

ELLIS COUNTY DEVELOPMENT CORPORATION
Housing Rehabilitation Program

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (“the/this Agreement”) is entered into and effective as of the date of approval as set forth below and is by and between the Grow Hays, Inc. (“GHI”) and _____ (“Developer”).

WHEREAS, the GHI is a non-profit Kansas corporation committed to advancing economic vitality and innovation to enhance the community and quality of life in Ellis County and the surrounding area; and

WHEREAS, GHI has developed a program to provide interest-free loans to developers and/or contractors seeking to build or rehabilitate affordable homes for low-income consumers (“the Program”); and

WHEREAS, Developer seeks to participate in the Program and agrees to perform pursuant to the obligations of developers as set forth in the terms of this Agreement;

NOW, THEREFORE, in exchange for the promises set forth in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. **FUNDS AVAILABLE and PROPERTY.** GHI hereby agrees to lend up to \$_____ to Developer for the purpose of purchasing, constructing and/or rehabilitating real property located in Ellis County, Kansas (“the Property”). For purposes of this Agreement, the term “the Property” includes any and all improvements currently located on the Property or to be constructed thereon. The general location of the Property is:

Street Address: _____

City / Zip Code _____ / _____

A full legal description is set forth on Exhibit A, attached to this Agreement and incorporated herein. The funds disbursed or advanced to Developer hereunder may only be utilized for the purpose of purchasing, constructing and/or rehabilitating the real property listed above.

2. **DISBURSEMENT OF FUNDS and REPAYMENT SCHEDULE.** GHI shall distribute borrowed funds to Developer as follows (check applicable schedule):

_____ The full amount of the loan in the amount of \$_____ shall be disbursed to Developer on the _____ day of _____,

20____, with repayment of the entirety of the principal balance of the loan to GHI due no later than the earlier of: (a) the _____ day of _____, 20____, or (b) the date that is six (6) months after the date of disbursement; OR

____ The loan shall be disbursed to Developer in periodic advances as needed and as requested in writing by Developer, with the total amount of all advances not to exceed \$_____. A schedule of advances shall be maintained on Exhibit B, attached hereto, and made a part hereof, setting forth the total of each advance and the reason for it. No advances may be made after the date that is four (4) months after the disbursement of the first advance. The repayment of the entire principal balance of all combined advances shall be due to GHI no later than the earlier of: (a) the _____ day of _____, 20____, or (b) the date that is six (6) months after the date of disbursement of the initial advance.

The terms of repayment shall be further memorialized in a Promissory Note to be executed by Developer in favor of GHI by which Developer shall promise to repay to GHI the funds borrowed pursuant to this Agreement. Said Promissory Note shall be in a form substantially as set forth in Exhibit C, attached hereto and made a part hereof. If loan funds are repaid timely, then no interest shall accrue or be charged to Developer.

3. **ADMINISTRATIVE FEE.** Upon repayment of the sums disbursed to Developer hereunder, Developer shall pay to GHI a flat administrative fee of Two Thousand Five Hundred Dollars (\$2,500.00) (“the Administrative Fee”).

4. **SECURITY INTEREST/MORTGAGE.** Developer hereby grants to GHI a security interest in and to the Property as collateral for the loan provided by GHI pursuant to this Agreement. Developer agrees to provide a mortgage in favor of GHI in an amount not to exceed the total amount of the disbursement(s) or advance(s) set forth in paragraph 2, above (“the Mortgage”). The cost of any mortgage registration shall be paid by Developer, but such payment shall be a credit toward the Administrative Fee.

5. **THE WORK.** Developer has submitted an Application to GHI specifying the work to be completed to the Property (“the Application”), and the Application is hereby incorporated into this Agreement as though fully set forth herein. Developer agrees to begin work at the Property promptly upon executing this Agreement and to continue working diligently and in a good and workmanlike manner in accordance with applicable local, county and/or state rules, regulations or ordinances. Developer shall be solely responsible to ensure that all work performed complies with the scope of work set forth in the Application and all applicable building codes and

regulations. If asked to do so by GHI, Developer will repair or replace at Developer's expense any work that does not comply with the plan or scope of work upon which Developer's Application and this Agreement is based. Developer acknowledges that GHI is not liable for any failure to construct, complete, protect or insure the work or the Property, and GHI is not liable for any costs of the work or materials involved. Nothing GHI does, including inspecting the work performed or making an advance of funds to Developer, will be a representation or warranty by GHI that the work complies with any third party contract, any permit or any applicable governmental rule, regulation, code or ordinance.

6. **PERMITS.** Developer will obtain and keep in force all permits required by any federal, state, county or local government agency or authority for the work to be performed at the Property.

7. **CHANGE ORDERS.** Any change order or other change in the scope of the work outlined in the Application must be submitted in writing to GHI and will be subject to GHI's approval, which will not be unreasonably withheld. Under no circumstances shall GHI be obligated to increase the total loan to Developer on account of a change order or other change in the scope of work.

8. **PROPERTY CONDITION.** At GHI's request, Developer will obtain a certified inspection of the Property intended to detect the presence of any wood-boring insects or other pests. If the Property is not free of such insects or any other pests, then GHI may withhold any disbursement of loan funds or future advances until such an infestation is remediated and any damage resulting therefrom repaired. At all times that loan funds remain unpaid to GHI, Developer will be responsible to maintain the condition of the Property, subject to the work being performed, and will notify GHI immediately of any fire or other casualty relating to the Property or the work performed.

9. **COMPLETION OF WORK.** Developer promises that all work to improve the Property shall be completed on or before the ____ day of _____, 20__ (if blank, the date that is four (4) months after execution of this Agreement).

10. **INSPECTIONS.** GHI has the right to enter onto or in the Property to inspect the work, without notice to Developer, during normal business hours or at any other time GHI arranges with Developer.

11. **TITLE REPORT.** Developer understands that GHI may obtain a title report by a title company, certified to GHI as lender, showing that the mortgage to be taken by GHI in and to the Property will be a valid lien, free of all defects and encumbrances except those that GHI, at its sole discretion, agrees to in writing. At or prior to the advancement of funds by GHI to Developer, Developer will provide GHI with a commitment of title insurance by a title company of GHI's choosing, and when the work to the Property is complete, then Developer shall provide GHI a title insurance policy insuring GHI to the full amount of the loan disbursements and including any endorsements that GHI may require. GHI may waive the requirement of title insurance at GHI's sole discretion.

12. **SURVEYS, APPRAISALS and OTHER EXPENSES.** If requested by GHI, Developer agrees to pay for and provide a survey of the Property as is, or as-built, including dimensions of all improvements to/on the Property and all easements or other rights or restrictions. Further, if requested by GHI, Developer will pay for and provide an appraisal of the Property and the proposed improvements before disbursement of any loan proceeds to Developer. Any other expenses not specifically identified herein that should arise in the completion of the work or protection of GHI's lien shall be borne by Developer.

13. **USE OF FUNDS.** At GHI's request and at any time after disbursement of any monies under this Agreement, Developer shall provide GHI with invoices and receipts showing the use of the funds loaned to Developer. Developer's failure to keep and provide such invoices and receipts shall be a breach of this Agreement and default under the terms hereof.

14. **REPRESENTATIONS AND WARRANTIES.** Developer hereby represents and warrants:

a. That: (i) Developer is a contractor duly licensed to conduct business as a contractor in the city, county and state where the Property is located; and/or (ii) Developer is a graduate from an accredited post-secondary construction and trades program; or (iii) Developer is a licensed real estate broker, associate broker or salesperson in the State of Kansas and that Developer has contracted with a contractor duly licensed to conduct business as a contractor in the city, county and state where the Property is located for the purpose of completing the work contemplated by this Agreement.

b. That at the time of entering into this Agreement and, throughout the time period that Developer's indebtedness to GHI remains unpaid, Developer shall maintain in force: (i) a builder's risk insurance policy (with a mortgagee's loss payable clause in favor of GHI and with a physical loss form endorsement) in an amount not less than the total funds available to Developer under this Agreement; (ii) public liability insurance with limits of liability equal to at least \$500,000 per occurrence; and (iii) workers' compensation insurance as required by applicable law.

c. That so long as the indebtedness to GHI remains unpaid, Developer shall maintain standard hazard insurance coverage on the improvements to the Property as required by the Mortgage.

d. That unless GHI provides specific written authorization to do so, Developer will not permit a lien, mortgage or encumbrance of any other party, including but not limited to lenders, contractors, materialmen, suppliers or other parties of any nature, to encumber the Property until GHI's loan hereunder and Developer's obligations to GHI have been paid in full.

e. That upon completion of the work to the Property, Developer shall work diligently, through the services of the real estate licensee identified in Developer's Application (unless Developer is such a licensee, in which case Developer can market the

Property him/herself), to market the Property for sale. The maximum sale price of the Property shall be \$175,000.00, and Developer agrees that the Property shall not be marketed for an amount in excess of this maximum sale price.

f. Developer hereby agrees, represents and warrants that Developer shall sell the Property to a buyer that represents his/her/their intention to owner-occupy the Property as a single-family residence. Developer agrees not to sell the Property to a party that Developer knows, or has reason to know, does not intend to occupy the property or is an investor intending to utilize the Property as a rental property or who intends to purchase the Property as an investment for immediate re-sale.

15. **DEFAULT.** This Agreement, the Promissory Note referred to herein in paragraph 2, the Mortgage referred to herein in paragraph 4, the Application referred to herein in paragraph 5, and all other documents related to Developer's borrowing of the funds hereunder shall collectively be referred to as "the Loan Documents." Developer shall be in default under this Agreement and/or any other Loan Documents if any of the following should occur:

a. Developer fails to make any payment due under this Agreement or any of the other Loan Documents;

b. Developer fails to keep any promise or perform any obligation(s) as required under the terms of this Agreement or any of the other Loan Documents;

c. Developer utilizes the funds loaned hereunder for any purpose other than the purpose(s) set forth in this Agreement; or

d. Any statement, representation or warranty of Developer in this Agreement or any of the other Loan Documents is false, inaccurate or incomplete in any way.

16. **GHI'S RIGHTS AND REMEDIES.** In the event of Developer's default pursuant to paragraph 15, then upon notice from GHI to Developer of the default and Developer's opportunity to cure the default within fifteen (15) days after the issuance of the notice, GHI has the following rights and remedies:

a. GHI may declare a default under any or all of the Loan Documents;

b. GHI may take possession of the Property and may do every act and thing Developer or any subsequent owner of the Property might or could do for the protection, construction, repair, operation, maintenance and leasing of the Property, charging Developer for the costs of such act(s) and thing(s);

c. GHI may seek to foreclose, as necessary, its security interest in the Property, sell the Property as necessary upon possession, and seek to recover from Developer any loss or deficiency related to the exercising of GHI's rights hereunder;

d. GHI may accelerate and collect from Developer any unpaid principal of the loan hereunder with default interest at the rate of ten percent (10%) per annum (“the Default Rate”) accruing from the date of the disbursement or advance of loan proceeds to Developer and, to the extent that principal has already been repaid to GHI at the time of default;

e. To the extent that Developer’s default hereunder is a default under paragraph 14.e. of this Agreement related to selling the Property for a price in excess of \$175,000.00, then Developer shall pay to GHI that portion of the proceeds of the sale resulting from the sale in excess of \$145,000.00 and Developer shall further be obligated to pay to GHI interest accruing at the Default Rate from the date of the closing of the sale of the Property until this obligation is paid in full;

f. GHI may collect from Developer any and all attorneys’ fees, costs and other expenses paid or incurred by GHI in enforcing or exercising ECDC’s right and remedies under this Agreement or the other Loan Documents, with interest accruing on these amounts at the Default Rate; and

g. ECDC’s rights and remedies hereunder shall be considered cumulative and not exclusive. GHI may, but is not required to, exercise any or all of the rights under this Agreement or the other Loan Documents. These rights and remedies are in addition to any other rights and remedies created in any other Loan Document or existing law or in equity.

17. **HOLD HARMLESS AND INDEMNIFICATION.** Developer hereby indemnifies and holds GHI and its affiliates, officers, directors, employees and agents (“the Indemnified Parties”) harmless from and against any and all claim or claims, liabilities, loss, costs, expenses (including legal expenses and attorney fees), incurred by or alleged against any of the Indemnified Parties arising from or related in any way to the Property, the work performed to improve the Property or any default of Developer under this Agreement or any other Loan Documents.

18. **GENERAL PROVISIONS.**

a. **Cooperation.** Developer agrees to cooperate and sign any documents or instruments required by GHI or any other party, or supply such information or data that GHI shall require or deem necessary to accomplish the purposes of this Agreement.

b. **Credit Information.** Developer agrees to provide GHI with such updated financial or credit information as GHI requests, and further authorizes GHI to obtain such credit reports from credit reporting agencies as GHI may require.

c. **No Waivers.** GHI may choose to delay enforcing any of ECDC’s rights under this Agreement. No such delay or temporary waiver of a right herein shall be construed as affecting ECDC’s other rights hereunder, nor shall a temporary waiver of a right be construed as a permanent waiver of any right hereunder.

d. **Entire Agreement.** This Agreement and the other Loan Documents are the entire understanding between GHI and Developer about the loan provided for herein, the Property and the work to be performed at the Property. These agreements may not be modified, amended or terminated except by written agreement signed by the parties.

e. **Binding Agreement.** This Agreement and the other Loan Documents are for the benefit of GHI and ECDC's successors and assigns, and they bind Developer and Developer's heirs, executors, administrators, successors and assigns. This Agreement may not be assigned without ECDC's prior written consent, which such consent can be withheld at ECDC's sole discretion.

f. **Survival of Representations.** Any promise, representation or warranty of Developer hereunder shall survive the termination of this Agreement and repayment of the loan.

g. **Joint and Several Liability.** In the event that there are multiple borrowers signing this Agreement as Developer, each such person or borrower shall be jointly and severally liability for the obligations hereunder.

h. **No Joint Venture.** Nothing in this or the other Loan Documents shall be construed as creating a partnership or other joint venture between Developer and GHI. Developer and GHI are in a relationship as borrower and creditor only.

i. **Notices.** Any communication required by this Agreement shall be in writing and addressed or communicated personally to the parties or by delivery at the physical addresses or email addresses set forth below. Each party shall be responsible to update the other as to any changes in physical or email addresses or other contact information.

j. **No Third Party Beneficiary.** This Agreement is for the sole benefit of the stated parties and not for the benefit of anyone else. All conditions to ECDC's obligation to make any disbursement or advance of loan proceeds are solely for ECDC's benefit. No other person or entity shall have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.

k. **Governing Law.** This Agreement shall be construed pursuant to the laws of the State of Kansas. Any dispute regarding the terms, conditions, obligations or subject matter of this Agreement shall be subject to the exclusive jurisdiction and venue of the District Court of Ellis County, Kansas.

l. **Savings Clause.** Should any term or condition of this Agreement be deemed unenforceable by a court of competent jurisdiction, the remaining terms or conditions hereof shall remain effective and interpreted as though the offending term of condition has been stricken.

Remainder of this Page Intentionally Blank.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

DEVELOPER:

Company/Individual Name: _____ Date: _____

By: _____ Title: _____
(Signature)

Printed Name: _____

Address: _____

Phone: _____ E-Mail: _____

CO-BORROWER(S) / GUARANTOR(S)

The undersigned hereby personally and unconditionally guarantee the performance of Developer’s obligations pursuant to the foregoing Agreement and all Loan Documents. The undersigned co-borrower(s) and/or guarantor(s) waive diligence, demand for payment, extension of time for payment, and notice of any kind, and consent to any and all forbearances and extensions of time for payment or performance under this Agreement and to all changes in the terms of this Agreement entered into by the parties. GHI may enforce the obligations of co-borrower(s) and/or guarantor(s) without first resorting to or exhausting other remedies provided by the Agreement, the other Loan Documents, or applicable law. In so agreeing to guarantee the performance of Developer’s obligations, the undersigned co-borrower(s) and/or guarantor(s) agree to pay all reasonable costs, including attorney fees, incurred by GHI in enforcing their obligations herein.

_____ Date: _____
Co-Borrower / Guarantor Signature

Printed: _____

_____ Date: _____
Co-Borrower / Guarantor Signature

Printed: _____

GHI:

By: _____ Title: _____
(Signature)

Printed: _____

Address: _____

Phone: _____ E-Mail: _____

Date approved by GHI: _____