limited liability company; or

   (b) MBA or an officer or owner of MBA is the managing general partner or managing member of the assignee, as the case may be; or

   (c) The assignee is Urban Strategies, Inc., a Missouri not for profit corporation.

MBA may not assign or transfer its rights under this Agreement to any other entity without the prior written consent of the City, the MCDA and the MPHA.

4. **SCOPE OF WORK/COMPENSATION.** MBA shall perform the scope of work described in Exhibit B attached hereto and incorporated herein by reference. As compensation, the City shall pay MBA a flat fee of $30,000.00 per month commencing on June 1, 2000, and continuing until the City has committed to fund the Phase I infrastructure and MBA has secured tax credits or equivalent financing for the Phase I housing. Beginning in the month after these conditions have been met and continuing until termination of this Agreement, the fee shall be reduced to $15,000 per month. The City shall have the right to suspend payments to MBA if the parties have not entered into a development agreement for any phase of the Project by the date set out in paragraph 2(a) for commencement of that phase. The portion of the compensation that shall be advances
against developer fees and profits will be determined as part of the development agreement for each phase.

5. **PAYMENT PROCEDURE.** On or before the 20th day of each month, MBA shall submit to the Near Northside Project Director a detailed statement of the services rendered and invoices or other cost documentation reasonably acceptable to the City. The City will pay each properly documented statement within 30 days after presentment.

6. **AMENDMENTS.** No amendments may be made to this Agreement except in writing and executed in the same manner as this Agreement.

7. **INDEPENDENT CONTRACTOR.** MBA’s employees shall not be employees of the City, the MCDA or the MPHA. It is agreed that MBA and its employees will act hereunder as an independent contractor and acquire no rights to tenure, workers compensation benefits, re-employment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the City, the MCDA or the MPHA.

8. **INDEMNIFICATION.** MBA agrees to defend, indemnify and hold harmless the City, the MCDA, and the MPHA, and their officers and employees, from any liability, claims, damages, costs, judgments and expenses, including reasonable attorney’s fees, resulting directly or indirectly from any act or omission (including, without limitation, professional errors and omissions) of MBA, its employees, agents or subcontractors, in the performance of this Agreement or by reason of the failure of MBA to fully perform, in any respect, all of its obligations under this Agreement.

9. **AUDITS.** MBA agrees that the City or the State Auditor, including any duly authorized representatives of the City or State Auditor, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, and records that involve relevant transactions relating to this Agreement at any time during normal business hours and as often as they may reasonably deem necessary. MBA agrees to retain these records for a period of 3 years from the date of termination of this Agreement.

10. **APPLICABLE LAW.** The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation, which may arise hereunder, will be in and under those courts located within the County of Hennepin, State of Minnesota.

11. **NOTICES.** Any notice or demand, authorized or required under this Agreement, shall be in writing and shall be sent by certified mail to the other party as follows:

   **To MBA:** McCormack Baron & Associates, Inc.
   1101 Lucas Avenue, 6th Floor
   St. Louis, MO 63101
   Attention: Richard Baron
To the City/MCDA/MPHA: City of Minneapolis
301M City Hall
350 South Fifth Street
Minneapolis, MN 55415
Attention: Charles T. Lutz, Near Northside Project Director

12. INSURANCE. This Agreement shall be effective only upon the approval by the City, the MCDA and the MPHA of acceptable evidence of the insurance detailed below. Such insurance secured by MBA shall be issued by insurance companies acceptable to the City, the MCDA and the MPHA and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of this Agreement and shall remain continuously in force for the duration of the Agreement.

MBA shall secure and maintain the following insurance:

(a) Workers compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least $100,000 each accident, $500,000 disease-policy limit and $100,000 disease-each employee.

(b) Commercial general liability insurance with limits of at least $1,000,000 general aggregate, $1,000,000 products completed operations, $1,000,000 personal and advertising injury, $1,000,000 each occurrence, $100,000 fire damage and $10,000 medical expense any one person. The policy shall be on an “occurrence” basis, shall include contractual liability coverage, and the City, the MCDA and the MPHA each shall be named an additional insured.

(c) Commercial automobile liability insurance covering all owned, non-owned and hired automobiles with limits of at least $1,000,000 per accident.

(d) Professional liability insurance providing coverage for the claims that arise from the errors of MBA or its consultants, omissions of MBA or its consultants, failure to render a professional service by MBA or its consultants, or the negligent rendering of the professional service by MBA or its consultants in the amount of $500,000 each occurrence and $500,000 annual aggregate. The insurance policy must provide the protection stated for 2 years after completion of the work.

Acceptance of the insurance by the City, the MCDA and the MPHA shall not relieve, limit or decrease the liability of MBA. Any policy deductibles or retention shall be the responsibility of MBA. MBA shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City, the MCDA and the MPHA do not represent that the insurance requirements are sufficient to protect MBA’s interests or provide adequate coverage.

Evidence of coverage shall be provided on a City-approved certificate(s) of insurance. A 30-day written notice is required if the policy is cancelled, not renewed or materially changed.

MBA shall require any of its subcontractors, if allowable under this Agreement, to comply with these provisions.
13. **CONFLICT OF INTEREST.** MBA certifies that to the best of its knowledge no member of the governing body, officer, employee or agent of the City, the MPHA or the MCDA has any pecuniary interest in the business of MBA or this Agreement and no person associated with MBA has any interest that would conflict in any manner or degree with MBA’s performance of this Agreement.

14. **EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT.**

   (a) MBA agrees to comply with all applicable requirements and regulations of the Americans with Disabilities Act, the Minnesota Human Rights Act (Minnesota Statutes, Section 181.59 and Chapter 363), the Minneapolis Civil Rights Ordinance (Minneapolis Code of Ordinances, Chapter 139) and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability and religion, and with sexual harassment. In the event of questions from MBA concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to the termination of this Agreement.

   (b) MBA will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affectional preference, disability, age (40 to 70), marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

   (c) MBA agrees to submit to the City’s Civil Rights Department a written affirmative action plan meeting the requirements of Minneapolis Code of Ordinances, Chapter 139, for approval before entering into this Agreement.

   (d) In the event of MBA’s noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated or suspended, in whole or part, and MBA may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

15. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original.

16. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer or agent of any party shall be binding, unless it is in writing and signed by all the parties to this Agreement.

17. **SECTION 3; W/MBE.** MBA shall use its best efforts to comply with the Near Northside Implementation Committee’s “Section 3 Plan” and the contracting goals that have been established by the City for minority business enterprises and women business enterprises.

18. **REIMBURSEMENT.** The amounts paid to MBA for fees and third party subcontracts shall be reimbursed or credited at the closing for each phase of the Project, to the extent and in such amounts as are agreed by the parties.
19. **FEDERAL PART III.** MBA shall comply with all applicable requirements of the federal Part III-Special Conditions attached hereto and incorporated herein by reference.

[INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF MINNEAPOLIS

By ____________________________
   Mayor

Attest ____________________________
   City Clerk

Countersigned ____________________________
   Assistant Finance Officer

Approved as to form:

________________________
Assistant City Attorney

MCCORMACK BARON & ASSOCIATES, INC.

By ____________________________
   Its ____________________________

By ____________________________
   Its ____________________________

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By ____________________________
   Its Director of Administrative Services

Approved as to form:

________________________
Assistant City Attorney

MINNEAPOLIS PUBLIC HOUSING AUTHORITY

By ____________________________
   Its Executive Director

Approved as to form:

________________________
EXHIBIT A

(Phasing Plan)
EXHIBIT B

(Scope of Work)
PART III - SPECIAL CONDITIONS

I. GENERAL COMPLIANCE

The Contractor agrees to comply with applicable Federal and State regulations and policies issued with respect to grant funds in this contract. The Contractor further agrees to utilize funds available under this contract to supplement rather than supplant funds otherwise available.

II. ADMINISTRATIVE RESTRICTIONS

A. Redundant Payments

The Contractor understands that payment will not be available for costs that are being claimed by the Contractor on another contract for substantially the same service and/or outcome.

B. Fees

The Contractor is prohibited from charging an enrolled individual a fee for referral or program services.

C. Voter Registration

The Contractor shall provide voter registration services for employees and program participants encountered in the performance of this contract. Non-partisan assistance shall be provided, including routinely asking employees and members of the public served if they would like to register to vote, providing them with a registration form, and assisting them in completing the form.

III. SPECIFIC FEDERAL REQUIREMENTS

A. Section 504

The Contractor agrees to comply with any federal regulations issued under Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706), which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

B. Hatch Act

The Contractor agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

C. Regulations

The Contractor agrees to comply with the requirements, as applicable, of:

- **AMERICANS WITH DISABILITIES ACT OF 1990.**

- **EXECUTIVE ORDER 12259 - LEADERSHIP AND COORDINATION IN FEDERAL HOUSING PROGRAMS**

- **EXECUTIVE ORDER 12549 - DEBARMENT AND SUSPENSION, 29 CFR PART 98.**
EXECUTIVE ORDER 12800 - NOTICE TO EMPLOYEES.

FEDERAL FAIR LABOR STANDARDS ACT FOR MINIMUM WAGE AND MAXIMUM HOURS PROVISIONS.

OMB CIRCULAR A-21 - COST PRINCIPLES FOR EDUCATIONAL INSTITUTIONS.

OMB CIRCULAR A-87 - COST PRINCIPLES FOR STATE AND LOCAL GOVERNMENTS.

OMB CIRCULAR A-110 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND OTHER AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS.

OMB CIRCULAR A-122 - COST PRINCIPLES FOR NONPROFIT ORGANIZATIONS.

OMB CIRCULAR A-128 - AUDITS OF STATE AND LOCAL GOVERNMENTS.

OMB CIRCULAR A-133 - AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT ORGANIZATIONS.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968.


TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968.

USDHEW OASC-5 - COST PRINCIPLES AND PROCEDURES FOR ESTABLISHING INDIRECT COST AND OTHER RATES FOR GRANTS AND CONTRACTS WITH THE DEPT. OF HEALTH AND HUMAN SERVICES.

USDHEW OASC-10 - COST PRINCIPLES AND PROCEDURES FOR ESTABLISHING COST ALLOCATION PLANS AND INDIRECT COST RATES FOR GRANTS AND CONTRACTS WITH THE FEDERAL GOVERNMENT.

24 CFR PART 85 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS.

D. Other Requirements-Community Development Block Grant (CDBG) Funds

1. National Objectives - The Contractor agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this contract meet one or more of the CDBG program's national objectives:
   
   a) Benefit low/moderate income persons,
   b) Aid in the prevention or elimination of slums or blight,
   c) Meet community development needs having a particular urgency - as defined in 24CFR Part 570.208.

2. "Section 3" Clause - Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued thereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, the Contractor and any subcontractors. Failure to fulfill these requirements shall subject the City, the Contractor and any subcontractors, their successors and
assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement:

"The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project." The Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

3. Notifications - The Contractor agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under the "Section 3" clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. Subcontracts - The Contractor will include the "Section 3" clause in every subcontract for work in connection with this contract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Grantor Agency. The Contractor will not sub-contract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Notice to Employees

The Contractor agrees to comply with Executive Order 12800 which requires that all federal contractors, subcontractors and vendors post a notice to employees which meets the following requirements:

It must be set forth on paper no smaller than 20" x 24", use type that is at least as easily visible and readable as 48 point Korinna type (with the caption in type that is at least as easily visible and readable as 72 point Korinna boldface caps) and be posted in conspicuous places in and about their plants and offices, including all places where notices to employees are customarily posted. Following is the text of the required Notice:

Notice to Employees

Under federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact either a Regional Office of the National Labor Relations Boards or:

National Labor Relations Board
Division of Information
The last sentence of the Notice, however, shall be omitted in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151 et seq.).

The Contractor further agrees to comply with the Executive Order 12800 requirement that federal contractors and subcontractors include a clause in federally connected subcontracts and purchase orders requiring subcontractors and vendors to post the notice also.

F. Certification Regarding Lobbying - Before the City releases any of the funds covered by this agreement, the Contractor shall sign the following certification statement:

The undersigned hereby certifies, to the best of his or her knowledge and belief, that:

(1) NO FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID, OR WILL BE PAID, BY OR ON BEHALF OF THE UNDERSIGNED, TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF AN AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THE AWARDING OF ANY FEDERAL CONTRACT, THE MAKING OF ANY FEDERAL GRANT, THE MAKING OF ANY FEDERAL LOAN, THE ENTERING INTO OF ANY COOPERATIVE AGREEMENT, AND THE EXTENSION, CONTINUATION, RENEWAL, AMENDMENT, OR MODIFICATION OF ANY FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT.

(2) IF ANY FUNDS OTHER THAN FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THIS FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT, THE UNDERSIGNED SHALL COMPLETE AND SUBMIT STANDARD FORM-LLL, "DISCLOSURE FORM TO REPORT LOBBYING," IN ACCORDANCE WITH ITS INSTRUCTIONS.

(3) THE UNDERSIGNED SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN THE AWARD DOCUMENTS FOR ALL SUBAWARDS AT ALL TIERS (INCLUDING SUBCONTRACTS, SUBGRANTS, AND CONTRACTS UNDER GRANTS, LOANS, AND COOPERATIVE AGREEMENTS) AND THAT ALL SUBRECIPIENTS SHALL CERTIFY AND DISCLOSE ACCORDINGLY.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

IN WITNESS WHEREOF, I have set my hand this ________.

(date)
G. Certification Regarding Debarment - Before the City releases any of the funds covered by this agreement, the Contractor shall sign the following certification statement:

The undersigned hereby certifies, to the best of his or her knowledge and belief, that:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants’ responsibilities. The regulations were published as Part VIII of the May 26 1988 Federal Register (pages 19160-19211).

(1) THE PROSPECTIVE PRIMARY PARTICIPANT CERTIFIES TO THE BEST OF ITS KNOWLEDGE AND BELIEF, THAT IT AND ITS PRINCIPALS:

(A) ARE NOT PRESENTLY DEBARRED, SUSPENDED, PROPOSED FOR DEBARMENT, DECLARED INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM COVERED TRANSACTIONS BY ANY FEDERAL DEPARTMENT OR AGENCY;

(B) HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS PROPOSAL BEEN CONVICTED OF OR HAD A CIVIL JUDGMENT RENDERED AGAINST THEM FOR COMMISSION OF FRAUD OR A CRIMINAL OFFENSE IN CONNECTION WITH OBTAINING, ATTEMPTING TO OBTAIN, OR PERFORMING A PUBLIC (FEDERAL, STATE, OR LOCAL) TRANSACTION OR CONTRACT UNDER A PUBLIC TRANSACTION; VIOLATION OF FEDERAL OR STATE ANTITRUST STATUTES OR COMMISSION OR EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS, MAKING FALSE STATEMENTS, OR RECEIVING STOLEN PROPERTY;

C) ARE NOT PRESENTLY INDICTED FOR OR OTHERWISE CRIMINALLY OR CIVILLY CHARGED BY A GOVERNMENT ENTITY (FEDERAL, STATE, OR LOCAL) WITH COMMISSION OF ANY OF THE OFFENSES ENUMERATED IN PARAGRAPH (1)(B) OF THIS CERTIFICATION; AND

(D) HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS APPLICATION/PROPOSAL HAD ONE OR MORE PUBLIC TRANSACTION (FEDERAL, STATE, OR LOCAL) TERMINATED FOR CAUSE OR DEFAULT.

(2) WHERE THE PROSPECTIVE PRIMARY PARTICIPANT IS UNABLE TO CERTIFY TO ANY OF THE STATEMENTS IN THIS CERTIFICATION, SUCH PROSPECTIVE PARTICIPANT SHALL ATTACH AN EXPLANATION TO THIS PROPOSAL.
(3) THE UNDERSIGNED SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN ALL SUBCONTRACT AWARDS PURSUANT TO THIS CONTRACT AND AGREES TO REQUIRE ANY SUCH SUBCONTRACTORS TO SIGN A DEBARMENT CERTIFICATION.

Name and Title of Authorized Representative

Signature

1994-PT.III Federal/State
Heritage Park Case Study Documents

PART II. RFPs, Development Agreements, and Program Descriptions

Development Agreements

→ Phase I Rental Development Agreement

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Neither the City of Minneapolis, nor any of its officers or employees, shall be held liable for any use of the documents and no warranty, express or implied is made regarding the adequacy, completeness, legality, reliability or usefulness of the documents.
MINNEAPOLIS NEAR NORTHSIDE REDEVELOPMENT

Phase 1 Development Agreement
(Rental Components)

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made as of the __________ day of October, 2001 by and among the CITY OF MINNEAPOLIS, a Minnesota municipal corporation and home rule charter city (the “City”); the MINNEAPOLIS PUBLIC HOUSING AUTHORITY IN AND FOR THE CITY OF MINNEAPOLIS, a Minnesota public body corporate and politic (“MPHA”); the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a Minnesota public body corporate and politic (“MCDA”) (collectively, the "Public Entities"); and McCORMACK BARON & ASSOCIATES, INC., a Missouri corporation (the “Developer”).

PREAMBLE

A. MPHA is the owner of real property in the Near Northside area of Minneapolis, Minnesota, on which were located MPHA-owned public housing developments known as Sumner Field Homes and Sumner Annex (also known as Golden Age Apartments)(collectively, 350 units); Olson (254 units, including 188 units in the Bryant Highrises); Glenwood (220 units); and Lyndale (152 units, including 66 units in the 800 5th Avenue North Highrise).

B. Individual plaintiffs representing a class of minority families and individuals who (i) held Section 8 tenant-based certificates or vouchers administered by MPHA, or were on the waiting list for such certificates or vouchers, or (ii) resided in public housing projects owned by MPHA, including the projects identified in Recital A. above, or (iii) were on the MPHA waiting list for public housing, and the Minneapolis Branch of the National Association for the Advancement of Colored People (“NAACP”) (collectively, the “Hollman Plaintiffs”), commenced an action in United States District Court, District of Minnesota, in July 1992, now entitled Hollman v. Cuomo, Civil 4-92-712, against defendants including each of the Public Entities and the United States Department of Housing and Urban Development (“HUD”), in which the Hollman Plaintiffs alleged that the defendants had administered the public housing and Section 8 tenant-based program in Minneapolis so as to create and perpetuate patterns of racial segregation in violation of the United States Constitution and federal and state laws. The Metropolitan Council was later added as a defendant. The Hollman Plaintiffs and the defendants in the action entered into a Consent Decree that was approved by order of the District Court dated April 20, 1995 (the “Hollman Consent Decree”).

C. Part III. of the Hollman Consent Decree is headed “Deconcentration and Improvement of Northside Projects.” Part III.A. required that MPHA submit applications to HUD, pursuant to Section 18 of the United States Housing Act of 1937, as amended (the “Act”), requesting approval of demolition of (i) 402 public housing units, consisting of the Sumner Field projects (including Golden Age Apartments), four units located in the Glenwood project, and 48 scattered site units located in Minneapolis outside the Near Northside area (the “Phase I
Demolition Application”), and (ii) an additional 368 units, consisting of the remaining units in the Glenwood Project, the Olson Project excluding the Bryant Highrise, and the Lyndale Project excluding the 800 5th Avenue North Highrise (the “Phase II Demolition Application”), for a total of 770 units. The Phase I Demolition Application and the Phase II Demolition Application were timely submitted to and were approved by HUD, and all demolition approved therein has been completed, using approximately $4,156,229 of Comprehensive Grant Program funds made available to MPHA by HUD pursuant to Section 14 of the Act.

D. Part III.C.1 of the Hollman Consent Decree required that HUD enter into an Annual Contributions Contract with MPHA providing development funds for the development of 770 public housing units, to be used either for replacement by MPHA of public housing units demolished pursuant to the requirements of Part III.A. of the Hollman Consent Decree or to provide incentives to other public housing authorities to accept replacement units located in “nonconcentrated areas” (as defined in the Hollman Consent Decree). HUD and MPHA entered into Amendment Nos. 66 and 67 to Annual Contributions Contract awarding an aggregate of $74,126,542 to be used for MPHA’s development of 770 public housing units in compliance with the Hollman Consent Decree.

E. Parts III.C.2 and III.C.3 of the Hollman Consent Decree contemplated that not less than 402 replacement units for public housing units demolished pursuant to Part III.A. would be located in nonconcentrated areas of Minneapolis and Metropolitan Area suburban areas. The Hollman Consent Decree directed that MCDA and MPHA undertake a planning process regarding “reuse of the Sumner Field site and any additional land vacated by second phase demolition” (Paragraph 27), and that MPHA undertake a separate planning process to develop a plan for “the Glenwood, Lyndale, and Olson Projects, the Golden Age Apartments, and the scattered site units located on Smith Circle,” which plan was to consider “to what extent replacement should take place on the current site, how any resulting vacant land should be re-used, and how any public housing replaced on site can be improved to better meet resident needs” (Paragraph 45). The Hollman Consent Decree further directed that “based upon both studies,” MCDA, MPHA, and the City were to “produce an action plan which will provide for the restructuring of the Smith Circle, Golden Age, Glenwood, Lyndale and Olson projects, and redevelopment of the Sumner Field site as well as any vacant land resulting from second phase demolition, to be presented to the parties within two years of entry of the Decree” (Paragraph 50). The Hollman Consent Decree, in Paragraph 51 thereof, set forth goals and factors to be considered in the development of the action plan.

F. In December 1997, MPHA, MCDA, and the City (by action of their respective governing bodies) approved and adopted an Action Plan for Redevelopment of the Sumner Field, Glenwood, Lyndale and Olson Public Housing Developments and Adjacent Land in Minneapolis in accordance with Hollman v. Cisneros Consent Decree, dated December 31, 1997 (the “Action Plan”) and presented same to the Hollman Plaintiffs. As adopted, the Action Plan designated an “Action Plan site area” of approximately 73 acres (exclusive of public right-of-way) encompassing generally the public housing sites hereinabove referred to plus an adjacent “superblock” of publicly-owned and privately-owned land; provided for demolition of the Bryant Highrises in addition to the 722 units that were contained in the Sumner Field, Glenwood, Lyndale and Olson housing developments; and provided that housing developed in the Action Plan would be located in nonconcentrated areas of Minneapolis and Metropolitan Area suburban areas.
Plan site area (not including the 100 elderly public housing units to replace the Bryant Highrises) would be 25% public housing, 25% low-income housing and 50% market-rate housing, and contemplated selection of a private housing developer by competitive solicitation. In April 1998, the Public Entities approved an organizational structure for implementation of the Action Plan, including a Near Northside Implementation Committee (the “Implementation Committee”) to guide all activities, including but not limited to selection of development entities for construction of, or facilitation of construction of, all improvements contained in the Action Plan, except the public housing portion of the replacement housing which would remain the responsibility of MPHA.

G. The Hollman Plaintiffs submitted objections to the Action Plan and invoked the dispute resolution procedure provided in the Hollman Consent Decree. In April 1998, the Hollman Plaintiffs and the Public Entities entered into an Agreement Regarding Plaintiffs’ Objections to Action Plan for Summer-Glenwood Redevelopment (the “Agreement Regarding Objections”) setting forth certain agreed criteria for selection of a developer for the Action Plan implementation, as it relates to the mix of housing types and affordability levels in the mixed-income housing development. The Agreement Regarding Objections provides that “the possibility of rental units constituting some portion of the non-public housing units has not been ruled out, but the housing mix will be determined in consultation with the developer who is ultimately selected to develop the housing.” The Agreement Regarding Objections also provided that representatives of the Legal Aid Society of Minneapolis and NAACP, as representatives of the Hollman Plaintiffs, would be members of the Implementation Committee.

H. By a memorandum of understanding dated November 9, 1998, and amended and restated on August 4, 1999 (the “Public Entities MOU”), the City, MCDA, and MPHA agreed to jointly undertake implementation of the Action Plan in accordance with a Near Northside Project Manual adopted by the Implementation Committee on October 23, 1998, and amended on July 9, 1999, and clarified their respective roles and funding responsibilities during the master planning phase of the implementation.

I. In November 1998, the Implementation Committee issued a Request for Proposals (“RFP”) for selection of a lead developer to assist in the creation of a mixed-use, mixed-income, high-amenity community in the Action Plan site area. In response to the RFP, the Developer submitted a proposal dated January 13, 1999, as amended by correspondence dated March 17, 1999, and April 1, 1999. The Implementation Committee recommended and the City, MCDA, and MPHA each approved the selection of the Developer as the lead developer. Pursuant to the foregoing selection, the City and the Developer entered into a Master Planning Agreement dated July 1, 1999, and amended by First Amendment to Master Planning Agreement dated April 25, 2000.

J. A Minneapolis Near Northside Master Plan was approved by the Implementation Committee, MPHA, MCDA, and the City in March 2000 and has been modified on July 28, 2000 and October 27, 2000, to refine the location of the senior building, “superblock” circulation, and north-south boulevard alignment. As used herein, “Master Plan” refers to the March 2000 Master Plan as amended. The Master Plan provides for development within an approximately 143-acre area that includes the Action Plan site area (the “Master Plan Site”), in
four phases, of 900 housing units, including 440 family rental units (of which 200 will be public housing replacement units), 360 for-sale homes, and 100 elderly public housing units (Bryant Highrises replacement units). Of the 360 homeownership units, the Master Plan provides for targeting 55 units to families with incomes not exceeding 60% of area median income and 55 units to families with incomes between 60% and 80% of area median income, the remaining 250 units to be unrestricted. The Master Plan also provides for the development of two large parks, a north-south boulevard, reconfigured streets and related improvements within the Master Plan Site.

K. On June 1, 2000, the City, MCDA, and MPHA entered into a Master Development Agreement (Near Northside Development) with the Developer, granting to the Developer the exclusive right to negotiate development agreements with the City, MCDA and/or MPHA for the phased development of the housing component of the redevelopment of the Action Plan site area in accordance with the Master Plan (as amended to date, the “Master Development Agreement”). The first phase of the redevelopment of the Action Plan site area pursuant to the Master Plan is intended to consist of approximately 232 rental housing units, including 105 public housing units, in two sub-phases (the “Phase 1A and Phase 1B Rental Components”), for-sale units and certain park, open space and infrastructure improvements.

L. On April 12, 2001, the Public Entities and MPRB entered into a Public Entities Memorandum of Understanding (Near Northside/Hollman Redevelopment Project) and concurrently with the execution of this Agreement, the Public Entities intend to enter into a Joint Powers Agreement setting forth their respective roles and responsibilities in connection with site preparation and the construction of infrastructure, open space and park improvements essential for housing construction under Phase I of the Master Plan.

M. The Developer has represented to the Public Entities, and the Public Entities have determined, that the Developer has the requisite expertise, skill, and ability to carry out the commitments contained herein. The Public Entities have determined that construction of the Phase 1A and Phase 1B Rental Components will promote the Public Entities’ purposes pursuant to the Hollman Consent Decree, Chapters 420 and 422, Minneapolis Code of Ordinances, and the Housing and Redevelopment Authorities Act, Minnesota Statutes, Sections 469.001-469.047.

N. The parties desire to enter into this Agreement in order, among other things, to (i) confirm the designation of Developer as sole Developer with respect to the Phase 1A and Phase 1B Rental Components and designate the Developer as MPHA’s "Partner" (as hereinafter defined) with respect to the mixed-finance development of public housing units to be included in the Phase 1A and Phase 1B Rental Components, (ii) establish a scope of work to be performed by the Public Entities in connection with the Phase 1 Sites, (iii) establish a scope of work to be performed by the Developer in connection with the Phase 1A and Phase 1B Rental Components, including coordination with the Public Entities of site preparation and oversight of housing construction, (iv) identify specific rights and responsibilities of the parties with respect to specific aspects of the redevelopment, and (v) establish a schedule of compensation to the Developer for the performance of its scope of work.

NOW, THEREFORE, in consideration of the foregoing recitals and the following terms, conditions and mutual promises contained herein, the parties hereto agree as follows:
ARTICLE 1: DEFINITIONS; LIST OF EXHIBITS.

1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement:

"Act" shall mean the United States Housing Act of 1937, as amended.

"ACC" shall mean the Consolidated Annual Contributions Contract between HUD and MPHA dated September 26, 2001, as amended from time to time including, specifically, as will be amended by one or more Mixed-Finance ACC Amendments with respect to the Phase 1A Rental Component and the Phase 1B Rental Component.

“ACC-assisted Units” shall mean 60 units in the Phase 1A Rental Component and 45 units in the Phase 1B Rental Component that will be operated as “public housing” as defined in Section 3(b) of the Act.

"Action Plan" shall mean the Action Plan identified as such in Recital F. of the Preamble to this Agreement.

"Action Plan site area" shall mean the area of approximately 73 acres identified as such in the Action Plan and depicted on Exhibit F.

“Additional Services” shall mean any services to be provided by the Developer at the request of the Public Entities, as provided in Section 2.5 hereof, which are not included as Developer Services.

"Affiliate" shall mean an entity which controls, is controlled by, or is under common control with, another entity. A partnership shall be deemed an Affiliate of any general partner thereof, or of any Affiliate of such general partner.

"Closing" shall mean the financing closing for a Component. It is generally anticipated that the Closing for the Phase 1A Rental Component or the Phase 1B Rental Component shall be the initial construction loan closing, concurrently or prior to which MPHA and the pertinent Owner Partnership shall have entered into a Ground Lease regarding the site on which such Component shall be constructed.

"Component" shall mean a separately financed portion of the physical redevelopment activities included in the Phase 1 Redevelopment. The Phase 1A Rental Component and the Phase 1B Rental Component each constitute a distinct Component; the Phase 1 Homeownership Component may include one or more Components.

"Construction Documents" shall mean, as to any Component, (a) the construction contract between the Owner Partnership or other party contracting as owner and the general contractor or construction manager, (b) the general, special, and supplemental conditions to such contract, (c) drawings and specifications incorporated in the foregoing;
and (d) all written or graphic interpretations, clarifications, amendments, and changes of any of the foregoing.

"Developer Affiliate" shall mean any entity that is an Affiliate of the Developer.

"Development Contingencies" shall have the meaning ascribed thereto in Section 7.8.1 of this Agreement.

"Development Documents" shall mean, as to any Component, all documents pertaining to the development of the Component that are executed by the Owner Partnership or an Affiliate thereof, among other parties, not later than at the Closing for the Component, including, without limitation, the partnership agreement of the Owner Partnership, a Ground Lease, documents pertaining to one or more mortgage loans including MPHA Loan Documents, a Regulatory and Operating Agreement, and a Management Agreement, as generally described in Article 5 of this Agreement.

"Developer Services" shall mean the services to be provided by the Developer and which are stated to be the responsibility of the Developer in Article 3 hereof.

"Developer’s Construction Work" shall mean work, including site work, included in the scope of work for Developer’s (or Owner Partnership’s) general construction contractors as described in Developer’s request for proposals issued March 9, 2001.

"Environmental Condition" shall mean a preclosing or postclosing environmental condition as described in Sections 3.2.4 and 3.2.5 hereof.

"Forced Delay" shall have the meaning ascribed thereto in Section 8.4 of this Agreement.

"Ground Lease" shall mean a long-term ground lease of the Phase 1A Site or the Phase 1B Site by MPHA to the respective Owner Partnership.

"Hazardous Materials" shall mean any pollutants, contaminants or industrial, toxic, hazardous or extremely hazardous chemicals, wastes, materials or substances that are defined, determined, classified or identified as such in any Hazardous Materials Law or in any judicial or administrative interpretation of any Hazardous Materials Law, including, without limitation, oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls and urea formaldehyde.

"Hazardous Materials Law" shall mean all statutes, laws, acts, ordinances, rules, regulations, orders, decrees and rulings of any federal, Minnesota and/or local governmental or quasi-governmental body, agency, board, commission and/or court with jurisdiction over the Phase 1 Sites relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release and/or transportation of Hazardous Materials, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended; The Resource Conservation and
Recovery Act of 1976, as now or hereafter amended; and all regulations respectively promulgated thereunder.

"Hollman Consent Decree" shall mean the Consent Decree approved by order of the United States District Court, District of Minnesota, on April 20, 1995, in an action now entitled Hollman v. Cuomo, Civil 4-92-712, as heretofore amended on March 7, 1997; May 30, 1997; May 13, 1998; and March 21, 2000; and as may be further amended from time to time. The parties acknowledge that the Hollman Consent Decree has been amended heretofore through Amendment No. 4.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Infrastructure Improvements” shall mean certain infrastructure, open space and park improvements deemed essential for housing on the Phase 1 Sites, as more fully described in Exhibit D to this Agreement.

“Lead Developer RFP” shall mean the RFP described in Recital I. of the Preamble to this Agreement.

"Management Agent" shall mean the property management agent for the Phase 1A Rental Component or the Phase 1B Rental Component appointed by the respective Ownership Partnership as provided in Section 5.5 hereof.

“Management Plan” shall mean the plan for management of a Phase 1A or Phase 1B Rental Component prepared by the Management Agent and approved by the respective Owner Partnership and MPHA in accordance with Section 5.5 hereof, as same may be amended from time to time in accordance with the provisions thereof.

“Master Plan” shall mean the Master Plan identified as such in Recital J. of the Preamble to this Agreement.

“Master Plan Site” shall mean the area of approximately 143 acres identified as such in the Master Plan.

"Mixed-Finance ACC Amendment" shall mean a Mixed-Finance Amendment to Consolidated Annual Contributions Contract pertaining to a project consisting of public housing units included within a larger development which are developed by the mixed-finance method of development.

"Mixed-Finance Proposal" shall mean a proposal submitted to HUD by MPHA, pursuant to 24 CFR Part 941, Subpart F (as may be amended from time to time), for mixed-finance development of public housing units to be included in the Phase 1A Rental Component or the Phase 1B Rental Component.

“MPCA” shall mean the Minnesota Pollution Control Agency.

“MPRB” shall mean the Minneapolis Park and Recreation Board, a Minnesota public body corporate and politic.
"Near Northside Redevelopment" shall mean the program of carrying out all redevelopment activities, including but not limited to physical redevelopment activities, to be carried out with respect to the Master Plan Site in accordance with the Master Plan.

“New Improvements” shall mean the buildings and improvements (including building fixtures) to be constructed by the Developer or Owner Partnerships on the Phase 1A and Phase 1B Sites, together with ancillary landscaping, a leasing/management building, and site improvements.

"Owner Partnership" shall mean a limited partnership caused to be formed by the Developer to develop, own, and operate either the Phase 1A Rental Component or the Phase 1B Rental Component, as described in Section 5.1 of this Agreement. The Owner Partnership heretofore formed with respect to the Phase 1A Rental Component is Bassett Associates, L.P., a Missouri limited partnership, and the Owner Partnership heretofore formed with respect to the Phase 1B Rental Component is Bassett Creek Partners, L.P., a Missouri limited partnership. Each Owner Partnership is a Developer Affiliate.

"Phase 1A Rental Component" shall have the meaning ascribed thereto in Section 2.1.1 hereof.

"Phase 1B Rental Component" shall have the meaning ascribed thereto in Section 2.1.2 hereof.

"Phase 1A Site" shall mean the parcels, comprising approximately 7.0 acres, on which the Phase 1A Rental Component shall be constructed, as depicted on the map attached hereto as Exhibit A.

"Phase 1B Site" shall mean the parcels, comprising approximately 6.7 acres, on which the Phase 1B Rental Component shall be constructed, as depicted on the map attached hereto as Exhibit A.

"Phase 1 Homeownership Component" shall have the meaning ascribed thereto in Section 2.1.3 hereof.

"Phase 1 Homeownership Sites" shall mean such one or more parcels, located north of Olson Memorial Highway within the Master Plan Site, on which the Phase 1 Homeownership Component shall be constructed.

“Phase 1 Public Realm Improvements” shall mean the Infrastructure Improvements and the Site Preparation Work, as more fully described in Exhibit D to this Agreement. The Phase 1 Public Realm Improvements are a subset of the Stage 1 Public Realm Improvements for which the City approved a finance plan on August 25, 2000.

"Phase 1 Sites" shall mean the Phase 1A Site, the Phase 1B Site, and the Phase 1 Homeownership Sites, collectively.

"Phase 1 Demolition Application" shall mean MPHA's application to HUD for approval of demolition, identified as such in Recital C. of the Preamble to this Agreement.
"Phase II Demolition Approval" shall mean MPHA's application to HUD for approval of demolition, identified as such in Recital C. of the Preamble to this Agreement.

"Phase 1A Disposition Application" shall mean an application by MPHA to HUD, pursuant to Section 18 of the Act, for approval of disposition of the Phase 1A Site to the respective Owner Partnership pursuant to a Ground Lease.

"Phase 1B Disposition Application" shall mean an application by MPHA to HUD, pursuant to Section 18 of the Act, for approval of disposition of the Phase 1B Site to the respective Owner Partnership pursuant to a Ground Lease.

"Phase 1 Redevelopment" shall mean the program of carrying out all redevelopment activities, including but not limited to physical redevelopment activities, to be carried out by the Developer, the Owner Partnerships and the Public Entities with respect to or affecting the Phase 1 Sites under and in accordance with the Master Plan.

"Phase 1 Redevelopment Budget" shall mean the budget described as such in Section 2.11 of this Agreement and attached hereto as Exhibit C, as same may be modified or amended from time to time.

"Phase 1 Redevelopment Schedule" shall mean the schedule, in bar-graph form, described as such in Section 2.10.2 of this Agreement and attached hereto as Exhibit B, as the same may be modified or amended from time to time.

"Predevelopment Loan Agreement" shall mean a Predevelopment Loan Agreement described in Section 4.2 hereof.

"Predevelopment Budget" shall mean the Predevelopment Budget attached as an exhibit to each of the Predevelopment Loan Agreements.

"Public Entities" shall mean the City, MPHA, and MCDA, collectively, each of which may be referred to herein as a "Public Entity."

“Regulatory and Operating Agreement” shall mean an agreement between MPHA and each Owner Partnership concerning operation and funding of the Phase 1A and Phase 1B Rental Components.

“Site Preparation Work” shall mean the site clearance, remediation, wick drain and grading activities to be performed by the Public Entities on the Phase 1 Sites in accordance with Exhibit D to this Agreement.

“Unforeseen Geotechnical Condition" shall mean an adverse soils or geotechnical condition as described in Section 3.3.2.

Section 1.2. **Exhibits.** The following exhibits are attached to and incorporated into this Agreement:
ARTICLE 2. ENGAGEMENT; SCOPE OF PHASE 1 REDEVELOPMENT ACTIVITIES.

2.1. Scope of Phase 1 Activities. The Phase 1 Redevelopment will consist of the following principal components:

2.1.1. Phase 1A Rental Component. A 120-unit rental development will be constructed on the Phase 1A Site, which will include 90 qualified low-income units under Section 42 of the Internal Revenue Code, as amended, including 60 mixed-finance replacement public housing units, and 30 market-rate units. The Developer shall cause one or more applications to be submitted to MCDA for allocation of tax-exempt financing volume cap qualifying for 4% low-income housing tax credits for development of the Phase 1A Rental Component.

2.1.2. Phase 1B Rental Component. A 112-unit rental development will be constructed on the Phase 1B Site, which will include 63 qualified low-income units under Section 42 of the Internal Revenue Code, as amended, including 45 mixed-finance replacement public housing units, and 49 market-rate units. The Developer has received from the Minnesota Housing Finance Agency and MCDA allocations of calendar year 2000 Federal low-income housing tax credits, plus a forward commitment of calendar year 2001 credits, for development of the Phase 1B Rental Component, and has satisfied the requirements for carryover allocation of such credits.

2.1.3 Phase 1 Homeownership Component. Townhouse, condominium, or detached single-family units that will be constructed on the Phase 1 Homeownership Sites. The number of units to be included in the Phase 1 Homeownership Component, the number thereof to be targeted to lower-income families, the financing method, and other aspects of development of the Phase 1 Homeownership Component will be addressed in a separate agreement or agreements.

2.1.4 Phase 1 Public Realm Improvements. The Phase 1 Public Realm Improvements shall be carried out by the Public Entities or other agencies of the City as further detailed in Exhibit D to this Agreement.

2.2 Designation as Developer and "Partner." The Public Entities hereby confirm the designation of the Developer as exclusive Developer and MPHA hereby designates the Developer as its "Partner," as described in 24 CFR § 941.604, for the mixed-finance development of replacement housing on the Phase 1A and Phase 1B Sites in accordance with the
Master Plan, one or more Mixed-Finance Proposals (including the specification therein of the number of public housing units, and number of bedrooms therein), and the Construction Documents, Ground Leases and MPHA Loan Documents in form and substance acceptable to MPHA, and subject to and in accordance with the terms and conditions of this Agreement. While all legal consequences attributed to a partnership relationship are not intended to be applicable (as further specified below), the term "Partner" substantially accurately conveys that the revitalization program which is the object of this undertaking entails substantial contributions by both parties, both of services and of resources, and requires close coordination and consensus at all stages and on all elements, and the fact that the financial compensation of the Developer is significantly dependent upon successful implementation of the program.

Nothing contained in this Agreement shall be deemed or construed to create a relationship of partners, co-venturers, or principal and agent between any of the Public Entities and the Developer. The Developer shall have no power or authority to create any obligation on the part of any of the Public Entities, as principal, obligor, guarantor, or surety, with respect to any obligation to third parties incurred by the Developer.

In general, the Developer, directly or through Owner Partnerships caused to be formed by the Developer in accordance with Section 5.1 hereof, shall initiate, coordinate, and carry out or contract for all design, financing, and construction activities in connection with the development and construction of the Phase 1A and Phase 1B Rental Components, and shall coordinate such activities with the scheduling and sequencing of the Phase 1 Public Realm Improvements.

2.3 Legacy Management; Delegation to Affiliates.

2.3.1 The Public Entities acknowledge that, as disclosed in Developer's response to the Lead Developer RFP, the Developer intends to enter into a joint venture or consulting arrangement with Legacy Management and Development Corporation with respect to part or all of the responsibilities of Developer under the Master Development Agreement and this Agreement. Notwithstanding any sharing of risks and benefits which may be agreed upon between the Developer and Legacy Management and Development Corporation, the Developer shall remain primarily and directly accountable to the Public Entities for the timely and satisfactory performance of all such responsibilities. By its subscription to this Agreement, Legacy Management and Development Corporation acknowledges and consents to the terms and conditions of this Agreement.

2.3.2 The Public Entities acknowledge that the Developer may properly arrange for the assumption of direct responsibility for certain of the activities described herein (including, without limitation, contracting for necessary third-party services) by an Owner Partnership or other Developer Affiliates. Notwithstanding such delegation to and undertaking of such responsibilities by entities other than the Developer, the Developer shall remain primarily and directly accountable to the Public Entities for the timely and satisfactory performance of all such activities.

2.4. Development Obligations of the Public Entities. The Public Entities shall be obligated to perform, directly or through contractors selected by them, the Phase 1 Public Realm
Improvements and other tasks and activities designated in Article 3 hereof as responsibilities of the Public Entities, and, subject to Forced Delays, shall coordinate such activities with the scheduling and sequencing of housing construction.

2.5 Additional Services. The Public Entities may request the Developer to undertake any of the activities designated as obligations of the Public Entities as Additional Services, compensation for which shall be paid to the Developer at the times and in the manner set forth in a separate agreement defining the scope of work for any such Additional Services. The Developer shall provide such Additional Services as the agent on behalf of the Public Entities and shall disclose such agency relationship in all third party contracts for Additional Services. The parties acknowledge that no Additional Services have been requested or are anticipated as of the date hereof.

2.6 Role of HUD. The parties hereto acknowledge that the Closings and the consummation of the transactions contemplated by this Agreement are subject to approval by HUD. The Developer and the Public Entities agree to cooperate in good faith to obtain all necessary approvals from HUD required pursuant to 24 CFR Part 941, Subpart F. MPHA shall coordinate closely with the Developer regarding all relevant communications with HUD and timely forward to the Developer all relevant correspondence, directives, and other written material either to or from HUD with respect to the Near Northside Redevelopment. MPHA shall maintain sole authority for the execution of documents required of MPHA as the grantee of public housing development funds from HUD. Whenever statute or regulation or the successful implementation of the Phase 1 Redevelopment requires MPHA to take actions or execute documents to accomplish the Phase 1 Redevelopment, MPHA will do so promptly, so as not to impede the orderly progress of the Phase 1 Redevelopment.

2.7 Term of Agreement and Designation. Subject to earlier termination pursuant to Article 7 hereof, the term of this Agreement shall continue until the completion of all activities to be performed hereunder with respect to the Phase 1A and Phase 1B Rental Components and the Phase 1 Public Realm Improvements.

2.8 Cooperation. The Public Entities and the Developer shall cooperate with one another in good faith to complete the Phase 1 Redevelopment. Such cooperation shall include reasonable efforts to respond to one another as expeditiously as possible with regard to requests for information or approvals required hereby and prompt proactive sharing of information pertinent to the carrying out and orderly progression of the Phase 1 Redevelopment, including forwarding of all relevant correspondence, directives, and other written material between a Public Entity and any other department or instrumentality of the City or the State of Minnesota, or between any Public Entity and HUD, with respect to the Phase 1 Redevelopment. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval. A spirit of good faith and a mutual desire for the success of the Phase 1 Redevelopment shall govern the parties' relationship under this Agreement.
The City will follow normal review and approval procedures for regulatory or permitting activities. The Public Entities agree to promptly review any nonregulatory matter submitted, advise the Developer of approval or of why approval is being withheld, and not unreasonably withhold, condition or delay approval of such matters. The Public Entities and the Developer acknowledge that the ultimate approval responsibility and authority within each Public Entity rests with its governing body, which may reserve to itself approval of any and all deliverables referenced herein (including in the Exhibits hereto). The Public Entities and the Developer, therefore, shall determine a schedule of time and order for performance of the tasks for which they have responsibility based upon reasonable times for review, approval and return of documents, to ensure the prompt and continuing prosecution of work, which will make due allowance for approval by the pertinent governing body when so reserved.

As a norm, each Public Entity and the Developer shall approve, disapprove, or withhold approval of any nonregulatory matter as promptly as practicable and in any event not later than 14 days after receipt. Where a Public Entity reasonably anticipates that more than 14 days may be required due to necessity of consideration by its governing body or other factors, such Public Entity shall make best efforts to so advise the Developer in ample time to permit such requirements to be taken into account in the scheduling of submissions to such Public Entity. If a submitted deliverable or any portion thereof is disapproved or approval is withheld, the Public Entity or Developer shall give specific reasons for disapproval and suggested modifications, and the submitting party shall, within a reasonable time thereafter, submit the deliverable with such responsive revisions as such submitting party may propose. The objecting party shall then have 7 days to review and approve or disapprove the new or corrected deliverable. The provisions of this section relating to time periods for approval, rejection or resubmission of new or corrected deliverables shall continue to apply until the deliverables have been approved by all necessary parties or until this Agreement is terminated.

2.9 Communications. To facilitate communication, the Public Entities and the Developer each shall designate a representative with responsibility for the routine administration of such party's obligations under this Agreement. Initially such representatives shall be Darrell Washington, Project Coordinator in the Special Initiatives Department of MCDA, as the “Project Manager” for the Public Entities, and Darlene Walser for the Developer. In all cases in this Agreement where information, notices, or other documents are to be transmitted from the Developer to the Public Entities, such transmission shall be made through their representative designated above (or any designated successor thereto), with a copy to MPHA's Executive Director of all written transmittals as they are provided to the Project Manager. Each of the Public Entities and the Developer will keep one another informed of all material events, information and communications relating to the Phase 1 Redevelopment.

2.10 Redevelopment Schedule.

2.10.1 Base Expectations. The Public Entities and the Developer acknowledge certain mutual base objectives and expectations regarding progress of the Phase 1 Redevelopment, which each of them commit their mutual best efforts to achieve, as follows:
(1) The Developer will provide all necessary information regarding development costs and sources and terms of financing and such other assistance as may be required or requested by MPHA to permit preparation and submission to HUD of a Mixed-Finance Proposal covering the Phase 1B Rental Component in adequate time (not less than 60 days prior to projected Closing and commencement of construction) to permit financing closings and commencement of construction in accordance with schedules necessary to preserve carryover reservations and applicable placement in service deadlines. The parties acknowledge that buildings in the Phase 1B Rental Component intended to qualify for tax credits based on the calendar year 2000 carryover allocation must be placed in service not later than December 31, 2002.

(2) The Developer has caused the Phase 1A Owner Partnership to submit to MCDA an application for tax-exempt bond financing for the Phase 1A Rental Component. Assuming timely receipt of approval of such application, the Developer will provide all necessary information regarding development costs and sources and terms of financing and such other assistance as may be required or requested by MPHA to permit preparation and submission to HUD of a Mixed-Finance Proposal covering the Phase 1A Rental Component contemplating construction substantially contemporaneously with construction of the Phase 1B Rental Component.

(3) Subject to Forced Delays and timely performance by Developer of its obligations under this Agreement, the Phase 1 Public Realm Improvements will be completed in accordance with the schedule in Exhibit D and the other tasks that are the responsibility of the Public Entities hereunder shall be carried out and completed in accordance with a sequencing and scheduling which will permit commencement and completion of construction of the housing Components on a schedule consistent with the foregoing.

2.10.2 Phase 1 Redevelopment Schedule. Attached hereto as Exhibit B is a detailed schedule, in critical-path bar-graph form, for commencement and completion of all tasks required for timely commencement and completion of the Phase 1A and Phase 1B Rental Components and Phase 1 Public Realm Improvements, which is consistent with the base objectives and expectations set forth in Section 2.10.1 hereof. The Developer shall continually revise and update the schedule to reflect evolving events and circumstances, including impacts on interdependently related activities, and to include actual dates of commencement and completion of tasks; provided, however, that any material change to the schedule for the Phase 1 Public Realm Improvements shall be subject to the prior written approval of the Public Entities. The Phase 1 Redevelopment Schedule is intended to function as a coordination tool. The Developer shall supplement the bar-graph schedule with detailed schedules for submissions and responses of necessary deliverables associated with tasks covered by the schedule, taking into account appropriate scheduling for submission and consideration by the governing bodies of the Public Entities, where applicable. An updated complete Phase 1 Redevelopment Schedule will be provided to the Public Entities monthly, as needed (see Section 2.12), with identification and explanation of changes reflected therein. If a Public Entity shall object to any change in the schedule as submitted by the Developer, such Public Entity shall promptly advise the Developer, and each other Public Entity, in writing of such Public Entity's basis for such objection and any
suggested means of avoiding or otherwise remedying such change. Each Public Entity
undertakes that it will advise the Developer and each other Public Entity promptly of any known
or reasonably anticipated event or condition which might affect the scheduling, or require a
change therein, of any task which is the responsibility, in whole or in part, of such Public Entity.

2.11 Phase 1 Redevelopment Budget. The Phase 1 Redevelopment Budget, including
separate budgets for the Phase 1B Rental Component and the Phase 1A Rental Component and
identifying all sources of funds and amounts for estimated uses, is attached as Exhibit C. The
Phase 1 Redevelopment Budget is intended to encompass all sources and uses of funds for
activities which are the cost responsibility of the Developer, and accordingly does not include
administrative and other costs of MPHA that may be eligible for reimbursement from public
housing capital funds or costs of activities that are the cost responsibility of the Public Entities.
Proposed revisions to the Phase 1 Redevelopment Budget will be submitted by the Developer to
the Public Entities monthly, as needed (see Section 2.12 below), in the form of a proposed
revised Phase 1 Redevelopment Budget with identification and explanation of changes, which
upon approval by the Public Entities shall be deemed to constitute a Phase 1 Redevelopment
Budget. The Public Entities shall not unreasonably withhold approval of any proposed increase
in the Phase 1 Redevelopment Budget for which a source of funds other than a Public Entity is
identified by the Developer.

2.12 Monthly Status Reports and Information. No later than the 15th day of each
month beginning with the month following the date of execution of this Agreement, (i) the
Developer shall provide the Public Entities with written progress reports in such form as may
reasonably be required by the Public Entities on the status of all redevelopment activities,
including work performed by the Developer's subcontractors and by the Public Entities as
reported by them to the Developer, and which shall include proposed modifications to the Phase
1 Redevelopment Schedule, when necessary; a chart showing monthly expenses against the
Phase 1 Redevelopment Budget; and when necessary, proposed revisions to the Phase 1
Redevelopment Budget; and (ii) the Public Entities shall provide the Developer with written
progress reports on the status of all activities that are the responsibilities of the Public Entities,
including work performed by the Public Entities' contractors, which shall include, when
necessary, proposed modifications to the Phase 1 Redevelopment Schedule.

2.13 Contractors and Consultants. The Developer or appropriate Owner Partnership
shall be responsible for the selection and engagement of subcontractors, consultants and other
participating parties necessary for carrying out Developer Services pursuant to this Agreement,
including Predevelopment Activities described in Article 3 and subsequent development and
construction activities and non-construction activities contemplated by this Agreement. MPHA
acknowledges that, in accordance with 24 CFR § 941.602(d)(2), neither the Developer nor an
Owner Partnership is required to comply with procedures set forth in the procurement policy of
the MPHA or under 24 CFR § 85.36. However, in light of the public investment in the Near
Northside Redevelopment, the Developer acknowledges the Public Entities’ expectation that
contractors will be engaged pursuant to open and fair competitive procedures to the extent
practical. In selecting contractors and consultants, the Developer shall be alert to organizational
conflicts of interest as well as noncompetitive practices that may restrict or eliminate competition
or otherwise restrain trade and will make awards to the bidder or offeror whose bid or offer is in
the Developer's (or Owner Partnership's) sole determination most advantageous to the
revitalization, taking into consideration price, quality and other factors. The other factors shall include (but not be limited to) the bidder's or offeror's commitment to compliance with the Section 3, workforce and MBE/WBE participation goals attached as Exhibit E. The Developer shall advise the Public Entities of all selections by the Developer of contractors or other participating parties engaged or selected for participation in the Near Northside Redevelopment. The Public Entities, or MPHA separately, may disapprove a selection made by the Developer only in writing specifying the grounds of disapproval, including (i) a conflict of interest causing any Public Entity to violate its obligations under applicable regulations, MPHA’s ACC with HUD, 24 C.F.R. § 85.36(b)(3), or state law, or (ii) demonstrated poor performance by the selectee under any previous contract with a Public Entity or another public agency in Minnesota.

2.14 Compliance With Laws and Permits. The Developer shall cause the design and construction of all Components to be in compliance with all applicable Federal, state and local laws, codes, ordinances, rules and regulations and with all permits. The Developer shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise.

2.15 [Intentionally Omitted]

2.16 Adherence to Master Plan. The Developer and the Public Entities shall be guided by the Master Plan in performing their obligations under this Agreement. The parties acknowledge that the Master Plan has been modified to date to identify the placement of senior housing and the alignment of the north-south boulevard and other roads, among other things. It is contemplated by the parties that, as the Developer pursues the further planning and implementation of the Near Northside Redevelopment, the Developer and/or the Public Entities may identify areas in which the Master Plan can be improved so as to make the Near Northside Redevelopment more economically feasible or to better achieve the underlying objective of community revitalization. In addition, the parties recognize that the Master Plan may prove to be predicated on assumptions of fact or law (including, but not restricted to, assumptions about the availability of certain sources of funds on certain terms, or about statutory or administrative restrictions applicable to funds or other resources, or about the cost of redevelopment) which are no longer well-founded, causing the Master Plan to be no longer reasonably feasible. Where future amendments to the Master Plan are required by infeasibility or unforeseen circumstances, the Public Entities and the Developer will work together to develop changes which accomplish the original goals set forth in the Master Plan to the maximum extent reasonably feasible given available resources.

ARTICLE 3. PRE-DEVELOPMENT ACTIVITIES

3.1 Relocation and Replacement. MPHA has and shall retain all responsibility for the temporary and permanent relocation of public housing residents necessitated by demolition pursuant to the Phase I Demolition Application and the Phase II Demolition Application, and all costs thereof, in accordance with MPHA's relocation plans approved by HUD in connection therewith and all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, implementing regulations at 49 CFR
Part 24, and 24 CFR Part 970. To the extent that any person or family eligible for assistance under MPHA's relocation plans is provided permanent replacement housing in the Phase 1A Rental Component or Phase 1B Rental Component, or in the Phase 1 Homeownership Component, MPHA shall be solely responsible for the cost of relocation of such person or family thereto, including, but not limited to, all moving expenses and fees or costs for reinstallation of utilities (including phones, cable TV, etc.), and counseling and advisory services. MPHA shall indemnify and hold the Developer harmless from any liability to public housing residents displaced by demolition pursuant to MPHA's demolition applications arising pursuant to the foregoing laws and contractual obligations.

3.2. Environmental and Geotechnical Assessment; Environmental Conditions.

3.2.1 The Public Entities, at their expense, engaged a contractor to perform a phase 1 environmental site assessment of the Master Plan Site. The Public Entities also caused a phase 2 environmental site assessment to be performed of all or a portion of the Master Plan Site, as a consequence of which the Public Entities prepared a response action plan regarding removal of fuel-contaminated soils at the former Sumner Heating Plant and soil screening during construction in all other areas that has been approved by the MPCA. The Public Entities provided the Developer with copies of the International Technology Corporation Limited Phase 1 Environmental Site Assessment Report for Hollman/Near North Side dated November 23, 1998, the Braun Intertec Phase 2 Environmental Site Assessment Near North Side Redevelopment Project Report dated February 25, 2000, and the Braun Intertec Response Action Plan/Construction Contingency Plan dated September 21, 2000 and amended October 30, 2000 and August 17, 2001 (as amended, the “RAP”). Upon completion of remedial action to be performed pursuant to the RAP, the Public Entities will obtain applicable closure and liability assurance letters from the MPCA for the identified releases in the RAP.

The Developer, at its own expense, has engaged a contractor to perform a phase 1 environmental site assessment of each of the Phase 1 Sites. The Developer has requested that the Public Entities retain Braun Intertec to perform further environmental evaluation in accordance with that certain “Cost Estimate and Scope of Work” dated August 14, 2001 (the “Braun Additional Assessment”). At the initial Closing, the Developer shall reimburse the Public Entities for the cost of the Braun Additional Assessment. If remedial actions in addition to those described in the RAP are required by MPCA as a result of the Braun Additional Assessment or any other environmental assessments found necessary after the date hereof (collectively, the “Additional Environmental Assessments”), and subject to Section 3.2.4, such remedial actions shall be added to the scope of the Site Preparation Work to be conducted by the Public Entities, at their sole cost, pursuant to Section 3.3.

3.2.2 The Public Entities, at their expense, engaged a contractor to compile and evaluate information from previous geotechnical reports and perform additional borings on the Master Plan Site and provided the Developer with a copy of the Braun Intertec Preliminary Geotechnical Evaluation Report dated April 6, 2000. The Developer, at the expense of the Public Entities, engaged a geotechnical consultant to perform a preliminary geotechnical evaluation of the Action Plan site area and provided the Public Entities with a copy of the Barr Engineering Preliminary Geotechnical Evaluation Review: Near North Side Neighborhood Master Planning dated April 2000. The Developer, at its own expense, subsequently engaged a
geotechnical consultant to perform a geotechnical evaluation for Phase 1 Sites (the “Geotechnical Assessment”), a copy of which Geotechnical Assessment by Barr Engineering dated January 2001 has been provided to the Public Entities. Except for the Site Preparation Work included in Exhibit D, the remedial actions recommended in the Geotechnical Assessment shall be the Developer’s responsibility to perform using available funds from sources identified by the Developer.

3.2.3 MPHA hereby authorizes and grants a license to the Developer, its agents, employees, contractors and subcontractors, to conduct environmental, geotechnical and other assessments of the Phase 1 Sites owned by MPHA as required. The Public Entities have made and shall continue to make available to Developer, without representation or warranty from the Public Entities, all studies, reports, or other documents and any "as-built" drawings which, to the best of the Public Entities’ knowledge, are in the possession and control of any Public Entity and pertain to the presence of Hazardous Materials in, on or under the Phase 1 Sites and geotechnical conditions of the Phase 1 Sites; provided, however, that the Public Entities do not warrant the right of Developer to rely upon such reports and documents and shall bear no liability in the event of unintentional nondisclosure of any such document.

3.2.4 If the Public Entities determine at any time subsequent to the completion of any Additional Environmental Assessments, but prior to Closing, that either (i) the nature of, time frames for, or costs of remediation to MPCA residential standards of a Phase 1 Site or any portion thereof as recommended by the Additional Environmental Assessments or (ii) a materially increased scope or cost of remediation of a previously known condition would render the construction of the New Improvements or operation of such New Improvements practically or financially unacceptable (a “Preclosing Environmental Condition”), the Public Entities shall give notice thereof to the Developer and the Developer and the Public Entities shall meet to consider the feasibility of the development of the Phase 1 Site (or affected portions thereof) and the possible methods and source of payment for remediation of the Preclosing Environmental Condition. If no written agreement, either separate from or as an amendment to this Agreement, regarding such remediation is reached between the Developer and the Public Entities within ninety (90) days after the date of the written notice of such condition, the Public Entities may terminate this Agreement for convenience pursuant to Section 7.3, and the Developer may terminate this Agreement pursuant to Section 7.8, as to such Phase 1 Site or, if feasibly separable, the affected portion thereof; provided, however, that if this Agreement is not so terminated, the Phase 1 Redevelopment Schedule and Exhibit D timelines for the affected Component or portion thereof shall be extended by the time taken to execute such agreement or amendment or as necessary to remediate such Preclosing Environmental Condition. The Public Entities shall be responsible only for all costs and expenses of remediation of any Preclosing Environmental Condition to MPCA residential standards, and to the extent that such costs or expenses are advanced by the Developer with the written consent of the Public Entities (it being understood and agreed that Developer is under no obligation to advance its own funds), the Public Entities shall promptly reimburse Developer for all such expenditures upon presentation of appropriate invoices.

3.2.5 If either the Developer or the Public Entities discovers Hazardous Materials after Closing and during the course of the Site Preparation Work or Developer Construction Work for a Phase 1A or Phase 1B Rental Component, the discovering party shall
immediately notify the other party. If the Public Entities determine that either (i) the nature of, time frames for, or cost of remediation to MPCA residential standards of such an environmental condition affecting such site or (ii) a materially increased scope or cost of remediating a previously known condition would render construction or operation of the New Improvements practically or financially unacceptable (a “Post-Closing Environmental Condition”), the Public Entities shall give written notice thereof to the Developer, and the Developer and the Public Entities shall meet to consider the feasibility of the development of the Component or affected portions thereof and the possible methods and source of payment for remediation of the Post-Closing Environmental Condition. If no written agreement, either separate from or as an amendment to this Agreement, regarding such remediation is reached between the Public Entities and Developer within thirty (30) days after the date of the written notice of the Post-Closing Environmental Condition, the Public Entities may terminate this Agreement as to such Component upon (i) payment or reimbursement to the Developer of all third party costs incurred but not yet reimbursed, and (ii) payment of all other amounts necessary to restore parties to the Closing to the position they were in prior to Closing, including repayment of debt or equity funds advanced. If this Agreement is not so terminated, the Phase 1 Redevelopment Schedule and Exhibit D timelines for the affected Component or portion thereof shall be extended by the time taken to execute such agreement or amendment or as necessary to remediate such Post-Closing Environmental Condition. The Public Entities shall be responsible only for all costs and expenses of remediation of any Post-Closing Environmental Condition to MPCA residential standards, and to the extent that such costs or expenses are advanced by the Developer with the written consent of the Public Entities (it being understood and agreed that Developer is under no obligation to advance its own funds), the Public Entities shall promptly reimburse Developer for all such expenditures upon presentation of appropriate invoices.

3.3. Site Preparation.

3.3.1 The Public Entities agree to perform, at their sole cost, the Site Preparation Work described in Exhibit D. The Public Entities' obligation to perform any wick drains installation work (the "Wick Drains Work") as part of the Site Preparation Work for the New Improvements on the Phase 1 Sites, as described in Exhibit D, is subject to the following conditions: (a) the Developer shall prepare the plans and specifications for the Wick Drains Work which shall authorize the Developer's engineer to direct and approve the installation of the wick drains; (b) the Developer through its engineer shall provide on-site field supervision of the installation of the wick drains and certify completion in accordance with the plans and specifications of the wick drains; (c) subject to appropriate confirming change to the existing contract with the wick drain installation contractor, the Public Entities shall schedule and coordinate the Wick Drains Work; and (d) the cost of the Wick Drains Work shall be the obligation of MPHA, subject to the following sentence. In the event that the costs of the Wick Drains Work shall exceed $813,790, (x) any increased costs attributable to a change in specifications or increase in the number of wick drains to be installed shall be reimbursed by the Developer; (y) any increased costs attributable to correction by the wick drain contractor of conditions discovered during the course of Wick Drains Work which are the responsibility of the Public Entities hereunder (e.g., remediation of environmental conditions, removal of vestiges of former land use) shall be the responsibility of the Public Entities; and (z) any increased costs attributable to other causes shall be reimbursed by the Developer to the extent of the first
$20,000 thereof and thereafter shall be split equally between the Developer and the Public Entities.

The Public Entities’ obligation to perform mass grading for the Phase 1 Sites is subject to the following conditions: (a) the Developer shall review and approve the Public Entities’ plans and specifications for the work prior to commencement of the work; (b) the Developer, through its engineer, shall provide on-site field monitoring and shall coordinate with the Public Entities’ engineer to monitor and approve the suitability of soils prior to placement and compaction of the soils in accordance with the plans and specifications; (c) the cost of mass grading shall be the cost responsibility of the Public Entities; and (d) the Public Entities shall provide a progressive as-built survey of the development sites within 15 working days after mass grading of the development sites is completed. The Public Entities have no obligation to perform development block subgrade geotechnical corrections or exchanges below the grades given in the mass grading plans and specifications.

The responsible Public Entity shall, as applicant, apply for and obtain grading permits and all other City or governmental approvals necessary for the Site Preparation Work. The Public Entities shall be responsible for delivering a site in conformance with the agreed plans and specifications. The Developer will be responsible for performing or causing its contractors to perform any development block work that is outside the scope of Exhibit D and Section 3.2, using available sources of funds identified by Developer.

If and to the extent that Site Preparation Work for a Phase 1A or Phase 1B Site is not completed by the date of Closing with respect to such site, the Public Entities shall continue and complete the Site Preparation Work therefor subsequent to Closing. The Developer, on behalf of the Owner Partnerships, hereby grants to the Public Entities and their contractors a license to permit completion of the Site Preparation Work.

3.3.2 If, during the course of the Site Preparation Work or Developer Construction Work for the Phase 1A or Phase 1B Rental Component (whether prior or subsequent to Closing), the Developer determines that either (i) the nature of, time frames for, or cost of correcting a soils or geotechnical condition not encompassed by Exhibit D or the Developer Construction Work or (ii) a materially increased scope or cost of correcting a previously known condition would render construction or operation of the New Improvements practically or financially unacceptable (an “Unforeseen Geotechnical Condition”), the Developer shall give written notice thereof to the Public Entities, and the Developer and the Public Entities shall meet to consider the feasibility of the development of the Component or affected portions thereof and the possible methods and source of payment for remediation of the Unforeseen Geotechnical Condition. If no written agreement, either separate from or as an amendment to this Agreement, regarding such remediation is reached between the Public Entities and Developer within thirty (30) days of the date of a written notice of such Unforeseen Geotechnical Condition, the Developer may terminate this Agreement as to such Component or the affected portions thereof. Upon termination, the Public Entities will reimburse the Developer for any third party costs incurred but not yet reimbursed, provided that (a) the tasks or products are useable by the Public Entities in further carrying out of the Near Northside Redevelopment; and (b) the Public Entities receive reimbursement for such works as recognized project costs from public housing development funds. If this Agreement is not so terminated, the Phase 1
Redevelopment Schedule and Exhibit D timelines for the affected Component or portion thereof shall be extended by the time taken by the parties to confer regarding the Unforeseen Geotechnical Condition and, as necessary, to remediate the Unforeseen Geotechnical Condition. The Developer shall be responsible for all costs and expenses of correction of any Unforeseen Geotechnical Condition.

3.4. Infrastructure Improvements.

3.4.1 The Public Entities shall construct, at their sole cost (subject to section 3.4.3) the Infrastructure Improvements described in Exhibit D. The Public Entities will submit to the Developer for its review the schematic, design development and construction plans and specifications (collectively, the “Infrastructure Plans”) for the Infrastructure Improvements. The Infrastructure Plans will be consistent with the description of proposed physical improvements contained in the Master Plan. Upon request by the Developer, the Public Entities and the Developer shall meet within ten (10) days of each submission for the purpose of reviewing such submission and discussing any Developer questions or concerns. The Developer must provide written objections to each submission within fifteen (15) days after receipt. If the Public Entities are in disagreement with the Developer regarding the necessity, desirability or feasibility of any modifications to the Infrastructure Plans recommended or requested by the Developer, the Public Entities and the Developer shall meet to consider in good faith alternative means of addressing the concerns of the Developer. However, the design decisions of the Public Entities regarding the Infrastructure Improvements shall be final, subject to the Developer’s rights under Section 7.8 hereof. Notwithstanding any other provision of this Agreement, the Developer shall bear no liability or responsibility for the Infrastructure Plans as a result of its review of such plans.

3.4.2 The Public Entities acknowledge the necessity of carrying out the Phase 1 Public Realm Improvements (including the Site Preparation Work) in accordance with a sequencing and scheduling, subject to Forced Delays and timely performance by the Developer, which permits timely commencement and completion of housing construction and commencement of occupancy and supports successful marketing of the Phase 1A and Phase 1B Rental Components and the Phase 1 Homeownership Component. A narrative description of tasks encompassed within the Phase 1 Public Realm Improvements and schedule for completion thereof are included in Exhibit D. The Public Entities acknowledge that a substantial portion of the Phase 1 Public Realm Improvements affecting each Component will remain substantially subject to future performance at a time when the Component is otherwise ready for Closing and that the obligations of the Public Entities to timely perform and complete the Phase 1 Public Realm Improvements affecting any Component shall survive the Closing as to such Component.

3.4.3 Special Assessments. The Public Entities intend to specially assess the cost of the Infrastructure Improvements to the benefited properties over a 20-year period. The total special assessment to be levied against the Phase 1 Sites, including Phase 1A Sites, Phase 1B Sites, and Phase 1 Homeownership Sites, for Phase 1 Infrastructure Improvements is estimated to be $2,729,500. This amount will be allocated according to the following table. The Developer hereby waives on behalf of the Owner Partnerships the right to appeal the amount of the special assessments for the Infrastructure Improvements.
<table>
<thead>
<tr>
<th>Outlot</th>
<th>Streets</th>
<th>Street lights</th>
<th>Streetscape (sidewalks)</th>
<th>Sanitary Sewers</th>
<th>Water</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>40,500</td>
<td>48,500</td>
<td>26,500</td>
<td>13,000</td>
<td>79,500</td>
<td>208,000</td>
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<td>B</td>
<td>72,500</td>
<td>86,500</td>
<td>40,000</td>
<td>129,500</td>
<td>139,500</td>
<td>468,000</td>
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<tr>
<td>C</td>
<td>8,500</td>
<td>9,500</td>
<td>6,500</td>
<td>21,500</td>
<td>23,000</td>
<td>69,000</td>
</tr>
<tr>
<td>D</td>
<td>70,000</td>
<td>83,500</td>
<td>32,500</td>
<td>100,500</td>
<td>80,500</td>
<td>367,000</td>
</tr>
<tr>
<td>E</td>
<td>87,500</td>
<td>104,500</td>
<td>57,500</td>
<td>142,000</td>
<td>162,500</td>
<td>554,000</td>
</tr>
<tr>
<td>F</td>
<td>133,500</td>
<td>159,500</td>
<td>65,000</td>
<td>161,500</td>
<td>161,000</td>
<td>680,500</td>
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<tr>
<td>K</td>
<td>46,500</td>
<td>55,500</td>
<td>20,000</td>
<td>67,000</td>
<td>53,500</td>
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<td>61,000</td>
<td>22,000</td>
<td>4,000</td>
<td>2,500</td>
<td>140,500</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$510,000</strong></td>
<td><strong>$608,500</strong></td>
<td><strong>$270,000</strong></td>
<td><strong>$639,000</strong></td>
<td><strong>$702,000</strong></td>
<td><strong>2,729,500</strong></td>
</tr>
</tbody>
</table>

Note: No street or street light costs are included in Outlots B, C or E for Olson Highway, since temporary condition without new pedestrian scale lighting will be in place until Olson Highway realignment and reconstruction (target construction year is 2003). New sidewalks will be constructed as part of Phase I and again with Olson Highway. At the time the Olson Highway improvements are assessed, the Developer (as taxpayer) may, if desired, petition to have the assessments for the improvements that benefit the Phase 1A and Phase 1B Sites billed alternatively to the Developer’s other development blocks abutting Olson Highway, if any. The City’s Public Works Department supports petitions for special assessments in general, and therefore, will work with the Developer to ensure that the petition is acceptable.

### 3.4.4 Public and Private Utilities.

(a) The Developer may not construct any building or other structures on, over or within the boundary lines of any public or private utility easement unless such construction is provided for in the easement or has been approved by the utility involved.

(b) The Developer must pay all sewer availability charges with respect to the New Improvements.

(c) The Developer, at its own expense, must replace any public facilities and public utilities damaged by Developer or its agents, employees, or contractors during the construction of the New Improvements, in accordance with the technical specifications, standards and practices of the owner thereof.

(d) The Public Entities will install and/or modify the public utilities (i.e., water mains, storm sewers and sanitary sewers) and the lateral connections from the mains to the property lines as described in Exhibit D and specially assess the costs to the benefited properties, including the Phase 1A and Phase 1B Rental Sites as further described in Section 3.4.3. From and after the first Closing, the City shall coordinate with the Developer’s contractor to field
locate the sanitary wyes, water service tees and taps that will service the Phase 1A and Phase 1B Rental Sites. Subsequent changes shall be the responsibility of the Developer.

(e) The Public Entities will use best efforts to coordinate private utilities activities such as relocations and releases of easements so as not to impede, delay or hinder Developer’s timing, sequence or schedule of onsite work within the development blocks. The Public Entities shall be responsible for reimbursing private utilities for costs associated with relocations from or within Outlots D, E, and F to enable street realignment and shaping of development blocks, to the extent required by easement or utility franchise agreements.

Except as described above, the Developer shall be responsible for the costs of installation of all private utilities (e.g. power, gas, phone, cable) on the development blocks necessary for the New Improvements, and for construction and provision within development blocks for water, sanitary sewer, and storm water management.

(f) Metropolitan Council Environmental Services (MCES) owns and is responsible for the interceptor currently located in planned Outlots B, F, and right-of-way. MCES is undertaking relocation of the interceptor to a diagonal alignment parallel to the Bassett Creek Tunnel, from Olson Highway to Lyndale Avenue, in part within an easement and in part within public right-of-way. MCES and the City have developed an agreement that will define cost sharing and work responsibilities. When abandoned, the existing interceptor area will be properly filled and the easements therefor abandoned. The Developer must include on all plans and specifications any instructions to contractors as furnished by MCES for maintaining the structural integrity of the existing MCES interceptor in Outlots B and F prior to abandonment. Prior to its abandonment in Spring 2002, maintaining the operation of the existing MCES sewer interceptor is of great importance. The existing interceptor, in utility easements in Outlot B (former Dupont Avenue North) and in Outlot F (former 8th Avenue North) must be protected by the Developer’s contractor. The Developer’s contractor will be solely responsible for all costs associated with repairs if a failure occurs that is caused by the contractor’s operations. The Developer’s contractor must develop an interceptor protection plan and submit it to MCES for review prior to commencement of construction activities.
3.5 Rental Component Plans, Specifications.

3.5.1 The Public Entities acknowledge that the Developer has engaged, or has caused the Owner Partnerships to engage, Ellness, Swenson & Graham as “Project Architect” for the Phase 1A and Phase 1B Rental Components. The Developer has submitted the design development plans and shall cause the Project Architect to submit to the Public Entities for their review and approval, the construction plans and specifications for each Rental Component, which shall be consistent with the description and schematic design of the proposed physical improvements contained in the Master Plan, and any revisions, not later than fifteen (15) days prior to submission thereof to the City Inspection Division of Regulatory Services. Upon request of the Public Entities, the Public Entities and the Developer and the Developer’s general contractor shall meet within ten (10) days of each submission for the purpose of reviewing such submission and resolving any Public Entities questions or concerns, specifically including development costs. The Public Entities agree to cooperate with the Developer in reviewing any modifications to plans and specifications required by financing sources and to use their best efforts in accommodating HUD processing requirements. Notwithstanding any other provision of this Agreement, (i) the Public Entities shall bear no liability or responsibility for the Phase 1A or Phase 1B Rental Component plans and specifications as a result of their review; and (ii) the plan review and approval process set forth above is in addition to and independent of the zoning and planning approvals (e.g., subdivision, rezoning, PUD, site plan review) that the Developer must obtain from the City following normal City procedures.

3.5.2 The Developer shall apply for and obtain, or shall cause each Owner Partnership to apply for and obtain, all zoning and land use approvals, including building permits, for construction of the Phase 1A and Phase 1B Rental Components to be located on the Phase 1A and Phase 1B Sites. The Developer acknowledges that the execution of this Agreement by the Public Entities does not constitute approval by the City and does not limit the City’s application of its normal standards in the permitting and approval process, including, without limitation, the City’s detailed review and approval of Developer’s final plans and specifications. Upon request of the Developer, and at no cost to the Public Entities, the Public Entities shall assist the Developer in obtaining such permits and approvals to the extent the Developer deems necessary or appropriate, including, without limitation, any instance in which MPHA's assistance as fee owner of the Phase 1A or Phase 1B Site may be required by law or regulation.

3.6 Financing.

3.6.1 MPHA agrees that up to $9,321,600 of funds are reserved and available for obligation for development of the Phase 1A Rental Component, and up to $6,690,600 of funds are reserved and available for obligation for development of the Phase 1B Rental Component (exclusive, in each case, of funds to be used for MPHA administration or other costs that are the obligation of the Public Entities, including MPHA, hereunder). Subject to HUD approval, the funds will be loaned to the Owner Partnerships pursuant to separate mortgage loans as described in Section 5.4 of this Agreement. The Developer shall be solely responsible for obtaining commitments for all sources of funds required for development of the Phase 1A and Phase 1B Rental Components other than public housing development funds, including senior
debt financing (taxable or tax-exempt) with credit enhancement, low-income housing tax credit syndication, and any other required public or private sources.

Developer acknowledges that the execution of this Agreement by MCDA and MPHA does not limit application of their normal application approval and underwriting standards to the Developer's (or applicable Owner Partnership's) applications for tax-exempt and other financing for the Phase 1A and Phase 1B Rental Components.

3.7 Real Estate Tax Exemptions. MPHA agrees to cooperate with the Developer or the respective Owner Partnership to secure exemptions from real estate taxes (but not special assessments) to the extent of the ACC-assisted units included in the Phase 1A and Phase 1B Rental Components.

3.8 Mixed-Finance Proposals; Disposition Applications.

3.8.1 Mixed-Finance Proposals. The Developer shall provide to MPHA such assistance as may be required or requested by MPHA in the preparation, submission and processing of Mixed-Finance Proposals for mixed-finance development of the Phase 1A and Phase 1B Rental Components pursuant to 24 CFR Part 941, Subpart F.

3.8.2 Disposition Applications. MPHA shall prepare and timely submit to HUD, pursuant to Section 18 of the Act, appropriate applications for disposition of the Phase 1A and Phase 1B Sites to the pertinent Owner Partnerships pursuant to Ground Leases and in accordance with MPHA's approved Mixed-Finance Proposals. The Developer shall provide to MPHA such assistance in the preparation and processing of such applications as MPHA may request.

3.9 Commencement and Completion of Construction. Subject to Forced Delays and timely performance by the Public Entities of their obligations under this Agreement, the Developer must (i) close and commence construction of the Phase 1B Rental Component by December 31, 2001, (ii) close on the Phase 1A Rental Component by December 31, 2001, (iii) commence construction of the Phase 1A Rental Component by May 1, 2002, and (iv) substantially complete construction of the New Improvements by December 31, 2003.

3.10 Insurance.

(a) The Developer must cause the appropriate Owner Partnerships to obtain and continuously maintain insurance on the Phase 1 Sites and the New Improvements to be constructed thereon. At the request of the Public Entities, the Owner Partnerships must furnish proof to the Public Entities that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer or Owner Partnerships must obtain and maintain:

(i) Builder's risk insurance, written on the so-called "Builder's Risk--Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the New Improvements at the date of
completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. To the extent that any of the Public Entities have an insurable interest in the New Improvements, those interests shall be protected in accordance with a mortgagee/loss payee clause in form and content satisfactory to the Public Entities.

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an ISO Form B Additional Insured endorsement naming each of the Public Entities as an additional insured, with limits against bodily injury and property damage of not less than $1,000,000 for each occurrence and an aggregate limit of $3,000,000.

(iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required by this Agreement must be obtained from financially sound and reputable insurance companies selected by the Developer or Owner Partnerships that are authorized under the laws of the State of Minnesota to assume the risks covered by such policies. The Developer or Owner Partnerships will deposit annually with the Public Entities a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Each policy must contain a provision that the insurer will not cancel or modify the policy without giving written notice to the insured and the Public Entities at least 30 days before the cancellation or modification becomes effective. Not less than 15 days prior to the expiration of any policy, the Developer or Owner Partnerships must furnish the Public Entities evidence satisfactory to the Public Entities that the policy has been renewed or replaced by another policy conforming to the provisions of this Agreement, or that there is no necessity for the policy under the terms of this Agreement.

(c) The Developer or the appropriate Owner Partnerships shall pay all premiums and deductibles.

3.11 Signage. Prior to the commencement of construction, the Developer shall erect at its own expense a sign of reasonable size in a prominent position on the Phase 1 Sites indicating to the general public the name of the development, the Developer and acknowledging the participation of the Public Entities. The Developer shall also give ample notice to the Public Entities of ground breaking, opening ceremonies and like events so the Public Entities may obtain publicity of and participation in such events. The Developer agrees to assist and cooperate in and with such publicity and participation. The Developer further agrees that the Public Entities shall have the right to issue press releases concerning the development.

It is recommended that signage contain green lettering on a white background with the lettering being of professional quality. Further, the Public Entities recommend that weatherproof materials be used and the minimum size be 4 feet by 6 feet and include the following: a) name of project, (b) name of Developer, and (c) the phrase "This project is being developed with the assistance and cooperation of the CITY OF MINNEAPOLIS, the MINNEAPOLIS PUBLIC
HOUSING AUTHORITY and the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY." The Developer may also include the names of other entities, such as lenders, contractors and architects on such sign.

3.12 Construction Warranty.

(a) The Developer hereby warrants to the MPHA that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from material defects, and that the work will substantially conform with the requirements of the Construction Documents. Work not conforming to these requirements may be considered defective. If requested by the MPHA, the Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the construction of the New Improvements.

(b) If, within one (1) year after receipt of a certificate of occupancy, any of the structural or nonstructural work performed to construct the New Improvements is found to be materially defective or not in substantial compliance in all material respects with the Construction Documents and with all applicable building codes, laws, rules and regulations, the Developer shall correct or cause the contractor to correct such defect(s) promptly after receipt of written notice from the MPHA to do so. The obligation under this Section 3.12 shall survive acceptance of the work performed to construct the New Improvements. The MPHA shall give such notice promptly after discovery of the condition. If a material defect is discovered more than one (1) year after the date of receipt of a certificate of occupancy, and such defect was known to the Developer or an Affiliate of the Developer and was not disclosed to the MPHA or was intentionally concealed by the Developer or such Affiliate, then the Developer shall promptly take such action as may be necessary, at the Developer’s sole expense, to correct such defective work to the satisfaction of the MPHA.

(c) The Developer agrees to include the MPHA as a third party beneficiary of all warranties in the Construction Documents and/or to assign to the MPHA its warranties in the Construction Documents.

3.13 Hazardous Materials. Developer (i) covenants to the Public Entities, their successors and assigns that, except as permitted by law, including all applicable statutes, regulations, and rulings, it will not use or permit the Phase 1 Sites to be used, whether directly or through contractors, agents or tenants, for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any dangerous, toxic or hazardous pollutants, chemical wastes or substances as defined in the Hazardous Materials Laws; and (ii) represents to the Public Entities, their successors and assigns, that there have been no investigations or reports citing the Developer or its operations as violating the foregoing by any governmental authority which in any way pertain to Hazardous Materials. Developer will not operate the Phase 1 Sites in a manner that violates any Hazardous Materials Laws.
In addition to the foregoing, the Developer shall not install or maintain, or permit the installation or maintenance of any underground or above-ground storage tanks for the storage of petroleum, petroleum byproducts, or other Hazardous Materials in, about, or under the Phase 1 Sites, except as permitted by law.

The Developer agrees to indemnify and reimburse the Public Entities, their successors and assigns, for any loss, damage, expense or cost arising out of or incurred by the Public Entities, which is a result of a breach, misstatement of or misrepresentation of the above covenants, representations and warranties in this Section 3.13, together with all attorneys’ fees incurred in connection with the defense of any action against the Public Entities arising out of the above. These covenants, representations and warranties are for the benefit of the Public Entities, and any successor or assign of the Public Entities, and shall be deemed to survive termination of this Agreement and any transfer of the interests of the Developer in the Phase 1 Sites or the New Improvements.

ARTICLE 4. DEVELOPER COMPENSATION; PREDEVELOPMENT LOANS.

4.1 Developer Compensation. Except only as otherwise specifically provided in this Agreement, the compensation to Developer or Developer Affiliates for all services performed or obtained by Developer or any Developer Affiliate arising from the Phase 1 Redevelopment shall consist of and be limited to:

4.1.1 Master Development Agreement Payments. Pursuant to Paragraph 4 of the Master Development Agreement, the City has paid to the Developer $30,000 per month commencing June 1, 2000, such payments to continue through March 31, 2001 (i.e., ten monthly payments) (provided that public allocation of low-income housing tax credits and tax-exempt financing referenced in Sections 2.1.1 and 2.1.2 shall have been obtained and in effect on March 31, 2001). Commencing April 1, 2001, the City shall pay to the Developer $15,000 per month, which payments shall continue until the earlier of (a) termination of the Master Development Agreement, or (b) the closing of construction financing for Phase IV of the Near Northside Redevelopment (or the first Component). The payments made commencing June 1, 2000, through March 31, 2001, to the extent of one-half, and all payments made commencing April 1, 2001, through the final payment pursuant to the preceding sentence, shall be deemed payments of program management fee pursuant to paragraph 4 of the Master Development Agreement. The payments made commencing June 1, 2000, through March 31, 2001, to the extent of one-half (i.e., $150,000), shall be deemed advances against developer fees to be earned by Developer as described in Section 4.1.2 and shall be reimbursed by Developer to the City (i) to the extent of $78,000, concurrently with the closing of construction financing for the Phase 1A Rental Component, and (ii) to the extent of $72,000, concurrently with the closing of construction financing for the Phase 1B Rental Component. Notwithstanding the foregoing, the City may suspend payments if a development agreement for a subsequent phase of the Near Northside Redevelopment shall not have been executed by the date for commencement set forth in paragraph 2(a) of the Master Development Agreement, subject to any extension of any date as may be agreed in writing between the City and the Developer. To the extent of any inconsistency between this section and paragraph 4 of the Master Development Agreement, this section shall be deemed a modification and shall control.
4.1.2 Rental Component Developer Fees. With respect to each of the Phase 1A Rental Component and the Phase 1B Rental Component, the Developer (or a Developer Affiliate designated by it) shall be entitled to earn and receive developer fees, which shall be paid solely from syndication proceeds or other development financing sources other than public housing development funds, in the amount allowed by the MCDA pursuant to its developer fee guidelines, but not exceeding such amount as shall be approved by HUD. Developer fees shall be deemed earned and shall be paid on a per-Component basis in accordance with the terms and conditions of appropriate agreements between the Developer (or, as pertinent, a designated Developer Affiliate) and the respective Owner Partnership approved by MPHA and, to the extent required by the applicable Mixed-Finance ACC Amendment, by HUD. Subject to agreement by the equity investor with respect to any particular Component, the parties hereto agree that such developer fees may be deemed earned and shall be payable 50% at construction loan closing, 25% at substantial completion, and 25% at achievement of 90% occupancy during four consecutive months.

4.1.3 Phase 1 Homeownership Component Developer Fees. Compensation for services by Developer in connection with development of the Phase 1 Homeownership Component shall be addressed in a separate agreement.

4.2 Pre-Development Third Party Costs and Loan Agreements. The City has made a loan of $200,000 to the Phase 1B Owner Partnership pursuant to a Predevelopment Loan Agreement dated as of January 5, 2001. The City made an additional loan of $200,000 to the Phase 1A Owner Partnership on or about March 31, 2001 pursuant to a substantially similar Predevelopment Loan Agreement. MPHA has made a loan of $200,000 to the Phase 1B Owner Partnership pursuant to a Phase 1B Predevelopment Loan Agreement dated as of October 30, 2000, and has made an additional loan of $200,000 to the Phase 1A Owner Partnership pursuant to a Phase 1A Predevelopment Loan Agreement dated as of October 30, 2000. The respective Owner Partnerships intend to and are authorized to make payments from the proceeds of such loans for costs of third-party contractors incurred in activities included within the line items of the Predevelopment Budget, which includes generally activities stated to be the responsibility of Developer in Article 3 hereof. The Developer shall cause the respective Owner Partnerships to timely repay each such Predevelopment Loan in full, with interest thereon where applicable, in accordance with the terms thereof.

4.3 Other Services by Developer Affiliates. In addition to compensation described in Section 4.1, MPHA agrees that McCormack Baron Management Services, Inc., a Developer Affiliate, may be appointed as property management agent of the Phase 1A Rental Component and the Phase 1B Rental Component by the respective Owner Partnerships and shall receive a management fee in an amount to be determined consistent with industry standards.

4.4 Planning Cost Reimbursement. The Developer agrees to pay (or to cause the respective Owner Partnership to pay) to the Public Entities at the Closing on each of the Phase 1A and Phase 1B Rental Components an amount equal to $1,200 per rental unit in such Component as reimbursement for costs paid by the Public Entities during the planning phase of the Near Northside Redevelopment.
ARTICLE 5 DEVELOPMENT DOCUMENTS

5.1 **Owner Partnerships Formation.** The Developer has caused the formation of 2 Owner Partnerships to own, operate and manage the respective Phase 1A and Phase 1B Rental Components. The Developer or one or more affiliates will be general partners of each Owner Partnership and may permit one or more entities not affiliated with the Developer to participate as co-general partner of an Owner Partnership, which shall not diminish the scope of the responsibility of the Developer to MPHA or any other Public Entity with respect to such Component under any provision of this Agreement. The principal equity interest in any Owner Partnership will be a low income housing tax credit investor selected by the Developer. All documents evidencing the formation of each Owner Partnership, its rights and obligations with regard to the general and limited partners, including but not limited to the payment of development fees, guarantees, and pledges, and the financial wherewithal of the general partners (collectively, the "Partnership Documents") shall be subject to the approval of MPHA and HUD.

5.2 **Ground Leases.** With respect to each of the Phase 1A Site and the Phase 1B Site, MPHA shall, not later than at the Closing for the respective Component, enter into a Ground Lease with the respective Owner Partnership, pursuant to which the Owner Partnership will operate the development provided to be developed during a lease term of not less than sixty-two years. Each Ground Lease (a memorandum of which shall be recorded prior to any leasehold mortgage) shall contain a covenant running with the land obligating the lessee and lessor and any successors in title of either of them, including any successor who acquires title to the lessee's estate by foreclosure of a leasehold mortgage, to maintain and operate the ACC-assisted Units in compliance with all applicable requirements of the Act, the ACC, and the Regulatory and Operating Agreement during the period required by law.

5.3 **Regulatory and Operating Agreement.** MPHA and each Owner Partnership shall enter into a Regulatory and Operating Agreement, to be approved by HUD, that provides, among other things, for a methodology acceptable to HUD for distribution of a portion of MPHA's operating subsidy to the Owner Partnership with respect to the ACC-assisted Units, and binding assurances that the number of ACC-assisted Units and number of bedrooms specified in the Mixed Finance ACC Amendment will be maintained. Each Regulatory and Operating Agreement will provide for the following:

5.3.1 **Operating Subsidy.** The MPHA will be obligated to provide operating subsidy to the Owner Partnership in an amount sufficient to cause the ACC-assisted Units to operate at break-even against attributable operating expenses; subject to any cap on such operating subsidy obligation as may be provided in the Regulatory and Operating Agreement.

5.3.2 **Admissions to ACC-assisted Units.** MPHA and the Developer acknowledge that the goal of achieving long-term sustainability of the Phase 1A and Phase 1B Rental Components as mixed-income communities will be enhanced by administrative procedures and terms and conditions of occupancy which reduce discernible distinctions in maintenance, operation and conditions of continued occupancy, between the ACC-assisted Units and the other units in the Component to the greatest extent feasible while assuring that the ACC-assisted Units are available for housing families who meet the occupancy objectives of MPHA.
The selection of applicants for admission to and continued occupancy of rental units in each Component, including the ACC-assisted Units, shall be the function of the Owner Partnership. Admission to and continued occupancy of ACC-assisted Units shall be limited to persons or families eligible for public housing under the Act and HUD regulations, as limited further, during the compliance period and any extended use period, by applicable restrictions under Section 42 of the Internal Revenue Code. Applicants for admission to and continued occupancy of the ACC-assisted Units shall be selected in accordance with preferences adopted by MPHA. The Owner Partnership, subject to delegation to the Management Agent, shall carry out all administrative functions in connection with admission of applicants to occupancy of the ACC-assisted Units, including pre-application and application intake, applicant interview and screening, verification procedures, determination of eligibility for admission and qualification for preference, record maintenance, waiting list maintenance, unit assignment and execution of leases, all in accordance with criteria and procedures approved by MPHA. MPHA shall authorize the Owner Partnership to maintain a site-based waiting list and shall include in its annual plan, pursuant to Section 5A of the Act, a description of the site-based waiting list and admission procedures and policies applicable to the ACC-assisted Units, including preferences and selection criteria, which shall be developed in consultation with the Owner Partnership and shall be consistent with Sections 6 and 16 of the Act and the Hollman Consent Decree.

Screening criteria and procedures established by Owner Partnership with respect to ACC-assisted Units will not necessarily be identical to those utilized by MPHA with respect to MPHA-owned public housing but will, to the maximum extent permissible under applicable HUD requirements and the ACC, be consistent with those utilized by the Owner Partnership and its Management Agent with respect to non-public housing units in the Component.

5.3.3 Other Matters. Further details of the Regulatory and Operating Agreement shall be subject to negotiation between MPHA and the Developer and will include the levels of reserves, including reserves to cover shortfalls of operating subsidy, the rights of the Owner Partnership to change the occupancy of the Component in the event of diminished operating subsidies, and other terms as may be agreed to in writing by MPHA and the Developer or Owner Partnership and/or required by HUD.

5.4 MPHA Loan Documents. MPHA shall enter into (or shall cause a subgrantee affiliate of MPHA to enter into) one or more mortgage loan agreements with each Owner Partnership providing for one or more loans of public housing development funds to be used in accordance with the requirements of the Mixed-Finance ACC Amendment applicable to the Phase 1A or Phase 1B Component. The mortgage loans may be subordinate to other development loans made by private or other public lenders for uses in accordance with the Mixed-Finance ACC Amendment and shall contain other terms and conditions as shall be agreed upon by MPHA and the applicable Owner Partnership and be consistent with the financial plan for the Component and the Mixed-Finance ACC Amendment.

5.5 Management Agreement and Management Plan. Not later than at the Closing for each Phase 1A or Phase 1B Rental Component, the respective Owner Partnership shall enter into a “Management Agreement” approved by MPHA and HUD with McCormack Baron Management Services, Inc., a Developer Affiliate, as Management Agent. The Management Agreement shall provide that the Management Agent shall be responsible to the Owner Partnership for management of the Component in accordance with the terms of the Management
Agreement, the Regulatory and Operating Agreement, and other applicable requirements referenced therein, and in accordance with a Management Plan that is consistent with the Hollman Consent Decree, approved in writing by the Owner Partnership and MPHA prior to its implementation, and may not be amended without the prior written approval of the Owner Partnership and MPHA. The Management Plan shall include methods for (a) obtaining applications from eligible households, (b) pre-screening applicants to determine their status as eligible residents, (c) selecting residents from among eligible applicants; and (d) criteria for continued occupancy.

5.6 Relation of Development Documents to This Agreement. The obligations of this Agreement shall survive the Closing. Unless one or more of the Public Entities have specifically approved the relevant Development Documents, in the event of any conflict between the Development Documents and this Agreement, the provisions of this Agreement shall control.

ARTICLE 6. CONTRACTING AND EMPLOYMENT GOALS.

6.1 Nondiscrimination. The Developer shall not discriminate against, or segregate, a person or a group of persons on account of race, color, creed, religion, sex, affectional preference, marital status, familial status, national origin, ancestry, disability, Vietnam era veteran status, age, or status with regard to public assistance in carrying out its duties and obligations pursuant to this Agreement. Nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation.

6.2 Equal Employment Opportunity. The Developer shall develop and shall cause each contractor with a contract in excess of $50,000 to develop an affirmative action plan meeting the requirements of Section 139.50, Minneapolis Code of Ordinances, and incorporating the workforce goals in Exhibit E. In addition, the Developer agrees that during the course of construction of the New Improvements:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin. Such action shall include, but not be limited, to the following: advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Minneapolis Civil Rights Department setting forth the provisions of this nondiscrimination clause.

(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion,
ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin.

(c) The Developer will comply with all applicable provisions of the Minneapolis Code of Ordinances, Chapters 139-141, incorporated herein by reference, and other applicable federal, state and local laws, rules and regulations regarding equal employment opportunities.

(d) The Developer will include the provisions of paragraphs (a) through (c) of this Section in every contract or purchase order relating to construction of the New Improvements, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be.

6.3 [Intentionally Omitted]

6.4 **Hours and Wages.** The Developer covenants and agrees that it will cause all contracts entered into by it or an Owner Partnership to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. Sections 276a to 276a-5, as amended, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-333. The Developer shall obtain a wage determination after filing the application for FHA mortgage insurance. The wage determination shall be deemed to be incorporated herein by reference. Compliance shall be demonstrated by means of weekly payroll certifications made by the Developer and submitted to the City’s Department of Civil Rights on a monthly basis in the manner and on forms provided by the City.

6.5 **MBE/WBE and Section 3 Plans.** The Developer submitted to the Public Entities, and they approved, a plan for MBE/WBE participation and Section 3 hiring and business participation (together, the “Business and Employment Participation Plan”), including the goals for the project that are set forth in Exhibit E to this Agreement. The Business and Employment Participation Plan, including the goals, shall be applicable to the Developer, the Owner Partnerships and their contractors, and the services rendered or contracted for by the Developer, the Owner Partnerships and their contractors. The Public Entities have committed to providing certain services to assist the Developer in meeting the business and employment participation goals: recruiting and training Section 3 residents and business concerns, maintaining a worker bank and a data base of qualified Section 3 businesses, and providing employee referrals to contractors.

6.6 **Small and Underutilized Business Program.** The Developer shall comply with the Small & Underutilized Business (“SUB”) Program, Minneapolis Code of Ordinances Chapter 423, established by the City Council on June 25, 1999. The MBE/WBE goals discussed above and on Exhibit E constitute the goals for the SUB program. Documentation of a business enterprise’s status as a MBE and/or WBE is required. MBE/WBE information can be obtained by contacting James Patterson, Minneapolis Civil Rights Department, at 612-673-2426. Section 3 information can be obtained by contacting Leslie Woyee, Minneapolis Public Housing Authority, at 612-342-1404.
6.7 Payment and Performance Bonds. Subject to HUD/FHA requirements, the Developer shall furnish or cause to be furnished to the Public Entities on or before the Closing of each Component, a payment bond and a separate performance bond covering the faithful performance by the general contractor of construction of each Component and the payment of all obligations arising under the construction contract for each Component. Each payment bond and performance bond shall name the Public Entities as obligees or co-obligees, shall be in the amount of the contract(s) for the construction of the respective Component, and shall be in such form and with such surety or sureties as the Public Entities may approve.

ARTICLE 7. TERMINATION

7.1 Termination by Public Entities for Default. The Public Entities may terminate this Agreement at any time for default by the Developer based upon:

7.1.1 failure of Developer to complete any work within the time set forth in the Phase 1 Redevelopment Schedule if such failure shall cause the Public Entities to be held in violation of the Hollman Consent Decree, materially prejudice the obtaining of any necessary and material approval by a third party, including HUD or the City, or have a material adverse impact upon the progress of the Near Northside Redevelopment;

7.1.2 Developer or an Affiliate who has any rights or obligations in the Phase 1 Sites becoming insolvent, making an arrangement with or for the benefit of its creditors, acquiescing in the appointment of a receiver, trustee or liquidator, instituting or becoming the subject of any proceeding commenced under any law for the relief of debtors, or otherwise objectively demonstrating financial incapacity to carry out its obligations hereunder;

7.1.3 unilateral withdrawal (other than pursuant to Section 7.8 hereof) by the Developer;

7.1.4 debarment, suspension, or other exclusion of the Developer, or any Affiliate thereof, from participation in any Federal or State program which shall exclude the Developer from qualifying for award of Federal or State assistance (including allocation of low-income housing tax credits) on which the Near Northside Redevelopment is dependent;

7.1.5 implementation of any remedial or enforcement action by HUD pursuant to the ACC, if the default on which such action is based is an action or failure to act by the Developer;

7.1.6 the holder of any financing encumbering the Phase 1A or Phase 1B Sites exercises any remedy provided by the applicable financing documents or exercises any remedy provided by law or equity in the event of a default (after expiration of applicable cure periods) in any terms or conditions of such documents;

7.1.7 any breach by Developer or its Affiliates of a material provision of this Agreement, the Regulatory Agreement(s) or the Ground Lease(s) that is beyond the applicable cure period.
7.2 **Events Beyond Control.** Notwithstanding Section 7.1.1, this Agreement shall not be terminated if the delay in completing the work arises from the failure to occur of any Development Contingency (as defined in Section 7.8.1) or from a Forced Delay (as defined in Section 8.4).

7.3 **Termination by Public Entities for Convenience.** The Public Entities also reserve the right to terminate this Agreement at any time for the convenience of the Public Entities; provided, however, that no termination for convenience by the Public Entities shall affect the obligations of the Public Entities with respect to any Component that has gone to Closing.

7.4 **Notice.** The Public Entities shall exercise its election to terminate this Agreement by delivering a notice thereof to the Developer specifying the nature (default or convenience) and the effective date of the termination and the extent to which performance of work under this Agreement is terminated. If the termination is stated to be for default, the notice thereof shall specify the nature of the claimed default and, if such default shall be reasonably subject to adequate cure, shall state (i) the actions required to be taken by the Developer to cure the default, and (ii) the reasonable time within which Developer shall respond with a showing that all required actions have been taken. During any cure period so provided, the Developer shall proceed diligently with performance of any work required by this Agreement which is not the subject of the claimed default. Following expiration of the stated cure period, the Public Entities may deliver a second notice stating either that the default has been adequately cured or that the Agreement is terminated.

7.5 **Work Product.** If the termination is stated to be for convenience or for a default, the Developer upon receipt of such notice shall (i) immediately discontinue all services affected (unless the notice directs otherwise), (ii) assign and deliver to the Public Entities and cause each Developer Affiliate to assign and deliver to the Public Entities, all plans, specifications, drawings, studies, reports, papers, and other materials related to the Near Northside Redevelopment, whether completed or in process, and (iii) deliver to the Public Entities a status report of all work completed and all work in progress under this Agreement. Each contract or subcontract between Developer or a Developer Affiliate and any non-related third party for work related to the Near Northside Redevelopment (including, without limitation, any architect, engineer, or construction contractor or subcontractor) shall permit Developer or such Developer Affiliate, in the event of termination of this Agreement by the Public Entities for default or for convenience, to assign all work product thereunder to the Public Entities solely for purposes of completing, using and maintaining the Near Northside Redevelopment and to terminate such contract without compensation except for work performed and unpaid.

7.6 **Contest.** If the termination is stated to be for default and the Developer elects to contest the basis therefor, either party may demand that such dispute be submitted to mediation by a mutually acceptable mediator prior to commencement of litigation. Unless otherwise agreed by the Public Entities and the Developer, the pendency of such mediation shall not affect the effectiveness of any notice of termination which also purports, alternatively, to be delivered pursuant to Section 7.3 hereof. If as a result of such mediation or any other dispute resolution,
including litigation, it shall be determined or agreed that the Developer was not in default, the Public Entities’ termination, at its election, shall nevertheless be effective but deemed a termination for convenience.

7.7 Remedies.

7.7.1 Convenience. In the event the Public Entities terminate for the convenience of the Public Entities on or before August 15, 2001, the Public Entities shall be obligated to reimburse the Developer for any third party costs incurred but not yet reimbursed, provided that (a) such tasks or products are useable by the Public Entities in the further carrying out of the Near Northside Redevelopment; and (b) the Public Entities receive reimbursement for such works as recognized project costs from public housing development funds. In the event the Public Entities terminate for the convenience of the Public Entities after August 15, 2001, the Public Entities shall be obligated to compensate the Developer for unreimbursed third party costs incurred by the Developer for all tasks timely performed plus 50% of unreimbursed overhead costs incurred after August 15, 2001.

7.7.2 Default. In the event of a termination for default, the Public Entities shall be obligated to compensate the Developer only for tasks or products completed by the Developer and accepted by the Public Entities, provided that (i) such tasks or products are useable by the Public Entities in its further carrying out of the Near Northside Redevelopment, and (ii) the Public Entities receive reimbursement for such work as recognized project costs from public housing development funds. The foregoing provision shall be without prejudice to any other remedy available to the Public Entities by reason of the nature of the events, actions or omissions giving rise to such termination for default.

7.8 Withdrawal by Developer for Infeasibility.

7.8.1 Development Contingencies. The Public Entities acknowledge that the Developer’s ability to perform many responsibilities under this Agreement is substantially contingent upon actions by third parties over which Developer has limited or no control, or factual circumstances which could not reasonably have been determined as of the date of this Agreement (“Development Contingencies”). Such Development Contingencies include, but may not be limited to the following items as to which the Master Plan and the Phase 1 Redevelopment Budget reflect certain expectations of the parties:

i. The award of tax credits or tax-exempt bond financing allocations in the amount projected;

ii. The investment of equity at projected rates;

iii. The making of private loans under projected terms and conditions;

iv. The provision of all projected assistance, including grants, loans and land transfers, from other governmental bodies, including the Public Entities;
v. The receipt of all necessary government approvals and permits, including without limitation HUD's approval of any Mixed-Finance Proposal and evidentiary materials submitted pursuant thereto;

vi. The continuation of law, regulations and policy at least as favorable to mixed-finance public housing development in general, and to the Phase 1 Redevelopment in particular, as they currently exist.

7.8.2 If a Development Contingency fails to occur after all reasonable efforts by the Developer to cause it to occur in a manner generally consistent with this Agreement, the parties will consider in good faith revision of this Agreement by extending deadlines, revising goals, or as otherwise agreed. If a Development Contingency described in Section 7.8.1 fails to occur due to causes beyond the control of the Developer and the parties cannot within 90 days agree to amend this Agreement despite good faith efforts to do so, or cannot secure HUD approval of any amendment so agreed to within an additional 60 days, then the Developer may terminate this Agreement by written notice delivered to the Public Entities. Following such withdrawal, the Developer shall assign and turn over all drawings, studies, plans, specifications and other interim work products to the Public Entities, solely for purposes of completing, using and maintaining the Near Northside Redevelopment and the Public Entities shall reimburse the Developer for any third party costs incurred but not yet reimbursed, provided that (a) such tasks or products are useable by the Public Entities in its further carrying out of the Near Northside Redevelopment; and (b) the Public Entities receive reimbursement for such works as recognized project costs from public housing development funds. Upon withdrawal, neither party shall have any obligation to the other, except for those obligations that survive termination by the terms of this Agreement.

7.8.3 The Public Entities and the Developer have mutually assumed that the Minnesota Department of Transportation ("MnDOT"), which owns at the date of this Agreement a portion of the Phase 1A Site, would convey such property (the "MnDOT Parcel") to MPHA by approximately September 1, 2001. The MnDOT Parcel is located on the perimeter of the Phase 1A Site, but unavailability of the MnDOT Parcel would render the presently planned location of four buildings, containing 30 rental units, impossible. If MPHA shall not have acquired title to the MnDOT Parcel by not later than November 2, 2001, the Developer will prepare and submit for approval to permitting and financing agencies not later than November 9, 2001, revised plans for the Phase 1A Component which will reconfigure the planned development to accommodate the 120 planned units on the Phase 1A Site excluding the MnDOT Parcel. The Public Entities will affirmatively support the Developer's requests for such approvals, and for timely action thereon, to the maximum extent appropriate in light of the independent decision-making responsibility of such permitting and financing agencies. The Developer shall use its best efforts to obtain all required approvals and commitments necessary to permit achievement of a Closing on the Phase 1A Component not later than December 31, 2001. If the Developer is unable to achieve a Closing on the revised plans by December 28, 2001, the Public Entities and the Developer shall use best efforts to extend the Closing Date and retain the tax-exempt bond financing and any other public financing source previously committed to the Phase 1A.
Component. If MPHA shall acquire title to the MnDOT Parcel after November 2, 2001, and after submission of revised plans to permitting and financing agencies, the Developer will not be obligated to revert to the original project configuration but may, at its sole election, proceed to Closing on the revised plans, but the Developer in such event will use its best efforts after Closing to obtain a change order or other appropriate approvals permitting incorporation of the MnDOT Parcel into the Phase 1A Component.

7.9 Termination by Developer for Public Entities Default.

7.9.1 The Developer may terminate this Agreement at any time for default by MPHA or another Public Entity based upon any action or failure to act by MPHA or such other Public Entity if such act or failure shall (i) materially prejudice the obtaining of any necessary and material approval by a third party, including HUD or the City; (ii) cause the loss, termination or withdrawal of any material financial assistance or commitment by any private or public source, including loss of low income housing tax credits previously allocated; or (iii) cause implementation of any remedial or enforcement action by HUD pursuant to the ACC.

7.9.2 The Developer shall exercise its election to terminate this Agreement by delivering a written notice to the Public Entities specifying the specific acts or omissions claimed to constitute an event of default, the effective date of the termination, and, if such default shall reasonably be subject to adequate cure, specifying (i) the actions required to be taken by MPHA or another Public Entity to cure the default, and (ii) the reasonable time within which MPHA or another Public Entity shall respond with a showing that all required actions have been taken. During any cure period so provided, the Developer shall proceed diligently with performance of any work required by this Agreement. Following expiration of the stated cure period, the Developer may deliver a second notice stating either that the default has been adequately cured or that the Agreement is terminated.

7.9.3 In the event of a termination by the Developer for Public Entities default, the Public Entities shall be liable to the Developer for (i) unreimbursed costs incurred by the Developer for all tasks timely performed, plus a reasonable allowance for profit on work satisfactorily done, (ii) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs (but not to exceed the actual costs thereof), and (iii) actual reasonable costs of legal and accounting services reasonably necessary to prepare and present a termination claim to the Public Entities.

7.9.4 Notwithstanding Section 7.9.1, this Agreement shall not be terminated for default if the delay in completing the work arises from an unforeseen environmental or geotechnical condition, Developer delay or Forced Delay (as defined in Section 8.4).

7.10 Adjustments of Public Financing. If an extension of the Phase 1 Redevelopment Schedule shall be reasonably required to permit remediation of an Environmental Condition or Unforeseen Geotechnical Condition pursuant to Sections 3.2 or 3.3 hereof, or due to delays in timely completion of necessary Phase 1 Public Realm Improvements, or because of an otherwise agreed method of addressing the failure of a Development Contingency to occur, and the required extension is incompatible with deadlines affecting use of any form of public assistance on which the Phase 1 Redevelopment or Near Northside Redevelopment is dependent.
(including, without limitation, placement in service deadlines), the Public Entities shall use reasonable efforts to take such steps within their authority and control as may be necessary to attempt to obtain substitute awards or allocations of assistance which may be utilized successfully in accordance with the extended Phase 1 Redevelopment Schedule.

Additionally, Developer has requested that the Public Entities accelerate wick drain installation. If (i) the Public Entities are unable to amend their agreement with the wick drain contractor such that all “sequence 2” wick drain work and surcharge placement is completed by May 1, 2002, and (ii) as a result, the Developer’s cost to construct the New Improvements increases beyond the available contingency in the Redevelopment Budget, then the Public Entities will use reasonable efforts to assist the Developer in its attempt to obtain additional funding for the increased construction costs.

**ARTICLE 8  GENERAL PROVISIONS.**

8.1 **Notices, Demands and Communications.** Formal notices, demands, and communications between the Public Entities and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by (a) certified mail, return receipt requested; (b) express delivery service with a delivery receipt; or (c) personal delivery, to the offices of the Public Entities and the Developer as follows:

**Public Entities:**

Minneapolis Community Development Agency
105 Fifth Avenue South, Suite 200
Minneapolis, MN 55401
Attention: Executive Director

**With a copy to:**

Minneapolis Public Housing Authority
1001 Washington Avenue North
Minneapolis, MN 55401
Attention: Executive Director

and

City of Minneapolis
301M City Hall
350 South Fifth Street
Minneapolis, MN 55415
Attention: City Coordinator

**Developer:**

McCormack Baron & Associates, Inc.
1101 Lucas Avenue
St. Louis, MO 63101-1079
Attention: Hillary Zimmerman
Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may designate by mail as provided in this Section 8.1. Notices shall be deemed received on the date shown on the notice receipt or delivery record.

8.2 Non-Liability of Public Entities Officials, Employees and Agents. No member, official, employee or agent of MCDA, MPHA or the City or its affiliate agencies shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Public Entities or for any amount that may become due to the Developer or on any obligation under the terms of this Agreement.

8.3 Disclaimer of Relationship. Any transfer of public housing development grant funds by MPHA to the Developer, any Owner Partnership or other participating party will not be (and shall not be deemed to be) an assignment of public housing development grant funds. The Developer, any Owner Partnership or other participating party receiving such funds will not succeed to any rights or benefits of MPHA under the ACC or any applicable Mixed-Finance ACC Amendment or attain any privilege, authority, interest, or right thereunder. Nothing contained in the ACC or any Mixed-Finance ACC Amendment, or in this Agreement, will be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or other association or relationship involving HUD.

8.4 Forced Delay. Performance by any party hereunder shall not be deemed to be in default where delays are due to: war; insurrection; strikes; riots; floods; earthquakes; an act of God; fires; casualties; governmental restrictions; litigation (including suits filed by third parties concerning or arising out of this Agreement); acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the Public Entities); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (individually, a “Forced Delay”; and collectively, “Forced Delays”).

8.5 Conflicts of Interest. No member, official, or employee of the Public Entities shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

8.6 Inspection of Books and Records. Upon request and for a period of 6 years following the payment to Developer by the Public Entities of any of its funds pursuant to this Agreement, Developer shall permit the Public Entities to inspect, at reasonable times and on a confidential basis, those books, records and other documents of the Developer necessary to determine Developer’s compliance with the terms of this Agreement.

8.7 Hold Harmless.

(a) The Developer shall indemnify and hold harmless the Public Entities, their officers, employees, agents, contractors, and directors from all claims, actions, demands, damages, costs, expenses and attorneys’ fees arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of Developer, its Affiliates, agents, contractors, servants, employees or invitees,
which shall constitute a breach of the Developer’s obligations under this Agreement. In addition, if anyone shall assert any claim against the Public Entities on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Developer, its Affiliates, agents, servants, employees, invitees, or contractors (including, without limitation, its construction contractor), the Developer shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Public Entities shall be allowed, the Developer shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

(b) The Public Entities shall indemnify and hold harmless the Developer, its Affiliates, partners, members, officers, employees, agents, contractors, and directors from all claims, actions, demands, damages, costs, expenses and attorneys’ fees arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of the Public Entities, their agents, contractors, servants, employees or invitees, which shall constitute a breach of the Public Entities’ obligations under this Agreement. In addition, if anyone shall assert any claim against the Developer or a Developer Affiliate on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Public Entities or their agents, contractors, servants, employees or invitees, the Public Entities shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Developer shall be allowed, the Public Entities shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. Nothing in this Agreement shall constitute a waiver by the Public Entities of any statutory limits or exceptions to liability.

8.8 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

8.9 Applicable Law. This Agreement shall be interpreted pursuant to the laws of the State of Minnesota.

8.10 Severability. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable, then the remainder of the provisions shall continue in full force unless the rights and obligations of the parties have been materially altered by such unenforceability.

8.11 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto, except that there shall be no transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to that party’s successor, heir, administrator, executor, or assign who has acquired an interest in compliance with the terms of this Agreement or under law. Developer represents and agrees that it will not assign or transfer its interest,
rights, or obligations under this Agreement, directly or indirectly, without the written consent of the Public Entities.

8.12. **Parties Not Co-Venturers.** With respect to the subject matter of this Agreement, the Public Entities and the Developer are not partners, co-venturers, or principal and agent with one another by reason of the provisions hereof or the existence of this Agreement.

8.13. **Warranties.** The Public Entities express no warranty or representation to the Developer as to fitness or condition of the Phase 1 Sites for the development of the Phase 1 Redevelopment or the use to be conducted thereon.

8.14. **Time of the Essence.** In all matters under this Agreement, TIME IS OF THE ESSENCE.

8.15. **No Third Party Beneficiary.** This Agreement is made solely and specifically among, and for the benefit of, the parties signatory hereto and no other person or entity whatsoever shall have any rights, claims or interests hereunder, or to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

8.16. **Amendments in Writing.** All amendments to this Agreement must be in a writing signed by the Public Entities and the Developer.

8.17. **Complete Understanding of the Parties.** This Agreement and attached Exhibits (all of which are incorporated herein by reference) constitute the entire understanding and agreement of the Public Entities and the Developer with respect to the subject matter hereof.

ARTICLE 9. **DEVELOPER REPRESENTATIONS AND WARRANTIES.**

(a) The Developer hereby represents and warrants to the Public Entities that:

(i) No mortgage on any project assisted or insured by HUD or any State or local government housing finance agency in which the Developer or its Affiliate was a principal has ever been in default nor has mortgage relief been given;

(ii) There have been no defaults or noncompliance by the Developer or any of its Affiliates under any conventional construction contract or turnkey contract of sale in connection with a public housing project;

(iii) There are no known unresolved findings for the Developer or any of its Affiliates raised as a result of HUD audits, management reviews or other governmental investigations;

(iv) No officer or executive of the Developer has been convicted of a felony and is not presently the subject of a compliant or indictment charging a felony;
(v) No officer or executive of the Developer has been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or of a State Government from doing business with such department of agency;

(vi) Neither the Developer nor its Affiliates has defaulted on an obligation covered by a surety or performance bond, nor has been the subject of a claim under an employee fidelity bond;

(vii) No officer or executive of the Developer is a HUD employee or a member of a HUD employee’s immediate household, as defined by HUD’s Standards of Conduct (24 CFR 0.735-205(c);

(viii) No officer or executive of the Developer is a member of Congress or a resident commissioner;

(ix) The Developer and its Affiliates have all requisite power and authority, corporate or otherwise, to execute and deliver this Agreement and perform their obligations;

(x) The Developer has complied and will continue to comply with all applicable procurement and conflict of interests requirements with respect to the selection of entities to assist in the Near Northside Redevelopment;

(xi) Neither the Developer nor any of its Affiliates is ineligible to be awarded contracts by an agency of the United States Government, HUD, or the state or locality in which this Agreement is to be performed or to participate in HUD programs pursuant to 24 CFR Part 24;

(xii) The execution, delivery and performance of this Agreement has been duly authorized by the signatories so authorized and this Agreement constitutes the legal, valid and binding obligation of the Developer and its Affiliates, to the extent any such entity is a party to this Agreement;

(xiii) This Agreement will not result in a breach or violation of, nor constitute a default under any contract to which the Developer or any of its Affiliates, to the extent any such entity is a party to this Agreement, is a party or by which it or its properties may be bound or affected; and

(xiv) Neither the Developer nor any of its Affiliates have received any notices nor is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations or decrees that would materially and adversely affect their ability to perform hereunder.

(b) For the purpose of this Article 9, all terms used but not defined herein shall have the meanings set forth in 24 CFR 200.215, relating to Participation and Compliance Requirements.
(c) The Developer shall be required to notify the Public Entities in writing within two days of the date that any of the above declarations shall not be true. The Developer hereby acknowledges and understands that the foregoing declarations and the truthfulness of such declarations are a material inducement to the Public Entities to enter into this Agreement and the transactions and agreements contemplated thereby.

(d) The Developer hereby agrees to execute a certificate at each Closing stating that the declarations set forth above are true in all material respects as of the date of the applicable Closing.
IN WITNESS WHEREOF, the Public Entities and the Developer have executed this Agreement by their duly authorized signatories on or as of the date first above written.

CITY OF MINNEAPOLIS, a Minnesota municipal corporation

By ____________________________
Mayor

Attest ____________________________
City Clerk

Countersigned ____________________________
Finance Officer

Approved as to form:
_____________________
Assistant City Attorney

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a Minnesota public body corporate and politic

By:
Name: Keith Ford
Its Deputy Executive Director

Approved as to form:
_____________________
Assistant City Attorney

MINNEAPOLIS PUBLIC HOUSING AUTHORITY IN AND FOR THE CITY OF MINNEAPOLIS, a Minnesota public body corporate and politic

By:
Name: Cora McCorvey
Its Executive Director

Approved as to form:
_____________________
Assistant City Attorney
ACKNOWLEDGEMENT AND CONSENT

In accordance with Section 2.3.1 of the foregoing Agreement, LEGACY MANAGEMENT AND DEVELOPMENT CORPORATION hereby acknowledges and consents to the terms and condition of the Agreement.

LEGACY MANAGEMENT AND DEVELOPMENT CORPORATION

By ________________________________

Its ________________________________
EXHIBITS

Exhibit A: Map depicting Phase 1A and Phase 1B Sites
Exhibit B: Phase 1 Redevelopment Schedule
Exhibit C: Phase 1 Redevelopment Budget
Exhibit D: Description of Phase 1 Public Realm Improvements and Schedule
Exhibit E: Section 3, Workforce, Apprenticeship and WBE/MBE/SUB Goals
Exhibit F: Map depicting Action Plan Site
PART II. RFPs, Development Agreements, and Program Descriptions

Development Agreements

→ Heritage Housing LLC Redevelopment Contract

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REDEVELOPMENT CONTRACT

By and Between

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

And

HERITAGE HOUSING LLC

Dated as of ______________, 2003

This Instrument Drafted By:
Minneapolis City Attorney’s Office (SAR)
Crown Roller Mill, Suite 405
105 Fifth Avenue South
Minneapolis, MN 55401-2534
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REDEVELOPMENT CONTRACT

This Agreement is made and entered into as of the _____ day of _______________ 2003 by and between the Minneapolis Community Development Agency (the “Agency”), a Minnesota public body corporate and politic, having its principal offices at Crown Roller Mill, Suite 200, 105 Fifth Avenue South, Minneapolis, Minnesota 55401-2534, its successors and assigns, the City of Minneapolis, a Minnesota municipal corporation (the “City”), and Heritage Housing LLC, a Minnesota limited liability company, doing business at 4740 Viking Drive, Minneapolis, Minnesota 55435 (the “Developer”).

WHEREAS, the Minneapolis Public Housing Authority (“MPHA”), the Agency, and the City are all parties to that certain Consent Decree dated April 20, 1995, entered into in connection with an action in United States District Court, District of Minnesota, entitled Hollman v. Cuomo, Civil 4-92-712 as amended from time to time (the “Consent Decree”); and

WHEREAS, the MPHA received approval from the United States Department of Housing and Urban Development (“HUD”) to develop on the property that was the subject of the Consent Decree and adjacent real property (the “Site”), in partnership with third parties, a mixed-income community, including public housing replacement units; and

WHEREAS, the MPHA in cooperation with the Agency and the City, issued a request for proposals from private developers pursuant to which they selected a developer to develop a master plan for the Site; and

WHEREAS, the master plan for the Site, developed by McCormack Baron & Legacy Management, Urban Design Associates and SRF Consulting Group dated May, 2000, provides for the development of approximately 900 rental and for-sale housing units, two large parks, a new north-south boulevard, reconfigured streets and related improvements on the Site in four phases (the “Master Plan”); and

WHEREAS, the Agency, in cooperation with the MPHA and the City, issued a request for proposals from private developers pursuant to which they selected the Developer to develop approximately 167 for-sale housing units on a portion of the Site; and

WHEREAS, Minnesota Statutes, Sections 469.001-469.047, as amended, authorize the Board to establish redevelopment projects to provide for the development and redevelopment of selected areas of the City; and

WHEREAS, on August 22, 2003, the City Council of the City and the Board of the Agency approved Modification No. 15 to the Grant Urban Renewal Plan and Modification No. 84 to the Common Plans (the “Grant Plan”); and

WHEREAS, by Resolution No. 89R-530, duly adopted on December 15, 1989, and approved on December 21, 1989, the City Council of the City approved the creation by the Agency of the Common Development and Redevelopment Project (the “Common Project”) and the adoption of the Common Development and Redevelopment Plan and the Common Tax Increment
Financing Plan (the “Common Plans”) relating thereto, under Minnesota Statutes, Section 469.001-469.047, 469.124-469.134, and 469.174-469.179, as amended; Laws of Minnesota 1971, Chapter 677, as amended; Laws of Minnesota 1980, Chapter 595, as amended; and Minneapolis Code of Ordinances, Title 16, Chapter 422, as amended; and

WHEREAS, on June 18, 1999, the City Council of the City and the Board of the Agency approved the Near Northside Community Redevelopment Plan which was revised on July 19, 1999 and revised and renamed the Heritage Park Redevelopment Plan on January 17, 2003 (the “Heritage Park Plan”); and

WHEREAS, the Heritage Park Plan, the Grant Plan and the Common Plans are hereafter collectively referred to as the "Redevelopment Plans".

WHEREAS, in order to bring about redevelopment in accordance with the Master Plan, the Agency has acquired or intends to acquire certain real property legally described in Exhibit A annexed hereto and made a part hereof (the “Property”) and located within the Redevelopment Plans Area and the Master Plan Site; and

WHEREAS, on August 8, 2003, the City of Minneapolis City Council and the Minneapolis Community Development Agency’s Board of Commissioners authorized the Agency and the City to enter into this Agreement to convey the Property to facilitate the development of approximately 167 for-sale housing units on the Property;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. In this Agreement and in the Exhibits attached hereto, unless a different meaning clearly appears from the context:

“Acquisition Property” means the real property described in Exhibit A-4 of this Agreement and depicted as Parcel 10 on Exhibit A-2.

“Acquisition Property Closing Date” means the latest to occur of the following: (i) a date 15 days after the Agency acquires marketable title to the Acquisition Property either through negotiated sale or condemnation, or (ii) a date 15 days after satisfaction or removal of all Developer’s contingencies in Section 4.10 with respect to the Acquisition Property, or (iii) a date 15 days after the Section 4.05 preconditions to Closing have been satisfied with respect to the Acquisition Property or (iv) a date mutually agreed upon by the parties; provided, however, that the Acquisition Property Closing Date shall be no later than April 1, 2004.

“Affidavit of Affordability” means an affidavit in the form of Exhibit G-2 attached to this Agreement.

“Affordability Declaration” means a declaration of covenants, conditions and restrictions running with the Land in substantially the form attached hereto as Exhibit R.

“Affordability Fund” means the fund established by Section 5.08(b) of this Agreement to enhance long-term affordability for families wishing to purchase homes in the Heritage Park Redevelopment Plan Area.

"Affordable Builders" means those Builders identified as Affordable Builders on Exhibit H attached to this Agreement.

“Affordable Units” means, collectively, the 15% of the Minimum Improvements that must be sold to homeowners with incomes below 60% of the Median Family Income, and the 15% of the Minimum Improvements that must be sold to homeowners with incomes between 60% and 80% of the Median Family Income as further described in Section 5.08.

“Agency” means the Minneapolis Community Development Agency, a Minnesota public body corporate and politic created pursuant to the Act, its successors and assigns.

“Agency’s Documents” means the documents to be executed and/or delivered by the Agency to the Developer on or before a Closing date pursuant to Section 4.07 of this Agreement.

“Agreement” means this agreement and all exhibits attached hereto, as the same may be from time to time modified, amended or supplemented.

“Board” means the Board of Commissioners of the Agency.

“Builder” means an entity on the list attached hereto as Exhibit H or that is approved by the Developer and the Agency pursuant to the terms of Section 5.03.

“Buyer” means a person or persons who execute a purchase agreement with a Builder with respect to a Unit on the Property.

“Certificate of Completion” means a certificate in substantially the form of Exhibit C to this Agreement.

“City” means the City of Minneapolis, Minnesota.

“Closing” means the execution and/or delivery by the Developer of all of the Developer’s Documents with respect to each Phase and the execution and/or delivery by the Agency of all the Agency’s Documents with respect to each Phase respectively.
“Completion Date” means the date a Certificate of Completion with respect to each Unit on the Property is delivered pursuant to Section 5.07 with respect to the Minimum Improvements on the Property or a portion thereof.

“Construction Plans” means the plans, drawings, and related documents with respect to the construction of the Minimum Improvements on the Property, which must be at least as detailed as the plans submitted to the City’s building inspector and include at least the following: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations; and (7) facade and landscape plan including materials and specifications.

“County” means the County of Hennepin, Minnesota.

“Deed” means a quitclaim deed in substantially the form of Exhibit B to this Agreement.

“Deferred Purchase Price Mortgage” means a purchase money mortgage in the form of Exhibit K attached hereto and incorporated herein made by Developer in favor of the Agency that is securing the Deferred Purchase Price Note and constituting a second lien on the Property, subject only to a mortgage securing debt incurred by Developer for the purposes of obtaining funds only to the extent necessary for completing the Soil Correction Work and the PUD Improvements (including, but not limited to, labor and materials, professional fees, real estate taxes, interest, organizational and other indirect costs of development, costs of completing the Soil Correction Work and an allowance for contingencies).

“Deferred Purchase Price Note” means a promissory note made by Developer in favor of the Agency in the form of Exhibit J attached hereto and incorporated herein evidencing Developer’s obligation to pay the previously unpaid Purchase Price for any portion of the Property conveyed to Developer under the terms of this Agreement.

“Demographic Survey” means a survey in the form of Exhibit G-1 attached to this Agreement.

“Developer” means Heritage Housing LLC, a Minnesota limited liability company.

“Developer’s Documents” means the documents to be executed and/or delivered by the Developer to the Agency on or before a Closing pursuant to Section 4.06 of this Agreement.

“Environmental Reports” means the reports listed on Exhibit D to this Agreement.

“Event of Default” means an action by the Developer described in Section 9.01 of this Agreement that is not cured within the time period provided in Section 9.02 of this Agreement.

“Grading and Utility Plans” means the Developer’s plan for site grading and utility work on the Property as approved by LHB dated ________, 2003 and on file with the Agency.
“Heritage Park Redevelopment Plan” means the Near Northside Community Redevelopment Plan which was revised on July 19, 1999 and revised and renamed the Heritage Park Redevelopment Plan on January 17, 2003.

“Housing Unit Deed” means any deed whereby a Builder transfers ownership of an individual housing Unit on the Property.

“Letter of Credit” means an irrevocable bank letter of credit in substantially the form of Exhibit F to this Agreement or other form reasonably acceptable to the Agency and/or City from a bank reasonably acceptable to the Agency and/or City as appropriate.

“LHB” means LHB, Inc.

“Lot” means any subdivided parcel of the Property reflected on the Lot Release Schedule attached hereto as Exhibit L and incorporated herein.

“Lot Release Schedule” means the schedule of Property purchase prices broken out as installments to be paid upon the sale of each Lot to a Builder attached hereto as Exhibit L and incorporated herein.

"Market Builders" means those Builders identified as the Market Builders on Exhibit H attached to this Agreement.

“Median Family Income” means the “Median Family Income” as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul Standard Metropolitan Statistical Area, adjusted for family size.

“Minimum Improvements” means new construction of 167 dwelling Units, consisting of 74 single-family home Units and 93 multi-family Units, including all landscaping on the Property, including the Soil Correction Work and reasonable measures to buffer the planned residential use of the Acquisition Property from nearby industrial uses, in accordance with Construction Plans approved by the Agency.

“Mortgage” means any mortgage loan to the Developer, other than the Deferred Purchase Price Mortgage that is secured, in whole or in part, with the Minimum Improvements or the Property.

“Operating Expenses” means any expenses incurred by the Developer to carry out Developer’s responsibilities under this Agreement excluding the Purchase Price for the Property and third-party costs to complete the Soil Correction Work.

“Parcel” means either Parcel 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, or 11 of the Property as depicted on Exhibit A-2 and described on Exhibit A, attached hereto and incorporated herein.

“Pattern Book” means the Near Northside Pattern Book created by Urban Design Associates.
“Permitted Encumbrances” means those encumbrances that are specifically approved pursuant to the terms of this Agreement or as otherwise agreed to in writing by the Agency.

“Phase” means either completion of the Soil Correction Work and the Minimum Improvements on the Phase I Property, or the Acquisition Property respectively.

“Phase I Property” means the real property described in Exhibit A-3 of this Agreement and depicted as Parcels 1, 2, 3, 4, 5, 6, 7, 8(e), 8(w), 9, and 11 on Exhibit A-2.

“Phase I Property Closing Date” means the latest to occur of the following: (i) September 26, 2003, (ii) a date 15 days after satisfaction or removal of all Developer’s Contingencies in Section 4.10, with respect to the Phase I Property, (iii) a date 15 days after the Section 4.05 preconditions to the Closing have been satisfied with respect to the Phase I Property or (iv) a date mutually agreed upon by the parties; provided, however that the Phase I Property Closing Date shall be no later than December 31, 2003.

“Project” means the construction of the Minimum Improvements on the Property pursuant to the terms of this Agreement.

“Property” means the real property described in Exhibit A to this Agreement.

“Public Improvement Cost Note” means a promissory note made by Developer in favor of the City in the form of Exhibit O attached hereto and incorporated herein evidencing Developer’s obligation to pay the Public Improvement Costs associated with any Property conveyed to Developer.

“PUD Improvements” means those certain Public Improvements that the City and Developer agree to have Developer install pursuant to Section 5.10(a) herein.

“Redevelopment Act” means Minnesota Statutes, Sections 469.001-469.047, as amended.

“Rental Housing Developer” means McCormack Baron Salazar, Inc. and its affiliates.

“Soil Correction Costs” means all costs to clean, clear, remove, mitigate and/or remediate Unsuitable Soils, including all costs of investigation, testing, analysis, removal, remedial action, response, monitoring, transferring, transportation, storage and/or disposal associated with hazardous and non-hazardous waste, debris, deleterious material, demolition debris, petroleum and/or hazardous substances located on the Property, and the cost of purchasing, delivering, movement, and compaction of clean fill to the Property, and all fees of consultants and governmental agencies in connection therewith; provided, however, that Soil Correction Costs shall not include any attorneys’ fees, MPCA administrative fees to obtain “No Action/No Association” assurance letters. The terms “hazardous substance,” “release,” “removal,” “remedial action,” “response,” “transportation” and “disposal” as used herein shall have the same meaning as set forth in Paragraphs (14), (22), (23), (24), (25), (26) and (29), respectively, of Title 42 U.S.C. § 9601, except the term “hazardous
“Soil Correction Work” means stormwater quality improvements, soil testing and engineering work, soil and environmental correction, including environmental remediation and Site grading on the Property.

“Special Assessment Gap” means the difference between the amount the City is charging the Developer for City costs associated with the Public Improvements as described in Section 5.10(c) and what the City would have ordinarily assessed the Property for Public Improvements using the City’s standard methodology for assessing Public Improvement Costs.

“State” means the State of Minnesota.

“Title” means Commonwealth Land Title Insurance Company.

“Unavoidable Delays” shall mean delays arising out of acts of God, acts of the public enemy, the direct result of strikes, other labor troubles, fire, floods, epidemics, quarantines, restrictions, unavailability of utilities, unavailability of materials, acts of governmental entities including legislative or administrative actions taken by any entity, action or inaction of public authority, unusually severe weather or delays of subcontractors due to such causes, or other casualty to the Minimum Improvements, “economic recession” defined as two consecutive quarters in which there is a decrease in United States Gross Domestic Product, an increase in the interest rate on 30-year home mortgages of more than 2% in any 12-month period, and litigation commenced by third parties which by injunction or other similar judicial action directly results in delays and other actions beyond the reasonable control of the parties.

“Unit” means each subdivided parcel or physical portion of a common interest community under Minnesota Statutes, Sections 515B.01-101 through 515B.4-118, which is intended for separate ownership.

"Unit Release Schedule" means the schedule of Public Improvement Costs associated with each Unit to be built on the Property attached hereto as Exhibit Q and incorporated herein.

“Unsuitable Soils” means abnormal, geotechnically substandard or contaminated soils, which in Agency staff’s professional opinion, qualify for soil correction. Such abnormal, substandard or contaminated soils shall include, but not be limited to, soils that contain substantive amounts of loose and/or organic soils; demolition debris and rubble; abandoned building foundations, pilings, underground utilities, and storage tanks; illegally dumped and buried materials; and hazardous substances, hazardous wastes, pollutants or contaminants as those terms are defined under any federal, state or local statute, ordinance, code or regulation. Unsuitable Soils does not mean uncontaminated soils that have 3,000 p.s.f. soil

substance” as used herein shall include “hazardous waste” as defined in Paragraph (5) of 42 U.S.C. § 6903, “petroleum” as defined in Paragraph (8) of 42 U.S.C. § 6991, non-hazardous waste, debris, demolition debris, cinders, brick, masonry, steel, metal, glass, paper, concrete, wood and reinforcement material.
bearing capacity at 95% of Standard Proctor density and that are suitable for construction of the Minimum Improvements.

“Work Force Goals” means the Section 3, workforce, apprentice and women business enterprises/minority business enterprises/small and underutilized businesses goals established by the City Council for this Project as listed on Exhibit N attached hereto and incorporated herein.

ARTICLE II
REPRESENTATIONS

Section 2.01 Representations of the Agency. The Agency makes the following representations to the Developer as of the date hereof and as of each Closing:

(a) The Agency is a public body corporate and politic of the State, duly organized and existing under the Act. Under the provisions of the Act and the Redevelopment Act, the Agency has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) The Agency has taken all action necessary to authorize the execution and delivery of this Agreement to the Developer.

(c) There are no pending or threatened legal proceedings, of which the Board has notice, to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting the validity of this Agreement, or contesting the authority of the Agency to execute and deliver this Agreement. There are no pending or threatened legal proceedings, of which the Board has notice, contesting the right of the members of the Board to hold their respective offices.

(d) The consummation of the transactions contemplated by this Agreement, and compliance by the Agency with the terms of this Agreement, will not result in any breach of any of the terms of, or constitute a default under, any indenture, lease, loan agreement, or other instrument to which the Agency is a party or by which the Agency is bound, or any law applicable to the Agency or this transaction.

(e) Except as disclosed in the Environmental Reports, the Agency does not know of any underground storage tanks on the Property.

(f) Except as disclosed in the Environmental Reports, the Agency does not know of any wells located on the Property.

(g) Except as disclosed in the Environmental Reports, the Agency does not know of any individual sewage treatment systems on or serving the Property.
Section 2.02 **Representations of the City.** The City makes the following representations to the Developer as of the date hereof and as of the Closing Date:

(a) The City is a municipal corporation of the State. The City has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) The City has taken all action necessary to authorize the execution and delivery of this Agreement to the Developer.

(c) There are no pending or threatened legal proceedings, of which the City Council has notice, to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting the validity of this Agreement, or contesting the authority of the City to execute and deliver this Agreement. There are no pending or threatened legal proceedings, of which the City Council has notice, contesting the right of the members of the City Council to hold their respective offices.

(d) The consummation of the transactions contemplated by this Agreement, and compliance by the City with the terms of this Agreement, will not result in any breach of any of the terms of, or constitute a default under, any indenture, lease, loan agreement, or other instrument to which the City is a party or by which the City is bound, or any law applicable to the City or this transaction.

Section 2.03 **Representations of the Developer.** The Developer makes the following representations to the Agency and the City:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State of Minnesota.

(b) There are no pending or threatened legal proceedings, of which the Developer has notice, contemplating the liquidation or dissolution of the Developer or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by this Agreement, or questioning the authority of the Developer to execute and deliver this Agreement or the validity of this Agreement.

(c) The Developer has authorized the execution and delivery of this Agreement and the Developer’s Documents.

(d) At such time or times as Developer is required by law, the Developer will have complied with all local, state, and federal environmental laws and regulations binding upon Developer applicable to the Property and the operation of the Minimum Improvements. As of the date of execution of this Agreement, the Developer, to the best of its knowledge, has received no notice or communication from any local, state, or federal official that the activities of the Developer in the Project area may be or will be in violation of any environmental law or regulation. As of the date of execution of this Agreement, the Developer is aware of no existing facts, the existence of which cause it to be in violation of any local, state, or federal
environmental law, regulation, or review procedure, or which would give any person a valid claim under the Minnesota Environmental Rights Act as to the Property.

(e) Neither the execution and delivery of this Agreement and the Developer’s Documents, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Developer’s Documents is prevented, limited by, or conflicts with or results in a breach of, the terms, conditions, or provisions of any evidences of indebtedness, agreement, or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The Developer would not acquire the Property and construct the Minimum Improvements but for the execution of this Agreement.

ARTICLE III
ACQUISITION OF PROPERTY

Section 3.01 Acquisition of MPHA Property. Parcels 1, 2, 3, 4, 5 and 8(e), as described on Exhibit A and depicted on Exhibit A-2 (the “MPHA Property”), are currently owned in whole or in part by the MPHA and make up a portion of the Phase I Property. The Agency has entered into a land conveyance agreement dated October 9, 2003 with the MPHA, whereby the Agency has the option to purchase the MPHA property by March 1, 2004 (the “Land Conveyance Agreement”). Subject to the Agency receiving 10 calendar days written notice from the Developer that the contingencies stated in Section 4.10 have been satisfied or waived with respect to the Phase I Property and MPHA fulfilling its obligations under the Land Conveyance Agreement, on or before the Phase I Property Closing Date, the Agency will acquire fee title to the Phase I Property.

Section 3.02 Acquisition Property. Subject to all of the terms, covenants and conditions of this Agreement, the Agency will use reasonable efforts (including exercise of the power of eminent domain) to acquire the Acquisition Property.

(a) Voluntary Sale. If the Agency is able to negotiate a voluntary sale of the Acquisition Property, the Agency will not execute a purchase agreement until: (i) the Developer has been afforded a reasonable period (at least 5 calendar days) to review and approve the proposed purchase agreement; and (ii) the Developer has deposited the Deposit or such greater amount equal to the price the Agency is going to pay to acquire the Acquisition Property, free and clear of all encumbrances related to the Minneapolis Community Development Agency Limited Tax Supported Development Revenue Bonds, Common Bond Fund Series 2001-2A and 2001-2B.

(b) Condemnation. If the Agency is unable to negotiate a voluntary sale of the Property by December 15, 2003, the Agency will proceed with reasonable diligence, including the use of “quick take” provisions, to acquire the Acquisition Property with a goal of allowing for conveyance to Developer no later than March 30, 2004. The Developer has approved the condemnation petition, including the interests to be condemned and the Title Company has reviewed the condemnation petition and
agreed to issue an owner’s title insurance policy to the Developer insuring marketable title to the Acquisition Property upon successful acquisition. As a condition precedent to the Agency’s obligation to complete acquisition of the Acquisition Property,

(i) The Agency shall have received an updated appraisal of the Acquisition Property from The Valuation Group, Inc.; (the “Updated Appraisal”);

(ii) The Developer shall have deposited with the Agency the Deposit or such greater amount equal to the Updated Appraisal plus the cost to the Agency to procure such Updated Appraisal to be credited toward the Property Purchase Price; and

(iii) The Developer shall have requested the Agency to complete and Developer shall have paid for such environmental investigation with respect to the Acquisition Property as Developer deems prudent.

(c) Good Faith Efforts. The Agency shall use all of its reasonable good faith efforts to acquire title to the Acquisition property. Notwithstanding anything herein to the contrary, however, the Agency shall be under no obligation to initiate any unreasonable appeals to any administrative or judicial determination made in conjunction with the acquisition or attempted acquisition of the Acquisition Property as determined in the Agency’s reasonable discretion. The Agency cannot and does not warrant the successful conclusion of any eminent domain action. If the Agency is unable to acquire the Acquisition Property, the Developer, Agency and the City shall negotiate in good faith to equitably amend this Agreement and any relevant exhibits/related documents as necessary to reflect the fact that the Acquisition Property will not be conveyed to the Developer.

ARTICLE IV
CONVEYANCE OF PROPERTY

Section 4.01 Earnest Money.

(a) Amount. At the Phase I Closing, the Developer will deliver to the Agency an earnest money payment in the form of cash or a certified check in the amount of $167,000 (the “Deposit”).

(b) Interest. The Agency shall be under no obligation to pay or earn interest on the Deposit. Any interest earned shall be the property of the Agency.

(c) Deposit as Credit. The Deposit shall be credited toward the Purchase Price for the Property.

(d) Return to Developer; Retention. If this Agreement is terminated prior to the Phase I Property Closing Date for any reason other than Developer’s default hereof, the
Agency shall return the Deposit to the Developer. Upon termination of this Agreement as provided in Section 13.02 hereof, the Agency shall retain the Deposit as liquidated damages.

Section 4.02 Purchase Price. In total, the Developer shall pay to the Agency $4,000 per Unit to be built on the Property (the "Property Purchase Price"). Assuming all the Property is conveyed to the Developer, the full Purchase Price is $668,000 ($4,000 x 167). Except for the Deposit, the Purchase Price shall be paid on a deferred basis in 167 installments as described in the Deferred Purchase Price Note and the Lot Release Schedule of $3,000/Unit plus accrued interest less a prorated portion of any amounts paid to the Agency by the Developer pursuant to Section 3.02(b)(ii), due and payable on the 1st and 15th of each month for all Lots conveyed by Developer to a Builder since the previous payment, and if not previously paid, due and payable on December 31, 2006. Such Deferred Purchase Price Note to be secured by the Deferred Purchase Price Mortgage. The Developer and Agency hereby agree to amend the Deferred Purchase Price Note and Lot Release Schedule as needed to reflect any additional amounts paid to the Agency by the Developer pursuant to Section 3.02(b)(ii) or if the Acquisition Property is not conveyed to Developer. It is the agreement of the parties that after taking into consideration the costs being borne by the Developer associated with Public Improvements and Soil Correction Work, the Property is being sold to the Developer for its fair market value.

Section 4.03 Escrowed Land Sale Proceeds. The Agency shall escrow, without interest accruing, all Property Purchase Price funds it receives from the Developer net of any costs the Agency incurs pursuant to Section 4.08 herein to convey the Property to the Developer and net of $8,738 that is restricted to debt service on previously issued tax increment bonds (the “Escrowed Funds”). The Escrowed Funds shall be available for the following uses in the following order of priority:

(a) to the Agency for the acquisition of the Acquisition Property, including legal and consultant costs;

(b) to the Developer for Soil Correction Costs as described in Section 4.09;

(c) to the City for any Special Assessment Gap; and

(d) to the Agency.

Section 4.04 Title Review.

(a) Commitment. Within 10 calendar days after the date of execution of this Agreement, the Developer will secure a commitment from Title for issuance to Developer of an owner’s title insurance policy in the amount of the Purchase Price and including a special assessment search and searches for bankruptcies and state and federal tax liens and judgments with respect to the Phase I Property (the “Commitment”).

(b) Objections. The Developer shall be allowed 20 calendar days after receipt of the Commitment to make objections to title, said objections to be made in writing and delivered to the Agency within such 20-day period or deemed waived.
(c) **Period.** If the Developer makes timely written objections to the Commitment, then the Agency will have until the Phase I Closing Date to cure the title defects and establish marketable title to the Phase I Property. The Agency agrees to use reasonable efforts to cure any title defects timely objected to by Developer in writing that make title unmarketable. If the Agency fails to have the objections to title removed or satisfied within the time provided, the Developer may elect to (1) purchase the Phase I Property subject thereto; or (2) declare this Agreement null and void, and neither party hereto shall be liable for damages hereunder to the other party and the Agency shall refund the Deposit and any additional amounts paid to the Agency pursuant to Section 3.02 to the Developer without interest; but if the title to the Property be found marketable or cured within said time, and Developer shall thereafter breach its obligations to accept conveyance of the Property as provided in this Agreement, then and in that case the Agency may terminate this Agreement, and on such termination, the Agency shall retain the Deposit and any additional amounts paid to the Agency pursuant to Section 3.02 as liquidated damages, time being of the essence hereof.

(d) **Subsequent Title Review.**

(i) Developer hereby acknowledges having reviewed the City of Minneapolis Heritage Park Plat 2 and agrees to execute the Plat as necessary upon final approval by the Minneapolis Planning Commission. The City and the Agency shall use reasonable good-faith efforts to cause the City of Minneapolis Park Plat 2 to be filed in the Hennepin County land records as expeditiously as reasonably possible, including title clearance or registration actions required to allow the filing. The Agency shall notify the Developer upon the filing of the final City of Minneapolis Heritage Park Plat 2.

(ii) The Agency shall notify the Developer upon Agency acquisition of the Acquisition Property. Beginning upon receipt of such notice, rather than the date of execution of this Agreement, the timelines for title commitment, objections and cure as described above shall apply to the Acquisition Property. The Agency agrees to use reasonable efforts to cure any title defects timely objected to by Developer in writing that make title unmarketable. However, if the Agency fails to have the objections to title removed or satisfied within the time provided, the Developer may (1) elect to purchase the Acquisition Property subject thereto or (2) the Developer, the Agency and the City shall negotiate in good faith to equitably amend this Agreement and any relevant exhibits/related documents as necessary to reflect the fact that the Acquisition Property will not be conveyed to Developer.

**Section 4.05 Closing; Agency Conditions Precedent to Closing.** The Agency will transfer its entire interest in and possession of the Phase I Property and the Acquisition Property to the Developer by delivery of Deeds in substantially the form of Exhibit B on the Phase I Property Closing Date and on the Acquisition Property Closing Date respectively, provided, however, that each of the following has been satisfied or waived:
(a) The representations and warranties of Developer contained in this Agreement must be true in all material respects.

(b) No Event of Default has occurred that has not been cured.

(c) The Developer delivers all of Developer’s Documents to the Agency with respect to the portion of the Property being conveyed.

Section 4.06 Developer’s Documents (as appropriate).

(a) Phase I Property Closing. Closing shall be conditioned upon Developer’s execution and delivery to the Agency and City the following Developer’s Documents, all in form and content reasonably satisfactory to the Agency and City (as appropriate):

(i) The Deposit;

(ii) Evidence that the Developer has cash resources or financing sufficient for Soil Correction Work, PUD Improvement work and related soft costs, less any amounts previously expended by Developer for Soil Correction Work already completed

(iii) An affirmative action plan if required under Chapter 139.50, Minneapolis Code of Ordinances

(iv) Proof of the insurance required for the benefit of the Agency and City pursuant to this Agreement

(v) To the extent required and obtainable as of the Closing, environmental clearances, permits, and any other required governmental approvals for the Minimum Improvements;

(vi) A Deferred Purchase Price Note in the original principal amount of $453,000 (less any amounts paid by the Developer to the Agency pursuant to Section 3.02(b)(ii)) (the “Phase I Purchase Price Note”);

(vii) A Deferred Purchase Price Mortgage securing the Phase I Purchase Price Note (the “Phase I Purchase Price Mortgage”);

(viii) A Public Improvement Cost Note in the original principal amount of $2,017,230 (the “Phase I Public Improvement Cost Note”);

(ix) A $15,000 issuance fee for the City to issue the Public Improvement Cost Note as required by Section 5.10(c);

(x) A Letter of Credit securing 110% of the outstanding principal amount of the Phase I Public Improvement Cost Note in form reasonably acceptable to the City (the “Phase I Public Improvement Letter of Credit);
(xi) An updated policy of title insurance from Title insuring that the Phase I Deferred Purchase Price Mortgage will be a valid second lien on the Phase I Property, without exception from possible mechanic’s liens, and otherwise in form and substance reasonably satisfactory to the Agency; and

(xii) A copy of Developer’s contract with the contractor(s) performing the Soil Correction Work on the Phase I Property.

(b) **Acquisition Property Closing.** The Acquisition Property Closing shall be conditioned upon Developer’s execution and delivery to the Agency and City (as appropriate) the following Developer’s Documents, all in form and content reasonably satisfactory to the Agency and City (as appropriate):

(i) Proof of the insurance required for the benefit of the Agency and City pursuant to this Agreement;

(ii) A Deferred Purchase Price Note in the original principal amount of $48,000 (less any amounts paid by Developer to the Agency pursuant to Section 3.02(b)(ii) that has not previously been credited toward the Phase I Property Purchase Price) (the “Acquisition Property Purchase Price Note”);

(iii) A Deferred Purchase Price Mortgage securing the Acquisition Property Purchase Price Note (the “Acquisition Property Purchase Price Mortgage”);

(iv) A Public Improvement Cost Note in the original principal amount of $120,000 (the “Acquisition Property Public Improvement Cost Note”);

(v) A Letter of Credit securing 110% of the outstanding principal amount of the Acquisition Property Public Improvement Cost Note in form reasonably acceptable to the City (the “Acquisition Property Public Improvement Cost Letter of Credit”);

(vi) An updated policy of title insurance from Title insuring that the Acquisition Property Deferred Purchase Price Mortgage will be a valid second lien on the Acquisition Property, without exception from possible mechanic’s liens, and otherwise in form and substance reasonably satisfactory to the City; and

(vii) A copy of the Developer’s contract with the contractor(s) performing any soil correction work on the Acquisition Property.

**Section 4.07 Agency’s Documents.**

(a) Provided that the Developer has satisfied all of the conditions precedent specified in Section 4.05 of this Agreement with respect to the Phase I Property, and has paid to the Agency the Deposit, the Agency shall execute and deliver all of the following Agency’s Documents on the Phase I Closing Date:

(i) The Deeds to the Phase I Property; and
(ii) Such other documents as shall be required to carry out the intent of this Agreement.

(b) Provided that the Developer has satisfied all of the conditions precedent specified in Section 3.02(b) of this Agreement and Section 4.05 of this Agreement with respect to the Acquisition Property, the Agency shall execute and deliver all of the following Agency’s Documents on the Acquisition Property Closing Date:

(i) The Deed to the Acquisition Property; and

(ii) Such other documents as shall be required to carry out the intent of this Agreement.

Section 4.08  Prorations. The Agency and the Developer agree to the following allocation of costs pertaining to transfer of the Property:

(a) **Title Insurance and Closing Fee.** The Developer shall pay for all costs of the Commitment, updates of the Commitment and the premiums required for the issuance of any owner’s or mortgagee’s title policy. The Agency and the Developer shall share equally any reasonable and customary fees imposed by Title to close this transaction(s).

(b) **Deed Tax.** The Agency shall pay the state deed tax required in order to file the Deeds.

(c) **Real Estate Taxes.** General real estate taxes payable in the year of Closing, if any, will be prorated as of the Closing Date.

(d) **Recording Costs.** The Developer shall promptly record the Deeds and shall pay all costs of recording same. The Agency shall pay all costs of recording any other documents necessary to place record title in the Agency’s name and to correct title. The Developer shall pay all filing fees, charges, expenses and taxes (including, but not limited to, mortgage registration tax) with respect to any Deferred Purchase Price Mortgage.

Section 4.09  Soil Correction and Environmental Correction.

(a) The Developer will undertake all Soil Correction Work on the Property that the Developer determines to be appropriate, provided that Agency engineering staff have reviewed the scope of activities to be completed pursuant to this provision and has concurred that the work will result in buildable sites. The Developer and the City shall reasonably cooperate to coordinate Soil Correction Work on the Property with the other construction activities underway, including those by the Rental Housing Developer, private utility companies and park and open space contractors. Developer shall ensure that all excavation work associated with the Project by either the Developer or the Builders shall be monitored according to the Construction Contingency Plan related to the existing Response Action Plan for the area already approved by the Minnesota Pollution Control Agency. Developer shall use Braun...
Intertec or another independent engineer reasonably acceptable to the Agency to
design all Soil Correction Work plans, monitor performance of the Soil Correction
Work and verify the quantity of materials moved. Developer shall document
selective re-use of on-site soils where appropriate, in Developer’s reasonable
discretion, to control costs, but agrees to reasonably consider Agency and City
suggestions in that regard. The Agency shall not reimburse for Soil Correction
Costs if the Developer has not reasonably maximized use of on-site soils for fill in
areas where such use is cost effective and otherwise feasible and not in conflict with
structural necessity, such as fill above the footing elevations or between buildings.
If there are design options available for construction of the project that could
minimize the need for and costs of Soil Correction Work, these design options
should be considered and undertaken if they are reasonable and feasible and do not
substantially increase development costs. If the Developer does not consider these
design options or unreasonably rejects the use of these design options, the Developer
shall not receive reimbursement. Reimbursement, if any, for environmental clean-
up shall be limited to costs for work required according to Minnesota Pollution
Control Agency (MPCA) standards. The Developer may choose to perform
activities that differ from or exceed the applicable MPCA standards, but no
reimbursement shall occur from the Soil Reimbursement Amount, nor shall any
grant monies awarded to the Agency or the City be allocated for these activities.
The Developer shall document the Soil Correction Costs to the satisfaction of the
Agency and provide copies of all Soil Correction Work related reports generated.
Documentation such as evidence that all Soil Correction Work was bid to at least
three bidders and paid receipts certified by the Developer as to the applicable costs
shall be acceptable documentation.

(b) Priority of Soil Correction Reimbursement. The Developer shall exhaust the
following sources of funds for the payment of Soil Correction Costs before any
Escrowed Funds are available for reimbursement of unpaid Soil Correction Costs:

(i) $1,410,000 of Developer funds;

(ii) Any Unneeded Budgeted Amounts, as described in Section 4.09(f);

(iii) Outside grants either obtained by Developer or that the Agency or City
identifies as Agency or City obtained grants that are not otherwise needed
for costs related to the rental housing or public infrastructure within the
boundaries of the Heritage Park Plan, if any; and

(iv) The remainder of Developer’s $356,500 contingency amount as reflected in
the Project Budget attached hereto as Exhibit E.

(c) Soil Correction Reimbursement Amount. An amount equal to the total Soil
Correction Costs less Soil Correction Costs paid for after exhaustion of the sources
identified above shall be the “Soil Reimbursement Amount.” The final
determination of Soil Correction Costs and the Soil Reimbursement Amount shall be
made after all of the Property has been tested and certified as buildable by Developer.
and the Agency’s engineering staff and all Soil Correction Work is completed. A Lot must be certified as buildable by Developer and the Agency's engineering staff prior to such Lot being conveyed to a Builder. No costs incurred by Developer or any Builder for (i) stormwater quality improvements, (ii) activities normal for excavation and building a Unit on a site with uncontaminated soil conditions that have $3,000 p.s.f. soil bearing capacity at 95% of standard proctor density and that are suitable for construction of the Minimum Improvements or for soil correction after the Property has been certified as buildable by the Agency engineering staff shall be reimbursable with any escrowed funds. If the Soil Reimbursement Amount is less than $150,000, Developer shall, within fifteen (15) calendar days of calculation of the Soil Reimbursement Amount, provide the Agency with a Letter of Credit or other form of security in form reasonably satisfactory to the Agency equal to the difference between the Soil Reimbursement Amount and $150,000 (the “Security LOC”). Fifty percent (50%) of the Soil Reimbursement Amount will be available for disbursement to Developer upon the issuance of Certificates of Completion for at least 80% of the Units on the Property. Twenty-five percent (25%) of the Soil Reimbursement Amount will be available for disbursement to Developer upon the issuance of Certificates of Completion for at least 90% of the Units on the Property. The remaining twenty-five percent (25%) of the Soil Reimbursement Amount will be disbursed to Developer upon the issuance of Certificates of Completion for all of the Units on the Property. Likewise, the Security LOC will be released in the same percentage amounts at the same milestone dates.

(d) “As Is” Sale. Developer specifically acknowledges and agrees that Developer has, or will have before the Phase I Property Closing Date and the Acquisition Property Closing Date respectively, to the extent desired and deemed consistent with good commercial practice and at Developer’s sole cost and expense, completed an investigation and inspection of the Property, including such soils, engineering and environmental studies as may be necessary to assess the condition of the Property and the suitability of the Property for its intended uses. Subject to the obligations of the Agency under Section 4.09(a), Developer is agreeing to accept and purchase the Property “AS IS WITH ALL FAULTS” and is not relying upon any representations or warranties of any kind whatsoever, express or implied, from the Agency, its employees, officers, agents or consultants as to any matters concerning the Property.

(e) Release. Except as otherwise provided in this Section 4.09, Developer waives its right to recover from, and forever releases and discharges, the Agency, the City and the MPHA and the Agency’s, City’s and MPHA’s affiliates, employees, directors and officers for, from and against any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and court costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with “hazardous substances,” as defined in state or federal environmental laws and regulations, located in, on or about the Property. The provisions of this
Section 4.09(e) shall survive the Phase I Property Closing Date and the Acquisition Property Closing Date.

(f) **Unneeded Budget/Contingency Uses.** Any amounts in the Project Budget, attached hereto as Exhibit E and incorporated herein, for Soil Correction Costs ($2,371,500) that are not needed for third-party Soil Correction Costs shall be available for the following uses in the following order of priority:

(i) Developer Operating Expenses to the extent they exceed $1,597,027 provided that in no event shall excess Developer Operating Expenses over $238,800 be funded from this source.

(ii) To the City for any Special Assessment Gap.

(iii) To the Developer.

Developer shall bid all Soil Correction Work to at least three bidders and shall certify such costs, upon completion, to the Agency, in accordance with standard Agency procedures.

(g) **Environmental Clearances.** All environmental clearances required by state and federal laws and regulations for development of the Minimum Improvements on the Property in accordance with this Agreement shall be obtained by the Developer, at Developer’s expense. The Agency shall cooperate with the Developer, provided that the Agency shall not, except as otherwise provided in this Section 4.09, incur any costs or expense by virtue of such cooperation.

**Section 4.10 Contingencies for Developer’s Benefit.**

(a) **Generally.** The obligations of Developer under this Agreement are subject to and contingent upon each of the following contingencies being satisfied or waived on or before the Phase I Property Closing Date and the Acquisition Property Closing Date with respect to the Phase I Property and the Acquisition Property respectively:

(i) **Testing.** Developer shall have determined that the results of and matters disclosed by the Environmental Reports and any other environmental and geotechnical investigation of the Property are acceptable and satisfactory to Developer, in Developer’s sole opinion. The Developer acknowledges that the Agency has allowed the Developer to review complete copies of the Environmental Reports that are in the Agency’s possession or control, without cost to the Developer.

(ii) **Permits and Zoning Compliance.** The Developer shall have obtained from the appropriate governmental authorities, at its expense, all permits (other than building permits) and zoning, planned unit development/site plan, platting/subdivision, and environmental approvals necessary for the construction and operation of the Minimum Improvements. Throughout the term of this Agreement, copies of all planned unit/development/site plan and...
platting/subdivision plans shall be provided to the Agency prior to their submission to the City for approvals through the normal City processes. The Agency agrees to assist the Developer with the permitting processes, provided that such assistance shall be at no cost to the Agency.

(iii) **Condition of Title.** The Agency shall have corrected any title matters to which Developer has timely objected under Section 4.04.

(iv) **Survey.** The Developer shall have obtained a current survey (“Survey”) of the Property certified to the Developer and to Title. If the Survey or the Commitment disclose any survey defects that make title to the Property unmarketable, the Agency agrees to use reasonable efforts to cure such defects.

(b) **Phase I Property Contingencies.** All of the contingencies stated in this Section 4.10 are specifically stated and agreed to be for the sole and exclusive benefit of the Developer, and the Developer shall have the right to unilaterally waive any contingency by written notice to the Agency. If any of the above contingencies have not been satisfied with respect to the Property on or before the Phase I Property Closing Date, then this Agreement may be terminated, at the Developer’s sole option, by written notice from the Developer to the Agency. A notice of termination may be given at any time on or before the Phase I Property Closing Date. Upon termination, the Deposit and any additional amounts paid to the Agency pursuant to Section 3.02 shall be refunded to the Developer and, upon such refundment, neither party will have any further rights or obligations regarding this Agreement or the Property.

(c) **Acquisition Property Contingencies.** If any of the above contingencies have not been satisfied with respect to the Acquisition Property on or before the Acquisition Property Closing Date, then Developer, the Agency and the City shall negotiate, in good faith, an amendment to this Agreement to equitably remove references to the Acquisition Property as appropriate.

**Section 4.11 Reconveyance to Agency.** Within 15 calendar days after the Phase I Closing and the recording of the City of Minneapolis Heritage Park 2 plat (a copy of which is preliminarily approved and on file with the Agency), for the Phase I Property, Developer will convey back to the Agency by providing a Deed for those certain Outlots described on “City of Minneapolis Heritage Park Plat 2” as “Outlot G” and “Outlot H”. All costs of the re-conveyance and filing shall be borne by the Developer and Developer shall provide to the Agency at Developer’s cost, an owner’s policy of title insurance insuring that Outlots G and H are free from encumbrances (other than encumbrances that had been on the Property at the time it was conveyed to Developer) and without exception from possible mechanic's liens.
ARTICLE V
CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION

Section 5.01 Construction of Improvements. Subject to the terms and conditions herein, the Developer will complete the Soil Correction Work substantially in accordance with the Grading and Utility Plans on file with the Agency. Developer shall be responsible for erosion and sediment control. Developer shall cause the construction of the Minimum Improvements by Builders on the Property in substantial conformance with approved Construction Plans, including appropriate erosion and sediment control. Developer shall cause Builders constructing Minimum Improvements to complete utility connections from water mains and sanitary sewer mains to dwelling Units (the “Water Connection Work”) in accordance with the schedule attached hereto as Exhibit M. All Water Connection Work shall be performed by licensed and bonded contractors approved by the City.

Section 5.02 [Intentionally Omitted]

Section 5.03 Sale of Property to Builders.

(a) Approved Builder List. Developer may only convey Lots to approved Builders. Currently, the only approved Builders are listed on Exhibit H attached hereto and incorporated herein. Builders on the Approved Builders List may be added or deleted by the Developer subject to the Agency’s Executive Director’s approval, which approval will not be unreasonably withheld. A Northside Residents Redevelopment Council (NRRC) affiliated builder will only be approved by the Agency as a Builder if such entity is a corporate or limited liability entity separate and apart from NRRC, which is structured in a fashion satisfactory to the Agency, using its reasonable discretion, to avoid conflicts with NRRC’s citizen participation role within the City. Deletion from the Approved Builder List for non-performance will be allowed with notice to, but without approval by, the Agency. The Developer shall reasonably consider Agency or City requests to remove a Builder from the Builder List.

(b) Platting and Approvals. Prior to the sale of any Lot to any Builder, Developer, at its sole cost and expense, shall have subdivided or replatted the Property in which the Lot is located in accordance with the Lot Release Schedule and Minnesota Statutes, Sections 462.351 to 462.365, Minnesota Statutes, Chapter 515B, and the City’s subdivision regulations and provided a copy of such plat to the Agency. Developer agrees to dedicate an additional four feet of Parcel 4 as street easement right of way for 11th Avenue North and show a resulting shift of the 10 foot utility easement on Parcel 4 on such subdivision plat. Developer will obtain all environmental, land use and zoning approvals for the Project. When not in conflict with City or Agency policy, procedures or ordinances, and provided there is no out-of-pocket cost to the Agency, the Agency will cooperate and assist Developer in obtaining such approvals.
(c) **60% Units.** Developer will coordinate and assist Habitat for Humanity (“Habitat”) in developing the 60% Units as described in Section 5.08(a). Habitat will use other funding sources (e.g., internal, private grants, governmental grants) to pay for the cost of any Lot conveyed to Habitat. The Developer agrees that the price it will charge Habitat for a Lot is $20,750. If Habitat does not construct the required number of Units in accordance with Developer’s development schedule, the Agency and Developer will cooperate to achieve a suitable alternative concerning the 60% Units. This provision does not convey any third-party beneficiary rights to Habitat.

(d) **Total Development Cost.** Lot prices to Builders will be based on total development cost of a Lot and the Unit to be built thereon pursuant to the formula set forth in Section 5.03(e) below adjusted for actual sales price of a Unit. Total development cost includes the Developer’s costs for Soil Correction Work. The total development cost will be estimated at the time of closing between Developer and Builder and will be adjusted at the time of closing between the Builder and the homeowner based on actual sales price.

(e) **Target Lot Prices.** Except for the 60% Units, Lot prices will be based on the anticipated sales price of the Unit to be built thereon, but with a goal of Lot prices equal to (i) 20% of the sales price for the condominiums and townhouses; (ii) 22% of the sales price for small lot Units; and (iii) 25% of the sales price for large lot Units.

(f) Developer shall not convey any Lot to any Builder unless:

(i) The Soil Correction Work to be completed on the Lot by the Developer has been completed;

(ii) The Construction Plans for the Unit to be built by the Builder on the Lot have been approved pursuant to Section 5.05;

(iii) The Builder’s financing has been approved for the Unit to be built on the Lot pursuant to Section 7.02;

(iv) The Builder has expressly assumed the obligations of the Developer with respect to the Lot to be conveyed pursuant to a Builder Pool Agreement and/or a Purchase Agreement in substantially a form that has been approved by the Agency in writing;

(v) The portion of the Property Purchase Price to be paid to the Agency by Developer in accordance with the Lot Release Schedule is paid;

(vi) If the Lot is being conveyed to a Market Builder identified on Exhibit H, the portion of the Public Improvement Cost Note attributable to the Lot pursuant to the Unit Release Schedule is paid to the City.
(vii) Developer is in compliance with this Section 5.03 and Section 5.08;

(viii) There are no uncured Events of Default (as defined in Section 9.01 herein); and

(ix) A copy of the closing settlement statement is provided to the Agency.

Section 5.04 Land Sale Profit. If Developer realizes aggregate LOT sale proceeds in excess of $7,959,200 (the “Excess LAND proceeds”), any Excess LAND Proceeds shall first be used to reimburse any unpaid third-party Developer Soil Correction Costs that have not been reimbursed pursuant to Section 4.09 herein and secondly to reimburse the Agency for any Soil Reimbursement Amount previously paid to Developer pursuant to Section 4.09(c) herein. Any amount of Excess LAND Proceeds remaining after payment of costs as described in the foregoing sentence will be paid (i) 100% to reimburse any Developer Operating Expenses not otherwise paid through Project Budget Sources provided that in no event shall Developer Operating Expenses in excess of $238,800 be reimbursed through this source, then (ii) one-half to Developer and one-half to the City toward any Special Assessment Gap (or alternatively, to the Agency if there is not a remaining Special Assessment Gap) until Developer profit (capping Developer Operating Expenses at $1,597,200) equals $1,009,000; then (iii) one-third to Developer and two-thirds to the City until the Special Assessment Gap is paid down to zero; then (iv) one-third to the Developer, one-third to the Affordability Fund and one-third to Agency. Within 30 days of the final LOT sale to a Builder, Developer shall provide the Agency with the final closing statement for the LOT or such documentation of LOT sale proceeds prepared by a certified public accountant reasonably acceptable to the Agency in a form reasonably acceptable to the Agency and make payments to the City as required by this Agreement. Within 30 days of the final Unit sale to a homeowner, Developer shall provide the Agency with updated documentation of aggregate LOT sale proceeds and Developer project costs prepared by the same certified public accountant in the same form and make payments to the City, Agency and to the Affordability Fund as appropriate.

Section 5.05 Construction Plans/Specifications.

(a) In addition to all standard City zoning and planning reviews, before Developer conveys a LOT to a Builder, all Construction Plans must be approved by LHB for compliance with overall design guidelines consistent with the Pattern Book and the Master Plan, generally as indicated in Developer’s proposal and consistent with Developer’s approved Grading and Utility Plan. The Agency also will review the Construction Plans submitted to LHB. LHB shall coordinate its review with the Agency and shall ensure that the six (6) copies of the Construction Plans are delivered to the Agency. The Agency will review the Construction Plans and, within 7 business days after the date of receipt of the Construction Plans, must deliver to LHB a written statement approving the Construction Plans or a written statement rejecting the Construction Plans and specifying the deficiencies in the Construction Plans. The Agency’s review will be limited to issues of project feasibility, livability of the residence, and consistency with overall Agency approved design guidelines, the Pattern Book and the Master Plan. LHB shall not approve Construction Plans until it receives approval from the Agency. If the Agency rejects the Construction Plans, LHB will submit amended Construction Plans to the Agency. The Agency will review the amended Construction Plans and, within 5
business days after the date of receipt of the amended Construction Plans, will deliver to the Developer a written statement approving the amended Construction Plans or a written statement rejecting the amended Construction Plans and specifying the deficiencies in the amended Construction Plans. The foregoing provisions relating to the submission, approval or rejection, and resubmission of Construction Plans will continue to apply until the Construction Plans have been approved by the Agency. The Agency may not unreasonably withhold or delay its approval of the Construction Plans.

(b) If prior to the completion of construction of a Unit the Builder proposes to make a material change to the Construction Plans, the Builder will deliver the proposed amendment to the Construction Plans to LHB for approval, and LHB will coordinate a review and approval of the Construction Plans with the Agency. The Agency will review the proposed amendment to the Construction Plans and, as soon as practicable after receipt thereof and in no event more than 5 business days after receipt of the proposed amendment to the Construction Plans, will deliver to LHB a written statement approving the proposed amendment to the Construction Plans or a written statement rejecting the proposed amendment to the Construction Plans specifying the deficiencies in the proposed amendment to the Construction Plans. The Agency will not unreasonably withhold or delay its approval of any proposed amendment to the Construction Plans.

(c) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Agency does not constitute a representation or warranty by the Agency or the City that the Construction Plans or the Minimum Improvements comply with any applicable building code, health or safety regulation, zoning regulation, environmental law or other law or regulation, or that the Minimum Improvements will meet the qualifications for issuance of a certificate of occupancy, or that the Minimum Improvements will meet the requirements of the Developer or any other users of the Minimum Improvements.

(d) Developer shall encourage the use of high quality modular housing components in the construction of the Minimum Improvements by Builders. However, all use of modular components shall be specifically presented to and approved by the Agency prior to their implementation.

Section 5.06 Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays and delays in the Phase I Property Closing Date or the Acquisition Property Closing Date, Developer shall commence and complete, or cause the commencement and completion, of the Soil Correction Work and the Minimum Improvements in accordance with the schedule and related construction information attached hereto and incorporated herein as Exhibit M. All Lot site grading and construction of the Minimum Improvements by Builders shall be monitored by LHB at Developer’s sole cost for consistency with the Grading and Utility Plan and Construction Plans. If an Unavoidable Delay occurs, the following timelines shall be extended by a period of time reasonably necessary to alleviate the
effect of the cause of the Unavoidable Delay. All claims for an extension of time must be made, in writing, to the Agency and the City no more than 30 calendar days after the occurrence of the Unavoidable Delay, or 30 calendar days after the event giving rise to the Unavoidable Delay is first recognized by the Developer, whichever is later, otherwise they shall be waived.

(b) Developer shall ensure that the following timelines are met:

With respect to the 74 Single-Family Units:
(i) Commence Soil Correction Work by March 1, 2004;
(ii) Commence Unit Construction by June 30, 2004;
(iii) Obtain Certificates of Completion on 20% of the Units by December 31, 2004;
(iv) Obtain Certificates of Completion on 40% of the Units by June 30, 2005;
(v) Obtain Certificates of Completion on 60% of the Units by December 31, 2005;
(vi) Obtain Certificates of Completion on 80% of the Units by June 30, 2006; and
(vii) Obtain Certificates of Completion on 100% of the Units by December 31, 2006.

With respect to the 93 Multi-Family Units:
(viii) Commence Soil Correction Work by March 1, 2004;
(ix) Commence Unit Construction by June 30, 2004;
(x) Obtain Certificates of Completion on 50% of the Units by June 30, 2005; and
(xi) Obtain Certificates of Completion on 100% of the Units by December 31, 2005.

(c) The Developer shall ensure the construction of the Minimum Improvements on the Property in substantial conformity with the Construction Plans approved by the Agency. Prior to delivery of a final Certificate of Completion on the Minimum Improvements, upon the request of the Agency, the Developer will ensure that the Agency has reasonable access to the Property and the Minimum Improvements that have not previously received a Certificate of Completion. During construction, marketing and sales of the Minimum Improvements, the Developer will deliver quarterly progress reports to the Agency that shall include a report on what stormwater quality improvements and PUD Improvements are anticipated to be constructed in the next quarter.

Section 5.07 Certificate of Completion.

(a) Promptly, but in no event more than 5 business days, after the Developer notifies the Agency of substantial completion of each Unit, in accordance with the provisions of this Agreement, including the common elements required to be completed pursuant to Minnesota Statutes, Section 515B.1-103(7), if any, the Agency will furnish to the
appropriate Builder, with a copy to the Developer, a Certificate of Completion in substantially the form attached hereto as Exhibit C certifying the completion of a Unit. The Certificate of Completion issued for each Unit of the Property shall conclusively satisfy and terminate the agreements and covenants in this Agreement to construct the portion of the Minimum Improvements for that Unit or portion of the Property. It will not be the responsibility of the Agency or the City to record the Certificate of Completion or pay the cost thereof. The Agency and Developer shall coordinate Certificate of Completion inspections with Builder/lender/homeowner final walk-throughs. The Developer shall encourage all Builders to avoid interior escrows. If a Lot has an Affordability Declaration filed against it, the Agency will only deliver a Certificate of Completion on such Lot if the Unit built thereon is sold to an income qualified purchaser pursuant to Section 5.08.

(b) If the Agency refuses or fails to provide any Certificate of Completion in accordance with the provisions of this Section 5.07, within the period prescribed in Section 5.07(a) above, the Agency will instead provide the Builder, with a copy to the Developer, a written statement indicating in adequate detail in what respects the Developer has failed to complete the Unit or the Minimum Improvements for the Lot in accordance with the provisions of this Redevelopment Contract, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Agency, for the Builder or Developer to take or perform in order to obtain such certification.

Section 5.08 Affordability of Units.

(a) Developer covenants that 15% of the Units constructed as part of the Minimum Improvements shall be sold to homeowners with incomes at or below 60% of the Median Family Income (the “60% Units”), that an additional 15% of the Units constructed as part of the Minimum Improvements shall be sold to homeowners with incomes between 60% and 80% of the Median Family Income (the “80% Units”), and that such Units shall be affordable to such homeowners (collectively, the “Affordable Units”). For the purposes of this covenant, a Unit is affordable to a homeowner (i) if the maximum that the homeowner pays on a monthly basis, taking into account principal, interest, taxes and insurance, and association dues is no more than 33% of homeowner’s monthly income or (ii) if the Unit is otherwise deemed by the Agency to be affordable. Given marketing, design, lot size and other relevant considerations, Developer will use reasonable efforts to locationally allocate the Affordable Units through the entirety of the Property. Developer shall provide the Agency with monthly updates reporting breakdowns of the number and types of Units being constructed, completed and occupied and estimates of what Units are anticipated to be completed in the next month. Developer shall ensure that the Agency receives copies of closing statements signed by the Title Company, Builder and purchaser and a completed Demographic Survey upon the sale of each Unit (regardless of whether the Unit is an Affordable Unit) and an Affidavit of Affordability and Fannie Mae Mortgage Loan Application 1003 for each Affordable Unit.
If the number of Affordable Units Developer has left to deliver pursuant to this Section 5.08 exceeds 60% of the Lots left to be conveyed to Builders, Developer may not convey any additional Lots to Builders without filing Affordability Declarations against a sufficient number of Lots to bring the foregoing ratio below 60% or obtaining explicit written approval from the Agency. Additionally, if the number of Affordable Units that Developer has yet to deliver or begin exceeds the number of market-rate Units Developer has yet to start construction on, Developer may not convey any additional Lots to Market Builders without obtaining explicit written approval from the Agency until such condition is rectified. For purposes of this Section 5.08, an Affordable Unit is considered "delivered" if it has received a Certificate of Completion and has been sold to a homeowner in accordance with the provisions of Section 5.08(a) and an Affordable Unit is "begun" if a Lot has been sold to a Builder with an Affordability Declaration filed against it and such Builder has an executed purchase agreement with a qualified homeowner that has a financing commitment to purchase the Unit to be built thereon meeting the requirements of Section 5.08(a).

There is hereby established with the Agency, a Heritage Park Affordability Fund (the “Affordability Fund”), the purpose of which is to enhance long-term affordability for families wishing to purchase homes in the Heritage Park Redevelopment Plan area who have incomes between 60% and 80% of Median Family Income. The Affordability Fund shall be available to provide down payment or other financing assistance to such families and will be facilitated at Developer’s option, through second mortgages and/or collaboration with private non-profit organizations such as land trusts and co-operatives consistent with Agency policy. The Agency hereby commits $261,000 of mortgage revenue bond funds to initially fund the Affordability Fund. Such initial funds shall be used as second mortgages consistent with Agency policy and mortgage revenue bond fund restrictions. The Affordability Fund will also be funded from Excess Land Proceeds as described in Section 5.04 herein. Although the Agency shall have no additional obligation to provide funding, the Developer and the Agency will cooperate to seek other sources, public and private, to capitalize the Affordability Fund. The Developer will be responsible for preparing all applications for any such funding. The Affordability Fund will be managed and administered by the Agency or its subcontractor, with administrative fees as reasonably negotiated by the Agency subject to conditions approved by the Agency and NRRC.

Section 5.09 Additional Responsibilities of the Developer.

The Developer will not construct any building or other structures on, over or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

The Developer, at its own expense, will replace any public facilities and public utilities damaged by Developer or its agents, employees, or contractors during Soil Correction Work and the construction of the Minimum Improvements, in accordance with the technical specifications, standards and practices of the owner thereof.
(c) The Developer will be responsible for the cost of installation of any public or private utilities or relocation of any existing public or private utilities on the Property, which may be caused or necessitated by the construction of the Minimum Improvements.

(d) The Developer will install, construct or replace all necessary curb cuts and driveways, shall replace any abandoned curb cuts with new curb and gutter and shall repair any damaged public sidewalks along the street frontage of the Property. All such work shall be done in accordance with the technical specifications, standards and practices of the City at the expense of the Developer.

(e) The Developer must obtain prior written approval from the City for any use of right-of-way areas or areas for which replatting of right-of-way is in process for purposes other than for general traffic use such as stockpiling, over-excavation or closure of sidewalks or streets. The City shall not unreasonably withhold its approval.

(f) The Developer shall ensure that the Minimum Improvements will be constructed to comply with all applicable accessibility laws and that at least 5% of all one-story Units built as part of the Minimum Improvements shall be offered as accessible to mobility impaired individuals and that another 2% of the one-story Units will be adaptable to visual and hearing impaired individuals (the “Accessible Units”). If built, all of the Accessible Units shall have at least one entrance at grade and approachable by a paved accessible route and, where possible, accessible front entrances will be provided. All Unit entry and interior passage doors (rental or for sale) on the first floor of the Accessible Units will be a minimum of 2 feet 10 inches wide.

(g) The Developer will work cooperatively with the Agency to develop standards to monitor and prevent instances of predatory lending with respect to the Minimum Improvements.

(h) The Developer shall be responsible for returning any calls the Agency or City receives from Unit purchasers regarding satisfaction with their Units.

(i) The Developer shall market the Units in accordance with the Marketing Plan attached hereto as Exhibit S.

Section 5.10 Public Improvements.

(a) The City shall undertake all street, streetlight, sanitary sewer mains, water mains, sidewalks, curb and gutter, landscaping and other related work within the public/right of way areas identified on Exhibit A-2 and described on Exhibit M (the “Public Improvements”). Under the authority granted by Minnesota Statutes Section 462.358(2a) and the provisions of Section 5.11 hereto, the Developer shall install the public alleys on the Property in accordance with the City Planning Commission approved Planned Unit Development plans (the “PUD”), Exhibit M and City specifications. At the City’s option and upon terms mutually agreeable to the parties, the City may allow Developer to install certain of the sidewalks,
streetlights and landscaping Public Improvements as specified by the PUD, Section 5.11 and on Exhibit M (the "PUD Improvements"). Except where infeasible due to necessary Public Improvements, to the extent Public Improvement work has not already irrevocably commenced, the City shall reasonably work with Developer to be flexible and timely in coordination of such work, provided that if the City delays public improvement work at the request of Developer, Developer shall be responsible for any delays in the Builder’s ability to obtain building permits and certificates of occupancy caused by such flexibility. The Developer acknowledges that the City will need periods of exclusive use of right-of-way for completion of street work.

(b) The City acknowledges the necessity of carrying out the Public Improvements in accordance with a sequencing and schedule, subject to Unavoidable Delays and timely performance by the Developer. Therefore, the City shall, subject to (i) Unavoidable Delays, (ii) requests from the Developer to make adjustments to Public Improvement Work and (iii) timely performance by the Developer, shall complete the Public Improvements in accordance with the schedule attached hereto as Exhibit M and incorporated herein.

(c) The City will cap the amount of Public Improvement Costs it will assess/charge to the Property, regardless of ownership of the Property, at $2,137,230 plus related interest and fees. These costs shall be repaid in accordance with the terms of the Phase I Public Improvement Cost Note and Acquisition Property Public Improvement Cost Note and secured by the Phase I Public Improvement Letter of Credit and the Acquisition Property Public Improvement Letter of Credit, the terms of which are incorporated herein. The Developer hereby waives the right to a project approval public hearing and the right to appeal the amount of the Public Improvement Costs. Developer shall also pay a $15,000 service charge for the City issuing and administering the Public Improvement Cost Note.

(d) The parties acknowledge that the amount to be expended by the City for Public Improvements associated with the Property may exceed the amount agreed to be paid by the Developer ($2,137,230). The difference between what the City would have ordinarily assessed using its standard methodology for assessing Public Improvement Costs and $2,137,230 is hereafter referred to as the “Special Assessment Gap.” The Special Assessment Gap is estimated to be $463,000. Excess Land Proceeds, budget savings and profit participation are intended to help address this Special Assessment Gap as further described herein.

Section 5.11 PUD Improvements.

(a) PUD Improvements. The City may request, in writing, the Developer to undertake any of the PUD Improvements as designated in Section 5.10 hereto. The City shall reimburse the Developer for the cost of such improvements at the times and in the manner set forth below. Included in the City's written request shall be a scope of work for any such PUD Improvements. The parties acknowledge that, except for
the public alleys, for which, compensation shall be $170,230, no PUD Improvements have been requested as of the date hereof.

(b) Contractors and Consultants. The Developer shall be responsible for the selection and engagement of subcontractors, consultants and other participating parties necessary for carrying out the PUD Improvements pursuant to this Agreement. The Developer acknowledges the City’s expectation that any contractors undertaking the PUD Improvements will be engaged pursuant to open and fair competitive procedures. All PUD Improvements for which the City shall reimburse the Developer shall be bid to at least three bidders. In selecting contractors and consultants, the Developer shall be alert to organizational conflicts of interest as well as noncompetitive practices that may restrict or eliminate competition or otherwise restrain trade and will make awards to the bidder or offeror whose bid or offer is in the Developer’s sole determination most advantageous to the project, taking into consideration price, quality and other factors. The other factors shall include (but not be limited to) the bidder’s or offeror’s commitment to compliance with the Section 3, workforce and MBE/WBE participation goals attached to this Agreement as Exhibit N. The Developer shall advise the City of all selections by the Developer of contractors. The City may disapprove a selection made by the Developer only in writing specifying the grounds of disapproval, including (i) a conflict of interest causing the City or Agency to violate its obligations under applicable regulations and laws, (ii) demonstrated poor performance by the selectee under any previous contract with the City or Agency or another public agency in Minnesota or (iii) price, quality and other factors.

(c) Plans and Specifications. The Developer shall prepare plans and specifications for the PUD Improvements work consistent with the PUD and City specifications. The plans and specifications shall be reviewed and approved by the City prior to commencement of the work. The Developer shall solicit proposals and, subject to appropriate City review of proposed contracts, award contracts for all required construction activities in accordance with procurement procedures approved by the City, including the payment and performance bond requirements in Minnesota Statutes, Section 469.015. The Developer, through its consultants shall schedule and coordinate the work and provide on-site field supervision of the work and approve installation thereof in accordance with the approved plans and specifications. The total amount payable to the Developer and its consultants and contractors for public alley installation shall not exceed $170,230. The City’s review and approval of the plans and specifications shall not relieve, limit or decrease the liability of the Developer or its consultants and contractors for professional errors, omissions or other negligence. The Developer shall apply for and obtain all City or other governmental approvals necessary for the PUD Improvements.

(d) Payment Requests. The Developer shall submit to the City’s project coordinator, no more often than monthly, a payment request (the “Payment Request”) for PUD Improvements, including public alleys, performed through the date of such request, billed as a percentage of completion of tasks. The Payment Request shall include
billing statements or invoices from third parties. The City shall pay to the
Developer the requested amount within thirty (30) days after the date of submission
of the Payment Request to the City, unless the City provides written notice to the
Developer of reasonable objection to such Payment Request within ten (10) calendar
days after the date of its submission to the City. If the City has objection to only a
portion of the Payment Request, the remainder of the Payment Request will be
processed. In the event the Developer fails to respond to the City’s objection or to
make any necessary corrections to the Payment Request, the City shall have the right
to suspend payment of such Payment Request. Following the Developer’s response
or correction of the Payment Request to the reasonable satisfaction of the City, the
City shall pay the Developer for such Payment Request within twenty (20) days after
the date of the Developer’s response or correction. The Developer shall have the
right to suspend the PUD Improvements pursuant to this Agreement in the event of
the failure by the City to make payment within the periods and according to the
procedures provided herein. Final payment shall serve as final acceptance of the
work by the City.

(e) **Insurance.** With respect to the PUD Improvements, the Developer and its
consultants or contractors, as appropriate, shall maintain (i) workers compensation
insurance that meets statutory requirements, (ii) commercial general liability
insurance written on an “occurrence basis” with combined single limits and
coverages reasonably acceptable to the City’s project manager naming the City an
additional insured, (iii) commercial automobile liability insurance covering all
owned, non-owned and hired automobiles with limits of at least $1,000,000 per
accident naming the City an additional insured, (iv) professional liability insurance
providing limits and coverage reasonably acceptable to the City’s project manager
for claims that arise from the errors, omissions, failure to render professional
services and negligent rendering of professional services by the Developer or its
consultants and contractors, and (v) payment and performance bonds in accordance
with Minnesota Statutes, Section 469.015 covering the faithful performance of this
Agreement with respect to the PUD Improvements and the payment of all
obligations arising thereunder. The payment bond and the performance bond shall
name the City as obligee or co-obligee, shall be in the amount of the contract(s) for
the construction of the PUD Improvements and shall be in such form as the City
may approve.

**Section 5.12 Signage.**

(a) Prior to the commencement of construction, the Developer shall erect at its own
expense a sign of reasonable size in a prominent position on the Property indicating
to the general public the name of the development, the Developer and
acknowledging the participation of the City of Minneapolis. The Developer shall
also give ample notice to the Agency and the City of ground breaking, opening
ceremonies and like events so the Agency or the City may obtain publicity of and
participation in such events. The Developer agrees to assist and cooperate in and
with such publicity and participation. The Developer further agrees that the Agency
and the City shall also have the right to issue press releases concerning the development.

(b) It is recommended that signage as called for herein contain blue lettering on a white background with the lettering being of professional quality. Further, the Agency recommends that weatherproof materials be used and the minimum size be 4 feet by 6 feet and include the following:

   (i) name of project;
   (ii) name of Developer;
   (iii) the phrase “This project is being developed with the assistance and cooperation of the CITY OF MINNEAPOLIS and the MINNEAPOLIS PUBLIC HOUSING AUTHORITY”; and
   (iv) the City’s logo.

(c) The Developer may also include the names of other entities, such as lenders, contractors and architects on such sign. The name and logo of the City shall be clearly visible from a distance of at least 20 feet. The sign shall remain and be well maintained until the final Certificate of Completion is issued.

Section 5.13 Grants and Other Sources of Funds.

(a) Project Enhancement Grants. The Agency will cooperate with Developer’s efforts to obtain grants and other sources of outside funding for various project costs, including art, monumentation and any extraordinary Developer site improvement or Public Improvement Costs, affordability and enhanced design, provided that Developer acknowledges that application for such funding may involve a competitive process (both internally and externally).

(b) Pollution Grants. The Agency will cooperate with Developer’s efforts to obtain environmental remediation funds from the Metropolitan Council, and the Minnesota Department of Employment and Economic Development DEED, the Minnesota Pollution Control Agency and Hennepin County for any pollution or contamination identified in the Project, provided that Developer acknowledges that application for such funding may involve a competitive process (both internally and externally).

(c) LCDA. The Agency will cooperate with Developer’s efforts to obtain Livable Community Demonstration Account funds for any project shortfalls for site assembly, Developer Site Improvement or Public Improvement Costs, enhancement and other similar costs, provided that Developer acknowledges that application for such funding may involve a competitive process (both internally and externally).
Section 5.14 Site Coordination. The Agency, Developer and the City will work cooperatively with the Rental Housing Developer and City forces in coordinating the development of the Heritage Park Redevelopment Plan and the construction of the Minimum Improvements. In coordination with the Developer, the City has established periods of exclusive use of right-of-way for remaining street construction.

ARTICLE VI
INSURANCE; CONDEMNATION; INDEMNIFICATION; HAZARDOUS MATERIALS

Section 6.01 Insurance.

(a) Until receipt of a Certificate of Completion with respect to each particular portion of the Property, the Developer will obtain and continuously maintain insurance on the Property and the Minimum Improvements to be constructed thereon and, from time to time at the request of the Agency or City, furnish proof to the Agency or City that the premiums for such insurance have been paid and the insurance is in effect. This insurance requirement shall not apply to any portion of the Property that has received a Certificate of Completion. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and maintain:

(i) A policy of commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an ISO Form B Additional Insured endorsement naming the Agency and the City as additional insureds, with limits against bodily injury and property damage of not less than $1,000,000 for each occurrence and an aggregate limit of $3,000,000.

(ii) Workers compensation insurance, with statutory coverage.

(b) From the time the Developer conveys a Lot to a Builder until such Builder receives a Certificate of Completion for the Minimum Improvements on that Lot, the Developer will cause the Builder to obtain and continuously maintain insurance on the portion of the Minimum Improvements to be constructed on such lot and, from time to time at the request of the Agency or City, furnish proof to the Agency or City that the premiums for such insurance have been paid and the insurance is in effect. This insurance requirement shall not apply to any portion of the Property that has received a Certificate of Completion. The insurance coverage described below is the minimum insurance coverage that must be obtained and maintained:

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk--Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements on the Lot at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Agency and the City shall be protected in accordance with a mortgagee/loss payee clause in form and content satisfactory to the Agency and the City.
(ii) A policy of commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an ISO Form B Additional Insured endorsement naming the Agency and the City as additional insureds, with limits against bodily injury and property damage of not less than $1,000,000 for each occurrence and an aggregate limit of $3,000,000.

(iii) Workers compensation insurance, with statutory coverage.

(c) All insurance required in Article VI of this Agreement will be obtained from financially sound and reputable insurance companies that are authorized under the laws of the State to assume the risks covered by such policies. The Developer will deposit annually with the Agency a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Each policy must contain a provision that the insurer will not cancel or modify the policy without giving written notice to the insured and the Agency and City at least 30 days before the cancellation or modification becomes effective. Not less than 15 days prior to the expiration of any policy, the Developer must furnish the Agency evidence satisfactory to the Agency that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VI of this Agreement, or that there is no necessity for the policy under the terms of this Agreement. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer or its successor will deposit with the Agency a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 6.02 Condemnation. In the event that title to and/or possession of the Property and Minimum Improvements, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Developer will notify the Agency of the threatened taking with reasonable promptness.

Section 6.03 Indemnification.

(a) The Developer agrees to indemnify, defend, and hold harmless the Agency, the City, the members of the governing bodies of the Agency and the City, and the officers, agents, and employees of the Agency and the City from any third party claims, demands, suits, actions, or other proceedings of any kind or nature, including reasonable attorneys’ fees and expenses, made or commenced by any third person, to the extent arising from or purportedly arising from the following:

(i) Any wrongful or negligent act done by Developer or Builder or at Developer’s or Builder’s direction in, on, or about the Property or Minimum Improvements.

(ii) Injury to, or the death of persons or damage to property on the Property or Minimum Improvements or upon adjoining sidewalks, trees, fences, gates,
streets, alleys, curbs, or in any manner growing out of or connected with the use, non-use, condition, possession, operation, maintenance, management, or occupation of the Property or Minimum Improvements or resulting from the condition thereof or of adjoining sidewalks, trees, fences, gates, streets, alleys, or curbs, all to the extent caused by Developer or any Builder, or their agents, employees, and contractors.

(iii) Any negligence on the part of Developer or any Builder, or any of their agents, contractors, servants, or employees.

(iv) Violation by Developer or any Builder, or their agents, employees, or contractors of any agreement or condition of this Agreement or of conditions, agreements, restrictions, statutes, charters, laws, rules, ordinances, or regulations affecting the Property or Minimum Improvements or the ownership, occupancy, or use thereof.

(b) The foregoing agreement to indemnify shall not apply to any event, occurrence or circumstance occurring prior to the date of execution of this Agreement or to the extent due to the gross negligence or misconduct of the Agency, its employees, contractors or agents. This indemnification obligation of the Developer shall survive the termination of this Agreement, the Closing, the Certificate of Completion, and any transfer of the interests of the Developer in the Property or the Minimum Improvements.

Section 6.04 Hazardous Materials.

(a) Developer covenants to the Agency, its successors and assigns, (i) that except as permitted by law, including all applicable statutes, regulations, and rulings, it will not use or permit the Property to be used, whether directly or through contractors, agents or tenants, for the generating, transporting, treating, storage, manufacture, emission of, or disposal of any dangerous, toxic or hazardous pollutants, chemical wastes or substances as defined in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), or the Federal Resource Conservation and Recovery Act of 1976 (“FRCRA”), or the Minnesota Environmental Response Liability Act, Minnesota Statutes, Chapter 115A (“MERLA”), or any other federal, state or local environmental laws, statutes, regulations, requirements and ordinances (“Hazardous Materials”); and (ii) represents to the Agency, its successors and assigns, that there have been no investigations or reports citing the Developer or its operations as violating the foregoing by any governmental authority which in any way pertain to Hazardous Materials. Developer will not operate the Property in a manner that violates any federal, state or local law, regulation, ordinance or requirement governing Hazardous Materials.

(b) In addition to the foregoing, the Developer shall not install or maintain, or permit the installation or maintenance of any underground or above-ground storage tanks for
the storage of petroleum, petroleum byproducts, or other Hazardous Materials in, about, or under the Property, except as permitted by law.

(c) The Developer agrees to indemnify and reimburse the Agency, its successors and assigns, for any loss, damage, expense or cost arising out of or incurred by the Agency which is a result of a breach, misstatement of or misrepresentation of the above covenants, representations and warranties in this Section 6.04, together with all attorneys’ fees incurred in connection with the defense of any action against the Agency arising out of the above. These covenants, representations and warranties are for the benefit of the Agency, and any successor or assign of the Agency, and shall be deemed to survive termination of this Agreement and any transfer of the interests of the Developer in the Property or the Minimum Improvements.

ARTICLE VII
FINANCING

Section 7.01 Developer Financing. The Developer will deliver written notice to the Agency of the proposed method of financing the Soil Correction Work, and related soft costs and the source of money for all payments due from the Developer under the terms of this Agreement. If the source of such money is a loan from a financial institution, the Developer must provide evidence of a commitment from such financial institution to provide such loan. If the source of such money is the proceeds from the sale of securities or obligations of the Developer, the Developer must also provide evidence of a commitment from a financial institution to purchase such securities or obligations. If the Agency finds that the financing is sufficient pursuant to the terms of this Agreement to finance acquisition of the Property and the Soil Correction Work (including reasonable “soft” costs), the Agency will notify the Developer in writing of its approval. Such approval will not be unreasonably withheld or delayed and either approval or rejection shall be given within 7 business days after the date when the Agency is provided the evidence of financing. If the Agency rejects the evidence of financing, it shall do so in writing specifying the basis for the rejection. In any event, the Developer will submit adequate evidence of financing within 30 days after such rejection.

Section 7.02 Builder Financing. At least 3 business days prior to Developer conveying any Lot to a Builder, Developer will deliver written notice to the Agency of such Builder’s proposed method of financing construction of the Minimum Improvements to be built on such Lot and the source of money for all payments due from the Developer under the terms of this Agreement. If the source of such money is a loan from a financial institution, the Developer must provide evidence of a commitment from such financial institution to provide such loan. If the source of such money is the proceeds from the sale of securities or obligations of the Builder, the Developer must also provide a commitment letter or other acceptable evidence of a commitment from a financial institution to purchase such securities or obligations. If the Agency finds that the financing is sufficient to finance acquisition of the Property and the construction of the Minimum Improvements to be built on such Lot (including reasonable “soft” costs), the Agency will notify the Developer in writing of its approval. Such approval will not be unreasonably withheld or delayed and either approval or rejection shall be given within 7 days after the date when the Agency is provided the
evidence of financing. If the Agency rejects the evidence of financing, it shall do so in writing specifying the basis for the rejection.

Section 7.03 Limitation Upon Encumbrance of Property.

(a) Until Agency approval of a Lot conveyance to a Builder pursuant to Section 5.03 and receipt of the applicable Purchase Price for each Lot of the Property in accordance with the Lot Release Schedule, neither the Developer nor any successor in interest to the Property or any part thereof will engage in any financing or any other transaction creating any mortgage or other financing lien upon such Lot, whether by express agreement or operation of law, or suffer any financing lien to be made on or attach to the Property, except: (a) for the purposes of obtaining funds only to the extent necessary for completing the Soil Correction Work and the PUD Improvements (including, but not limited to, labor and materials, professional fees, real estate taxes, interest, organizational and other indirect costs of development, costs of completing the Soil Correction Work and an allowance for contingencies), and (b) only upon the prior written approval of the Agency, which shall not unreasonably be withheld. To facilitate the obtaining of funds necessary for completion of the Soil Correction Work and PUD Improvements, the Agency agrees that it will enter into a reasonable agreement of subordination of the Agency’s interest in the Property under this Agreement to the interests of the holder of an approved Mortgage, provided that the Agency determines, in its reasonable judgment, that the interests of the Agency under this Agreement remain adequately protected. Without limiting the generality of the foregoing right of the Agency to exercise its reasonable judgment in determining whether to approve and subordinate to a Mortgage, it is specifically agreed and acknowledged that the Agency shall not subordinate the requirement that the Property be used in accordance with the Redevelopment Plans; and the Agency need not approve or subordinate to any Mortgage which does not contain terms that conform to the terms of Section 7.06 of this Agreement.

(b) After Agency approval of a Lot conveyance to a Builder pursuant to Section 5.03 and payment of the Purchase Price for a Lot in accordance with the Deferred Purchase Price Note and the Lot Release Schedule, until receipt of a Certificate of Completion for the Minimum Improvements on such Lot, neither the Developer nor any successor in interest to the Property or any part thereof will engage in any financing or any other transaction creating any mortgage or other financing lien upon the Lot, whether by express agreement or operation of law, or suffer any financing lien to be made on or attach to the Property, except: (a) for the purposes of obtaining funds only to the extent necessary for completing the Minimum Improvements (including, but not limited to, labor and materials, professional fees, real estate taxes, interest, organizational and other indirect costs of development, costs of completing the Minimum Improvements and an allowance for contingencies), and (b) only upon the prior written approval of the Agency, which shall not unreasonably be withheld. In order to facilitate the obtaining of funds necessary for completion of the Minimum Improvements, the Agency agrees that it
will enter into a reasonable agreement of subordination of the Agency’s interest in the Property under this Agreement to the interests of the holder of an approved Mortgage, provided that the Agency determines, in its reasonable judgment, that the interests of the Agency under this Agreement remain adequately protected. Without limiting the generality of the foregoing right of the Agency to exercise its reasonable judgment in determining whether to approve and subordinate to a Mortgage, it is specifically agreed and acknowledged that the Agency shall not subordinate the requirement that the Property be used in accordance with the Redevelopment Plans; and the Agency need not approve or subordinate to any Mortgage which does not contain terms that conform to the terms of Section 7.06 of this Agreement.

(c) Notwithstanding the foregoing, the City shall not, at any time or for any purpose, subordinate its interests in the Phase I Public Improvement Cost Note, the Acquisition Property Public Improvement Cost Note, the Phase I Public Improvement Letter of Credit or the Acquisition Property Public Improvement Letter of Credit.

Section 7.04 Copy of Notice of Default to Mortgagee. If the Agency delivers any notice or demand to the Developer with respect to any Event of Default under this Agreement, the Agency will also deliver a copy of such notice or demand to the mortgagee of any Mortgage at the address of such mortgagee provided to the Agency in a written notice from the Developer or the mortgagee.

Section 7.05 Mortgagee’s Option to Cure Events of Default. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right (insofar as the rights of the Agency are concerned), at its option, to cure or remedy such Event of Default; provided, that if the Event of Default is with respect to construction of the Minimum Improvements, nothing contained in this Agreement will be deemed to permit or authorize such mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Minimum Improvements (beyond the extent necessary to conserve or protect the Minimum Improvements) without first having expressly assumed, by written agreement satisfactory to the Agency, the obligation to complete, in the manner provided in this Agreement, the Minimum Improvements on the Property or the part thereof to which the lien or title of such mortgagee relates. Any such mortgagee who assumes the obligations to complete construction of the Minimum Improvements and properly completes construction of the Minimum Improvements relating to the Property or applicable part thereof will be entitled, upon written request made to the Agency, to a certification by the Agency to such effect in the manner provided in Section 5.07 of this Agreement.

Section 7.06 Agency’s Option to Cure Mortgage Default. In the event the Developer is in default under any Mortgage, the mortgagee, prior to exercising any remedy available to it due to such default, will notify the Agency in writing of: (a) the fact of the default; (b) the elements of the default; and (c) the actions required to cure the default. If, within 30 days after receipt of such notice, the Agency cures any monetary default under the Mortgage and commences the actions necessary to cure any other default, then the mortgagee will pursue none of its remedies under the Mortgage based upon such default. Any such cure shall not give the Agency any rights against Developer. The Agency may modify any of the terms or requirements of this Section 7.06 by agreement with the mortgagee of any Mortgage without the approval or consent of the Developer,
but such modifications shall create no liability on Developer without Developer’s prior written consent.

ARTICLE VIII
TRANSFER LIMITATIONS

Section 8.01 Representation as to Development. The Developer represents to the Agency that its purchase of the Property, and its other undertakings under this Agreement, are for redevelopment purposes and not for speculation in land holding. The Developer acknowledges that, in view of the importance of the development of the Property to the general welfare of the Agency and the City, and the substantial financing and other public aids that have been made available by the Agency and the City for the purpose of making such development possible, the qualifications and identity of the Developer are of particular concern to the Agency and the City. The Developer further acknowledges that the Agency and the City are willing to enter into this Agreement with the Developer because of the qualifications and identity of the Developer.

Section 8.02 Limitations on Transfer of the Property and Minimum Improvements. Prior to receipt of a Certificate of Completion for each Unit or Lot of the Property, the Developer will not sell or convey the Property or the Minimum Improvements constructed thereon, or any interest therein or in this Agreement, without the express written approval of the Agency, which shall not unreasonably be withheld. Except as otherwise provided, no transfer of any interest in the Property, including any transfer to a Builder pursuant to Section 5.03, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the Agency and City of any rights, remedies, or controls provided in or resulting from this Agreement with respect to the Property or the Minimum Improvements that the Agency or City would have had if there had been no transfer. Unless specifically agreed to in a separate document, no transfer of the Property, including any transfer to a Builder pursuant to Section 5.03 herein, or any interest therein, will relieve the Developer of any of its obligations under this Agreement.

Section 8.03 Information as to Partners and/or Stockholders. In order to assist in the effectuation of the purposes of this Article VIII of this Agreement, the Developer agrees that during the period between execution of this Agreement and completion of the Minimum Improvements as certified by the Agency: (a) the Developer will promptly notify the Agency of any and all changes whatsoever in the ownership, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership, or with respect to the identity of the parties in control of the Developer or the degree thereof of which it has been notified or otherwise had knowledge or information; and (b) the Developer shall, at such time or times as the Agency may request, but no more often than annually, furnish the Agency with a complete statement, subscribed and sworn to by a partner of the Developer, setting forth all of the members of the Developer and the extent of their respective holdings and, in the event any other parties have a beneficial interest in such limited liability company, their names and the extent of such interest.
ARTICLE IX
EVENTS OF DEFAULT

Section 9.01 Default Defined. Each of the following shall be a “Default” under this Agreement:

(a) Failure by the Developer to pay when due any payments or to provide any funds required to be paid or provided under this Agreement.

(b) Failure by the Developer to submit a commitment for financing to the Agency in a timely manner pursuant to Sections 7.01 or 7.02 of this Agreement.

(c) Failure by the Developer to provide or maintain any insurance required to be provided and maintained by Sections 6.01 and 5.11(d) of this Agreement.

(d) Subject to Unavoidable Delays and delays in the Phase I Property Closing Dates or the Acquisition Closing Date, failure by the Developer to commence and complete construction of the Minimum Improvements pursuant to the terms, conditions, and limitations of Article V of this Agreement.

(e) Failure by the Developer to substantially observe or perform any other material covenant, condition, obligation, or agreement on its part to be observed or performed hereunder.

(f) The mortgagee under a Mortgage exercises any remedy provided by the Mortgage documents or by law or equity for a default under the Mortgage.

Section 9.02 Remedies on Event of Default. Whenever any Default referred to in Section 9.01 of this Agreement occurs, the Agency or City may take any one or more of the following actions after 30 days written notice to the Developer of the Default, but only if the Default has not been cured within said 30 days or such longer period with respect to Sections 9.01(b)-(f) as is reasonably required to cure the same, provided Developer is proceeding with reasonable diligence. The term “Event of Default” shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any Default which is not cured within the time period provided herein.

(a) Suspend its performance under this Agreement until it receives assurances from the Developer, deemed reasonably adequate by the Agency and the City, that the Developer will cure the Event of Default and remain in compliance with its obligations under this Agreement.

(b) Rescind, cancel or terminate this Agreement and retain the Deposit.

(c) Withhold the Certificate of Completion.

(d) Under the circumstances identified in Section 9.04 below, enforce its reversionary rights under the Deed (if the Event of Default occurs subsequent to closing).
(e) Take whatever action, including legal, equitable, and administrative action, that may appear necessary or desirable to the Agency or the City.

Section 9.03 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous, or subsequent breach hereunder.

Section 9.04 Revesting Title in Agency Upon Happening of Event Subsequent to Conveyance to Developer.

(a) If subsequent to conveyance of the Property or any part thereof to the Developer, and prior to the Agency’s issuance of a Certificate of Completion with respect to each Lot, Developer:

(i) defaults in or violates its obligations with respect to the construction of the Minimum Improvements (including the nature and date for the completion thereof) provided for in the Deed and this Agreement,

(ii) abandons or substantially suspends construction work;

(iii) fails to pay real estate taxes or assessment on the Property Developer owns or any part thereof, when due, or places thereon, any encumbrance or lien unauthorized by this Agreement, or suffers any levy or attachment to be made or any materialperson’s or mechanic’s liens, or any other unauthorized encumbrances or lien to attach;

(iv) transfers the Property or any part thereof;

(v) changes in the ownership or membership of the Developer in violation of this Agreement,

and any of the above defaults or violations are not cured, ended or remedied within 90 days after written demand by the Agency to do so, then, only as to the Property for which Developer then holds title (the “Developer’s Property”), the Agency will have the right to reenter and take possession of Developer’s Property and to terminate (and revest in the Agency) the estate conveyed by the Deed to the Developer as to the Developer’s Property, it being the intent of this provision, together with other provisions of this Agreement for the conveyance of the Property to the Developer will be made upon, and that the Deed shall contain a condition subsequent to the effect that in the event of a default under this Section 9.04(a), and failure on the part of Developer to remedy, and, or abrogate such default within the stated period and in a manner stated in such subdivision, the Agency, at its option, will declare a termination in favor of the Agency of the title, and all of the rights and interests in and to the Developer’s Property, shall revert to the Agency, but only if said defaults have not been cured in the time period provided above, or (except in the case of failure to commence construction subject to Unavoidable Delays) if such
defaults cannot be cured within such time period, the Developer does not provide reasonably satisfactory assurances to the Agency that the events will be cured as soon as reasonably possible. If title revests in the Agency pursuant to this Section 9.04(a), Developer also will assign to the Agency all of its rights under the then existing and effective Builder Purchase Agreements and Builder Pool Agreements as well as Developer’s rights as mortgagee pursuant to any mortgages given by any Builders to Developer;

(b) If subsequent to conveyance of the Property or any part thereof to the Developer, and prior to the Agency’s issuance of a Certificate of Completion with respect to each Lot, any Builder:

(i) defaults in or violates Developer’s obligations with respect to the construction of the Minimum Improvements on such Lot (including the nature and date for the completion thereof) provided for in the Deed and this Agreement,

(ii) abandons or substantially suspends construction work;

(v) fails to pay real estate taxes or assessment on the portion of the Property such Builder owns or any part thereof, when due, or places thereon, any encumbrance or lien unauthorized by this Agreement, or suffers any levy or attachment to be made or any materialperson’s or mechanic’s liens, or any other unauthorized encumbrances or lien to attach; or

(vi) transfers the Property or any part thereof;

and any of the above defaults or violations are not cured, ended or remedied by either such Builder or the Developer within 90 days after written demand by the Agency to do so, then only with respect to any Property for which the defaulting Builder then holds title (the “Builder’s Property”), the Agency will have the right to reenter and take possession of the Builder’s Property and to terminate (and revest in the Agency the estate conveyed by the applicable Deeds to the Builders, it being the intent of this provision, together with the other provisions of this Agreement, that the conveyance of any Property to the Builder will be made upon and that all Deeds to Builders must contain a condition subsequent to the effect that in the event of any default on the part of the Builder and failure on the part of the Builder and Developer to remedy and abrogate such default within the time period in the manner stated in such subdivisions, the Agency, at its option may declare a termination in favor of the Agency of the title, and of all the rights and interests in and to the Builder’s Property, and that such title and all acts and interests of the Builder will revert to the Agency, but only if said defaults have not been cured within the time periods provided above, or, if the default cannot be cured within such time periods, the Builder or the Developer do not provide reasonably satisfactory assurances to the Agency that said default would be cured as soon as reasonably possible.
(c) The Agency shall subordinate its reversionary right contained in Section 9.04 to financing obtained for and to the extent necessary for completing the Minimum Improvements (including, but not limited to, labor and materials, professional fees, real estate taxes, interest, organizational and other indirect costs of development, costs of completing the Minimum Improvements and an allowance for contingencies).

(d) The Developer may in good faith contest any mechanics’ or other lien filed or established and in such event the Agency shall permit such mechanics’ or other lien to remain undischarged and unsatisfied during the period of such contest and any appeal, but only if the Developer provides the Agency with a bank letter of credit for 110% of the amount of the lien, in a form satisfactory to the Agency pursuant to which the bank will pay to the Agency the amount of any lien in the event that the lien is finally determined to be valid; and during the course of such contest, the Developer shall keep the Agency informed respecting the status of such defense.

(e) Notwithstanding the foregoing provisions in this Section 9.04, the Agency’s reversionary rights granted in this Section will not apply to any Property for which a Certificate of Completion has been issued pursuant to Section 5.07.

Section 9.05 Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the Agency of title to and/or possession of the Property, or any part thereof, as provided in Section 9.04 hereof, the Agency shall, pursuant to its responsibilities under law, use its best efforts to lease or sell the Property or part thereof as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the Minimum Improvements or such other improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Property or part thereof in the Redevelopment Plan. Upon such resale of the Property, the proceeds thereof shall be applied:

(a) First, to reimburse the Agency and City for all costs and expenses incurred by the Agency and City, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof (but less any income derived by the Agency or City from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charge during the period of ownership thereof by the Agency an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Minimum Improvements or any part thereof on the Property or part thereof; and any
amounts otherwise owing the Agency or the City by the Developer and successor or transferee; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to (1) the sum of the purchase price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by it in making any of the Soil Correction Work or Minimum Improvements on the Property or part thereof, less (2) any gains or income withdrawn or made by it from this Agreement or the Property.

(c) Any balance remaining after such reimbursements shall be retained by the Agency as its property.

Section 9.06 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE X
CONTRACTING AND EMPLOYMENT GOALS

Section 10.01 Equal Employment Opportunity. The Developer shall develop and shall cause each Builder and each contractor with a contract to do work on the Soil Correction Work or the Minimum Improvements in excess of $50,000 to develop an affirmative action plan meeting the requirements of Section 139.50, Minneapolis Code of Ordinances and incorporating the Work Force Goals in Exhibit N, incorporated herein (the “Work Force Goals”). The Developer will provide training and education for Builders with respect to the above requirements. In addition, the Developer agrees that during the course of construction of the Soil Correction Work and the Minimum Improvements under this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin. Such action shall include, but not be limited, to the following: advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, affectional preference, disability, age, marital status, status with regard to public assistance, or national origin.

(c) The Developer will comply with all applicable provisions of the Minneapolis Code of Ordinances, Chapters 139-141, incorporated herein by reference, and other applicable federal, state and local laws, rules and regulations regarding equal employment opportunities.

(d) The Developer will include the provisions of paragraphs (a) through (c) of this Section in every contract, builder pool agreement, purchase agreement or purchase order relating to construction of the Minimum Improvements, and will require the inclusion of these provisions in every subcontract entered into by any of its Builders or contractors, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be.

Section 10.02 Hours and Wages. The Developer covenants and agrees that it will cause all contracts entered into by it or any Builder to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. Sections 276a to 276a-5, as amended, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-333. Developer shall not be required to provide weekly certifications to the City’s Department of Civil Rights, but Developer is required to maintain or cause to be maintained, appropriate payroll documentation for any covered contractual work for a three-year period after completion of the Minimum Improvements.

Section 10.03 MBE/WBE and Section 3 Assistance. The City and MPHA have committed to providing certain services to assist Developer in meeting the business and employment participation goals: recruiting and training Section 3 residents and business concerns, maintaining a worker bank and a database of qualified Section 3 businesses, and providing employee referrals to contractors.

Section 10.04 Section 3/Minority/Women Business & Employment Participation Requirements. The Developer and all Builders shall comply with Work Force Goals established by the City Council for the Heritage Park redevelopment project as reflected on Exhibit N. Guidance on complying with the Work Force Goals can be obtained by contacting James Patterson, Minneapolis Civil Rights Department, at 612-673-2426. Section 3 specific information can be obtained by contacting Leslie Woyee, Minneapolis Public Housing Authority, at 612-342-1404.

Section 10.05 Data Practices Act. Developer agrees to comply with the Minnesota Data Practices Act as it applies to all data generated or acquired in accordance with this Agreement.
ARTICLE XI
SUBSEQUENT PHASES OF DEVELOPMENT

Section 11.01 Storage/Early Start. Except where infeasible due to necessary public improvement activities, the Agency and the City will reasonably cooperate with and assist Developer with respect to Developer’s negotiations with MPHA for an agreement allowing Developer to commence soil correction work and grading of subsequent phases of homeownership development within the Heritage Park Redevelopment Plan area as identified by the City (“Phases III and IV”) concurrent with Developer’s activities under this Agreement. The City shall, using its best judgement, reasonably cooperate and coordinate with Developer with respect to the installation of public improvements in Phases III and IV to facilitate economies of scale in the future development of for-sale housing in Phases III and IV.

Section 11.02 Phase III and IV Improvements. Provided that Developer is progressing reasonably satisfactorily on Developer’s activities under this Agreement, Developer, the Agency and City will begin negotiations on a term sheet for Phases III and IV on or after January 2, 2004 with terms mutually agreeable to the parties, but generally parallel to the terms for this Agreement. Such term sheet shall not be presented to the Minneapolis City Council/Minneapolis Community Development Agency Board of Commissioners/MPHA Board of Commissioners (collectively, for purposes of this Section 11.02, the “Public Decisionmakers”) until Developer has (i) commenced construction on 100 of the Units required by this Agreement (with a reasonable mix of single-family and multi-family Units), (ii) satisfactorily completed 58 of the Units required by this Agreement (with a reasonable mix of single-family and multi-family units), (iii) Builder commitments for 150 of the Lots, and (iv) demonstrated satisfactory progress in fulfilling its obligation to construct low-income housing pursuant to Section 5.08 herein, as well as employment goals for the project. Provided terms can be reached that are mutually agreeable to the parties and Developer has, in the opinion of the Agency, City and MPHA, satisfactorily performed on this Agreement to that date and, subject to Section 11.01 herein, Developer will have the right to develop Phases III and IV upon execution of a redevelopment contract. If Developer has not, in the reasonable opinion of the Agency, City and MPHA, satisfactorily performed on this Agreement, there shall be no obligation for the Public Decisionmakers to approve Developer’s rights to develop Phases III and IV and nothing herein shall be interpreted as providing any obligation for the Public Decisionmakers to approve entering into a redevelopment contract with Developer upon completion of the above thresholds if the Public Decisionmakers are not of the reasonable opinion that Developer has performed satisfactorily. Nothing herein shall be interpreted to imply that the City or the Agency must declare an Event of Default for the Public Decisionmakers to find that the Developer has not satisfactorily performed. If Developer misses any of the performance deadlines outlined in Section 5.06 or if any of the Public Decisionmakers denies the rights for the Developer to develop Phases III and IV because of a reasonable determination that Developer has not satisfactorily performed on this Agreement, this Section 11.02 shall be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Section 11.02.
ARTICLE XII
ADDITIONAL PROVISIONS

Section 12.01 Conflicts of Interest; Agency and City Representatives Not Individually Liable. No member, official, or employee of the Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Agency or City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 12.02 Restrictions on Use. The Developer agrees to devote the Property to, and only to and in accordance with, the uses specified in the Redevelopment Plans, the Deeds, and this Agreement and shall not unlawfully discriminate upon the basis of race, color, creed, sex, or national origin in the sale, lease, or rental, or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof. Upon request by the Developer, the Agency shall deliver a written certification of Developer’s compliance with the Redevelopment Plans or a statement specifying the basis of the Developer’s noncompliance.

Section 12.03 Provisions Not Merged With Closing. None of the provisions of this Agreement are intended to or shall be merged by reason of any document delivered at closing and any such document shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 12.04 Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.05 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 4740 Viking Drive, Suite 608. Minneapolis, Minnesota 55435, Attn. Rodney D. Hardy

(b) in the case of the Agency, is addressed to or delivered personally to the Agency at Crown Roller Mill, Suite 200, 105 Fifth Avenue South, Minneapolis, Minnesota 55401-2534, Attn: Executive Director;

(c) in the case of the City, is addressed to or delivered personally to the City at 350 South 5th Street, Minneapolis, MN 55415-1315 Attn: City Coordinator
or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

**Section 12.06 Counterparts.** This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

**Section 12.07 Approvals.** Wherever in this Agreement the consent, satisfaction or approval of the Agency or City or the Developer is required, necessary or requested, such consents, satisfaction or approval shall not be unreasonably withheld or unduly delayed.

**Section 12.08 Assignment to the City of Minneapolis.** Developer hereby expressly acknowledges that the rights and obligations of the Agency as described in this Agreement are fully assignable to the City of Minneapolis without further notice. Upon such assignment, all references to the Agency in this Agreement and in the exhibits hereto shall be considered deleted and replaced with references to the City acting by and through its Department of Community Planning and Economic Development. The Agency, City and Developer shall reasonably cooperate in executing and delivering documents needed to effectuate the intent of this provision.

**Section 12.09 Project Coordinator.** Except as otherwise expressly provided in this Agreement, the following persons (or such other persons identified by a party in writing to the other parties from time to time) shall be the primary project coordinators for the activities contemplated by this Agreement.

**Agency:**
Cherré Palenius  
City of Minneapolis  
Department of Community Planning & Economic Development  
105 Fifth Avenue South  
Minneapolis, MN 55401  
Phone: 612-673-5241  
Fax: 612-673-5259

**City:**
Lois Eberhart  
City of Minneapolis  
Department of Community Planning & Economic Development  
105 Fifth Avenue South  
Minneapolis, MN 55401  
Phone: 612-673-5041  
Fax: 612-673-5293

**Developer:**
Jeffrey A. Tate  
5400 Main St. N.E., Suite 203  
Minneapolis, MN 55421  
Phone: 763-571-2580  
Fax: 763-571-2631
ARTICLE XIII
TERMINATION OF AGREEMENT

Section 13.01 Developer’s Remedies.

(a) Termination. This Agreement may be terminated at the option of the Developer if: (i) the Developer is in compliance with all the terms and conditions of this Agreement; (ii) the Agency has approved the commitment for mortgage financing submitted by the Developer pursuant to Section 7.01 of this Agreement; and (iii) the Agency has not tendered delivery to the Developer all of the Agency’s Documents on or before the Phase I and Phase Closing Date, and any such failure by the Agency will not be cured within 30 days after the date of written demand by the Developer.

(b) Other Remedies. Notwithstanding anything herein to the contrary, prior to the delivery of the Phase I Property Deed, the Developer’s sole and exclusive remedies for any default by the Agency or City shall be either (i) termination of this Agreement with a refund of Developer’s Deposit under Section 4.01 and any additional amounts paid to the Agency pursuant to Section 3.02 and recovery of its actual out of pocket expenses; or (ii) an action for specific performance, except with respect to Parcel 10 of the Property, provided such action is commenced within 4 months after the right of action arises. Developer shall have no right to seek damages from the Agency or City for Developer’s loss of its bargain in failing to acquire the Property or any portion thereof.

(c) Post-Closing Remedies. Notwithstanding anything herein to the contrary, after delivery of the Phase I Property Deed, the Developer’s sole and exclusive remedy for any default by the Agency or City shall be an action for specific performance, provided such action is commenced within 4 months after the right of action arises. Developer shall have no right to seek damages from the Agency or City for Developer’s loss of its bargain in failing to acquire any portion of the Property.

Section 13.02 Agency’s Option to Terminate. This Agreement may be terminated at the option of the Agency if: an Event of Default occurs pursuant to Article IX of this Agreement. Upon such termination, the Soil Reimbursement Amount shall be retained by the Agency as liquidated damages.

Section 13.03 Action to Terminate. Termination of this Agreement due to the occurrence of any of the foregoing must be accomplished by written notification to the other party. The Agency, City or the Developer may elect to temporarily or permanently forego its right to terminate this Agreement because of a default or failure to perform on the part of the other party. Such action by the Agency, City or the Developer shall not constitute a waiver of its rights to terminate this Agreement at some future date because of such occurrence.

Section 13.04 Effect of Termination. If this Agreement is terminated, then this Agreement will be null and void and of no effect, and no action, claim or demand may be based on
any term or provision of this Agreement. In all other cases, every condition, term, or other provision of this Agreement will be in effect and will be enforceable against the parties to this Agreement, unless expressly stated or provided for elsewhere in this Agreement.

IN WITNESS WHEREOF, the Agency and the Developer have each caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By ________________________________
Its Executive Director

______________________
Assistant Finance Officer

Approved as to form:

______________________
Asst. City Attorney

STATE OF MINNESOTA   )
)SS
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me this ______ day of ________________, 20____, by Lee Sheehy, the Executive Director of the Minneapolis Community Development Agency, a Minnesota public body corporate and politic, on behalf of the public body.

______________________
Notary Public
CITY OF MINNEAPOLIS

By __________________________
Mayor

Approved:
____________________________
John Moir
City Coordinator

Attest __________________________
City Clerk

Countersigned __________________________
Assistant Finance Officer

Approved as to form:
____________________________
Assistant City Attorney

STATE OF MINNESOTA )
)SS
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on this _____ day of
_________________________ 20___, by R.T. Rybak, the Mayor of the City of Minneapolis.

____________________________
Notary Public

STATE OF MINNESOTA )
)SS
COUNTY OF HENNEPIN )

The foregoing agreement was acknowledged before me on this _____ day of
_________________________ 20___, by ________________________________, the City Clerk of the
City of Minneapolis.

____________________________
Notary Public
STATE OF MINNESOTA )
 )SS
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on this _____ day of
____________________ 20___, by _______________________________________, the Assistant Finance
Officer of the City of Minneapolis.

_______________________________________
Notary Public

HERITAGE HOUSING LLC

By _______________________________________
Its_____________________________________

STATE OF MINNESOTA )
 )SS
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ______ day of
____________________, 20___, by _________________________________, the
_________________________________ of Heritage Housing LLC, a Minnesota limited liability
company, on behalf of the limited liability company.

_______________________________________
Notary Public
CONSENT AND ACKNOWLEDGEMENT

LHB, Inc. hereby acknowledges and accepts the obligations of “LHB” under Section 5.05 of the Redevelopment Contract dated as of _______________, 2003, between Heritage Housing LLC and the Minneapolis Community Development Agency.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand as of this ______ day of _______________, 2003.

STATE OF MINNESOTA )
 )SS
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on this ______ day of __________________20__, by ________________________________, the __________________________ of LHB, Inc.

____________________________________
Notary Public

LHB, INC.

By

____________________________________
Its___________________________________

This instrument was drafted by:
Minneapolis Community Development Agency (SAR)
105 Fifth Avenue South, Suite 405
Minneapolis, MN  55401-2534
FORM OF
QUITCLAIM DEED

THIS INDENTURE, between the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a Minnesota public body corporate and politic (Seller), and HERITAGE HOUSING LLC, a Minnesota limited liability company, of the County of Hennepin, State of Minnesota (Purchaser).

WITNESSETH, that Seller, in consideration of the sum of $____________ and No/100 Dollars ($____________), the receipt of which is hereby acknowledged, does hereby grant, bargain, quitclaim and convey to the Purchaser, its successors and assigns, forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota described as follows, to wit:

“THE SELLER CERTIFIES THAT THE SELLER DOES NOT KNOW OF ANY WELLS ON THE DESCRIBED REAL PROPERTY.”

To have and hold the same, together with all the hereditaments and appurtenances thereunto belonging in anywise appertaining, to the said Purchaser, its successors and assigns, forever, provided:

SECTION 1.

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement entered into between the Seller and Purchaser on the ________ day of ______________, 20____, identified as “Redevelopment Contract” (hereafter referred to as the “Agreement”) and that the Purchaser shall not convey this property, or any part thereof, without the consent of the Seller until a certificate releasing the Purchaser from the obligations of said Agreement as to this property or such part thereof then to be conveyed, has been placed of record. This provision, however, shall in no way prevent the Purchaser from mortgaging this property in order to obtain funds for the purchase of property hereby conveyed and for erecting improvements thereon in conformity with the Agreement.
Promptly after completion of the improvements in accordance with the provisions of the Agreement, the Seller will furnish the Purchaser with an appropriate instrument so certifying (hereafter referred to as the “Certificate of Completion”). The Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Purchaser, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof; provided, that such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Purchaser to any holder of a mortgage, including the Seller, or any insurer of a mortgage, securing money loaned to finance the purchase of the property hereby conveyed or the improvements, or any part thereof.

SECTION 2.

In the event the owner of the Property or a portion thereof as authorized by the Agreement ("Owner") shall, prior to the recording of the Certificate of Completion:

(a) default in or violate its obligations with respect to the construction of the improvements on a portion of the Property (including the nature and date for the completion thereof) provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work and any default or violation, abandonment or suspension shall not be cured, ended or remedied within 90 days after written demand by the Seller to the Purchaser and the Owner so to do; or

(b) fail to pay real estate taxes or assessments on the property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement with the Seller, or shall suffer any levy or attachment to be made, or any materialperson's or mechanic's liens, or any other unauthorized encumbrances or lien to attach, and such taxes or assessments shall not have been paid or the encumbrance or lien removed or discharged, within 60 days or such longer period as shall be required in the exercise of due diligence by Owner after written demand by the Seller to the Purchaser and the Owner so to do; or

(c) there is, in violation of the Agreement or of this Deed, any transfer of the property or any part thereof or any change in the ownership or distribution of the stock of the Purchaser or Owner, if Purchaser or Owner is a corporation, or with respect to the identity of the parties in control of the Purchaser or Owner or the degree thereof, and such violation shall not be cured within 90 days after written demand by the Seller to the Purchaser and the Owner;

then the Seller shall have the right to re-enter and take possession of the property which has not been released from these Section 2 provisions pursuant to the recording of a Certificate of Completion and to terminate and revest in the Seller the portion of the estate conveyed by this Deed with respect to which one of the foregoing defaults occurs along with such other portions of the estate conveyed by this Deed otherwise owned by the defaulting Purchaser or Owner and as more fully described in Section 9.04 of the Agreement, such reversionary rights to run with the land.
Such reversion of title shall, however, be subject to the lien of any outstanding mortgage authorized by the Agreement.

SECTION 3.

The Purchaser agrees that it shall not discriminate upon the basis of race, color, creed, religion, ancestry, national origin or sex, affectional preference, disability, age, marital status or status with regard to public assistance, in the sale, lease, use or occupancy of the Property or any improvements located or to be erected thereon, or any part thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Seller, its successors and assigns. It is further intended and agreed that the agreement and covenant provided in Section 3 shall be binding on the Purchaser itself, each successor in interest to the property, and each party in possession or occupancy, respectively, only for period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the property or part thereof.

SECTION 4.

This Deed is also given subject to the Grant Urban Renewal Redevelopment Plan, adopted by the Seller on February 28, 1964, and incorporated by reference into the Common Development and Redevelopment Plan adopted by the Seller on December 15, 1989, and the Heritage Park Redevelopment Plan adopted by the Seller on July 30, 1999 originally as the Near North Community Redevelopment Plan as the same may have been amended or extended as of the date hereof.

All of the terms, covenants, conditions, restrictions and agreements contained in Sections 3 and 4 of this Deed shall be null and void and of no further force or effect on the twentieth anniversary date of Seller’s execution of this Deed.
IN WITNESS WHEREOF, the Seller has caused this Deed to be duly executed in its behalf by two of its Commissioners and has caused its corporate seal to be hereunto affixed, this ______ day of ______________, 20____.

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By ________________________________
   a Commissioner

By ________________________________
   a Commissioner

Approved as to Form:

_______________________
Asst. City Attorney/Development Counsel

STATE OF MINNESOTA )
   ) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ______ day of ______________ 20____ by ________________________________ and ________
_______________________, both Commissioners of the Minneapolis Community Development Agency, a Minnesota public body corporate and politic, on behalf of the public body.

_______________________
Notary Public

Tax Statements for the Real Property Described in this Instrument should be sent to:

____________________________
____________________________
____________________________

This instrument was drafted by:
Minneapolis Community Development Agency (SAR)
105 Fifth Avenue South, Suite 405
Minneapolis, Minnesota 55401-2534
CERTIFICATE OF COMPLETION AND RELEASE OF FORFEITURE

WHEREAS, the Minneapolis Community Development Agency, a Minnesota public body corporate and politic, by a Deed recorded in the office of the [County Recorder/Registrar of Titles] in and for the County of Hennepin and State of Minnesota, as Document Number(s) ________________, has conveyed to Heritage Housing LLC the following described land in the County of Hennepin and State of Minnesota to wit:

and

WHEREAS, said Deed contained certain covenants and restrictions, the breach of which by Purchaser, its successors and assigns, would result in a forfeiture and right of re-entry by Seller, its successors and assigns, said covenants and restrictions being set forth in Sections 1 and 2 of said Deed; and

WHEREAS, said Purchaser, or its successors and assigns, has fully and duly performed all of said covenants and conditions; and

WHEREAS, the issuance of this certificate by the Agency is not intended nor shall it be construed to be a warranty or representation by the Agency as to the structural soundness of the improvements, quality of materials, workmanship or the fitness of the improvements for their proposed use;

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by Purchaser have been completed and all of the above-referenced covenants and conditions in said Deed have been duly and fully performed by the Purchaser therein and that the provisions for forfeiture of title and right to re-entry for breach of condition subsequent by the Seller therein is hereby released absolutely and forever insofar as it applies to the land described herein, and the [County Recorder/Registrar of Titles] in and for the County of Hennepin and State of Minnesota is hereby authorized to accept for recording and to record, the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of the Agreement referred to in said Deed, the breach of which would result in a forfeiture and right of re-entry; and termination of the terms, covenants, conditions and restrictions of Sections 1 and 2 of said Deed, but the covenants created by Sections 3 and 4 of said Deed shall remain in full force and effect.
Dated: ______________, 20____

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By ____________________________
a Commissioner

By ____________________________
a Commissioner

Approved as to Form:

________________________________
Asst. City Attorney/Development Counsel

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ________ day of _______________, 20____, by __________________________________ and
__________________________________________, both Commissioners of the Minneapolis
Community Development Agency, a Minnesota public body corporate and politic, on behalf of the public
body.

________________________________
Notary Public

This instrument was drafted by:  
Minneapolis Community Development Agency (SAR)  
105 Fifth Avenue South, Suite 405  
Minneapolis, Minnesota 55401-2534
EXHIBIT F

IRREVOCABLE LETTER OF CREDIT NO. ____________

To: The Minneapolis Community Development Agency
Applicant: or

The City of Minneapolis, Department of Community Planning & Economic Development

105 Fifth Avenue South, Suite 200
Minneapolis, Minnesota 55401-2534

We hereby issue an Irrevocable Letter of Credit No. _______________ in favor of the [Minneapolis Community Development Agency, a Minnesota public body corporate and politic (the “Agency”)/the City of Minneapolis, a Minnesota municipal corporation (“City”)], for the account of Heritage Housing LLC, a Minnesota limited liability company (the “Developer”), which is available by negotiation of [Agency’s/City’s] draft at sight on or before February 15, 2007, for one hundred percent (100%) of statement value, up to an amount not to exceed $______________, accompanied by a written statement, substantially in the form of the written statement attached hereto as Exhibit A, executed by the [Executive Director of the Agency/Mayor], or his designee, bearing the number of this Letter of Credit and stating that the amount of the [Agency’s/City’s] draft covers the indebtedness of the Developer to the [Agency/City] provided for in Section ______ of that certain Redevelopment Contract by and between the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, CITY OF MINNEAPOLIS and HERITAGE HOUSING LLC, dated as of the ________ day of _______ 20____.

We hereby agree with the [Agency/City] that all drafts and Exhibit A drawn under this Letter of Credit and in compliance with the terms of this Letter of Credit will be duly honored on presentation.

_________________________________________  ________________________________
(Authorized Signature)  (Authorized Signature)
EXHIBIT A TO LETTER OF CREDIT

TO: ______________________________________
_________________________________________
_________________________________________

The undersigned [Executive Director (or designee of the Executive Director)/Mayor (or designee of the Mayor)] of the [Minneapolis Community Development Agency, a Minnesota public body corporate and politic (the “Agency”)/City of Minneapolis, a Minnesota municipal corporation (“City”)], hereby states that the amount of the draft accompanying this statement covers the indebtedness of Heritage Housing LLC, a Minnesota limited liability company (the “Developer”), to the [Agency/City] provided for in Section____ of that certain Redevelopment Contract by and between MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, the CITY OF MINNEAPOLIS and HERITAGE HOUSING LLC, dated as of the ______ day of __________ 20____.

The accompanying draft is drawn on Irrevocable Letter of Credit No. ____________.

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By ______________________________________

Executive Director
or

CITY OF MINNEAPOLIS

By __________________________

Mayor

Attest __________________________

City Clerk

Countersigned __________________________

Assistant Finance Officer

Approved:

______________________________

John Moir
City Coordinator

Approved as to form:

______________________________

Assistant City Attorney
LETTER OF CREDIT DRAFT

Minneapolis, Minnesota

____________________, 20______
No. ____________________

At sight, pay to the order of the [Minneapolis Community Development Agency, a Minnesota public body corporate and politic/City of Minneapolis, a Minnesota municipal corporation], the amount of _________________________________ ($____________________). This draft is drawn under Irrevocable Standby Letter of Credit No. ______________, dated ________________, 20____, issued by ___________________________________________________________.

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By __________________________________________
Executive Director

or

CITY OF MINNEAPOLIS

By __________________________________________
Mayor

Approved: ________________________________
John Moir
City Coordinator

Attest ________________________________
City Clerk

Countersigned ________________________________
Assistant Finance Officer

Approved as to form:

______________________________
Assistant City Attorney
EXHIBIT G-1

DEMOGRAPHIC SURVEY
_______________________________ (Address)

NOTICE: You are being asked to provide the following information to allow the City of Minneapolis to compile demographical information on the Heritage Park Development Project.

Provision of the information requested by this Survey is voluntary. If you choose not to complete this Survey, please check here □

1. (We/I) previously resided in: □ the City of Minneapolis in the ____________ neighborhood
   □ the City of __________________

2. How do you identify your ethnic background: (check all that apply)
   □ Native American Origin
   □ African Origin
     □ Ethiopian
     □ Somali
     □ Sudanese
     □ Other African Origin _____________________
   □ Caribbean Origin
   □ Hispanic Origin
   □ Arab Origin
   □ Asian Origin
     □ Cambodian
     □ Hmong
     □ Laotian
     □ Vietnamese
     □ Other Asian Origin
   □ European Origin
   □ Other Origin(s) __________________________

3. (We/I)(are/am) (a family of _______/an individual) with a gross annual income of
   __________________.
EXHIBIT G-2

AFFIDAVIT OF AFFORDABILITY

NOTICE: You are being asked to provide the following information and supporting documentation to qualify you for certain homeownership opportunities in the Heritage Park Development. If you do not provide the requested information, the home you are intending to purchase may not be available to you due to affordability requirements in the Heritage Park Development. Your name and address will be classified as public data under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. All other data you provide will be classified as private data.

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

________________________________________________ (Purchaser(s)), being duly sworn, depose(s) and state(s) as follows:

1. That (we/I) (are/am) the potential purchaser(s) of a property located at ___________________________, Minneapolis, Minnesota.

2. That (we/I) intend to occupy the Unit on such property as a personal residence and do not intend to purchase said property for business or rental purposes.

3. That (we/I) (are/am) (a family of ___/an individual) with a gross annual income of __________.

4. That the total of our/my monthly expenditures for principal, interest, taxes and insurance to purchase the single family home/townhome is ________________.

4. As Purchaser (I/we) agree to permit (my/our) mortgage lender to release all information regarding (my/our) annual gross income.

FURTHER AFFIANT SAYETH NOT.

________________________________________________

Subscribed and sworn to before me this ______ day of ______________, 20______.

________________________________________________

Notary Public
EXHIBIT H

APPROVED BUILDER LIST

Market Builders

♦ Brakins Homes
♦ BrightKEYS
♦ Centex Homes
♦ Clover Field Homes
♦ Country Home Builders
♦ Guptil Contracting, Inc.
♦ Hunt Associates

Affordable Builders

♦ Greater Metropolitan Housing Corporation
♦ Habitat for Humanity
♦ Project for Pride in Living
EXHIBIT J

DEFERRED PURCHASE PRICE PROMISSORY NOTE
(Heritage Housing LLC)

$_______________ Minneapolis, Minnesota ________________, 20____

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the order of the Minneapolis Community Development Agency, a public body corporate and politic under Minnesota law (herein called the “Lender”), or its assigns, the sum of _______________ and No/100 Dollars ($______________), (herein called the “Loan Funds”). Said sum was made available to the Borrower by that certain Redevelopment Contract (the “Contract”) between the Lender, the Borrower and the City of Minneapolis to acquire the properties described in the Contract as the [Phase I/Acquisition] Property in Minneapolis, Minnesota (herein called the “Property”), and legally described on Exhibit A attached hereto.

The Loan Funds shall be repaid as follows:

(1) Interest shall accrue on the Loan Funds at a simple rate of [Prime plus 1%] per annum.

(2) An installment payment plus interest accrued thereon shall be paid to the Lender each time one (1) of the Lots comprising the Property is sold by the Borrower to a Builder as described in the Contract and in accordance with the Lot Release Schedule attached hereto as Exhibit B. Payments may only be made on the 1st and 15th of any month. Upon receipt of a Lot payoff, the City shall release the corresponding Lot from the Mortgage securing this Note, provided Borrower shall provide the Agency with at least five (5) days prior written notice on Lot payoffs, specifying which Lots are to be released from such Mortgage.

(3) As of December 31, 2006 (the “Maturity Date”), the entire outstanding unpaid principal balance of the Loan Funds plus interest accrued thereon, if not previously paid as required herein, shall be due and payable in full.

(4) The entire unpaid principal balance of the Loan Funds plus interest accrued thereon shall be immediately due and payable at any time prior to the full repayment of the Loan Funds upon the occurrence of the earliest of the following events of default:

(a) The sale, assignment, conveyance, transfer, lease, lien, encumbrance, or refinancing of the Property by the Borrower without the Lender’s prior written consent; or

(b) Any use of the Project or a portion of the Project which violates any federal, state or local law, statute, or ordinance, which includes illegal discrimination, pornography, gambling or drug related activities; provided, however, that Borrower shall not be in default as a result of illegal activities on the Property if Borrower is pursuing all reasonable actions to prohibit such illegal activities.

(c) Default by the Borrower in the performance of any other covenant, term or condition of this Promissory Note, the Deferred Purchase Price Mortgage or any other agreement or mortgage relating to or encumbering the Property.
Upon the occurrence of one of the events specified above, the Lender shall mail notice to the Borrower specifying: (1) the event of default; (2) the action required to cure such event; (3) a date not less than thirty (30) days from the date the notice is mailed to the Borrower by which date such default must be cured; and (4) that failure to cure such default on or before the dates specified in the notice may result in acceleration of the Loan.

If suit is instituted by Lender, its successors or assigns to recover on this Note, the undersigned agrees to pay all costs of such collection including reasonable attorney’s fees and court costs.

Demand, protest and notice of demand and protest are hereby waived and the undersigned waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

This Note is secured by a mortgage ("Mortgage") of the real property described in Exhibit A attached hereto of even date herewith and duly filed for record in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County in the State of Minnesota, and reference is made to the Mortgage for the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the day and year above first written.

BORROWER:
HERITAGE HOUSING LLC

By _______________________________
Its _______________________________
DEFERRED PURCHASE PRICE MORTGAGE
(Heritage Housing LLC)

THIS MORTGAGE, made this _____ day of ______________, 20____, by Heritage Housing LLC, a Minnesota limited liability company, doing business at ______________________________ (hereinafter designated as Mortgagor) to the Minneapolis Community Development Agency, a public body corporate and politic under Minnesota laws, whose main office is located at 105 Fifth Avenue South, in the City of Minneapolis, County of Hennepin, State of Minnesota, its successors and assigns (hereinafter designated as Mortgagee).

WITNESSETH:

That said Mortgagor hereby mortgages and conveys to said Mortgagee the following described premises situated in the County of Hennepin, State of Minnesota, and legally described as:

See Exhibit A attached hereto and incorporated herein.

This Mortgage is given in consideration of and as security for the payment of ______________ and No/100 Dollars ($______________) (the “Loan Funds”), receipt of which is hereby acknowledged and which is made to enable the Mortgagor to purchase the properties at ______________, Minneapolis, Minnesota (the “Project”). The Loan Funds are evidenced by a Deferred Purchase Price Promissory Note (the “Note”) to the order of the Mortgagee of even date herewith. According to the terms of the Note, the Loan Funds shall be repaid as follows:

(1) Interest shall accrue on the Loan Funds at a simple rate of [Prime plus 1%] per annum.

(2) An installment payment as described in the Lot Release Schedule attached to the Note as Exhibit B plus interest accrued thereon shall be paid to the Mortgagee each time one (1) of the lots comprising the Property is sold by the Mortgagor to a Builder as described in that certain Redevelopment Contract dated ______________ between Mortgagor and Mortgagee (the “Contract”). Upon receipt of an installment payment plus interest accrued, the Mortgagee shall promptly release the Lot from the Mortgage.
As of December 31, 2006 (the “Maturity Date”), the entire outstanding unpaid principal balance of the Loan Funds plus interest accrued thereon, if not previously paid as required herein, shall be due and payable in full.

The entire unpaid principal balance of the Loan Funds plus interest accrued thereon shall be immediately due and payable at any time prior to the full repayment of the Loan Funds upon the occurrence of the earliest of the following events of default:

(a) The sale, assignment, conveyance, transfer, lease, lien, encumbrance, or refinancing of the Property by the Mortgagor without the Mortgagee’s prior written consent; or

(b) Any use of the Property or a portion of the Property which violates any federal, state or local law, statute, or ordinance, which includes illegal discrimination, pornography, gambling or drug related activities; provided, however, that Borrower shall not be in default as a result of illegal activities on the Property if Borrower is pursuing all reasonable actions to prohibit such illegal activities.

(c) Default by the Mortgagor in the performance of any other covenant, term or condition of this Mortgage, the Deferred Purchase Price Promissory Note, or any other agreement or mortgage relating to or encumbering the Property.

Upon the occurrence of one of the events specified above, the Mortgagee shall give written notice to Mortgagor specifying: (i) the event of default; (ii) the action required to cure the event; (iii) a date not less than thirty (30) days from the date the notice is mailed to the Mortgagor by which such default must be cured; and (iv) that failure to cure such default on or before the date specified in the notice may result in acceleration of the Loan.

Mortgagor makes and includes in this Mortgage the Statutory Covenants and other provisions set forth in Minnesota Statutes Section 507.15, and, the Mortgagor covenants with the following statutory covenants:

a. To warrant title to the Property, subject only to the Permitted Encumbrances attached hereto as Exhibit B or as otherwise permitted by the Contract.

b. To pay all other liens, charges or encumbrances against the Premises as and when they become due.

c. To pay the indebtedness as herein provided.

d. To pay all real estate taxes on the Property.

e. That the Premises shall be kept in repair and no waste shall be committed.

f. Mortgagor shall keep any buildings on the Property insured against loss by fire and other hazards for at least the sum of the full insurable value of the Property, for the protection of the Mortgagee.
g. That the whole of the principal sum shall become due after default, in the payment of any installment of principal or interest, or of any tax, or in the performance of any other covenant, at the option of the Mortgagee.

h. To pay the principal and interest on all prior and subsequent mortgages as and when they become due.

i. Mortgagor will not, nor cause to be, nor will allow any other person to, deposit, dispose of, place, or otherwise locate or allow to be located on or within the Premises any hazardous substances, hazardous wastes, pollutants, or contaminants as those terms are defined under any Federal, State of Minnesota, or local statute, ordinance, code or regulation.

If the Mortgagor herein shall pay the Mortgagee herein, its successors or assigns the sum of ________________________ and No/100 Dollars ($_________________), when it becomes due according to the terms of the above mentioned Note, then this Mortgage shall be null and void, otherwise to remain in full force and effect. But if default shall be made in payment of said sum when due or in any of the covenants or agreements contained herein, then the Mortgagee may declare immediately due and payable the entire unpaid principal balance, and the Mortgagee, its successors and assigns are hereby authorized and empowered to foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Property at public auction and convey the same to the purchaser in fee simple and, out of the proceeds arising from such sale, to pay the principal of the Note with interest, together with all legal costs and charges of such foreclosure and the maximum attorney’s fees permitted by law.

Mortgagee prior to acceleration shall mail notice to Mortgagor specifying: (1) the event of default; (2) the action required to cure such event; (3) the date, not less than thirty (30) days from the date the notice is mailed to Mortgagor, by which date such default must be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Mortgagor to acceleration and sale. If the default is not cured on or before the date specified in the notice, Mortgagee at Mortgagee’s option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedy permitted by applicable law. Notwithstanding Mortgagee’s acceleration of the sums secured by this Mortgage, Mortgagor shall have the right to have any proceedings begun by Mortgagee to enforce this Mortgage discontinued at any time prior to the earlier of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) a judgment enforcing this Mortgage, if: (a) Mortgagor pays Mortgagee all sums constituting the default actually existing under this Mortgage and the Note at the commencement of foreclosure proceedings under this Mortgage; (b) Mortgagor cures all breaches of any other covenants or agreements of Mortgagor contained in this Mortgage, (c) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in this Mortgage and in enforcing Mortgagee’s remedies as provided herein, including, but not limited to, reasonable attorney’s fees; and (d) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee’s interest in the Property and Mortgagor’s obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

Notwithstanding anything in this Mortgage to the contrary, and except for fraud or willful misconduct, no recourse shall be had for the payment of the principal of, or interest in, this Mortgage or for
any claim based thereon or otherwise in respect thereof against the mortgagor or any partner, legal representative, heir, estate, successor or assign of any thereof. The Mortgagee agrees to look solely to the collateral given as security for the payment of this Mortgage.

MORTGAGOR HEREBY: EXPRESSLY CONSENTS TO THE FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT THE OPTION OF MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580, WHICH PROVIDES FOR SALE AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY AND PUBLICATION OF SAID NOTICE FOR SIX WEEKS IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PROPERTY IS SITUATED AND ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON MORTGAGOR PERSONALLY UNLESS MORTGAGOR IS AN OCCUPANT AND THAT NO HEARING OF ANY TYPE IS REQUIRED IN CONNECTION WITH THE SALE AND EXCEPT AS MAY BE PROVIDED IN SAID STATUTES, EXPRESSLY WAIVES ANY AND ALL RIGHT TO PRIOR NOTICE OF SALE OF THE MORTGAGED PROPERTY AND ANY AND ALL RIGHTS TO A PRIOR HEARING OF ANY TYPE OF CONNECTION WITH THE SALE OF THE MORTGAGED PROPERTY.

MORTGAGOR ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL; THAT BEFORE SIGNING THIS MORTGAGE THIS SECTION AND MORTGAGOR’S CONSTITUTIONAL RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL; AND THAT MORTGAGOR UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

This Mortgage and said Note shall be construed according to the laws of the State of Minnesota.

[INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed as of the day and year first above written.

MORTGAGOR:
HERITAGE HOUSING LLC

By ____________________________________________
Its ____________________________________________

STATE OF MINNESOTA               )
                                  ) ss.
COUNTY OF HENNEPIN       )

The foregoing instrument was acknowledged before me this ______ day of ________, 20___, by the __________________ of Heritage Housing LLC, a Minnesota limited liability company, on behalf of the limited liability company.

___________________________________________
Notary Public

Approved as to form:

________________________
Assistant City Attorney

This instrument was drafted by:
Minneapolis Community Development Agency
105 Fifth Avenue South, Suite 200
Minneapolis, Minnesota 55401-2534
ATTENTION: REAL ESTATE/LEGAL DEPARTMENT
EXHIBIT L

LOT RELEASE SCHEDULE
EXHIBIT M

SCHEDULE OF PUBLIC IMPROVEMENT WORK
SECTION 3, WORKFORCE, APPRENTICE AND WBE/MBE/SUB GOALS

SMALL AND UNDERUTILIZED BUSINESS GOALS
- 25% MINORITY OWNED BUSINESS
- 10% WOMAN OWNED BUSINESS

WORKFORCE GOALS
- 33% MINORITY - SKILLED AND/OR UNSKILLED
- 5% FEMALE

SECTION 3
- 10% NEW BUSINESS
- 30% NEW HIRES

EXECUTIVE REFERRAL AGREEMENT FOR EMPLOYMENT REFERRALS
(CONSTRUCTION EMPLOYMENT DIVERSITY ASSISTANCE GROUP C.E.D.A)
The Civil Rights Department currently administers this contract. Summit Academy OIC will participate with the referral of their graduates.

CONTRACTORS AGREE TO DIVERSIFY OFFICE WORKFORCE
This represents a commitment of the Minneapolis Civil Rights Department to enforce this existing provision.

APPRENTICESHIP PROGRAM
Contractor/s Subcontractors with contract awards of $1 million or more will commit to a goal of providing one new (1) apprentice position per $1 million of contracted work. Ninety (90) percent of this goal will represent people of color from the community/City of Minneapolis.
EXHIBIT O

PUBLIC IMPROVEMENT COST PROMISSORY NOTE
(Heritage Housing LLC)

Minneapolis, Minnesota
_______________, 2003

$2,137,230.00 (or portion associated with Property
being mortgaged)

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the
order of the City of Minneapolis, a Minnesota municipal corporation (herein called the “City”), or its assigns,
the sum of $____________ [Portion associated with Property being conveyed and mortgaged] (herein
called the “Loan Funds”). Said sum represents a portion of the cost of certain public improvements that were
made by the City for the benefit of certain Property owned by Borrower (herein called the “Property”) legally
described on Exhibit A attached hereto and is in lieu of special assessments that would otherwise attach to the
Property.

The Loan Funds shall be repaid as follows:

(1) Interest shall accrue on 50% of the Loan Funds at a simple rate of 3.5% per annum as of the
date of this Note. Interest shall begin to accrue on an additional 25% of the Loan Funds as
of April 1, 2004 at a simple rate of 3.5% per annum. Interest shall begin to accrue on the
final 25% of the Loan Funds as of August 1, 2004 at a simple rate of 3.5% per annum. Such
interest shall be calculated on a 30 day month, 360 day basis.

(2) The appropriate Lot installment payment in accordance with the Unit Release Schedule,
attached hereto as Exhibit B and incorporated herein, plus interest to accrue thereon from the
date of this Note to the next Payment Date shall be due to the City each time one (1) of the
Lots comprising the Property is sold by the Borrower to a "Market Builder" as identified on
Exhibit C, attached hereto and incorporated herein. If the Borrower conveys a Lot
comprising the Property to an "Affordable Builder“ as identified on Exhibit C, the
appropriate Lot installment payment in accordance with the Unit Release Schedule, plus
interest to accrue thereon from the date of this Note to the next Payment Date, shall be due to
the City at the time such Lot is conveyed to the Affordable Builder or alternatively, shall be
due to the City at such later date when an Affordable Builder conveys a Housing Unit Deed
for such Lot as described in that certain Redevelopment Contract between the City, the
Borrower and the Minneapolis Community Development Agency dated ____________,
2003 (the “Contract”). Notwithstanding when individual Lot installment payments are paid
to the Developer by the Builders or become due as described above, payments shall be made
to and accepted by the City on a quarterly basis starting March 1, 2004 and every June 1,
September 1, December 1 and March 1 thereafter (the "Payment Dates"). On each Payment
Date, the Borrower shall pay to the City an amount equal to the total of all Lot installment
payments that have become due in the previous quarter as required herein plus interest
accrued thereon to the Payment Date.

(3) Borrower shall provide the City with written notice as to which Lot installments Borrower
will be paying to the City on the next Payment Date at least five (5) days prior to any
Payment Date so that the City can calculate the interest due thereon. Upon receipt of a payment, the City shall release a portion of the Letter of Credit securing this Note equal to the Lot installment payments paid to the City, exclusive of interest.

(4) As of _____________, 2006 (the “Maturity Date”), the entire outstanding unpaid principal balance of the Loan Funds plus interest accrued thereon, if not previously paid as required herein, shall be due and payable in full.

(5) The entire unpaid principal balance of the Loan Funds plus interest accrued thereon shall be immediately due and payable at any time prior to the full repayment of the Loan Funds upon the occurrence of the earliest of the following events of default:

(a) The sale, assignment, conveyance, transfer, lease, lien, encumbrance, or refinancing of the Property by the Borrower without the Lender’s prior written consent provided that neither a conveyance to an approved Builder under the terms of the Contract nor acquisition or construction financing for improvements permitted by the terms of the Contract shall be an event of Default; or

(b) Any use of the Property or a portion of the Property which violates any federal, state or local law, statute, or ordinance, which includes illegal discrimination, pornography, gambling or drug related activities; provided, however, that Borrower shall not be in default as a result of illegal activities on the Property if Borrower is pursuing all reasonable actions to prohibit such illegal activities; or

(c) Default by the Borrower in the performance of any other covenant, term or condition of this Note, the Public Improvement Cost Letter of Credit securing this Note or any other agreement or mortgage relating to or encumbering the Property.

Upon the occurrence of one of the events specified above, the City shall mail notice to the Borrower specifying: (1) the event of default; (2) the action required to cure such event; (3) a date not less than thirty (30) days from the date the notice is mailed to the Borrower by which date such default must be cured; and (4) that failure to cure such default on or before the dates specified in the notice may result in acceleration of the Loan.

This Note may be prepaid in whole or in part, on any Payment Date, without any premium or penalty.

If suit is instituted by the City, its successors or assigns to recover on this Note, the undersigned agrees to pay all costs of such collection including reasonable attorney’s fees and court costs.

Demand, protest and notice of demand and protest are hereby waived and the undersigned waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

This Note is secured by a letter of credit issued by Franklin Bank (“Public Improvement Cost Letter of Credit”), and reference is made to the Public Improvement Cost Letter of Credit for the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.
Capitalized terms, which are not defined herein, shall have the meaning ascribed to them in the Contract.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the day and year above first written.

BORROWER:
HERITAGE HOUSING LLC

By ____________________________
Its ____________________________
EXHIBIT P
INTENTIONALLY LEFT BLANK
EXHIBIT R

FORM OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RUNNING WITH THE LAND

THIS DECLARATION was made and entered into on the _____ day of
_________________ 20___ by _______________________________________ (hereinafter referred
to as “Declarant”).

WITNESSETH:

WHEREAS, the Minneapolis Public Housing Authority (“MPHA”), the Minneapolis
Community Development Agency (“Agency”) and the City of Minneapolis (“City”) are all parties
to that certain Consent Decree dated April 20, 1995, entered into in connection with an action in
United States District Court, District of Minnesota, as amended and supplemented from time to time
titled Hollman v. Cuomo, Civil 4-92-712, whereby the parties agreed to create a comprehensive
plan to develop certain property that was the subject of the Consent Decree (the “Public Housing
Property”); and

WHEREAS, as a result of the consent Decree the MPHA, the Agency and the City
contracted with a private developer to develop a Master Plan for the Public Housing Property and
adjacent property (the “Site”); and

WHEREAS, the Master Plan prepared by McCormack Baron & Legacy Management,
Urban Design Associates, and SRF Consulting Group, Inc. (the “Master Plan”) called for 900 new
mixed-income units of which, 360 units were planned for homeownership opportunities; and

WHEREAS, the MPHA, the Agency and the city have collectively invested over
$____________ of public dollars in the implementation of the Master Plan (the “Public Funds”); and
WHEREAS, the public entities wish to ensure that the affordability goals established in the Master Plan are met; and

WHEREAS, Declarant has obtained title to the real property described below pursuant to that certain Redevelopment Contract dated ________________ as amended from time to time by and between the Agency, the City and Heritage Housing LLC (the “Redevelopment Contract”) which provides for the development of 167 Units of homeownership housing, 15% of which are to be affordable to homeowners with incomes at or below 60% of the Median Family Income as established by the United States Department of Housing and Urban Development (HUD) for the Minneapolis/St. Paul Standard Metropolitan Statistical Area, adjusted for family size (the “Median Family Income”) and another 15% are to be affordable to homeowners with incomes between 60% and 80% of Median Family Income (the “Affordability Requirements”); and

WHEREAS, As a condition to obtaining the development rights to the real estate described below, Declarant has agreed to create and set forth herein restrictive covenants designed to insure that the property described hereinbelow will be conveyed as “affordable” to an eventual homeowner.

NOW, THEREFORE, Declarant, as the fee owner of the real property and developer of the dwelling Unit to be built thereon referred to hereinbelow and in consideration of the benefits to be derived by Declarant from the Public Funds invested in the real property and the surrounding property, hereby makes the following declaration as the covenants, restrictions, limitations, conditions and uses to which such real property and the dwelling unit to be built thereon may be put, hereby specifying that such declaration shall constitute covenants to run with the land and shall be binding upon the Declarant, its representatives, successors, and assigns, and, subject to the limitation contained in Section 6 hereinbelow.

1. **Restriction on Conveyance.** In consideration of the benefit derived from the use of the Public Funds in developing the real property, and for the purpose of partially satisfying the Affordability Requirements in the Redevelopment Contract and the Master Plan, Declarant does hereby agree and declare for itself, and its successors and assigns, that subject to the exception contained in Section 6 hereinbelow, any sale of the real estate situated in the County of Hennepin, State of Minnesota and legally described as follows:

   (the “Property”) must be conveyed to a purchaser (i) whose family’s annual income at the time of such purchase [does not exceed sixty percent (60%)] of the Median Family Income, (ii) who will pay on a monthly basis for principal, interest, taxes and insurance and association dues no more than 33% of purchaser’s monthly income unless otherwise approved by the Agency or the City, and (iii) who will occupy the Property as their principal residence. This Declaration shall in no way prevent the Declarant from
mortgaging this Property in order to obtain funds for erecting improvements thereon in conformity with the Redevelopment Contract.

2. **Term.** The restrictive terms of this Declaration shall continue until a certification from the City terminating the requirements herein is placed of record. Promptly upon receipt of evidence that the purchaser of the Property meets the affordability requirements of this Declaration and the Redevelopment Contract, the City will furnish the purchaser with an appropriate instrument so certifying. Such certification by the City or the Agency shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants of this Declaration.

3. **Covenants Running with the Land.** Declarant hereby further agrees and declares that it is Declarant’s express intent that each of the covenants and restrictions set forth in this Declaration shall be construed to be, deemed, and are hereby declared to be covenants running with the Property, and that the benefit and burden of such covenants and restrictions shall pass to and be binding upon Declarant’s successors in title, unless amended and modified as provided in Section 8 hereinbelow. Subject to the exception contained in Section 6 contained hereinbelow, each and every transferee who acquires an interest in the Property shall conclusively be held to have acquired such interest subject to the obligations of the covenants and restrictions set forth in this Declaration regardless of whether or not such covenants and restrictions are set forth, referred to, or specifically agreed to be performed by any such transferee in any such contract, lease, conveyance, agreement, or other such instrument by which such transferee acquired its interest in the Property.

4. **Covenants Touch and Concern.** Declarant, on behalf of itself and its successors and assigns, hereby further agrees that the development subsidy from the public entities and the covenants and restrictions set forth in the Declaration both confer a financial benefit upon the Declarant and constitute a burden on the use of the Property. Declarant further agrees that the covenants and restrictions set forth in this Declaration in fact touch and concern the Property in the following manner:

A. Declarant’s legal title to the Property has been burdened with a use and sale limitation.

B. Declarant, the City, the Agency, the MPHA and the residents of the City of Minneapolis will all be benefited by an assurance that the Property will be conveyed to a low to moderate income purchaser.

In addition, Declarant, for itself and its successors and assigns, specifically states that the burden upon its fee title to the Property is reasonable, acceptable, and not unconscionable or against public policy in any way given the other benefits of the transaction to Declarant, the City, the Agency, the MPHA and the citizens of the
5. **Representatives of Benefited Parties.** The City of Minneapolis, along with its successors, assigns, and designees, are hereby designated the representatives of any and all other persons or entities also benefited by the covenants and restrictions set forth in this Declaration as far as the enforcement, the construction, the interpretation, the amendment, the release, and/or the termination of such covenants and restrictions are concerned. This designation and appointment shall also run with the Property and is hereby made and agreed to by Declarant, its successors and assigns, and any subsequent transferee of any interest in the Property, or any part thereof, from Declarant.

6. **Abeyance Upon Foreclosure and Subsequent Sale.** In the event that a mortgagee that possesses a mortgage on the Property the proceeds of which were used to purchase the Property or construct improvements thereon as permitted by the Redevelopment Contract acquires fee title to the Property by way of a foreclosure of such mortgage or by accepting a deed in lieu of foreclosure, then the covenants and restrictions hereinabove shall be held in abeyance and shall not be enforceable against such foreclosing mortgagee and subsequent individuals who can trace their fee ownership back to such foreclosing mortgagee; provided, however, such abeyance shall terminate and all of the covenants and restrictions contained in this Declaration shall apply and be fully enforceable if the Declarant again becomes the fee owner of the Property.

7. **Remedies, Enforceability.** In the event of a violation, or an attempted violation, of any of the covenants or restrictions set forth in this Declaration, the City of Minneapolis, its successors, assigns, and designees, either individually or jointly, may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation, or to specifically enforce such covenants or restrictions, or to recover monetary damages caused by such violation or attempted violation. No delay in enforcing the provisions of said covenants and restrictions as to any breach or violation shall impair, damage, or waive the right to enforce the same, or to obtain relief against or recover for the continuation or repetition of such breach or violation, or any similar breach or violation thereof at any later time or times.

8. **Amendment, Termination, or Deletion of Covenants.** The provisions set forth in this Declaration shall not be amended, terminated, or deleted except by way of an instrument in writing duly executed by the City or its successors or assigns.

9. **Severability.** If any term or provision of this Declaration is finally judged by any court to be invalid, the remaining terms and provisions of this Declaration shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if said invalid provision did not appear herein.
10. **Waiver.** The failure by the City in any one or more instances, to insist upon the complete and total observance or performance of any restriction and/or covenant set forth shall not be construed as waiving any breach of such restriction or covenant, or the right to exercise such right, privilege, or remedy thereafter.

11. **Headings.** The headings for the parts and sections of this Declaration shall only be used for identification purposes, and shall not have any substantive effect on the actual wording contained in such section.

**IN WITNESS WHEREOF,** the parties hereto have executed or accepted this agreement on the day and date first above written.

**DECLARANT**

________________________________________

By _____________________________________

Its____________________________________

(Need acknowledgement for the individuals executing the agreement.)

**STATE OF MINNESOTA )**

) ss.
**COUNTY OF HENNEPIN )**

This instrument was acknowledged before me this ______ day of ____________, 20___ by ________________________________________, the ______________________________ of ________________________________________, a Minnesota __________________________, on behalf of the ___________________________.

____________________________________
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Minneapolis Community Development Agency
105 Fifth Avenue South, Suite 200
Minneapolis, Minnesota 55401-2534

This instrument is exempt from registration tax under Section 287.06 of Minnesota Statutes.
EXHIBIT S

MARKETING PLAN
EXHIBIT T

FORM OF BUILDER POOL AGREEMENT
EXHIBIT U

FORM OF BUILDER PURCHASE AGREEMENT
Heritage Park Case Study Documents

PART II. RFPs, Development Agreements, and Program Descriptions

Program Descriptions and Policies
→ Heritage Park Tenant Screening Criteria

Reprinted with permission of McCormack Baron Ragan Management Services, Inc.

The tenant screening criteria for Heritage Park are specifically tailored for this project and are not representative of the criteria for other McCormack Baron Ragan properties. Nor are they necessarily representative of other mixed-income or HOPE VI properties in general.
SCREENING CRITERIA

FEES ARE AS FOLLOWS
- $35.00 Application Fee (non-refundable) per adult member of the household (18 years and older).
- $150.00 Reservation Fee (non-refundable) is required to remove unit from the market after application has been approved. This will go toward the $550 Security Deposit (if brought in with application and it must be a separate money order/cashier check from the Application Fee).
- $550.00 Security Deposit.

CREDIT REPORT
- Must have two (2) years of rental history. (Rent payments to family members or friends do not count.)
- No prior landlord/mortgage nonpayment or other rental lease violation within previous 36 months.
- No Unlawful Detainers within the previous 36 months.
- No reported delinquent consumer debt (excluding mortgage and excluding medical bills and student loans) within 3 years of application date or written off within 1 year.
- No history or pattern of substantial past due consumer debts (excluding medical bills and student loans) within last 18 months with balances older than 6 months.
- Monthly income must be less than 2.5 times the monthly rent amount.

(Please note that management reserves the right to deny any applicant with more than one unsatisfactory rental reference after period noted above.)

CRIMINAL RECORD CHECK
- No record or conviction for manufacturing drugs within last 5 years.
- No record or conviction for distributing drugs within last 3 years, unless within a drug free zone in which case, no record or conviction within last 6 years.
- No record or conviction for drug possession within last 18 months.
- No record or felony conviction for the last 4 years for a crime against a person.
- No record or conviction for the last 2 years for a crime against property, or for concealed weapons.
- No record or conviction for murder, attempted murder, rape or attempted rape.

Please note that management reserves the right to deny any applicant with more than one offense on criminal record after period noted above.)

UNDER 18 DECLARATION
Declaration from head of household that no family member under 18 years of age has been convicted of a crime classifying him or her as an adult.

HOME VISIT
Each applicant must have a satisfactory home visit to applicant’s current home. Home will be inspected, after notice of at least 48 hours, for cleanliness and evidence of acceptable living standard and personal conduct.
Heritage Park Case Study Documents

**PART II. RFPs, Development Agreements, and Program Descriptions**

**Program Descriptions and Policies**

→ Twin Cities Habitat for Humanity Pricing and Financing and Home Resale Policy

Reprinted with permission of Twin Cities Habitat for Humanity.
Twin Cities Habitat for Humanity
Pricing and Financing for Twin Cities Habitat for Humanity Homes

Each house newly constructed or rehabilitated by Twin Cities Habitat for Humanity is appraised for its market value. This appraised value becomes the purchase price of the home. Habitat takes the total purchase price of the home and divides it into two mortgages.

The first mortgage is based on the average costs for Habitat to build a home in the Twin Cities. The average cost is calculated based on the previous year’s costs of construction materials, land and infrastructure, in-kind materials and a small administrative fee per home. The total costs are divided by the number of homes built to arrive at the average. Next, the average cost is adjusted to a “benchmark” home, currently defined as: 1,300 square feet, one bathroom, an unfinished basement and single car garage. Additions or subtractions to the first mortgage amount are made depending on the specific features of each home. Adjustments are made for additional bathrooms, basement bedrooms, garages and square feet. The homeowner is responsible for paying back the first mortgage to Habitat in monthly installments over a term of 20-30 years. The mortgage is at 0% interest rate. Payments are based on 30% of the homebuyer’s gross income. First mortgage notes may include extended terms if necessary to meet affordability requirements.

The second mortgage is for the remainder of the purchase price. For example, if the purchase price of the home is $160,000 and the first mortgage is $120,000, then the second mortgage would be for the remaining $40,000 of the price. The second mortgage is also 0% interest and takes the form of a deferred loan for 30 years. At the end of 30 years the second mortgage is forgiven. If the family sells the home within the mortgage term it is credited back to Habitat in the sale.

Each family selected to purchase a home through Twin Cities Habitat for Humanity agrees to give Habitat the first option to purchase their home back if they decide to sell within 30 years. When Habitat repurchases the home, the family will receive their earned equity from principal payments and the cost of improvements. Families earn equity very quickly due to the 0% interest rate on the mortgage. If the family sells the home after living in it for at least five years, they will also receive 25% of any increase in its market value. Purchasing the home back from a family who desires to sell it allows Habitat to keep the home as an affordable homeownership opportunity for another family in the Twin Cities.

To summarize, Twin Cities Habitat for Humanity sells homes for their appraised market value. Habitat finances the full value of the home by providing two mortgages to the family, both at 0% percent interest. Families pay for the home by making monthly payments on only the first mortgage, which is based on Habitat’s costs. When a home is sold back, the market equity is shared to ensure long-term affordability of the home.
Home Resale Policy

30 Year Affordability Guarantee:
TCHFH will incorporate into its second mortgages a home repurchase clause which extends for a fixed 30 year term TCHFH’s right to repurchase the home in accordance with a predetermined formula. In order to guarantee 30 years of affordability and still offer first mortgage terms of 20 and 25 years, the second mortgage should remain in effect after the first mortgage is fully paid. After a review by TCHFH legal counsel, the addition of a 30 year affordability land covenant may be advised.

Years 1 through 5 Repurchase Formula:
The home repurchase formula will determine the selling price of the home to TCHFH. The home repurchase price will include all first mortgage payments made to-date plus reasonable costs of TCHFH authorized, documented improvements plus the remaining first and second mortgage balances which are then subsequently paid or forgiven. The repurchase formula will grant TCHFH 100% of market appreciation during the first 5 years of ownership.

Years 6 through 30 Repurchase Formula:
The home repurchase formula will determine the selling price of the home to TCHFH. After five years, the home repurchase price will include all first mortgage payments made to-date plus reasonable costs of TCHFH authorized, documented improvements plus the remaining first and second mortgage balances which are then subsequently paid or forgiven. Additionally, the formula includes 25% of the market appreciation since purchase by the owner. This price formula will be in effect for a fixed 30 year term.

Authorized Resale:
In the event TCHFH chooses not to repurchase a property, the owner can sell the home to any buyer. TCHFH will be repaid the remaining first mortgage plus second mortgage plus 75% of any market appreciation since purchase by the owner (100% in years 1-5) less reasonable costs of TCHFH authorized, documented improvements. Effective term is 30 years.
Home Resale Policy – Authorized Improvements

The sales price formula used in Habitat home repurchases, adds to the repurchase price reasonable costs of TCHFH authorized, documented home improvements made by the homeowner. In order to simplify, clarify and control the type of costs homeowners can include in the pricing formula, TCHFH is restricting home improvements to those which meet the criteria described below.

Improvements must affix to the property to be considered. No personal property is to be included.

To be considered, improvements must have been properly permitted, inspected and passed by appropriate municipal inspectors. Proof of passing inspection will be required. Improvements not requiring permits will not be considered in the repurchase formula.

An improvement must add value to the home if it were appraised by an independent appraiser. TCHFH is identifying only the following improvements as qualifying for adding value. Any other improvement will not be considered in the repurchase formula.

- Adding a bedroom.
- Adding a bathroom.
- Finishing all or a portion of the basement.
- In general - adding finished square footage to the home.
- Building a deck or patio.
- Privacy fence. (Chain link fence does not qualify.)
- Building a garage if the home had none originally.
- Adding an additional garage stall.

Documentation for improvement costs requires invoices or receipts be retained and produced by the homeowner. Undocumented improvements do not qualify for the repurchase formula. In the event the costs of the improvement are identified as unreasonably high, TCHFH retains the right to include in the repurchase formula only the “reasonable” costs.
Heritage Park Case Study Documents

PART II. RFPs, Development Agreements, and Program Descriptions

Program Descriptions and Policies

→ SumnerField at Heritage Park Program Guidelines and Buyer Restrictions

Reprinted with permission of Heritage Housing LLC.

The SumnerField at Heritage Park documents were current as of May 2006 – some content may have changed since that time.
Sumnerfield at Heritage Park
Affordable Ownership Program
PROGRAM GUIDELINES AND BUYER RESTRICTIONS

The Affordable Ownership Program is designed to give low to moderate income households an opportunity to purchase a home in Sumnerfield at Heritage Park. This program helps achieve the goal of creating a diverse, mixed-income community. Potential buyers must meet the restrictions and guidelines of the program which are listed below.

- **Income Restriction**: Buyer(s) total annual household gross income **cannot exceed** the following, based on household size. (Income earned over the last year and income anticipated from all sources over the next 12 months will be used for determination.) Must provide three most recent earning statements (paystubs) of all income earners in the household.

<table>
<thead>
<tr>
<th>Household Size</th>
<th>80% of Area Median Income (AMI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Person</td>
<td>Income cannot exceed $40,600</td>
</tr>
<tr>
<td>2 Person</td>
<td>$46,400</td>
</tr>
<tr>
<td>3 Person</td>
<td>$52,200</td>
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<tr>
<td>4 Person</td>
<td>$58,000</td>
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<tr>
<td>5 Person</td>
<td>$62,650</td>
</tr>
<tr>
<td>6 Person</td>
<td>$67,300</td>
</tr>
<tr>
<td>7 Person</td>
<td>$71,900</td>
</tr>
<tr>
<td>8 Person +</td>
<td>$76,550</td>
</tr>
</tbody>
</table>

**Additional Requirements**
- Must be the owner-occupant of the property.
- At time of application for affordability funding, buyer must have reviewed the “Program Guidelines and Buyer Restrictions” and sign “Affidavit of Purchaser”.
- To be considered a first-time home buyer one must not have owned a home over the last three years. Must provide last three years tax returns.
- Purchaser(s) must complete and receive a certificate from an approved Homebuyer Workshop before closing. (Workshop calendar available at [www.hocmn.org](http://www.hocmn.org))
- Non first-time Buyer must not have taken any equity out of their existing home within the past 12 months of date of purchase agreement and/or request for funds.
- Non first-time Buyer must invest at least 90% of the sale proceeds of their existing home towards the purchase of their new home.

**Affordability Fund Restrictions**
- Purchaser(s) must sign a Note(s) and Mortgage(s) for the entire amount of Sumnerfield at Heritage Park Affordable Ownership Program funds received. (most likely a 2nd, 3rd, and possibly 4th mortgage).
- Sumnerfield at Heritage Park Affordable Ownership Program funds must be repaid whenever the property, or an interest therein, is sold, refinanced, no longer owner-occupied, or first mortgage is satisfied.
- Affordable Ownership Program funds can be used toward the base purchase price only and **cannot** be used for upgrades.
- Affordable Ownership Program funds **cannot** be used for the purchaser’s required down payment or to pay closing costs.

**Maximum Amount**
- Base purchase price for the home may not exceed $299,000.
- The maximum amount of Affordable Ownership Program funds that can be dedicated to any one household will be determined by the Affordability Fund Administrator. (The amount of assistance is less for non-first time buyers). First mortgage product must be compatible with Affordable Ownership Program assistance funds.