

Loan Agreement - Revolving Line of Loan

Date: _____, 2015.

Name of Borrower: THE MOUNT COMMUNITY CENTRE

Address of Borrower: c/o Stephen P. Kylie Law Office
206 Aylmer Street North,
P.O. Box 1900
Peterborough, Ontario K9J 7X7
Attention: Directors of The Mount Community Centre

Dear Directors:

RE: ESTABLISHMENT OF REVOLVING LOAN FACILITY IN FAVOUR OF THE MOUNT COMMUNITY CENTRE (TMCC)

The Corporation of the County of Peterborough (the "**Lender**") offers to establish a revolving loan facility in the amount and on the terms set out below to THE MOUNT COMMUNITY CENTRE (hereinafter referred to as the "**Borrower**" or "**TMCC**").

Loan Facility - Revolving

1. \$1,700,000.00 in Canadian currency (the "**Loan**").

Purpose

2. To be used by the Borrower to assist in the construction of forty-seven (47) affordable apartments within Phase I of the redevelopment of the former Mount St. Joseph property owned by the Borrower, and known municipally as 1545 Monaghan Road, Peterborough, Ontario (the "**Project**").

Interest Rate

3. Interest at the rate of 2.5% per annum on the outstanding principal amount and interest on overdue interest compounded monthly and payable, before and after demand, default, judgment and maturity until repaid in full.

Term and Maturity

4. The Loan shall have due and payable on **April 15, 2017** (the "**Maturity Date**"). The continuation of the Loan throughout the term hereof is, however, subject to periodic reviews satisfactory to the Lender and subject to there being no adverse change to the condition (financial or otherwise) of the Borrower. On the Maturity Date, the whole of the principal balance outstanding together with accrued interest will become immediately due and payable. PROVIDED THAT the Borrower when not in default hereunder shall have the privilege of paying the whole or any part or parts of the Loan at any time or times without notice, penalty or bonus.

Calculation and Payment of Interest

5. Interest will accrue on the outstanding principal amount and interest on overdue interest compounded monthly and will be payable on the Maturity Date.

Availment

6. Advances up to a maximum aggregate principal amount of \$1,700,000.00 will be provided to the Borrower subject to the satisfaction by the Borrower of the terms and conditions of this Loan Agreement

Security

7. The Borrower shall deliver to the Lender the following security documents (the "**Security**") as continuing security for the payment and performance of all present and future, direct and indirect obligations of the Borrower to the Lender, along with applicable registrations, filings and opinion of counsel in form and substance satisfactory to the Lender prior to the first advance to be made to the Borrower.

- (a) grid promissory note in the principal amount of \$1,700,000.00 in favour of the Lender;
- (b) second charge/mortgage of land registered on title of the lands and premises municipally known as 1545 Monaghan Road, Peterborough, Ontario, and legally described as PT LT 12 CON 13 (NORTH MONAGHAN), PT LTS 1, 2, 3, 4, 5, PL 70, LTS 6, 7, 8, 9 PL 70 BEING PART 4 PL 45R14153; PT LTS 1, 2, 4, 5, PL 70, BEING PART 5 PL 45R14153, SIT R560471; T/W RIGHT OF WAY OVER PT LT 12 CON 13 (NORTH MONAGHAN), BEING PART 3 PL 45R14153 AS IN PE64721; PETERBOROUGH, being all of Property Identifier Number 28063 - 0278 (LT) (hereinafter referred to as the "**Property**"), subject only to the permitted encumbrances as summarized on Schedule "A" attached hereto (hereinafter referred to as the "**permitted encumbrances**");
- (c) general assignment of rents registered on title of the Property, subject only to the permitted encumbrances;
- (d) commitment to title insure in respect of the Property noting the Lender as second mortgagee and evidence of payment of title insurance premium by the Borrower;
- (e) general security agreement in favour of the Lender;
- (f) assignment of material contract in favour of the Lender;
- (g) assignment of insurance in favour of the Lender and acknowledged by the applicable insurer(s);
- (h) one or more certificates of insurance showing all of the insurance policies of the Borrower (including property, builders all risk and contractor liability and general liability insurance) and confirming that the policies include a standard mortgage clause approved by the Insurance Bureau of Canada; and the Lender shall be noted as second mortgagee and loss payee on all property insurance policies and the Lender shall be noted as an additional insured under liability insurance policies;
- (i) officer's certificate and resolution of the directors of the Borrower;
- (j) opinion from the Borrower's counsel;
- (k) priorities agreement between the Lender and The City of Peterborough; and
- (l) any other documents reasonably required by the Lender or its counsel.

Conditions Precedent

8. The Lender shall have no obligation to make any advance to the Borrower unless prior to the making of an advance, the terms and conditions in this section have been fulfilled to the full satisfaction of the Lender and the Lender's counsel. The Borrower shall have performed and provided to the Lender and the Lender

shall be satisfied with its due diligence in respect of the Borrower and its review of the following:

- (a) prior to the first advance:
 - (i) financial statements of the Borrower;
 - (ii) copies of the final construction budget, sources and uses of funds and drawdown schedule for the development and completion of the Project;
 - (iii) report from a qualified architect regarding the cost to complete the Project in accordance with approved plans and specifications along with reliance letter permitting the Lender to rely on such report;
 - (iv) copies of all material agreements (including without limitation design, build and fixed price construction contracts), building permits and all other necessary permits, consents and approvals required for the development, construction and completion of the Project; and
 - (v) copy of a phase I environmental assessment report in respect of the Property addressed to the Lender or accompanied with a reliance letter permitting the Lender to rely on such report(s), if available;
- (b) prior to each subsequent advance:
 - (i) a sub-search in respect of the Property and execution search against the Borrower confirming no liens or encumbrances registered prior or subsequent to the Lender's security interest other than the permitted encumbrances;
 - (ii) a tax clearance certificate in respect of the Property;
 - (iii) a "Certificate of Payment" signed by an authorized officer of the Borrower and including copies of all invoices issued in connection with the construction and development of the Project as at the date of such certificate and confirming that the representations and warranties contained herein continue to be true and correct in all material respects as if made on the date of such advance;
 - (iv) a certificate signed by an authorized officer of the Borrower which shall provide information required or requested by the Lender, and in any case, shall outline the status of the Project, work completed, cost to complete, any holdback amounts and accounts payable that are not being paid; such certificate to be certified by a qualified architect;
 - (v) a written certification addressed to the Lender from a qualified architect confirming that the unused balance of the Loan along with funds from The City of Peterborough will be sufficient to complete the Project in accordance with the approved plans and specifications;
 - (vi) an executed request for funds from the Borrower submitted to the Lender at least three (3) days prior to any requested advance of funds and the Borrower shall, in such request for funds, confirm that the Borrower is in compliance with all covenants contained herein;
 - (vii) an amount equal to 10% holdback as required under the *Construction Lien Act* (Ontario) shall be retained by the Lender's counsel and the holdback amounts will be released if a qualified architect provides a written certification to the Lender's counsel confirming that the requirements under the *Construction Lien Act* (Ontario) have been fulfilled and requesting for the release of the applicable hold back amount to be released in compliance with such legislation; and
- (c) for the final advance, the documents listed in section 8(b) above along with the following:

- (i) a "Certificate of Substantial Completion" signed by a qualified architect and addressed to the Lender confirming that the Project is completed in accordance with approved plans and specifications; and
- (ii) evidence of publication of the "Certificate of Substantial Completion" referenced in subsection 8(c)(i) hereof in all applicable publications and evidence that the 45 day lien period has expired.

Affirmative Covenants

9. Until all amounts payable in connection with the Loan have been paid in full, the Borrower agrees to do the following:

- (a) It will give the Lender prompt written notice of material adverse change in the condition (financial or otherwise) or business of the Borrower, or of any material loss, destruction or damage of or to any collateral subject to the Security.
- (b) It will insure and keep insured the collateral subject to the Security with coverage acceptable to the Lender and with loss payable to the Lender as its interest may appear.
- (c) It will duly and punctually pay to the Lender, the principal, accrued interest, and all other monies payable on the dates, at the place, in the amounts and in the manner mentioned in this Loan Agreement.
- (d) It will duly and punctually pay when due all taxes, rates, levies, assessments and governmental charges, fees and dues levied, assessed or imposed in respect of its property which are material to the conduct of its business, and deliver to the Lender upon request receipts evidencing such payments.
- (e) Comply with applicable laws and covenants contained in any permits and material agreements to which it is a party;
- (f) It will give the Lender written notice of any Event of Default (as defined below) immediately on the occurrence of such an event.

Negative Covenants

10. Until all amounts payable in connection with the Loan have been paid in full, the Borrower shall not, without the prior written consent of the Lender, do any of the following:

- (a) Change the general nature of the business of the Borrower or abandon the Project.
- (b) Create, incur or assume any indebtedness to any entity or grant or allow to exist any security interest or lien in respect of any of its property and assets, other than the permitted encumbrances.
- (c) Do any act which could adversely affect the enforceability or priority of the Security.
- (d) Amend, cancel or cause to be terminated any agreements or contract material to the development and completion of the Project.
- (e) Consolidate, amalgamate or merge with any other corporation or sell, lease, transfer or otherwise dispose of all or a substantial part of its assets.
- (f) Become obligated to any entity under any guarantee.
- (g) Make any payment in respect of principal, interest, fees or any other amounts in respect of any subordinated debt, unless the following conditions have been satisfied: (i) the payment is

expressly permitted pursuant to the relevant priorities agreement between the Lender and the subordinated lender, and (ii) no material adverse change would result or would have a reasonable likelihood of resulting in the Borrower's condition (financial or otherwise) if such payment is made.

Representations and Warranties

11. The Borrower represents and warrants to the Lender as follows :
- (a) The Borrower has full power, authority and legal right to execute and deliver this agreement and to perform all obligations of the Borrower provided for herein, and the execution and delivery of this agreement and the Security and notes required hereunder has been duly authorized by all necessary action on the part of the Borrower.
 - (b) The execution and delivery of this agreement and the performance by the Borrower of the terms hereof, including the borrowing of the Loan and the delivery of all the Security, do not and will not conflict with or result in any violation of or constitute a default under any agreement to which the Borrower is a party or otherwise bound or any law or governmental rule or regulation.
 - (c) There are no actions, suits or proceedings pending or threatened against the Borrower before any court or government department, commission, board or agency which may materially adversely affect the condition (financial or otherwise) or operations of the Borrower.
 - (d) The Borrower is not in default under the provisions of any trust deed or indenture, debenture, agreement or other instrument evidencing, guaranteeing or relating to any outstanding indebtedness or liability.
 - (e) The Borrower has good and marketable title to the Property subject to the permitted encumbrances and such other charges, security interests and other encumbrances as disclosed in Schedule "A" attached hereto.
 - (f) All financial statements and other financial information provided to the Lender relating to the Borrower are true and correct in all material respects as at the dates and for the periods to which such financial statements and information relate and such financial statements and information present fairly its financial position for the periods covered thereby.
 - (g) The Borrower is a Canadian resident as defined by the *Income Tax Act* (Canada).
 - (h) As at the date hereof, the Borrower is not aware of any information or any other matter which, if known to the Lender might reasonably be expected to deter the Lender from establishing the Loan on the terms and conditions contained herein or from making advances hereunder.

Events of Default

12. The principal balance outstanding at the time of default together with all accrued interest and enforcement costs (including without limitation reasonable legal costs on a full indemnity basis) shall become immediately due and payable upon the occurrence of any one or more of the following events (each an "**Event of Default**"):

- (a) If the Borrower makes default in the repayment of any interest or principal under the Loan when it becomes due and payable.
- (b) If the Borrower shall fail to pay any amount or to perform or observe any covenant, condition or agreement to be performed or observed by it under this Loan Agreement or under or pursuant to any of the Security or any other instrument or agreement of the Borrower with the Lender.
- (c) If any representation or warranty made by the Borrower in this Loan Agreement, any of the Security or in any other document or certificate furnished to the Lender in connection with this

Loan Agreement shall prove to be incorrect in any material respect at any time.

- (d) If the Borrower shall make any assignment for the general benefit of creditors or is adjudged insolvent or bankrupt within the meaning of the applicable bankruptcy, insolvency or creditors arrangement laws.
- (e) If the Borrower ceases or threatens to cease to carry on its business or makes or proposes to make any sale of the whole or a substantial portion of its assets in bulk or out of the ordinary course of its business.
- (f) If any proposal is made or petition filed by the Borrower under any law having for its purpose the extension of time for payment, composition or compromise of the liabilities of the Borrower.
- (g) If any resolution is passed for or judgment or order given by any court of competent jurisdiction ordering the dissolution, winding-up or liquidation of the Borrower.
- (h) If a petition or other application is made for a receiving order or for the winding-up of the Borrower, unless and for so long as the Borrower shall be contesting the petition or other application in good faith and with all due diligence and by appropriate proceedings, and the Borrower provides, at the option of the Lender exercisable by notice to the Borrower a bond in respect of any loss, cost or damage which might be sustained by the Lender or for which the Lender might be, or become liable by reason of the petition or application or the contestation of it by the Borrower.
- (i) If any execution, sequestration or similar process of any court of competent jurisdiction becomes and remains enforceable against, or if a distress or analogous process is levied on the property of the Borrower, or on any part of it, save for any process which is contested by the Borrower in good faith with all due diligence and by the appropriate proceedings, and the Borrower provides at the option of the Lender exercisable by notice to the Borrower, a bond in respect of any loss, cost or damage which might be sustained by the Lender or for which the Lender might become liable, by reason of execution, sequestration or other process or the contestation by the Borrower.
- (j) If any receiver, receiver-manager, administrator or manager of the property, assets or undertaking of the Borrower is appointed pursuant to the terms of any trust deed, trust debenture, debenture or similar instrument and the appointment is not terminated within a period of thirty (30) days, unless the Borrower provides, on written demand by the Lender, a bond in respect to any loss, cost or damage which might be sustained by the Lender or for which the Lender might be or become liable, by reason of the appointment of a receiver, receiver-manager, administrator or manager.
- (k) If there occurs in the opinion of the Lender a materially adverse change in the condition (financial or otherwise) or operation of the Borrower.
- (l) If there is a change in ownership or control of the Borrower.
- (m) If any permit or material agreement relating to or required for the development, construction and completion of the Project is cancelled or the Borrower is in default under such permit or material agreement.
- (n) If the Borrower is in default under the loan agreement between it and The City of Peterborough (as such loan agreement is amended, restated, supplemented or otherwise modified from time to time).
- (o) If the building, construction, development of the Project, for any reason, ceases, remain unfinished or without any work being done for a period of ten (10) consecutive days.

Remedies:

13. The Security shall become immediately enforceable after an Event of Default has occurred, and the Lender shall have the rights, powers and remedies set forth in the Security, or other agreements in existence between the Borrower and the Lender and the rights, powers and remedies rights and remedies available to the Lender at law or in equity, and all such rights and remedies shall be cumulative. The exercise or failure to exercise by the Lender any of the said rights or remedies shall not constitute a waiver or release thereof or of any other right or remedy available to the Lender, and shall be non-exclusive.

Application of Insurance Proceeds:

14. If insurance proceeds become payable in respect of loss of or damage to the Property and:
- (a) if an Event of Default has occurred and is continuing at such time, then the Lender shall apply such proceeds to repay the Loan together with all accrued interest and enforcement costs (including without limitation reasonable legal costs on a full indemnity basis); or
 - (b) if an Event of Default has not occurred and is continuing at such time, and such insurance proceeds are less than five hundred thousand dollars (\$500,000.00), then the Lender agrees to consent to the payment of such proceed by the insurer to the Borrower if:
 - i. the damaged or loss to the Property has been repaired or replaced and the insurance proceeds will reimburse the Borrower for payments it has made for such purpose; or
 - ii. the Borrower confirms in writing to the Lender that it will forthwith use such insurance proceeds to repair or replace the Property and promptly provide the Lender with evidence of completion of the repair or replacement.
 - (c) if an Event of Default has not occurred and is continuing at such time, and such insurance proceeds are more than five hundred thousand dollars (\$500,001.00), then the Borrower agrees that Lender may (in its sole discretion) apply such proceeds to repay the Loan together with all accrued interest and enforcement costs (including without limitation reasonable legal costs on a full indemnity basis).

Expenses

15. All expenses of the Lender, if any, including legal fees, in respect of the administration of the Loan, the negotiation and preparation of this Loan Agreement and the Security, the enforcement of them and of security review and the preparation of any waivers, partial or full discharges and similar matters will be for the account of the Borrower.

Severability

16. Any provision of this Loan Agreement or the Security which is illegal, prohibited or unenforceable in any jurisdiction, in whole or in part, shall not invalidate the remaining provisions hereof; and any such illegality, prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Assignment

17. The Borrower may not assign any of its rights or obligations under this Loan Agreement without the prior written consent of the Lender. The Lender may assign all or any portion of the Loan, together with all of its rights and obligations incidental thereto and under this Loan Agreement or any of the Security, to any other entity without notice to or the prior written consent of the Borrower.

Governing Law

18. This Loan Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Counterpart

19. This Loan Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same document. This Loan Agreement may be executed and delivered by facsimile or portable document format (pdf), and any signature contained hereon by facsimile or pdf shall be deemed to be equivalent to an original signature for all purposes.

Notice

20. Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier, facsimile or other direct written electronic means (provided that a written record is kept in respect of any such electronic communication), to the applicable address and to the attention of the applicable addressee as follows:

to the Borrower at:

Address: _____
Attention: _____
Facsimile _____
Email: _____

to the Lender at:

Address: 470 Water Street, Peterborough, Ontario, K9H 3M3
Attention: John Butler, Director of Finance
Facsimile 705-743-5382
Email: jbutler@county.peterborough.on.ca

Any notice or other communication made by personal delivery, facsimile or other direct written electronic means on a business day shall be deemed to have been given, received and made on such business day so long as it is actually received prior to 4:00 p.m. (Peterborough time) on such business day, and otherwise shall be deemed to have been made on the next business day and any such notice given, received or made on a day which is not a business day shall be deemed to have been given, received or made on the next business day.

This offer may be accepted by your signing and returning to us the enclosed copy of this Loan Agreement by the _____ day of _____, 2015, after which date this offer will expire.

THE CORPORATION OF THE COUNTY OF PETERBOROUGH (the Lender herein)

Per: _____
Name: J. Murray Jones
Title: Warden, County of Peterborough

Per: _____
Name: Sally Saunders
Title: County of Peterborough Clerk

We have authority to bind the corporation.

Accepted the ____ day of _____, 2015.

THE MOUNT COMMUNITY CENTRE (the Borrower herein)

Per: _____

Per: _____

Name: Stephen P. Kyle
Title: President

Name: John Martyn
Title:

We have authority to bind the corporation.

Schedule "A" Permitted Encumbrances

- 1) An easement registered in favour of Peterborough Utilities Commission on February 28, 1992 as Instrument Number R560471 for the installation and maintenance of a water main covering Part 1 on Plan 45R8972, Part 5 on Plan 45R3089, Parts 6 and 7 on Plan 45R3089, and part of Part 8 on Plan 45R3089 (these lands generally running along the southerly limit of the property from Monaghan Road to the centre of Albertus Avenue).
- 2) By-law registered by The City of Peterborough as Instrument Number PE137590 on November 26, 2011 to designate 1545 Monaghan Road under the *Ontario Heritage Act*.
- 3) First Charge/Mortgage registered on August 2, 2013 as Instrument Number PE191858 between Peterborough Poverty Reduction Network as Chargor and Mancal Lifestyles (Peterborough) Inc. and 2150628 Ontario Inc. as Chargees securing the original principal sum of \$2,000,000.00 (one of the two acquisition mortgages).
- 4) Instrument No. PE191859 registered August 2, 2014 is an Assignment of Rents from Peterborough Poverty Reduction Network in favour of Mancal Lifestyles (Peterborough) Inc. and 2150628 Ontario Inc.
- 5) Transfer of Charge registered as Instrument Number PE201859 on February 20, 2014 transferring Charge/Mortgage PE191858 from Mancal Lifestyles (Peterborough) Inc. and 2150628 Ontario Inc. to Mancal Lifestyles Investments Inc. and 2150628 Ontario Inc.
- 6) Notice of Site Plan Agreement registered as Instrument Number PE218372 on January 5, 2015 made between The Corporation of the City of Peterborough and The Mount Community Centre.
- 7) Notice of Security Interest with respect to a purchase-money security interest in mechanical systems upgrade to be registered pursuant to the provisions of the *Personal Property Security Act* (Ontario).
- 8) Third Charge/Mortgage registered on _____ as Instrument Number _____ between The City of Peterborough, as charge, and the Borrower, as charger, securing the principal sum of \$1,000,000.00.