

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

ONE ROOF COMMUNITY HOUSING

for

(address)_____

Dated as of _____, 201_

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the Director of Planning and Construction Services ("Director"), by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and One Roof Community Housing, a 501(c)3 not-for-profit corporation created and existing under the laws of the State of Minnesota ("Developer").

RECITALS

WHEREAS, Developer is the owner of property located at _____ in Duluth, Minnesota, legally described on the attached Exhibit A (the "Property"); and

WHEREAS, Developer has been awarded Fiscal Year 2017 funding by the City through the US Department of Housing and Urban Development ("HUD") HOME Investment Partnership program ("HOME Funding"); and

WHEREAS, pursuant to City Council resolution 17-____, the City committed such HOME Funding in an amount of up to \$292,000 to Developer for acquisition and rehabilitation of ten houses in the City, and required individual development agreements for each house to be rehabilitated; and

WHEREAS, Developer has been certified as of __ (Date) ____ a Community Housing Development Organization (a "CHDO") by the City for FY 2017 program activities by the Developer; and

WHEREAS, Developer desires to rehabilitate the property and principle dwelling unit on the site, enroll the property and dwelling unit in Developer's Community Land Trust program, and sell the dwelling unit to an eligible homebuyer (the "Project"); and

WHEREAS, Developer has submitted to the City a Scope of Work attached hereto as Exhibit B for the Project, and requesting allocation of an amount of \$_____ in HOME Funding for repairs to the Property (the "Project Scope"); and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

1. Developer's Duty and Compliance. The project must be in compliance with all applicable ordinances, rules, regulations and laws of the City, State of Minnesota, and HUD. Developer shall be responsible for obtaining all relevant governmental approvals, including environmental clearance by the Director or designee, and all required building permits.

2. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the construction and site work of the Project.

4. Required Improvements. Developer hereby agrees to complete the following improvements to the Property:

A. Developer agrees to design and construct improvements to the property consistent with the work described in Exhibit B, Project Scope.

B. Property shall be certified lead-free consistent with the requirements and recommendations developed by HUD for rehabilitation.

...

(the "Required Improvements").

6. Inspections. All Required Improvements shall be made in accordance with City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Following reasonable notice, Developer hereby grants City, its agents, employees and contractors a license to enter the Property and perform all inspections deemed appropriate by the City in connection with this Agreement.

8. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

A. Institute an action to specifically enforce performance of any term of this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.

B. Refuse to issue building permits for construction on the Property.

No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

9. Insurance. Developer agrees to purchase and maintain, during the term of this

Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,000,000
Auto Liability (owned, hired and non-owned)	\$1,000,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value
Umbrella or Excess Liability	\$10,000,000
Professional Liability	\$1,000,000
Environmental Liability	\$1,000,000

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

10. General Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

11. Environmental Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against

any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition existing on the Property prior to commencement of construction of the Required Improvements or the Project relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

12. Notices. Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
 Attn: Director of Planning and Construction Services
 208 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Developer: One Roof Community Housing
 Attn: Jim Philbin
 12 E 4th Street
 Duluth, MN 55802

13. Binding Effect. This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

14. Term. The term of this Agreement shall commence upon the date of attestation by the Director of Planning and Construction Services and shall continue until the City Director of Planning and Construction Services and Building Official have certified in writing that the Required Improvements have been constructed in accordance with all design and construction standards.

At Developer's request, City will issue a written certificate of completion in recordable form acknowledging that the Required Improvements have been completed. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

15. Assignment. Developer may not assign this Agreement without the written approval of the City.

16. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota and of the United States of America, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

17. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

18. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

19. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota
Municipal Corporation

ONE ROOF
COMMUNITY HOUSING

By _____

By _____

Date _____

Date _____

Keith Hamre
Its Director of Planning &
Construction Services

Jeff Corey
Its Executive Director

Attest:

By _____

Its City Clerk

(date)

Countersigned:

Its Auditor

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, the Executive Director of One Roof Community Housing, a Minnesota 501(c)3 not-for-profit entity, on behalf of the company.

Notary Public

EXHIBIT A

Legal Description of the Land

EXHIBIT B

Scope of Work