File No. R.12.1/2002(46)

THIS AGREEMENT made in duplicate as of the day of 2003.

BETWEEN:

THE CITY OF WINNIPEG,

(hereinafter called the "City")

OF THE FIRST PART,

- and –

CLOUTIER DRIVE RESIDENTS ASSOCIATION,

(hereinafter called "CDRA"),

OF THE SECOND PART.

WHEREAS the City is the holder of the license for the construction, operation and maintenance of the Cloutier Drive Trail, (hereinafter called the "trail");

AND WHEREAS CDRA wishes to develop a public trail on the licensed area;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises and subject to the terms, conditions and provisos herein set forth, the City hereby grants leave and license to CDRA to develop and improve the land for use as a public trail, as follows:

1. The preamble hereto shall form an integral part of this Agreement.
2. CDRA shall:

(a) at its sole cost, effort and expense, develop a public trail on the land PROVIDED THAT prior to the commencement of any and all work in connection therewith, it shall, at its sole cost, expense and effort

(i) provide to the City for approval, plans and/or specifications of all buildings and/or improvements to be erected on the land;

(ii) provide to the City for approval by the City's Director of Planning, Property and Development, (hereinafter called the **"Director"**), and the City's Director of Public Works, site landscape drawings, prepared by a qualified professional.

(iii) obtain all necessary permit and shall comply promptly with all laws, by-laws, ordinances, rules, regulations, orders, requirements and recommendations of any and all federal, provincial, municipal or other governmental authorities or associations of insurance underwriters or agents which may be applicable to CDRA or to the manner or use of the land;

(iv) ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations, rules or requirements of all authorities having jurisdiction over the land;

(v) not, at any time, release into the environment, or deposit, discharge, place or dispose of, at, on or near the land any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act,

R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time;

(vi) substantially complete construction of the public trail ("Cloutier Drive Trail") on or before September 30, 2005;

(vii) ensure that any construction work is performed and completed in compliance with all applicable statues, by-laws, ordinances and regulations of any federal, provincial or municipal authority. CDRA shall ensure that any contractor or builder maintains and keeps in force during the construction period insurance protecting/indemnifying both the City (with the City named as additional insured) and CDRA against all claims arising out of the construction;

To further safeguard the City, CDRA shall purchase and keep in force during the construction phase, a comprehensive general liability insurance policy, but not limited to, the following provisions:

(1) Commercial general liability insurance, in the amount of at least Two Million ($2,000,000.00) Dollars all inclusive, with the city being added as an additional insured, with a cross-liability clause, such liability policy to contain a contractual liability, an unlicensed motor vehicle liability and a products and completed operations endorsement to remain in place at all times during the construction phase.

(2) Automobile liability insurance for owned and non-owned automobiles used for in connection with the project in the amount of at least Two Million ($2,000,000.00) Dollars at all times during the construction phase;

(3) CDRA shall not cancel, materially change or cause any such policy or policies to lapse without a minimum of fifteen (15) days prior written notice to the City:

AND deductibles shall be borne by CDRA;

AND CDRA shall file with the City a certified copy of the policy in a form satisfactory to the City Solicitor;

(viii) ensure that any and all builders' liens, charges and/or claims (hereinafter collectively called the **"liens"**) as may be filed against the land shall be fully discharged within forty (40) days following substantial completion of the construction work; AND in the event CDRA fails to do so, the City is hereby entitled to do so and to charge all costs it may incur in attending to the discharge of the liens and any of them, to CDRA who shall, immediately upon demand by the City, pay such costs to the City;

(b) not erect or permit the erection of any buildings or structures on the land other than those permitted to be erected or placed on the land without prior written approval of the Director.

(c) to use the land for public trail purposes only and for no other purposes whatsoever.

3. CDRA hereby acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the land for any use or purposes, nor as to any environmental conditions which may exist.

4. CDRA shall not at any time use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the land or ay part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and CDRA shall not do, omit or suffer or permit to be done or omitted in, on or upon the land or any part thereof anything whatsoever which shall or may be or grown to the annoyance, nuisance, damage or disturbance of the City or of the owners or occupiers of neighbouring properties.

5. CDRA shall, at all times and its sole cost, effort and expense:

(a) maintain the land and all improvements and services constructed thereon, in good repair and operating order and in a neat and tidy condition, all satisfactory to the Director;

(b) ensure that access to and from the land is conducted in a careful manner, in accordance with good industry standards and in compliance with the provision of any and all applicable environmental, health or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such matters;

(c) be responsible for the clean up of litter in the immediate area of the land and the clean up of any wind blown litter generated as a result of the use and occupation of the land by CDRA.

(d) forthwith comply with any written notice to repair received by it from the City and if CDRA does not so repair, the City may enter

upon the land and conduct the repairs at the sole cost and expense of CDRA.

(e) Be responsible for maintenance supplies.

6. It is understood and agreed between the parties hereto that the public-at-large shall have free and unrestricted access to the land at any and all times.

7. (a) The City and any persons authorized by the City, shall have the right to enter upon the land at any time, without notice, with or without equipment for any purpose whatsoever including, but not limited to those purposes related to the safety, protection, preservation or improvement of the land and for doing any work of maintaining or repairing its utilities in or near to the land, without being responsible for any damage occasioned thereby but will restore the lands as to near original condition;

(b) The City reserves the right to MTS Communications Inc., Centra Gas (Manitoba) Inc., The Manitoba Hydro-Electric Board and/or other public utilities (hereinafter collectively called the ***"utilities"***), to enter upon the land for maintenance and/or repair of the utilities, without being responsible for any damage occasioned thereby but will restore the lands as to near original condition;

(c) CDRA shall, without any compensation whatsoever, whenever so requested, remove any vehicles and any improvements which it may have placed, installed, constructed or erected on the land in order to permit the City and/or the utilities unimpeded access to its services either above or below ground.

8. CDRA shall reimburse the City for any and all costs incurred by the City in making good any loss or damage to the land or utilities caused as a result of CDRA's use of the land and without limiting the generality of the foregoing, caused as a result of any negligent or willful act of CDRA, its contractors, agents, servants or employees.

9. During the construction phase, CDRA shall, at its sole cost, effort and expense, indemnify and keep indemnified the City from and again all claims, actions or proceedings for loss, injury, damages or compensation by any person, firm or corporation, whether to real or personal property, wheresoever situated, or by any member, employee, agent, licensee, invitee or third party, whether claiming through or under CDRA or otherwise

caused by reason of or in any way attributable to CDRA's use of the land or the construction, maintenance, existence or use of any buildings or structures erected thereon, or in any way connected therewith, or otherwise by reason of the exercise by CDRA of the use hereby granted or the performance of or failure to perform its obligations hereunder, or by reason of:

(a) any breach, violation, non-observance or non-performance of any covenant, condition or agreement in this Agreement contained, and on the part of the CDRA to be kept, observed or performed;

(b) any loss or damage to property, whether belonging to CDRA or otherwise, and any injury to person or persons, including death resulting at any time therefrom, arising out of or in connection with CDRA's use or occupation of the land and/or by or through anything done or omitted

to be done by CDRA or any assignee, contractor, agent, servant or employee of CDRA; or

(c) any installations which CDRA may make or cause to be made upon or to the land, including without limitation, claims for liens in respect of wages, work, services or materials, liability for damage to property and liability for injury to person or persons.

10. Upon completion of the construction phase, CDRA shall, at its sole cost, effort and expense, indemnify and keep indemnified the City from and against all claims, actions or proceedings for loss, injury, deatah, damages or compensation by any person, firm or corporation, whether to real or personal property, wheresoever situated, or by any member, employee, agent, assignee, contractor, licensee, invitee or third party, whether claiming through or under CDRA or otherwise caused by reason of or in any way attributable to CDRA's use of the land or the construction, maintenance, existence or use of any buildings or structures erected thereon, or in any way connected therewith, or otherwise by reason of the exercise by CDRA of the use hereby granted or the performance of or failure to perform its obligations hereunder, or by reason of:

(a) any breach, violation, nonobservance or non-performance of any covenant, condition or agreement in this Agreement contained, and on the part of CDRA to be kept, observed or performed; or

(b) any repairs, improvements, installations or alterations which CDRA may make or cause to be made upon or to the land, including without limitation, claims for liens in respect of wages, work, services or materials, liability for damage to property and liability for injury to person or persons;

and such indemnities shall survive the expiry or sooner determination of the term hereof.

11. CDRA will enter into Facility Use Agreements with the Community Services Department for organized community events on an as required basis.

12. CDRA shall not assign this Agreement without having first obtained the prior written consent of the Director and any consent by the Director to an assignment shall not relieve CDRA of its obligations for the performance of the terms ad conditions herein contained.

13. Either party hereto may at any time terminate this Agreement by giving to the other party a written notice naming therein a date at least one hundred and eighty (180) days from the giving of such notice upon which this Agreement shall terminate, and on the day so named in such notice, this Agreement and all rights and interests granted hereunder shall cease and terminate.

14. In the event of CDRA not complying with the terms and conditions contained in this Agreement and such default continues for a period of ten (10) days after notice to remedy such default (or such further period reasonably required provided that CDRA is diligently proceeding to rectify the default), this Agreement is subject to immediate cancellation by the Director upon notice therefore in wiring given to CDRA and thereupon CDRA shall immediately delivery up possession of the land to the city and the city may enter and take possession thereof.

15. In the event this Agreement expires or is terminated by either party for any reason whatsoever, CDRA shall at its sole costs, effort and expense:

(a) peaceably surrender and yield up the land unto the City and shall within thirty (30) days, take up and remove any and all improvements at the sole discretion of the Director which it may have placed, installed, constructed or erected on the land; and

(b) restore the land to a condition satisfactory to the Director.

AND in the event CDRA defaults in so doing, the City may do the said removal and restoration work at the sole risk and expense of WB

16. Notwithstanding the forfeiture or termination of this Agreement in any manner herein provided for, CDRA shall be and remain liable to the city for all obligations and liabilities incurred hereunder up to the date of such forfeiture or termination and for the fulfillment of all obligations herein contained on the part of CDRA to be observed and performed upon or after said forfeiture or termination.

17. Should the City become responsible for maintenance of the land due to default or termination, it is hereby acknowledged and agreed that the City may remove any and all improvements on the land that may be beyond its maintenance capabilities.

18. Any notice required to be given to any part shall be sufficiently given if personally served on the party, or if forwarded by ordinary mail, postage prepared, addressed to:

In the case of the City:

The City of Winnipeg
Planning, Property and Development Department
2nd Floor – 65 Garry Street
Winnipeg, Manitoba
R3C 4K4
Attention: Director File No. 32/7168

or to such other address as the City may from time to time advise by notice in writing:

In the case of CDRA:

640 Broadway
Winnipeg, Manitoba
R3C OX3

or to such other address as CDRA may from time to time advise by notice in writing;

AND such notice, if forwarded by mail, wherever mailed, shall be deemed to be served on the fifth (5th) business day following the date it is so mailed.

19. No assent or consent to changes in or waiver of any provisions of this Agreement in spirit or letter shall be deemed or taken as made unless the same is done in writing and attached to or endorsed thereon by the City. The city's

agents (unless such agents are authorized in wiring by the City) are not authorized to change or waive any provision of this Agreement and any purported changes or waivers by them or any of them are null and void.

20. CDRA shall not file any caveat or other encumbrance against the land.

21. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement in the manner appropriate to each, the day and year first above written.

THE CITY OF WINNIPEG
Per:

_____
Director, Planning, Property and Development

CLOUTIER DRIVE RESIDENTS ASSOCIATION

Per: _____

Per: _____

Approved:

_____
Public Works Department

Approved:

_____
Planning, Property and Development

Certified as to form:

_____
For City Solicitor/Manager of
Legal Services