

DEVELOPMENT AGREEMENT
FOR
171 KING STREET E. IN THORNBURY, ONTARIO

This Agreement is made as of August 2020

BETWEEN:

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION, a non profit corporation without share capital created under the Corporations Act of Ontario and having its office at 32 Mill Street, Thornbury, ON N0H 2P0 BMAHC is a (“**BMAHC**”)

AND:

NEW COMMONS DEVELOPMENT INC., a corporation created under the *Canada Not-for-profit Corporations Act* and having its office at 119 Spadina Avenue, Toronto, ON M5V 2L1 (“**New Commons**”)

BACKGROUND:

- A. The BMAHC is an entity incorporated for not-for-profit purposes, including to augment the supply of healthy, affordable and sustainable housing in The Blue Mountains which are affordable to a larger portion of the population.
- B. New Commons is an entity incorporated for not-for-profit purposes, including the development of housing affordable to and occupied by low income Canadians;
- C. In furtherance of their not-for-profit purposes, BMAHC and New Commons have agreed to co-operatively investigate, plan, and pursue the development of the Lands on the terms and conditions set out in this Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the covenants and conditions set out below and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed to by the parties, BMAHC and New Commons now agree as follows:

1. **INTERPRETATION**

(a) **Defined Terms**

In this Agreement, terms defined in Schedule A have the meanings set out in that Schedule.

(b) **Interpretation**

(i) Entire Agreement / Amendments

This Agreement is the whole agreement among the parties and will not be modified or waived except by further written agreement signed by those parties whose rights or obligations are being modified or waived.

(ii) Governing Law

This Agreement will be interpreted in accordance with and governed by the laws of Ontario, and the courts of Ontario will have exclusive jurisdiction and the parties irrevocably attorn to the jurisdiction of such courts.

(iii) Severability

If any term of this Agreement is found by a court to be invalid for any reason, the invalidity will not affect the validity or operation or any other term.

(iv) Survival

Despite any expiry or sooner cancellation of this Agreement, those terms which are intended or are in their context capable (whether or not expressly) of operating afterwards will continue in full force and effect. Without limiting the generality of this section, any releases and indemnities and audit obligations set out in this Agreement will not terminate but will survive any expiry or sooner termination of this Agreement.

(v) Joint and Several

If any of the parties to this Agreement comprises more than one Person, then all covenants, agreements, representations, warranties, duties and obligations of such party will be joint and several covenants, agreements, representations, warranties, duties and obligations of all Persons comprising such party to this Agreement.

(vi) Schedules

The following schedules are either attached (and are part of this Agreement) or shall be attached and made part of this Agreement upon the mutual consent of BMAHC and New Commons, and are incorporated by reference into this Agreement and form an integral part of it:

SCHEDULE A – Defined Terms

SCHEDULE B – Terms of Reference – Feasibility Study

SCHEDULE C – Access Licence

SCHEDULE D – Project Charter

SCHEDULE E – Pro Forma Requirements

SCHEDULE F – Project Schedule, Working Capital and Development Fees

2. REPRESENTATIONS AND WARRANTIES

(a) **BMAHC**

BMAHC represents and warrants to New Commons, as representations and warranties which are true as of the date of this Agreement (or such other date as may be specified) and regardless of any independent investigations which New Commons may cause to be made:

- (i) BMAHC will enter into an agreement with The Town of the Blue Mountains for the purchase or long-term lease of real estate located at 171 King St East, Thornbury, ON on which the Project shall be developed (the Lands);
- (ii) BMAHC plans to retain control and exclusive operation of the rental units and the Project developed on the Lands.
- (iii) BMAHC has the full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein;
- (iv) to its knowledge, there is no action, suit, claim or litigation pending or threatened with respect to the Lands which could comprise a lien, charge or encumbrance against title to the Lands or the interests of the BMAHC therein;

- (v) to its knowledge, there are no orders or directives of any relevant Governmental Authority relating to environmental matters requiring any work, repairs, construction or capital expenditures with respect to the Lands;
- (vi) to its knowledge, the Property Documents are complete, true and correct in all material respects as of delivery thereof;
- (vii) to its knowledge, there is no contract, option or any other right of any other Person binding upon or which at any time in the future may become binding upon BMAHC to occupy, lease, sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber the Lands; and
- (viii) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby in connection with the Lands have been (or will be, prior to the applicable date) duly and validly authorized by all necessary action on the part of BMAHC.

(b) **New Commons**

New Commons represents and warrants to BMAHC, as representations and warranties which are true as of the execution of this Agreement and regardless of any independent investigations which BMAHC may cause to be made:

- (i) New Commons has the full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein;
- (ii) the execution and delivery of this Agreement and the completion of the transactions contemplated hereby has been (or will be, prior to the applicable date) duly and validly authorized by all necessary action on the part of New Commons.

3. PROJECT STEERING COMMITTEE

The Parties will establish a Project Steering Committee (“**PSC**”) comprising representatives (each, a “**PSC Member**”) designated by each Party, which will operate in accordance with the following provisions:

- (i) each Party will designate between one and three representatives, as agreed by the Parties;

- (ii) each PSC Member will be the authorized agent of its respective Party for all matters under this Agreement;
- (iii) each PSC Member may be replaced from time to time on written notice to the other Party;
- (iv) the New Commons PSC Member will take reasonably detailed notes of all PSC meetings and record all material decisions and approvals and promptly send to BMAHC's PSC Member for concurrence and reference upon completion;
- (v) the written approval of both BMAHC and New Commons PSC Member is required for all matters requiring PSC approval under this Agreement;
- (vi) PSC meetings will be held at least monthly unless unanimously agreed otherwise and more frequently as required to meet the timelines set out in this Agreement; and
- (vii) where any PSC Member is unable to meet at the required time, the applicable Party will ensure that a knowledgeable replacement is sent to the meeting so as not to delay the Project.

4. GENERAL OBLIGATIONS, ROLES AND RESPONSIBILITIES

(a) General Principles

(i) Responsibility for Costs and Risks

Except as expressly provided for in this Agreement, each Party will be responsible for all costs and expenses incurred by it in connection with this Agreement, including any Losses incurred by it as a result of the Project not proceeding, in relation to which neither Party will have any right of recovery or claim against the other.

(ii) Exclusivity

BMAHC will not, while this Agreement is in effect, effect any lease or other disposition of the Lands or any part thereof, or enter into or discuss entering into any agreements in respect of the Lands with any other Persons, except in accordance with this Agreement, and except in accordance with BMAHC leasing either commercial or residential units that are part of the Project.

(iii) Contractors and Agents

BMAHC and New Commons may appoint and contract with other Persons for the purpose of fulfilling any of their duties and obligations under this Agreement, provided that:

- (A) each such Person has the requisite knowledge, skill, experience and credentials to perform the applicable duties and obligations; and
- (B) BMAHC and New Commons directly or indirectly oversee and remain responsible for the services performed by the Person that they appoint.

(b) **Financial and Project Records**

- (i) New Commons and BMAHC will jointly own, and New Commons will have care and stewardship of, all Project Records until the Substantial Completion of the Project is attained, or until this Agreement is Terminated, at which time New Commons will transfer right, title and interest in and relevant copies of all such Project Records to BMAHC.
- (ii) While New Commons has stewardship of the Project Records, BMAHC and any advisor retained by BMAHC will be given full and unfettered access to the Project Records at any reasonable time, provided such persons execute non-disclosure or confidentiality agreements as may reasonably be required by New Commons or BMAHC to comply with obligations of New Commons and/or BMAHC to third parties or under Privacy Legislation.

(c) **Pro Forma Requirements**

Every Pro Forma for the Project will satisfy the applicable requirements set out in Schedule E and comply with the following provisions:

- (i) the Pro Forma prepared during each Project Phase will reflect industry best practices for such phase;
- (ii) the calculation methodology and assumptions will be applied consistently, without modification, from one iteration of the Pro Forma to the next, except where expressly otherwise permitted by this Agreement or agreed by the Parties; and

- (iii) The servicing and retirement of Project Debt shall be at market rates and on market terms and conditions as approved by BMAHC, and all funds borrowed from The Town of The Blue Mountains, if any, shall accrue interest at a rate that is 200 basis points in excess of the rate paid to The Town of the Blue Mountains for its cash investments, and
 - (iv) all capital and operating costs, including servicing and retirement of Project Debt, will be comprehensively and accurately included and will be adjusted for inflation/deflation and interest rate forecasts in accordance with best forecasting practices as approved by the Parties.
- (d) **Compliance with Project Charter**

The Parties agree that unless otherwise mutually agreed in writing the Project will be carried out only in accordance with the Project Charter and the latest Pro Forma approved by the Parties.

(e) **Encumbrances**

From and as of the date of this Agreement, except with the other Party's prior written consent which shall not be unreasonable withheld, or as expressly provided for in this Agreement, neither Party will cause, suffer or permit any lien or encumbrance of any kind to be registered against title to the Lands.

(f) **Property Documents**

As soon as practicable following execution and delivery of this Agreement by the Parties, BMAHC will deliver to New Commons copies of the Property Documents for the Lands, to the extent they exist, and to the extent that they are in the possession and control of BMAHC.

(g) **Access, Surveys, Tests and Examinations**

During the Feasibility Phase, the Pre-Development Phase and the Permitting Phase, New Commons and its Representatives may, as reasonably required in connection with this Agreement, and subject to any access limitations set by Law or Regulation:

- (i) access the Lands at all reasonable times; and
- (ii) conduct surveys, tests and examinations of the Lands,

provided that New Commons will provide BMAHC with reasonable notice in writing prior to entering the Lands for such purposes.

(h) **Management and Control of the Lands**

During the Feasibility Phase, the Pre-Development Phase and the Permitting Phase, except as otherwise expressly set out in this Agreement the Lands will remain under the management and control of BMAHC or The Town of the Blue Mountains and BMAHC hereby releases New Commons and its Representatives from, and indemnifies them against, liability for any Losses incurred by BMAHC or its Representatives arising from actions, claims, demands, suits or judgments brought against BMAHC or its Representatives on account of injury or death occurring in or about the Lands and damage to or loss of property occurring in or about the Lands, except to the extent caused by the acts or omissions of New Commons or its Representatives.

(i) **Party Consents**

Except as otherwise expressly set out in this Agreement, the following provisions will apply to any Consent required or permitted under this Agreement:

- (i) subject to this section 4(i), the Consent will be obtained before any action is taken on it;
- (ii) the Consent will be requested sufficiently in advance of when it is required so as to allow for a reasonable period to review and respond to the request, subject to any requirements imposed by Governmental Authorities or contracts with third parties;
- (iii) Consent will not be unreasonably withheld, delayed or conditioned; and
- (iv) except in respect of declarations of a Green Light, where a Party fails to respond to a request for Consent within the stipulated time, the other Party may proceed as though Consent had been given or decline to proceed until such Consent is given.

(j) **Inquiries and Authorizations**

- (i) New Commons may, as reasonably required in connection with this Agreement, make inquiries with any Person, including existing and potential lenders, potential investors, holders of charges registered against title to the Lands and Governmental Authorities, and BMAHC will provide New Commons with any authorizations required for such purpose.
- (ii) BMAHC, in its capacity as lessee of the Lands, will request The Town of The Blue Mountains to execute and deliver all documents required in furtherance of the objectives applicable to each Project Phase, including applications for permits and authorizations and encumbrances charging the Lands.

5. **FEASIBILITY PHASE**

(a) **Application**

The Parties agree that components of the Feasibility Study have already been completed by BMAHC, and that New Commons will be responsible for reviewing those components and preparing a final Feasibility Study that may include additional information compiled by the Parties.

The Parties also agree that components of the Pre-Development phase will be executed during the preparation of the Feasibility Study.

(b) **Workplan Items**

- (i) As soon as practicable following execution and delivery of this Agreement by the Parties, New Commons and BMAHC will undertake the preparation of the Feasibility Study.
- (ii) The Feasibility Study will be prepared in accordance with the Terms of Reference attached at Schedule B and for certainty will include the following:
 - (A) a preliminary Project Design reflecting the values, aspirations and requirements of BMAHC;
 - (B) the review and if necessary augmentation of the existing phase 1 environmental site assessment;
 - (C) a preliminary Capital Budget and Pro Forma and financing strategy;
 - (D) Securing funding and financing as required to undertake subsequent phases of development work; and
 - (E) A high level assessment of possible green build components that should be included in the Project, including managing the Green Municipal Fund grant and attendant deliverables including revision of a workplan and reporting to Federation of Canadian Municipalities for the conduct of a feasibility study assessing energy requirements and outcomes of the Project using an evaluative process, cost benefit analysis, and recommendations for actions.

(c) **Workplan Responsibilities**

New Commons will be responsible for coordinating the Feasibility Study but will facilitate full discussion of the Feasibility Study with BMAHC, both through the PSC and through direct presentations to and consultations with BMAHC staff, board and stakeholders, as determined by BMAHC.

(d) **Working Capital**

During the Feasibility Phase, BMAHC has obtained working capital for the Feasibility Phase. If additional capital is required New Commons and BMAHC will work together to identify and secure funding in an amount sufficient to attain the objectives of the Feasibility Phase, to the maximum amount set out in Schedule F.

(e) **Development Fees**

During the Feasibility Phase, New Commons and BMAHC will earn fixed Development Fees in accordance with Schedule F.

(f) **Pre-Development Green Light**

Within 60 days following delivery of the completed Feasibility Study to the Parties, unless such period is extended by mutual agreement, the Parties will decide, each in its sole discretion, whether to proceed to the Pre-Development Phase.

(g) **Termination**

If the Parties have not declared Pre-Development Green Light within the period specified in section 5(f) or in any event by the Pre-Development Green Light Outside Date, this Agreement will automatically terminate, and in such event:

- (A) Working Capital advanced to date in accordance with this Agreement by New Commons will be recoverable to the extent BMAHC and any third parties, as applicable, agree to pay such recovery;
- (B) Fixed fee as earned in accordance with Schedule F will be payable to New Commons; and
- (C) No percentage Development Fee will be payable to New Commons.

6. PRE-DEVELOPMENT PHASE

(a) **Workplan Items**

During the Pre-Development Phase, New Commons and BMAHC will use commercially reasonable efforts to carry out, or cause to be carried out, the following:

- (i) the terms and conditions on which the Lands, if any, will be acquired;
 - (ii) updating and refining the Project Design on a schematic basis;
 - (iii) preparing a Project Schedule in accordance with the information created or obtained during the Pre-Development Phase;
 - (iv) Facilitate and manage the procurement of a design/builder with BMAHC (including the drafting and issuance of a request for qualifications and a request for proposals and supporting the evaluation processes of both) resulting in the execution of a Design-Build Stipulated Price Contract;
 - (v) updating and refining the Capital Budget and Pro Forma to reflect the Project Design, financing and operating model, site conditions and other information created or obtained during the Pre-Development Phase;
 - (vi) Produce and manage a business plan consisting of Project budget and cashflow, schedule and development plan;
 - (vii) Support and engage in zoning/rezoning and other planning approvals if needed, in coordination with BMAHC and Town staff including management of all required pre-development studies and participation in related open house and public meetings, as required;
 - (viii) review the public and private financing options and deal structure and submit any necessary financing applications, obtain financing letters of interest; and
 - (ix) Securing funding and financing as required to undertake subsequent phases of development work.
- (b) **Workplan Responsibilities**

New Commons will coordinate work on the workplan items set out in section 6(a), and will be responsible for all deliverables referred to in that section, but will facilitate involvement of BMAHC, primarily through the PSC, all work during the Pre-Development Phase.

(c) **Working Capital**

BMAHC has obtained working capital for the Pre-Development Phase. If additional capital is required New Commons and BMAHC will work together to identify and secure funding in an amount sufficient to attain the objectives of the Pre-Development Phase, to the maximum amount set out in Schedule F

(d) **Development Fees**

During the Pre-Development Phase, New Commons and BMAHC will each earn Development Fees and receive payment of Development Fees in accordance with Schedule F Permitting **Green Light**

Within 60 days following completion of workplan items in section 6(a) and delivery to both BMAHC and New Commons of all deliverables referred to in that section, unless such period is extended by mutual agreement, the parties will decide, each in its sole discretion, whether to proceed to the Permitting Phase.

(e) **Termination**

If the parties have not declared Permitting Green Light within the period specified in section 0 or in any event by the Permitting Green Light Outside Date, this Agreement will automatically terminate, and in such event:

- (A) Working Capital advanced to date in accordance with this Agreement by New Commons will be recoverable to the extent BMAHC and any third parties, as applicable, agree to pay such recovery;
- (B) no additional Development Fees will be payable to New Commons or BMAHC.

7. PERMITTING PHASE

(a) **Workplan items**

During the Permitted Phase, New Commons and BMAHC will use commercially reasonable efforts to carry out, or cause to be carried out, the following:

- (i) if applicable, entering into definitive, binding agreements by which the Lands will be acquired, subject to no conditions other than the declaration of Construction Green Light, unless otherwise agreed by the parties;
- (ii) supporting stakeholder and community engagement and updating and refining the Project Design to a level sufficient to obtain the Official Plan, Zoning and Site Plan Approvals, as applicable;

- (iii) obtaining the Official Plan, Zoning and Site Plan Approvals, subject (where applicable) to conditions within the control of BMAHC and/or New Commons;
- (iv) meeting all conditions specified in connection with any Official Plan, Zoning, and Site Plan approvals that are capable of being met during the Permitting Phase;
- (v) obtaining letters of interest or expressions of interest for capital funding, construction financing and permanent financing sufficient to complete and operate the Project in accordance with the Pro Forma;
- (vi) conducting a phase 2 environmental site assessment if recommended in the phase 1 environmental assessment obtained during the Feasibility Phase;
- (vii) obtaining expressions of interest in respect of Third Party Components, if the parties agree that the Project may contain such components;
- (viii) obtaining the Building Permits;
- (ix) if applicable, securing contracts for the purchase and sale of any Third Party Components, subject to no conditions other than the declaration of Construction Green Light, unless otherwise agreed by the parties;
- (x) if applicable, securing commitments from Project Equity Investors, subject to no conditions other than the declaration of Construction Green Light, unless otherwise agreed by the parties;
- (xi) securing conditional commitments in respect of the Debt Financing;
- (xii) meeting all conditions specified by lenders of the Debt Financing which are capable of being met during the Permitting Phase;
- (xiii) facilitate and manage the procurement of qualified design builder;
- (xiv) if applicable, finalizing any plans related to the relocation of residents and occupants of the Lands, and obtaining commitments in respect of any alternative accommodations in connection with such relocation;

- (xv) updating and refining the Project Schedule in accordance with the information created or obtained during the Permitting Phase; and
- (xvi) updating and refining the Capital Budget and Pro Forma to reflect the Project Design, financing and operating model, site conditions and other information created or obtained during the Permitting Phase.

(b) **Workplan Responsibilities**

New Commons will coordinate work on the workplan items set out in section 7(a), and will be responsible for all deliverables referred to in that section, but will facilitate involvement of BMAHC, primarily through the PSC, in all work during the Permitting Phase.

(c) **Working Capital**

During the Permitting Phase, New Commons will provide or obtain Working Capital in an amount sufficient to carry out its obligations in respect of the Permitting Phase as described above, to the maximum amount set out in Schedule F.

(d) **Security**

Should New Commons have provided Working Capital to the Project in excess of \$200,000 and BMAHC agrees, BMAHC will execute and deliver the New Commons Note and the New Commons Security in registrable form where appropriate. Any New Commons Security will be subordinate or will subordinate to other registered third-party security interests providing Project financing. All costs connected with both the New Commons Note and New Commons Security will be included in the Capital Budget.

(e) **Development Fees**

During the Permitting Phase, New Commons and BMAHC will each earn Development Fees and receive payment of Development Fees in accordance with Schedule F Construction **Green Light**

Unless this Agreement has been sooner terminated in accordance with section 7(f), on completion of the workplan items in section 7(a) the parties will proceed to the Construction Phase.

(f) **Termination**

- (i) If Construction Green Light has not occurred by the Construction Green Light Outside Date, then this Agreement will terminate and in such event:

- (A) New Commons will cancel the New Commons Note and release the New Commons Security;
- (B) Working Capital advanced by New Commons to date in accordance with this Agreement will be recoverable only to the extent the PARTNER and any third parties, as applicable, agree to pay such recovery;
- (C) no additional Development Fees will be payable to New Commons or BMAHC; and

Either party may in its discretion extend the Construction Green Light Outside Date by up to thirty (30) days.

- (ii) At any time from commencement of the Permitting Phase until the Construction Green Light Outside Date, BMAHC may terminate this Agreement and in such event:
 - (A) BMAHC will undertake best reasonable efforts to repay New Commons, as soon as possible and within five years from the date of such termination, all Working Capital advanced by New Commons to date or such amounts as BMAHC is able to repay in accordance with this agreement without putting the operations of BMAHC or its mission at risk;
 - (B) BMAHC will pay New Commons, as soon as possible and within five years from the date of such termination, fifty percent (50%) of all Development Fees earned by New Commons to date in accordance with this Agreement;
 - (C) on payment of all Working Capital and the Development Fees payable in accordance with this section, New Commons will cancel the New Commons Note and release any New Commons Security should either or both exist; and
 - (D) ownership of all Project Records created to date will vest exclusively in New Commons, notwithstanding any other provision of this Agreement to the contrary, until such time as New Commons has cancelled the New Commons Note and released the New Commons Security in accordance with this section 7(g)(iii), at which time ownership of such Project Records will vest exclusively in BMAHC.

8. CONSTRUCTION PHASE

(a) Workplan Items

During the Construction Phase, New Commons will use commercially reasonable efforts to carry out, or cause to be carried out, the following:

- (i) if applicable, complete the acquisition of the New Lands and, if necessary, consolidate the Lands and the New Lands;
- (ii) updating the Project Design as required in accordance with the issued Building Permits;
- (iii) work with BMAHC to finalize and execute a Design Build Stipulated Price Contract;
- (iv) updating and refining the Project Schedule in accordance with the information created or obtained during the Permitting Phase;
- (v) updating the Pro Forma based on competitive pricing of the Project;
- (vi) work with BMAHC to grant, register and perfect such security as may be required to secure the Debt Financing; and
- (vii) ensuring that construction of the Project is carried out and completed in compliance with this Agreement, the Design_Build Stipulated Price Contract, industry best practices, the Development Permits, the Building Permits, lending agreements, and any applicable requirements of Governmental Authorities.

(b) Continuing Co-operation

New Commons will carry out the workplan items set out in section 8(a), and will be responsible for all deliverables referred to in that section, but will continue to facilitate involvement of BMAHC, primarily through the PSC, in key decisions during the Construction Phase.

(c) **Liability of PARTNER**

BMAHC will execute documentation as reasonably necessary in relation to the Debt Financing, the security thereof, the Development Permits, the Building Permits, and the Design_Build Stipulated Price Contract. New Commons will make commercially reasonable efforts to protect BMAHC from liability to contractors, subcontractors, and lenders, by limiting their recourse to the Lands and the Project.

(d) **Other Rights and Obligations**

During the Construction Phase:

- (i) New Commons will take control of site pursuant to the Access Licence;
- (ii) New Commons will be entitled to recover accrued and outstanding Working Capital and Development Fees from advances pursuant to the Debt Financing; and
- (iii) To the extent that security has been provided by BMAHC for Working Capital loans provided by New Commons, New Commons Security will remain registered, in subordinate priority to security related to the Debt Financing.

9. COMPLETION PHASE

(a) **Transfer of Third Party Components**

If applicable, following Substantial Completion of the Third Party Components and the issuance of applicable Occupancy Permits:

- (i) the parties will take all actions required to subdivide and transfer title to the Third Party Components to purchaser(s) thereof; and
- (ii) pay down the Debt Financing from the net proceeds of the sale(s) of the Third Party Components.

(b) **Permanent Financing**

- (i) BMAHC will execute and deliver documentation as reasonably necessary in relation to the Permanent Financing and the security therefor and the discharge of security granted in relation to the Construction Financing.
- (ii) On receipt of the Permanent Financing, New Commons will:

- (A) pay out any amounts payable to the Project Equity Investors in accordance with applicable agreements; and
- (B) pay out any amounts payable to contractors under the Construction Contracts.

(c) **Occupancy by PARTNER**

BMAHC will take occupancy, management and control of BMAHC Components after all of the following have occurred:

- (iii) Substantial Completion of all components of the Project other than the Third Party Components (if any) has been declared;
- (iv) applicable Occupancy Permits have been issued; and
- (v) the Permanent Financing has been received.

(d) **Development Fees**

During the Completion Phase, New Commons and BMAHC will earn Development Fees in accordance with Schedule F and on completion of its obligations under this Article 9 (other than those set out in section 9(f)) will be entitled to payment therefor, including a reasonable estimate for performance of its obligations under section 9(f), as well as any other amounts remaining payable to it hereunder, from the proceeds of the Permanent Financing.

(e) **Project Wrap-Up**

On completion of the matters set out in sections 9(a) through 9(d), New Commons will:

- a. provide BMAHC with updated copies of the Project Records; and
- b. discharge the New Commons Security and provide BMAHC with evidence thereof.

(f) **Residual Obligations and Termination of Agreement**

Following completion of the matters set out in section 9(e), New Commons will continue to be responsible for ensuring the fulfillment of any residual obligations of contractors and suppliers under the Construction Contracts, including those related to deficiencies and warranties, until the expiry of the warranty period under the primary Construction Contract, at which time this Agreement will terminate.

10. DISPUTE RESOLUTION

(a) Direct Negotiation Proceedings

In the event of any dispute between the parties, the parties will use reasonable good faith efforts to engage in direct negotiations between New Commons and BMAHC, or their respective designates, no more than five calendar days after such dispute arises (or such longer period as the representatives may agree to in writing).

(b) Time Limit on Negotiation

If the parties fail to meet to carry out such negotiations within the period so limited in section 10(a) or the parties fail to resolve such dispute within 14 days after direct negotiations relating thereto has commenced (or such longer period as the representatives may agree to in writing), then the parties will resolve the dispute pursuant to section 10(c). However, in any event and despite any other provision of this Agreement to the contrary, the parties agree that any breach of this section 10(b) will not give rise to any liability for damages in contract, tort or any other basis or legal principle of any kind.

(c) Arbitration Proceedings

Subject only to section 10(a) and 10(b), all disputes are required to be resolved by arbitration and will be resolved in accordance with this section 10(c).

Whenever any party wishes to commence arbitration pursuant to this section, that party may do so in accordance with the following procedures:

- (i) the arbitration will be commenced and finally resolved by arbitration under the rules of the Arbitration Act, 1991 (Ontario) for domestic commercial arbitration;
- (ii) the arbitrator will be as agreed upon by the parties or, failing agreement, each party will appoint one arbitrator and the two arbitrators will select a third arbitrator;
- (iii) the arbitration will be conducted in the City of Toronto;
- (iv) the cost of the arbitration will be as determined by the arbitrator(s) and will be shared equally by the parties; and
- (v) the decision of the arbitrator(s) will be final and binding on all parties.

11. GENERAL

(a) Time is of the Essence

Time is of the essence of this Agreement and will remain of the essence notwithstanding any extension of time given under or in connection with this Agreement.

(b) Confidential Information

The parties will comply with all applicable Privacy Legislation and not disclose, directly or indirectly, any Confidential Information to any Person at any time, either during or after the termination of this Agreement, except as necessary for the performance of its obligations hereunder, as authorized in writing by the parties, or as required by applicable Laws and Regulations.

(c) Notices

- (i) Any notice required or permitted to be given by one party to another pursuant to this Agreement must be delivered, mailed, or e-mailed to that party's designated PSC Member, or such other Person, position, address as one party may advise the other from time to time or at any time in accordance with this or any other more specific provision of this Agreement.
- (ii) Any such notice is deemed to be received: (i) if delivered, at the time of delivery, (ii) if mailed, three calendar days after the deposit of the mail, provided that if there is any known or anticipated postal disruption, parties will use all methods permitted hereunder other than mailing, or (ii) if transmitted by e-mail, immediately upon acknowledgement of its receipt by the recipient (and will be deemed not to be delivered where the acknowledgement is in the nature of an automated or "auto-reply" notice that the recipient is currently out of the office or otherwise unable to respond promptly or at all to the e-mail unless and until the recipient sends a non-automated reply).

(d) Unavoidable Delay

Time periods for performance under this Agreement will be extended for periods of time during which the performance is delayed or prevented due to an Unavoidable Delay. This section does not apply to the performance of any obligations of a party to pay money in connection with this Agreement nor obligations of New Commons to provide Working Capital. Whenever a party is aware of an event or any circumstance which constitutes or could constitute an Unavoidable Delay, it will promptly provide the other party with a written notice of:

- (i) the particulars of the cause of any anticipated Unavoidable Delay;
- (ii) the anticipated length of the Unavoidable Delay; and
- (iii) steps that the notifying party intends to take to mitigate or overcome any delays caused by the actual or expected Unavoidable Delay.

(e) **Insurance**

New Commons will maintain (or, in the case of the professional liability errors and omissions policy, cause its professionals to obtain) the following policies of insurance:

- (i) during the term of this Agreement (the “Term”), fire insurance with extended coverage for all other risks and perils for an amount equal to 100% of the gross replacement cost of buildings existing on the Property as of the date hereof, without deduction for foundation and footings; such policy will include, inter alia, a replacement cost endorsement, coverage for direct and indirect damage resulting from leakage of fire protection equipment, and an endorsement to the effect that the policy will cover any additional costs of reconstruction as a result of enforcement of current building by-laws and regulations, but will not include any provision requiring reconstruction on same or adjacent sites;
- (ii) during the Term (subject to an extension of coverage for 24 months after substantial completion of the development for completed operations), project-specific wrap-up liability insurance with a limit of not less than \$10,000,000 aggregate, covering all contractors, subcontractors and trades, premises and operations liability, sudden and accidental pollution liability, liability with respect to the operations of New Commons’ contractors in connection with the development of the Lands, completed operations liability, blanket contractual liability and non-owned automobile liability insurance, and containing cross liability and severability of interest provisions;
- (iii) during the Term, commercial general liability insurance with a limit of not less than \$2,000,000 each occurrence and \$5,000,000 aggregate;

- (iv) during the Term and until final completion of the project, all risks builders course of construction insurance, including sewer back-up, flood and earthquake, for 100% of the estimated final construction cost of the Project, including reasonable soft costs;
- (v) during the Term and for a period of five additional years, professional liability errors and omissions insurance with a limit of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate; and
- (vi) during the Term, owned automobile insurance with a limit of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate.

Each policy of insurance required to be maintained under this Agreement will:

- (vii) other than the commercial general liability policy, the professional liability errors and omissions insurance and the owned automobile insurance, include as insureds, each as applicable, New Commons, New Commons' head contractors, all professionals engaged in construction of the Project, and all employees, agents, consultants and other persons engaged by such insureds, or any of them, in construction of the Project;
- (viii) other than the commercial general liability policy and the all risks builders' course of construction insurance, add as additional insureds, BMAHC and its Representatives and any lender providing financing for the Project;
- (ix) be placed with insurers licensed in Canada to provide insurance in the jurisdiction in which the Project is located and rated A- or higher by A.M. Best Company or equivalent;
- (x) be primary, provided that only one of the wrap up insurance policy or the commercial general liability policy will be primary;
- (xi) other than the commercial general liability policy and the all risks builders course of construction insurance, be endorsed to require the insurer to provide BMAHC with not less than 30 days' prior written notice of any cancellation, lapse, amendment restricting coverage or other adverse material change, unless otherwise agreed by BMAHC in writing; and
- (xii) provide for deductibles in commercially reasonable amounts.

New Commons will, at the signing of this agreement or at such later date as mutually agreed to, provide BMAHC with one or more certificates of insurance of every insurance policy required to be maintained by New Commons hereunder and any amendments thereto and extensions or renewals thereof, all certified true by an authorized representative of the respective insurer, and such other evidence of insurance as may be reasonably required by BMAHC, including copies of any insurance policies on written request by BMAHC.

In addition, New Commons will remain in good standing with WSIB for the duration of the contract. New Commons shall provide a current copy of their health and safety policy and a WSIB Clearance Certificate with the executed contract and at any time during the course of the contract.

(f) Third Party Claims

Each party will notify the other parties immediately upon the written threat or commencement of any actions or claims brought against that party, the outcome of which would affect the rights of any of the other parties under this Agreement, or the ability of that party to comply with its obligations under this Agreement.

(g) Additional Termination Provisions

If at any time a Default has occurred and is continuing under this Agreement, the non-defaulting Party shall give written notice to the defaulting Party specifying the Default in reasonable detail (the "Default Notice") and the non-defaulting Party may terminate this Agreement Twenty (20) Business Days after delivering such notice to the defaulting Party if such Default has not been cured.

Should either Party experience an Event of Insolvency, this Agreement shall be terminated.

(h) Waiver

The failure by either party to enforce at any time any of the terms of this Agreement, or the failure to require at any time strict performance by the other party of any of the terms of this Agreement, will in no way be construed to be a present or future waiver of the term, nor in any way affect the ability of any party to subsequently enforce the term. The express waiver by any party of any term must be in writing and signed by the waiving party. An express waiver will constitute a waiver of a future obligation to comply with the term only if there is an express reference to this effect.

(i) **No Partnership**

Nothing in this Agreement will create or be interpreted so as to create a partnership or any other form of relationship between any two of the parties other than covenantor and covenantee.

(j) **Further Assurances**

Each party on request of the other party will do and deliver or cause to be done and delivered all such further acts, documents, things and assurances as may be reasonably requested by the other party in order to perform the terms and the intent of this Agreement.

(k) **Successors and Assigns**

This Agreement will benefit and bind each party and its successors and permitted assigns.

(l) **Reasonableness**

Wherever in any provision of this Agreement either party is required or empowered to give its consent or approval or exercise its discretion, that party will not withhold such consent or approval nor exercise such discretion unreasonably or arbitrarily, unless the contrary intent is specifically expressed in such provision.

(m) Counterparts

Executed copies of this Agreement may be transferred by e-mail in counterparts pursuant to applicable legislation, all of which will be deemed originals and legally binding once delivered to the other parties' authorized e-mail addresses and such delivery is acknowledged by reply e-mail. Although not necessary to legally bind the parties, each party agrees to promptly circulate signed originals in sufficient number to the other party for record-keeping purposes after completing the e-mail execution and delivery. All counterparts when executed and delivered (by e-mail or in paper form) will be construed together to be an original and will constitute one and the same agreement.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS AGREEMENT, the parties have executed this document in the spaces provided below.

THE BLUE MOUNTAIN ATTAINABLE HOUSING CORPORATION

by its authorized signatory(ies):

Name:
Title:

Name:
Title:

NEW COMMONS DEVELOPMENT INC.

by its authorized signatory(ies):

Name:
Title:

Name:
Title:

SCHEDULE A DEFINED TERMS

“Access Licence” means a licence giving New Commons access to the Site, in the form attached at Schedule B.

“Building Permits” means any building permits to be applied for and obtained by New Commons in order to construct the Project.

“Completion Phase” means the period commencing on Substantial Completion of the Project and ending on fulfillment of the obligations of New Commons set out in section 9(e).

“Capital Budget” means the total design and construction costs of the Project as shown in the Pro Forma.

“Confidential Information” means all information, documentation or knowledge, in any form, not generally known to the public, obtained directly or indirectly from the parties, or any one of them, in connection with this Agreement, including:

- (i) personal information about an identifiable individual, including but not limited to employee names, addresses and identification numbers,
- (ii) proprietary information including, but not limited to, any software, source code, patent, trademark, copyright, trade name or trade secrets,
- (iii) financial information, and
- (iv) any other similar information that exists or may arise in the future.

“Consent” means a consent, approval or agreement of a party, as applicable.

“Construction Contracts” means all contracts governing construction of the Project.

“Construction Financing” means the construction financing comprising part of the Debt Financing.

“Construction Green Light” means the determination that the Project will proceed to the Construction Phase in accordance with section 0.

“Construction Green Light Outside Date” means the date designated as such in Schedule F, for purposes of Section 7(f), as such date may be extended or adjusted by mutual agreement between the parties from time to time.

“Construction Phase” means the period commencing on Construction Green Light and ending on Substantial Completion of the Project.

“Debt Financing” means construction and take-out financing arranged for the Project on market terms such that the return of and return on such financing is paid from the operating revenues of the Project in priority to all other financing.

“Default” means: the failure of a Party to perform its duties and discharge its obligations under this Agreement which has not been cured to the satisfaction of the non-defaulting Party within twenty (20) Business Days of written notice of such default of the Owner; or a breach by a Party of any trust or fiduciary duty for funds received by the Party or the Party’s refusal to account for such funds within three (3) Business Days of a request from the other Party; or an Event of Insolvency; or theft, embezzlement, defalcation or other act or omission constituting willful misconduct or gross negligence of the Party or those for whom the Party is in law responsible in connection with the Project.

“Design-Build Stipulated Price Contract” means is a standard prime contract between an owner and the design-builder where the design-builder provides the design services and performs the works under one agreement, for a single, pre-determined stipulated or fixed price.

“Development Fees” means the development fees set out in Schedule F and earned by and payable to the parties in accordance with this Agreement.

“Development Permits” means any development permits to be applied for and obtained in order to develop the Project.

“Environmental Contamination” means any substance which is capable of causing pollution or contamination to air, land, water and ground water (but excluding buildings and other improvement in accordance with the definition of Hazardous Construction Materials below) and includes explosives, radioactive materials, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive or toxic substances, hazardous waste, special waste, waste (as defined in the *Environmental Management Act* (B.C.)), polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them.]

(n) “Event of Insolvency” means, with respect to either of the Parties, the occurrence of any one or more of the following events:

(i) if, other than as expressly permitted hereby, the Party shall:

(A) be wound up, dissolved or liquidated, or become subject to the provisions of the Winding-Up Act (Canada), as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor;

(B) file a notice of intention, make a general assignment for the benefit of its creditors or a proposal under the Bankruptcy and Insolvency Act (Canada), as amended or re-enacted from time to time, or seek to be declared bankrupt or insolvent; or

(C) propose a compromise or arrangement under the Companies' Creditors Arrangement Act (Canada) or any similar legislation, from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future Bankruptcy and Insolvency Act (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors; or

(ii) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against either of the Parties seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to companies' bankruptcy, insolvency or other relief for or against debtors, and the Party shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 30 days (whether or not consecutive) from the day of entry thereof; or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers shall be appointed for the Party or of all or any substantial part of its property with the consent or acquiescence of the Party or such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(iii) if the Party shall be insolvent.

"Feasibility Phase" means the period commencing on execution and delivery of this Agreement and ending on Pre-Development Green Light or termination of this Agreement in accordance with Section 5(g).

"Feasibility Study" means a feasibility study in respect of the Project.

"Financial Records" means comprehensive accounting records in respect of the Project, including underlying ledgers and bank records, segregating Project-related revenues and expenses from other revenues and expenses of New Commons, all in accordance with GAAP.

"GAAP" means generally accepted accounting principles as determined and published from time to time by the Chartered Professional Accountants of Canada (and any successor professional body).

“Governmental Authority” means any federal, provincial, regional, municipal or local government or governmental authority or any political subdivision of any of them, or any entity, authority, agency or court or Person exercising executive, legislative, judicial, regulatory or administrative functions on behalf of such government, governmental authority, office or official or other political subdivision thereof.

“Hazardous Construction Materials” means (but only with respect to buildings and other improvements) any substance which is capable of causing pollution or contamination to air, land, water and ground water and includes, without limitation, explosives, radioactive materials, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive or toxic substances, hazardous waste, special waste, waste (as defined in the Environmental Management Act (B.C.)), polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them.]

“Lands” means the means those lands and premises, to be owned or controlled by BMAHC and to be used for the purpose of carrying out the Project, located at 171 King Street, East Thornbury, ON and legally described as: in The Blue Mountains, and legally described as LT 5 NE/S ARTHUR ST, 6 NE/S ARTHUR ST, 7 NE/S ARTHUR ST PL THORNBURY; PTLT 5 SW/S KING ST, 6 SW/S KING ST, 7 SW/S KING ST PL THORNBURY AS INR279682; S/T R133523; THE BLUE MOUNTAINS

“Law” or “Regulations” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice and other lawful requirements of any federal, provincial, municipal or other Governmental Authority, including the principles of common law and equity, and including all applicable guidelines and standards with respect to the above as adopted by any of those Governmental Authorities from time to time.

“Losses” means all direct, indirect and consequential losses, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement).

“New Commons Note” means a promissory note made by BMAHC in favour of New Commons in the aggregate amount of Working Capital expected to have accrued until the end of the Permitting Phase, based on the most recent Pro Forma approved by the parties.

“New Commons Security” means a mortgage charging the Lands in favour of New Commons, in form satisfactory to New Commons, acting reasonably, to be executed, delivered, and registered in accordance with section **Error! Reference source not found.** and securing any amount owing to New Commons by BMAHC pursuant to this Agreement.

“New Lands” means those lands and premises, if any, which BMAHC and New Commons agree to acquire or lease for the purpose of carrying out the Project.

“Occupancy Permits” means any occupancy permits required prior to occupancy of applicable components of the Project.

“Party or Parties” means, in the singular, either New Commons or BMAHC, and in the plural, both of New Commons and BMAHC.

“Permanent Financing” means the take-out financing comprising part of the Debt Financing.

“Permitting Green Light” means the agreement of the parties to proceed with the Permitting Phase in accordance with section 0 .

“Permitting Green Light Outside Date” means the date designated as such in Schedule F, for purposes of Section 6(e), as such date may be extended or adjusted by mutual agreement between the parties from time to time.

“Permitting Phase” means the period commencing on Permitting Green Light and ending on Construction Green Light or termination of this Agreement in accordance with section 0.

“Person” includes an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization or any trustee, executor, administrator or other legal representative.

“Pre-Development Green Light” means the agreement of the parties to proceed with the Pre-Development Phase in accordance with section 5(f).

“Pre-Development Green Light Outside Date” means the date designated as such in Schedule F, for purposes of Section 5(g), as such date may be extended or adjusted by mutual agreement between the parties from time to time.

“Pre-Development Phase” means the period commencing on Pre-Development Green Light and ending on Permitting Green Light or termination of this Agreement in accordance with section 6(e).

“Property Documents” means appraisals, studies, tests, surveys, as-built drawings, real property reports, investigations, specifications, drawings, surveys, applications, permits, notices, service contracts, property tax assessments for the three most recent years, and correspondence with any Governmental Authorities.

“Privacy Legislation” means any Laws and Regulations regulating the storage or use of personally identifiable information of individuals applicable to either or both of the parties.

“Pro Forma” means a cash flow projection for the Project prepared in accordance with the principles set out in section 4(c), as may be updated, based on the Project Design, the Capital Budget, and all known factors and conditions, revised and approved by the parties from time to time in accordance with this Agreement.

“Project” means the project proposed to be constructed on the Lands in accordance with this Agreement, as described in the Project Charter attached at Schedule D, as such Schedules may be modified and refined in accordance with this Agreement.

“Project Charter” means the project charter attached at Schedule D.

“Project Design” means a design for the Project prepared in accordance with industry best practices applicable to each Project Phase, as may be updated, revised and approved by the parties from time to time in accordance with this Agreement.

“Project Equity” means cash invested in the Project by Project Equity Investors on market terms such that the return of and return on such financing is paid from the Permanent Financing or from the operating revenues of the Project, as described in the Pro Forma for the Project.

“Project Equity Investor” means a Person which commits to invest Project Equity.

“Project Phase” means the Feasibility Phase, the Pre-Development Phase, the Permitting Phase, the Construction Phase, or the Completion Phase, as applicable.

“Project Records” means the Financial Records, schedule records, meeting records, meeting minutes, contracts, insurance, correspondence, plans, permits and authorizations and all other information held by New Commons relating to the Project, excluding the Property Documents and any communication subject to solicitor-client privilege.

“Project Schedule” means the schedule of Project milestones prepared by New Commons and updated from time to time in accordance with this Agreement.

“Property Documents” has the meaning given in section 4(f).

“PSC” has the meaning given in section 3.

“PSC Member” has the meaning given in section 3.

“Representatives” means the directors, officers, employees, contractors, subcontractors, agents, licensees, invitees, and permittees of the applicable party, but excludes members of the public except as otherwise expressly provided in this Agreement.

“BMAHC Components” means all units, facilities and components of the Project to be transferred to PARTNER in accordance with Article 9.

“Substantial Completion” means substantial completion of construction as certified by issuance of a certificate of completion.

“Third Party Components” means components of the Project intended to be owned by third parties.

“Unavoidable Delay” means any circumstances beyond a party’s reasonable control, including failure to obtain any required regulatory approval or other governmental action impeding the Project, acts of God, strikes/lockouts, war, or other strife but excluding any lockouts, strikes or other disputes between BMAHC or New Commons and their respective employees, or anything which causes Project Cancellation.

“Working Capital” means funds advanced or obtained by New Commons pursuant to this Agreement to pay expenses (other than Development Fees) incurred in furtherance of the Project, at the times and within the limits set out in Schedule F.

“Zoning Approvals” means any zoning approvals to be applied for and obtained by New Commons in order to develop the Project.

SCHEDULE B
TERMS OF REFERENCE – FEASIBILITY STUDY

A Feasibility Study will be completed through the identification and development of the following:

- (i) target population;
- (ii) number and type of units and other facilities to be provided in the Project;
- (iii) preliminary revenue and rent projection; See Schedule E.
- (iv) phase 1 environmental site assessment;
- (v) preliminary construction and capital budget; See Schedule E.
- (vi) preliminary development and operating Pro Forma See Schedule E.

**SCHEDULE C
ACCESS LICENCE**

This Agreement is made as of ●

BETWEEN:

THE BLUE MOUNTAINS ATTAINABLE HOUSING CORPORATION, a non profit corporation without share capital created under the Corporations Act of Ontario and having its office at 32 Mill Street, Thornbury, ON N0H 2P0 BMAHC is a ("**BMAHC**")

AND:

NEW COMMONS DEVELOPMENT INC., a corporation incorporated under the *Canada Not-for-profit Corporations Act* and having its office at 119 Spadina Avenue, Toronto ON M5V 2L1 ("**New Commons**")

BACKGROUND:

- A. The Sponsor is the registered and beneficial owner of those lands and premises located in PIN (the "**Lands**");
- B. BMAHC and New Commons have agreed to co-operatively pursue the development of the Lands (the "**Project**"); and
- C. BMAHC has agreed to grant New Commons a license to occupy and use the Lands on the terms and conditions set out in this Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the covenants and conditions set out below and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed to by the parties, BMAHC and New Commons now agree as follows:

1. Grant of Licence/Term

- (a) Subject always to the other terms and conditions of this Agreement, any third party tenancy or licence agreement, and this Agreement, BMAHC now grants to New Commons a non-exclusive licence (the “**Licence**”) to use the Lands for the purpose only of developing the Project and performing its obligations under this Agreement, PROVIDED ALWAYS THAT this Licence will automatically be cancelled upon termination of this Agreement or substantial completion of the Project.
- (b) New Commons must give at least three days’ prior written notice to BMAHC prior to exercising its access rights to the Lands and such access will then be granted or delayed in accordance with the rights of any existing third party tenant or licensee.
- (c) BMAHC will, on request, provide New Commons with a copy of any existing third party tenancy or licence agreement.

2. Licence Fee/Permits

- (a) Licence Fee

New Commons will pay BMAHC a one-time license fee of \$10.00 (not including applicable taxes) for the use of the Lands. However, New Commons remains fully liable for all other costs and fees payable under all applicable laws and regulations (excluding lost rental revenue) associated with New Commons’s access to and use of the Lands.

- (b) Permits

New Commons will obtain and comply with all required permits and pay all applicable permit fees associated with its use of the Lands and will otherwise comply with the requirements of this Agreement.

3. No Assignment

The rights granted to New Commons regarding the Lands are personal to New Commons and except as set out herein, New Commons may not assign, license, part with, or otherwise transfer these rights without the prior written Consent of BMAHC, not to be unreasonably withheld.

4. No Damage

New Commons will, at its own cost:

- (a) not permit or suffer waste or injury to the Lands or any part thereof and will not use or occupy or permit to be used or occupied the Lands or any part thereof for any unlawful purpose;
- (b) maintain the Lands in a sanitary, neat, tidy and safe condition and free from nuisance at all times;
- (c) not release, dump, spill or place, or allow to be released, dumped, spilled or released on the Lands any substance which is capable of causing pollution or contamination to air, land, water and ground water; and
- (d) repair any damage caused to the Lands by New Commons or its directors, officers, employees, contractors, subcontractors, agents, licensees, invitees, and permittees ("**Representatives**").

5. Indemnity

BMAHC will release, indemnify and save harmless New Commons and its Representatives from and against all direct, indirect and consequential losses, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) of any nature whatsoever relating to or arising from New Commons' occupation and/or use of the Lands and from all actions, claims, demands, suits and judgments against New Commons or its Representatives on account of injury or death occurring in or about the Lands and damage to or loss of property occurring in or about the Lands or relating to or arising from New Commons' occupation and/or use of the Lands (including claims under any applicable legislation in respect of occupier's liability), except to the extent caused by the acts or omissions of New Commons or those for whom it is responsible at law.

6. Insurance

New Commons will maintain (or, in the case of the professional liability errors and omissions policy, cause its professionals to obtain) the following policies of insurance:

- (a) during the term of this Agreement (the “**Term**”), fire insurance with extended coverage for all other risks and perils for an amount equal to 100% of the gross replacement cost of buildings existing on the Property as of the date hereof, without deduction for foundation and footings; such policy will include, inter alia, a replacement cost endorsement, coverage for direct and indirect damage resulting from leakage of fire protection equipment, and an endorsement to the effect that the policy will cover any additional costs of reconstruction as a result of enforcement of current building by-laws and regulations, but will not include any provision requiring reconstruction on same or adjacent sites;
- (b) during the Term (subject to an extension of coverage for 24 months after substantial completion of the development for completed operations), project-specific wrap-up liability insurance with a limit of not less than \$10,000,000 aggregate, covering all contractors, subcontractors and trades, premises and operations liability, sudden and accidental pollution liability, liability with respect to the operations of New Commons’ contractors in connection with the development of the Lands, completed operations liability, blanket contractual liability and non-owned automobile liability insurance, and containing cross liability and severability of interest provisions;
- (c) during the Term, commercial general liability insurance with a limit of not less than \$2,000,000 each occurrence and \$5,000,000 aggregate;
- (d) during the Term and until final completion of the project, all risks builders’ course of construction insurance, including sewer back-up, flood and earthquake, for 100% of the estimated final construction cost of the Project, including reasonable soft costs;
- (e) during the Term and for a period of five additional years, professional liability errors and omissions insurance with a limit of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate; and
- (f) during the Term, owned automobile insurance with a limit of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate.

Each policy of insurance required to be maintained under this Agreement will:

- (g) other than the commercial general liability policy, the professional liability errors and omissions insurance and the owned automobile insurance, include as insureds, each as applicable, New Commons, New Commons’ head contractors, all professionals engaged in construction of the Project, and all employees, agents, consultants and other persons engaged by such insureds, or any of them, in construction of the Project;

- (h) other than the commercial general liability policy and the all risks builders course of construction insurance, add as additional insureds, BMAHC and its Representatives and any lender providing financing for the Project;
- (i) be placed with insurers licensed in Canada to provide insurance in the jurisdiction in which the Project is located and rated A- or higher by A.M. Best Company or equivalent;
- (j) be primary, provided that only one of the wrap up insurance policy or the commercial general liability policy will be primary;
- (k) other than the commercial general liability policy and the all risks builders course of construction insurance, be endorsed to require the insurer to provide BMAHC with not less than 30 days' prior written notice of any cancellation, lapse, amendment restricting coverage or other adverse material change, unless otherwise agreed by BMAHC in writing; and
- (l) provide for deductibles in commercially reasonable amounts.

New Commons will, prior to commencement of construction of the Project, provide BMAHC with one or more certificates of insurance of every insurance policy required to be maintained by New Commons hereunder and any amendments thereto and extensions or renewals thereof, all certified true by an authorized representative of the respective insurer, and such other evidence of insurance as may be reasonably required by BMAHC, including copies of any insurance policies on written request by BMAHC.

In addition, New Commons will remain in good standing with WSIB for the duration of the contract. New Commons shall provide a current copy of their health and safety policy and a WSIB Clearance Certificate with the executed contract and at any time during the course of the contract.

7. Builder's Liens

New Commons will not permit any builders or similar liens, charges or encumbrances to be registered on title to the Lands. If any such liens, charge or encumbrance are registered on title to the Lands, New Commons will immediately pay into court or otherwise the amount required to discharge same.

8. Construction

It is the express intention of BMAHC and New Commons that New Commons will, as “owner” on behalf of and in the name of BMAHC, enter into and administer a construction contract for the Project and BMAHC hereby appoints New Commons as its agent for such purpose, with full power to execute any instrument, document or plan in respect thereof.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS AGREEMENT, the parties have executed this document in the spaces provided below.

THE BLUE MOUNTAIN ATTAINABLE HOUSING CORPORATION
by its authorized signatory(ies):

Name:
Title:

Name:
Title:

NEW COMMONS DEVELOPMENT INC.
by its authorized signatory(ies):

Name:
Title:

Name:
Title:

SCHEDULE D
PROJECT CHARTER – 171 KING STREET E. IN THORNBURY, ONTARIO

TO BE COMPLETED.

**SCHEDULE E
PRO FORMA**

TO BE COMPLETED.

SCHEDULE F
PROJECT SCHEDULE, WORKING CAPITAL, AND DEVELOPMENT FEES

Schedule F1.1

TO BE COMPLETED.

Schedule F1.2 – Working Capital

BMAHC has obtained pre-development capital from the CMHC Seed program and FCM.

BMAHC and New Commons Development will be responsible for arranging any required additional Working Capital.

Working Capital funds provided by New Commons will be repaid to New Commons with 2% accrued simple interest with the closing on construction financing and the start of construction.

No Working Capital funds will be spent by New Commons without the prior written approval of BMAHC.

Schedule F 1.3 – Development Fees

New Commons and BMAHC will earn development fees as per the below:

Fee Structure	Revised Amount
Development Management Services Fixed Fee	New Commons: \$21,000 (paid \$3,500 per month, for 6 months) BMAHC: Nil
Development Management Services Percentage Fee	New Commons: 3% BMAHC: 2% Total percentage fee 5% of Project Costs

For clarity, the Development Management Services Fixed Fee of \$3,500 per month will be paid for first six months of work during either the Feasibility or Pre-Development Phases. If the Feasibility and Pre-Development Phases take longer

than six months, then compensation for this additional work will be recovered by the Parties by the Development Management Percentage Fee.

Feasibility and Pre-development Scope under the Fixed Fee:

- Support and engage in zoning/rezoning and other planning approvals in coordination with BMAHC and Town staff. Work to include management of all required pre-development studies and planning and participation in related open house and public meetings, resulting in approved Project zoning and official plan amendment, if any required;
- Facilitate and manage procurement of the design builder with BMAHC (including the drafting and issuance of a request for qualifications and a request for proposals and supporting the evaluation processes of both) resulting in the execution of a CCDC 14 – Design-Build Stipulated Price Contract;
- Produce and manage a business plan consisting of project budget and cashflow, schedule and development plan;
- Manage grant deliverables related to FCM funding and reporting including the feasibility study to assess energy requirements and outcomes of the project entailing an evaluative process, cost benefit analysis, recommended actions, and alignment with design build contract; and
- Provide other development management services to BMAHC as needed and serve as liaison with various stakeholders including participation in community engagement.

The Development Management Percentage Fee will be earned by BMAHC and New Commons as follows:

- 25% at issuance of development permits,
- 25% at commitment of 90% of project financing,
- 25% at execution of the Design-Build Stipulated Price Contract, and
- 25% at the Substantial Completion.

The Development Management Percentage Fee will be paid to BMAHC and New Commons as follows:

- 50% at close of construction financing;
- 25% at substantial completion;
- 25% at stabilized occupancy.