

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual and other covenants hereinafter contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1: CONDITIONS PRECEDENT

1.1 This Agreement is conditional on all of the following being completed by the Owners prior to endorsement of the subdivision plan for the Said Lands, as provided for in Section 657(3) of the *Municipal Government Act* RSA 2000, Chapter M-26, as amended, and in any event not later than "**Conditions Precedent Date**", and shall not come into force and effect until the following conditions have been met:

- a) the Owners have paid to the City the sum of \$ "**Inspection Fee to the Nearest Dollar**" as their total contribution for inspection and review services by the City of certain municipal improvements to be installed or constructed pursuant to this Agreement plus the sum of \$ "**GST Amount on Inspection Fee**" as payment of the Goods and Services Tax on such amount as assessed, charged and levied by the Government of Canada. The City's G.S.T. registrant's number is R119326270; and
- b) the Owners have provided to the City a Letter of Credit in the amount of \$ "**Letter of Credit Amount**" and evidence of insurance in accordance with Article 7.

In the event that the conditions have not been met by the date specified above, this Agreement is void and of no force and effect.

ARTICLE 2: CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

2.1 The Owners shall construct, install, and maintain the Municipal Improvements set out in Schedule "C" in accordance with the Engineering Drawings and the edition of the City Design and Construction Standards in effect at the time such Drawings were approved by the City (the "Manual"). The maintenance period shall be as set out in Schedule "C", unless such period is extended through the operation of Articles 2.6 or 5.

2.2 The Owners shall have completed the construction and installation of the Municipal Improvements and have applied for a Construction Completion Certificate, as defined herein (the "CCC")

for each of the Municipal Improvements by no later than "**Construction Completion Date**", or such later date as approved by the Engineer.

2.3 Upon completion of the construction and installation of each of the Municipal Improvements in accordance with this Agreement, the Owners shall apply to the City, in writing, for an inspection of the Municipal Improvements. Upon completion of an inspection and submission of all test results and any other documentation required by the City, the Owners shall submit to the City a CCC application, Form 171-3629E, signed and sealed by a Professional Engineer stating that the said Municipal Improvements have been installed and constructed in accordance with this Agreement.

2.4 The maintenance period for each Municipal Improvement shall commence as of the date of issuance of the approved CCC for that Municipal Improvement. The maintenance period may commence as of a date before the issuance of a CCC, if the Engineer, at his sole discretion, so decides and issues notice of his decision in writing.

2.5 The Owners shall, upon notification in writing given by the Engineer, correct any maintenance deficiency determined by the Engineer. In the event the Owners fail to correct all such maintenance deficiencies within thirty (30) days of receipt of such written notification, the City may do all the work necessary to correct same, in the opinion of the Engineer, and may draw on the Letter of Credit for this purpose.

2.6 The Owners shall provide to the Engineer, for approval, "as constructed" drawings of each Municipal Improvement not later than six (6) months prior to the expiration date of the maintenance period for the particular Municipal Improvement. In the event such "as constructed" drawings are not provided within these time limits, the maintenance period of each Municipal Improvement for which such drawings are not provided shall be extended for six (6) months from the date the Engineer received the said drawings.

2.7 Within thirty (30) days of expiry of the maintenance period for each of the Municipal Improvements in accordance with this Agreement, the Owners shall apply to the City, in writing, for an inspection of the Municipal Improvements. Upon completion of an inspection and submission of all test results and any other documentation required by the City, the Owners shall submit to the City a Final Acceptance Certificate application, Form 171-3699D (the "FAC"), signed and sealed by a Professional Engineer stating that the said Municipal Improvements have been installed, constructed and maintained, reasonable wear and tear only excepted, throughout their maintenance periods in accordance with this Agreement, for each of the Municipal Improvements listed in Schedule "C", excepting only those for which

Schedule "C" states that no FAC will be issued. In the event the Owners fail to apply for an FAC for each Municipal Improvement within thirty (30) days after expiry of the maintenance periods prescribed in Schedule "C" herein, or as extended pursuant to Article 2.6 or 5 hereof, the City may draw on the Letter of Credit.

2.8 The Owners acknowledge that they are solely responsible for coordination of the installation of all non City owned utilities including cable television, telephone communications, and gas (the "Private Utilities"). The Owners and the City agree that the Owners are responsible for all costs of construction, design, and fees, and shall save the City harmless from any and all costs, penalties, claims or actions resulting from the design, installation or construction of the Private Utilities.

2.9 The Owners represent and warrant that they have or will have all of the property rights necessary to construct the Municipal Improvements including, where necessary, easements to build and maintain the improvements on lands of which they are not the registered owners.

2.10 The Owners shall pay the City an amount, plus any applicable G.S.T., equal to the City's cost of installation of any required traffic control devices (including, but not limited to, traffic lights, traffic signs and pavement markings). This amount shall be payable thirty (30) days after the City makes a written request to do so or by the date listed in Article 2.2, whichever is sooner.

2.11 The Owners shall, concurrent with the registration of the subdivision for the Said Lands, register any required easements, utility rights-of-way and restrictive covenants across, over and through the Said Lands, for the benefit of the City, in form and content satisfactory to the Corporate Services Department, Law Branch of the City, to protect the integrity of all the Municipal Improvements shown on the Engineering Drawings.

ARTICLE 3: CONSTRUCTION GUIDELINES

3.1 The Owners shall give written notice to any relevant City Departments, including EPCOR Water Services Inc. and EPCOR Distribution Inc., of their intention to construct or install each Municipal Improvement at least forty eight (48) hours prior to so doing.

3.2 The Owners shall, during construction and installation of the Municipal Improvements, minimize damage to and interference with existing municipal improvements or infrastructure necessarily affected by the carrying out of such work, and upon completion thereof shall restore all damaged municipal improvements or infrastructure, whether on the Said Lands or on lands adjacent thereto, to the

condition, as nearly as possible, in which they existed prior to the commencement of construction of the Municipal Improvements by the Owners, reasonable wear and tear excepted. The term infrastructure shall include, but shall not be limited to, ravine areas even if in a natural state.

3.3 At all times during the construction and installation of the Municipal Improvements, and except as authorized by the Manager in writing, the Owners shall maintain or provide alternative means of providing services to buildings or areas receiving services through municipal improvements necessarily disrupted by the Owners in carrying out the construction or installation of the Municipal Improvements and, without restricting the generality of the foregoing, the Owners shall maintain physical access to such buildings or areas for collection of refuse and recyclables and police and fire protection.

3.4 The Owners shall, at their sole expense, remove, relocate or abandon any municipal improvements already existing on or under the Said Lands, if requested to do so by the Engineer. Said removal, relocation or abandonment shall be performed by the Owners to the satisfaction of the Manager Engineer or in accordance with the standards prescribed in the edition of the City Design and Construction Standards in effect at the time the Engineering Drawings were approved by the City.

3.5 The Owners shall, at their sole expense, connect the water mains installed for servicing of the Said Lands to the existing mains on the adjacent lands. Said connection shall be performed by the Owners in accordance with the standards prescribed in the edition of the City Design and Construction Standards in effect at the time the Engineering Drawings were approved by the City.

3.6 The Owners shall, at their sole expense, connect the lateral storm and sanitary sewers installed for servicing of the Said Lands to the existing storm and sanitary sewers on the adjacent lands. Said connection shall be performed by the Owners in accordance with the standards prescribed in the edition of the City Design and Construction Standards in effect at the time the Engineering Drawings were approved by the City.

3.7 The Owners and the City may agree that the City shall construct, install and maintain any of the aforesaid Municipal Improvements upon a one-time payment being made by the Owners to the City in such amount as the City may direct. In such event, the Owners shall be relieved of the obligations to construct and maintain the aforesaid Municipal Improvements.

3.8 If the Owners intend to construct any improvements, other than those described in Schedule "C" herein, on a public highway or road allowance (the "Encroachable Improvements"), they shall obtain the applicable written approval from the Engineer. If the Encroachable Improvements are

constructed in whole or in part by the Owners without obtaining the aforesaid approval, the City may draw on the Letter of Credit for the purpose of removing the Encroachable Improvements.

3.9 If the Owners have not completed construction of the improvements or have not applied for a CCC or FAC within the time periods set out in this Agreement, the City may draw on the Letter of Credit in accordance with Article 7.

ARTICLE 4: CONSTRUCTION COMPLETION CERTIFICATES/FINAL ACCEPTANCE CERTIFICATES

4.1 Within thirty (30) days after application for either a CCC or an FAC the City shall make an on-site inspection, weather and ground conditions permitting, of the Municipal Improvement and shall provide to the Owners, within two (2) weeks after the aforesaid inspection, a written list of all deficiencies in the construction, installation, repair, restoration or maintenance thereof, reasonable wear and tear excepted (respectively the "CCC Deficiency List" and the "FAC Deficiency List"). In the event the Engineer is satisfied upon carrying out the inspection and review of all applicable tests and documents, demonstrating that the Municipal Improvements have been installed, constructed and maintained in accordance with this Agreement, the Engineer shall issue the CCC or FAC for that Municipal Improvement.

4.2 Notwithstanding anything herein to the contrary, if, in the sole opinion of the Engineer, weather or ground conditions are so adverse as to prevent him from completing an on site inspection of the Municipal Improvements, the Engineer shall, within thirty (30) days after receipt of an application for an inspection, notify the Owners in writing that an inspection cannot presently take place, and shall, when in his opinion weather and ground conditions allow, complete the inspection upon twenty four (24) hours notice to the Owners.

4.3 If the Engineer finds deficiencies, the Owners shall repair them and, unless the Owners and the Engineer have agreed the deficiency is a minor deficiency and may be repaired in accordance with Article 5, apply for a reinspection. Within thirty (30) days after receipt of such application for a reinspection, the City shall perform a reinspection, weather and ground conditions permitting, and shall provide to the Owners, within two (2) weeks after the aforesaid reinspection, a revised form of the deficiency list. In the case of an application for a CCC the revised deficiency list may not include deficiencies not noted on the original deficiency list. In the case of an FAC, the revised deficiency list may not include deficiencies not noted on the original deficiency list if the repairs are made and application for a reinspection is received within forty two (42) days of the date of the original FAC Deficiency List. Where the application for a reinspection is received more than forty two (42) days after

the original or previous FAC Deficiency List was issued, the next FAC Deficiency List may include deficiencies not previously noted. This process shall continue as often as is necessary until all deficiencies have been rectified.

4.4 When the Owners have been notified of deficiencies in accordance with Article 4.3, they shall perform the required repairs and apply for a reinspection in a timely manner, within six (6) months of receipt of notification of the deficiencies or in accordance with a time period specified by the Engineer. Where the Owners have failed to repair the specified deficiencies within the timelines set out herein, the City may draw on the Letter of Credit pursuant to Article 7 to make the necessary repairs.

4.5 Subject to Articles 4.2 and 4.8, if the Engineer does not give the Owners a deficiency list within the time limit and in the manner described above, for a particular Municipal Improvement, then upon receipt of a written request from the Owners, the Engineer shall be deemed to have issued the CCC or FAC effective the 31st day after receipt by the City of the application for inspection or effective the 31st day after receipt by the City of an application for reinspection, as the case may be.

4.6 Where a Municipal Improvement is constructed to the boundary of the Said Lands and adjacent lands, but is not operational due to deficiencies in the system existing outside the boundary of the Said Lands, then unless deficiencies also exist within the boundaries of the Said Lands, the Engineer shall issue a CCC or FAC within thirty (30) days of application therefor.

4.7 Subject to Articles 4.2 and 4.8, when all deficiencies have been rectified by the Owners and the Owners have made a written application, the Engineer shall issue a CCC or FAC for the Municipal Improvement in question, effective the date of the inspection which showed that all deficiencies were rectified.

4.8 Notwithstanding Article 4.5 herein, a CCC shall not be issued nor be deemed to have been issued:

- a) for any Municipal Improvement until all easements, utility rights of way, restrictive covenants and encroachments required by the City with respect to the Municipal Improvements required to service the Said Lands have been registered at the Land Titles Office;
- b) for a Municipal Improvement crossing a utility right-of-way or located on a utility right of way until the Owners have submitted to the Engineer:

- i) a copy of a utility Crossing Agreement permitting the Municipal Improvement to cross the utility right of way or in the case of landscaping on the utility right of way, permitting the landscaping to be located on the utility right of way; and
- ii) an assignment of all the rights and liabilities under the said utility Crossing Agreement in favour of the City, in form and content satisfactory to the Corporate Services Department, Law Branch of the City and the Owners;
- c) for any Municipal Improvement until all needed test results, documents and any other relevant materials have been submitted by the Owner to the City, and reviewed to the satisfaction of the Engineer.

4.9 If the City has issued a CCC for Paved Roads, Sidewalks, Curb and Gutter before a CCC has been issued for the Street Lighting System, the Owners shall take reasonable steps to ensure that the roads and sidewalks are not open for the use of the public until the Street Lighting System is operational to the satisfaction of the Transportation Department. Reasonable steps shall include, but not be limited to, the posting of clear signage at the entrance to unlit roads and sidewalks indicating that the roads and sidewalks are open for construction traffic only and are not open for public use. For the purposes of this article "public use" does not include use by:

- a) the Owner and its invitees;
- b) the City and its employees or agents;
- c) anyone engaged in the construction of Municipal Improvements pursuant to this Agreement or any other agreement with the City;
- d) the owners of land abutting the unlit roads or sidewalks and their invitees.

4.10 Notwithstanding anything herein to the contrary, the Engineer may, in his sole discretion, accept written application for an FAC prior to the expiry of the maintenance period for any Municipal Improvement if the period would expire in the months of November to March, inclusive.

4.11 From and after the date that an FAC for a Municipal Improvement has been issued, or is deemed to have been issued, the City shall assume full responsibility for the maintenance and operation of the particular Municipal Improvement to which the FAC applies.

4.12 Notwithstanding the issuance of an FAC for a Municipal Improvement the Owners shall repair any and all damage caused to new or previously existing municipal improvements by the Owners,

their employees, servants or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto.

ARTICLE 5: MINOR DEFICIENCIES

5.1 For the purposes of this Article the term "Repair Period" shall mean:

- a) for a CCC issued prior to September 1 of a given year, sixty (60) days from the date of issuance of the CCC; or
- b) for a CCC issued on or after September 1 of a given year, the period between the date the CCC is issued and June 30 of the following year.

5.2 Notwithstanding Article 4, and in particular Article 4.6, the Engineer shall issue a CCC for a Municipal Improvement notwithstanding the existence of minor deficiencies with the Municipal Improvement if, in his opinion, the minor deficiencies do not impair the operation of the Municipal Improvement and thus do not need to be rectified immediately. A CCC issued pursuant to this provision shall be issued effective the date of the inspection or reinspection, as the case may be.

5.3 Upon issuing the CCC for any of the Municipal Improvements having minor deficiencies, the Engineer shall provide to the Owners a list of the minor deficiencies that will need to be repaired. The Owners shall repair the minor deficiencies within the Repair Period.

5.4 The final determination of what constitutes a minor deficiency is in the sole and exclusive discretion of the Engineer.

5.5 Minor deficiencies shall be considered repaired when a Professional Engineer, employed by the Owners, certifies to the Engineer that the repairs have been completed in accordance with the Design and Construction Standards in effect at the time the Engineering Drawings were approved and the Engineer, upon reinspection of the Municipal Improvement, agrees that the repairs have been completed to his satisfaction.

5.6 If the minor deficiencies are not repaired within the Repair Period, the maintenance period for the particular Municipal Improvement set out in Schedule "C" shall be extended for a period of time equal to the period of time between the date of issuance of the CCC and the date on which the minor deficiencies were repaired.

5.7 In the event that the minor deficiencies are not repaired within twelve (12) months of the date of the issuance of the CCC the City may draw on the Letter of Credit to complete the repairs.

ARTICLE 6: SPECIAL PROVISIONS

6.1 In addition to the provisions set forth in this Agreement governing the servicing of the Said Lands, the Owners and the City agree that the provisions set forth in Schedule "D" are hereby incorporated and form part of this Agreement. The Owners agree that they shall comply with the specific provisions in Schedule "D". Where there is an inconsistency between the general provisions of this Agreement and the provisions of Schedule "D", the provisions of Schedule "D" shall govern.

ARTICLE 7: LETTER OF CREDIT AND INSURANCE

7.1 To ensure compliance with the terms and conditions of this Agreement the Owners shall provide such irrevocable and unconditional security as is acceptable to the Corporate Services Department, Law Branch of the City (the "Letter of Credit"), in the amount set out in Article 1.1(b), and keep in good standing the Letter of Credit until all required CCCs and FACs have been issued for the Municipal Improvements in accordance with this Agreement.

7.2 The Letter of Credit shall be for an initial term of not less than one (1) year, and shall be renewed by the Owners at least thirty (30) days prior to its expiry, and delivered to the Senior Accountant in the Planning and Development Department of the City as many times as is necessary until all required CCCs and FACs have been issued. The expiry date for the Letter of Credit shall fall on a weekday, which is not a statutory holiday. The Letter of Credit shall provide that partial draws are permitted and shall state that it is to be available as security for any and all obligations whatsoever of the Owners under this Agreement.

7.3 In addition to the situations specifically identified in other provisions of this Agreement as being circumstances under which the City may draw on the Letter of Credit, the City may draw on the Letter of Credit if:

- a) it is not renewed to the satisfaction of the Corporate Services Department, Law Branch of the City and in accordance with Article 7.2 above; or

- b) the Owners default on any of their obligations under this Agreement and, in the opinion of the City, create an unsafe condition in which event the City may use the proceeds of the Letter of Credit to do any work required to protect life and property from injury and destruction; or
- c) the Owners default on any of their obligations under this Agreement, including without limitation:
 - i) the obligation to repair any and all damage to Municipal Improvements caused by the Owners, their employees, servants or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto, in which event the City may use the proceeds of the Letter of Credit to do any work required to maintain, repair, remove, restore or remedy any defects in the work undertaken by the Owners herein; and
 - ii) the obligation to pay all Sales Taxes, as defined herein, and to indemnify and save the City harmless from and against such Sales Taxes all in accordance with Article 9.

7.4 In the event that the City draws on the Letter of Credit, pursuant to Article 7.3 or any other Article of this Agreement which gives the City the right to draw on the Letter of Credit, the proceeds shall be used to pay:

- a) the reasonable costs incurred by the City in drawing upon the Letter of Credit including, but not limited to transportation and actual out of pocket expenses;
- b) all costs incurred by the City in completing the work required pursuant to the Article giving rise to the City's right to draw on the Letter of Credit, including, but not limited to:
 - i) administrative costs incurred in arranging to complete the work;
 - ii) consulting and contracting fees required to retain an outside consultant and contractor;
 - iii) costs related to labour, materials, testing and inspection; and
 - iv) administrative and engineering costs required to obtain CCCs and FACs for the Municipal Improvements including documentation, testing, maintenance and deficiency repairs;

and
- c) any and all Sales Taxes.

If the proceeds of the Letter of Credit are not sufficient to cover the above noted items, the Owners shall pay any shortfall to the City within thirty (30) days upon being invoiced therefor. The City shall provide an accounting to the Owners indicating how the proceeds of the Letter of Credit were used within sixty (60) days of remedying any deficiency. The City shall pay to the Owners any surplus funds not required to remedy deficiencies within sixty (60) days after the issuance of FACs for all the Municipal Improvements. No interest shall be paid on the surplus funds.

7.5 If and whenever the City, in accordance with the provisions of Article 7.3(c) hereof, draws on the proceeds of the Letter of Credit to do any work required to maintain, repair, remove, restore or remedy any defects in the work undertaken by the Owners herein, then, on completion of such works by the City and upon receipt of any shortfall payment required from the Owners to the City, the City shall issue to the Owners, without application therefor, any certificates which the Owners may otherwise be entitled to receive on completion of the maintenance period pursuant to Article 4 and the Owners shall be relieved of any obligations they may otherwise have to maintain, repair, remove, restore or remedy defects to the extent that such works have been undertaken by the City.

7.6 When all CCCs and FACs have been issued, and when any and all damage caused to Municipal Improvements by the Owners, their employees, servants or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto have been repaired, the City, upon request in writing by the Owners, shall release the security provided by the Letter of Credit.

7.7 The Owners shall maintain in full force and effect, to the satisfaction of the City's Director of Risk Management (the "Risk Manager"):

a) a Commercial General Liability Insurance policy providing coverage of at least two million dollars (\$2,000,000.00) inclusive, per occurrence, for bodily injury, death, and damage to property.

This insurance shall include, inter alia, coverage for:

- i) independent contractors;
- ii) completed operations;
- iii) broad form loss of use;
- iv) blanket contractual liability, including this Agreement;
- v) shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below ground surface, tunnelling and grading;
- vi) attached machinery

- vii) non-owned automobiles;
- viii) City of Edmonton as additional insured;
- ix) employees as additional insureds;
- x) cross liability;
- xi) contingent employers liability; and
- xii) broad form property damage;

b) a Standard Automobile Policy providing coverage of at least One Million Dollars (\$1,000,000.00) inclusive, per occurrence, for bodily injury, death and damage to property, for all vehicles owned, leased or operated by the Owners which are used in conjunction with the work done under this Agreement.

These insurance coverages shall remain in full force and effect until all CCCs and FACs for the Municipal Improvements have been issued.

7.8 The aforementioned insurance coverages shall be endorsed to provide the City with thirty (30) days prior written notice of cancellation or material change and shall be in a form acceptable to the Risk Manager.

7.9 Within thirty (30) days of request by the City, the Owners shall provide additional insurance if it is deemed necessary by the Risk Manager. If requested, an explanation will be provided to the Owners for the additional insurance requirement.

7.10 It is further understood and agreed that the policy limits shown under items (a) and (b) of Article 7.7 do not define or limit the Owner's liability to indemnify the City in the event of bodily injury and/or property damage, nor does the City make any representations as to the adequacy of said limits or scope of coverage in the event of a claim.

ARTICLE 8: ARBITRATION

8.1 If a dispute arises between the parties in respect of Article 4.1 or 4.3, then such dispute shall be settled by arbitration in accordance with the following terms and conditions. It is agreed that only the matters listed above may be arbitrated.

8.2 (a) The party desiring to refer the dispute for arbitration (the "Disputing Party"), shall notify the other party (the "Other Party") in writing of the details of the nature and extent of the dispute.

- (b) Within fifteen (15) days of receipt of such notice, the Other Party shall, by written notice, advise the Disputing Party of all matters referred to in the initial notice except those for which the other party admits responsibility and proposes to take remedial action. The Other Party shall then take remedial action.
- (c) The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice, which remain in dispute.
- (d) Immediately following the identification of the terms of reference, the parties shall meet and attempt to appoint a single arbitrator. If the parties refuse to meet, or having met, are unable to agree on a single arbitrator, then upon written demand of either party, within fifteen (15) days of such date, each party to the arbitration shall appoint one (1) arbitrator in writing and the two (2) arbitrators shall, within five (5) days of their appointment, appoint a third member to be known as the Chairman of the Arbitration Committee.
- (e) If either party fails to appoint an arbitrator, then the opposite party may apply to a Justice of the Court of Queen's Bench of Alberta to have such arbitrator appointed.
- (f) If the two (2) arbitrators fail to appoint a Chairman, then both parties, or either of them, may apply to a Justice of the Court of Queen's Bench of Alberta to have the Chairman appointed.
- (g) Within fifteen (15) days of the appointment of a sole arbitrator or appointment of the Arbitration Committee, as the case may be, or such further time period as may be agreed upon by the parties, the sole arbitrator or the Arbitration Committee, as the case may be, shall resolve all matters and disputes in accordance with the terms of reference.
- (h) The sole arbitrator, or the Arbitration Committee, as the case may be, shall have the power to obtain the assistance, advice or opinions of such engineers, surveyors, appraisers, or other experts as they may think fit, and shall have the discretion to act upon any assistance, advice or opinions so obtained.
- (i) Each of the arbitrators shall provide a separate written decision with full reasons. The decision of the majority of the Arbitration Committee shall be the decision of the Arbitration Committee, provided that if no majority exists, then the decision of the Chairman shall be deemed to be the decision of the Arbitration Committee.

(j) The decision of the sole arbitrator, or the Arbitration Committee, as the case may be, shall be final and binding upon the parties hereto.

(k) Notwithstanding any provisions contained in the *Arbitration Act* RSA 2000, Chapter A-43, as amended, the costs of the Arbitration shall be determined by the sole arbitrator or the Arbitration Committee, as the case may be, and be borne by the party against which the award is made, or as otherwise determined by the sole arbitrator or the Arbitration Committee, as the case may be.

8.3 Notwithstanding that a matter has become the subject of arbitration, the parties shall, where reasonably possible, proceed with all other matters and things under this Agreement as if such matter had been settled and the dispute determined to the intent that no arbitration procedure shall delay the expeditious operation of the terms of this Agreement.

8.4 The time taken for any arbitration that further delays a party in the performance of any thing or act shall be added to the time of performance thereof unless the sole arbitrator or the Arbitration Committee, as the case may be, find that the delay in performance was not beyond the reasonable control of the party required to perform.

ARTICLE 9: NOTICE

9.1 Any notice to be given pursuant to the terms of this Agreement shall be sufficiently given:

a) in case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

Manager, Development Compliance Branch
Planning and Development Department
5th Floor, 10250 - 101 Street NW
Edmonton, AB T5J 3P4

and also to:

Corporate Services, Law Branch
9th Floor, Chancery Hall
3 Sir Winston Churchill Square NW
Edmonton, AB T5J 2C3;

b) in case of notice to the Owners, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

"Developer Name"
"Developer Address"

or, if the City determines it to be more appropriate, to:

"Consultant Name"
"Consultant Address"

9.2 Notice given as aforesaid, if posted in Alberta, other than during a postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which such notice is mailed. Notice during a postal disruption shall be personally delivered. Any notice personally delivered shall be deemed to have been given on the date of actual delivery.

9.3 Either party may, at any time, give notice in writing to the other of any change in address of the party giving such notice and, from and after the giving of such notice, the address therein specified shall be deemed to be the address of the said party for the giving of notice hereunder.

9.4 The word "notice" in this Article 9 shall be deemed to include any requests, applications, information, statements or other writing required or permitted to be given by either party to the other.

ARTICLE 10: GENERAL

10.1 The Owners shall indemnify and save harmless the City, its servants, agents and employees, from and against any and all claims, losses, demands, payments, actions, suits, judgements, damages and expenses of every nature and kind brought or claimed against the City, its servants and agents, by any party whatsoever, which may arise directly, indirectly or incidentally, in tort and in contract, or either, out of the performance or non performance by the Owners of their obligations under this Agreement, except any such claims which are caused by the wilful misconduct or negligence of the City, its officers or employees.

10.2 Unless otherwise expressly agreed by the parties to this Agreement, any and all amounts owing by one party to the other shall, thirty (30) days after the date of invoicing of any one party by the other and until the date of payment, bear interest at the rate of eighteen per cent (18%) per annum.

10.3 Whenever the singular or neuter or masculine is used in this Agreement, it shall be construed as meaning the plural or feminine or body corporate, where the context so requires.

10.4 If this Agreement is executed by more than one (1) party as an Owner hereunder, all covenants, conditions, obligations and agreements herein contained shall be construed as taken as against all executing parties, as joint and several.

10.5 The parties covenant and agree to do such things, to issue such instructions and to execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

10.6 Whenever any thing or matter is to be done to the approval of, satisfactory to, acceptable to or is subject to similar determination to or by the City, the Manager, the Engineer or their employees or officers, the City, its officers or employees shall act reasonably and in a timely manner.

10.7 This Agreement shall not nullify, replace, circumvent, extend or modify any existing statutes, bylaws, or permit conditions which govern development or construction within the City.

10.8 No condonation, forgiveness, waiver or forbearance by any party of any non observance or non performance by any other party of any of the provisions hereunder will operate as a waiver or forbearance against the first such party in respect of any such provision or any subsequent non observance or non performance by any party of any of the provisions hereunder.

10.9 In the event that one or more articles of this Agreement are declared invalid or unenforceable by a court of competent jurisdiction, the parties agree that such article or articles shall be severable from the remainder of this Agreement, and that the other provisions herein shall continue in full force and effect.

10.10 This Agreement shall not be assigned without consent of the City, and only upon arrangements, satisfactory to the City, made with the assignee of the Owners to secure payment by the assignee of the costs to be borne, and the insurance and Letter of Credit to be carried, by the Owners pursuant to this Agreement.

10.11 The Owners covenant and agree that they shall obtain the same covenants as are herein contained, including this covenant, from any person to whom they may, in any way, convey the fee simple estate of the Said Lands, or any part thereof, prior to registration of the subdivision plan for the Said Lands, so that the said covenants shall be enforceable by the City.

10.12 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, successors and approved assigns.

10.13 This Agreement shall not be modified or amended except by an instrument in writing signed by the parties hereto.

10.14 It is agreed that this written instrument embodies the entire agreement of the parties hereto with regard to the matters dealt with herein, and that no other understandings or agreements, verbal or otherwise, exist between the parties.

10.15 The Owners shall ensure that the provisions of the *Occupational Health and Safety Act* RSA 2000, Chapter O-2, as amended and its Regulations, the *Environmental Protection and Enhancement Act* RSA 2000, Chapter E-12, as amended and its Regulations, the *Fisheries Act* RSC 1985, Chapter F-14, as amended and its Regulations, the *Navigable Waters Protection Act* RSC 1985, Chapter N-22, as amended and its Regulations, the *Water Act* RSA 2000, Chapter W-3, as amended and its Regulations, and any other applicable Acts are complied with and shall at all times ensure that all contractors and subcontractors at the work site comply with the requirements of the said Acts and their Regulations.

10.16 The City does not represent or warrant that the obligations of the Owners under this Agreement are the only obligations related to access or servicing of the Said Lands. The City reserves the right to attach any other lawful conditions relating to servicing or access to the Said Lands as a condition of any future approval relating to the Said Lands. Without limiting the generality of the foregoing, the City reserves the right to impose an off-site levy pursuant to s. 648 of the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended.

10.17 It is expressly agreed that the preambles and all schedules attached hereto are deemed to form an integral part of this Agreement.

10.18 The validity and interpretation of this Agreement, and of each article and part hereof, shall be governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their duly authorized officers in that behalf on the day and year first above written.

THE CITY OF EDMONTON

(As represented by the General Manager of the Planning and Development Department)

GENERAL MANAGER

Approved:

As to form _____
Corporate Services Department, Law Branch

As to contents _____
Planning and Development Department

"INSERT DEVELOPER NAME"

PER: _____

PER: _____
[sign and affix corporate seal over signature(s)]

SCHEDULE "C"
MUNICIPAL IMPROVEMENTS

The Owners shall construct, install, and maintain the following Municipal Improvements in accordance with the conditions set forth in this Agreement:

1. The water distribution system, being all water transmission mains having an internal diameter greater than 450 millimetres, water mains having an internal diameter of less than or equal to 450 millimetres, all appurtenances thereto and service connections thereto (the "Water System and Service Connections"). The Water System and Service Connections shall be maintained for one (1) year;
2. The storm trunk sewers, being those storm sewers having an internal diameter greater than or equal to 1200 millimetres, the lateral storm sewers, being those storm sewers having an internal diameter of less than 1200 millimetres, the sanitary trunk sewers, being those sanitary sewers having an internal diameter greater than or equal to 375 millimetres, the lateral sanitary sewers, being those sanitary sewers having an internal diameter of less than 375 millimetres, all appurtenances thereto and all necessary service connections from the sewer mains to the boundary of each proposed lot within the Said Lands (the "Storm and Sanitary Sewers"). The Storm and Sanitary Sewers shall be maintained for one (1) year;
3. The curbs, gutters, catchbasin frames and covers, sewer manhole frames and covers, street identification signs, paved roads, sidewalks, emergency access walkways, and berms (the "Paved Roads, Sidewalks, Curb and Gutter"). The Paved Roads, Sidewalks, Curb and Gutter shall be maintained for two (2) years;
4. The electrical distribution servicing facilities including primary cable, the transformers, all secondary conductors, power bases and pedestals, switching and/or service cubicles, lighting of the Entrance Feature and service connections to each proposed lot within the Said Lands (the "Electrical Distribution System"). The Electrical Distribution System shall be maintained for one (1) year;
5. The street lighting system including all secondary conductors, luminaires, controllers, bases, poles and appurtenances thereto within the Said Lands (the "Street Lighting System"). The Street Lighting System shall be maintained for two (2) years;
6. The walkways (the "Walkways"). The Walkways shall be maintained for two (2) years;

7. The landscaping, which shall include such activities as grading, drainage, sodding or seeding, planting of trees and shrubs, on boulevards, walkways, public utility lots, land surrounding the Entrance Feature, berms and road islands (the "Landscaping"). The Owners shall maintain the Landscaping for one (1) year;
8. The landscape amenities, which shall include the installation of but shall not be limited to such items as fountains, decks, picnic tables and waste receptacles on boulevards, walkways, public utility lots, municipal reserve parcels, land surrounding the Entrance Feature, berms and road islands (the "Landscape Amenities"). The Owners shall maintain the Landscape Amenities for two (2) years;
9. The fencing (the "Fencing"). An FAC will not be issued for this improvement. The Fencing shall be constructed such that it is located inside the property lines of the individual lots created upon registration of the subdivision plan for the Said Lands. The Fencing shall be maintained by the Owner of the lots created upon subdivision of the Said Lands;
10. The noise attenuation fence (the "Noise Attenuation Fence"). An FAC will not be issued for this improvement. The Noise Attenuation Fence shall be constructed such that it is located inside the property lines of the individual lots created upon registration of the subdivision plan for the Said Lands. The Noise Attenuation Fence shall be maintained by the Owner of the lots created upon subdivision of the Said Lands;
11. The concrete drainage swales (the "Concrete Drainage Swales"). The Concrete Drainage Swales shall be maintained for one (1) year;
12. The grass drainage swales (the "Grass Drainage Swales"). The Grass Drainage Swales shall be maintained for one (1) year;
13. The interim/permanent storm water management facility and all appurtenances thereto, (the "Storm Water Management Facility"). The Storm Water Management Facility shall be maintained for two (2) years;
14. The interim drainage swale (the "Interim Drainage Swale"). An FAC will not be issued for this improvement. The Interim Drainage Swale shall be maintained until such time as a CCC has been issued for the permanent Storm and Sanitary Sewers to be constructed on lands adjacent to

the Said Lands, which will service the Said Lands; or The Interim Drainage Swale shall be maintained for one (1) year after the date the last FAC is issued for the Said Lands;

15. The sanitary lift station (the "Sanitary Lift Station"). The Sanitary Lift Station shall be maintained for one (1) year;
16. The paved alleys (the "Alleys"). The Alleys shall be maintained for two (2) years;
17. The entrance feature (the "Entrance Feature"). The Owners shall maintain the Entrance Feature for two (2) years;
18. The temporary paved turnarounds (the "Temporary Paved Turnarounds"). An FAC will not be issued for this improvement. The Temporary Paved Turnarounds shall be constructed prior to the issuance of an FAC for the Paved Roads, Sidewalks, Curb and Gutter, or earlier, which shall be at the discretion and direction of the Transportation Department of the City. The Temporary Paved Turnarounds shall be maintained until an FAC has been issued for Paved Roads, Sidewalks, Curb and Gutter or until such time as a CCC has been issued for the permanent Paved Roads, Sidewalks, Curb and Gutter to be constructed on lands adjacent to the Said Lands, which will service the Said Lands;
19. The temporary emergency access (the "Temporary Emergency Access"). An FAC will not be issued for this improvement. The Temporary Emergency Access shall be maintained until such time as a CCC has been issued for the permanent Paved Roads, Sidewalks, Curb and Gutter to be constructed on lands adjacent to the Said Lands, which will provide alternate emergency access to the Said Lands;
20. The interim "Insert Improvement" (the "Interim "Insert Improvement" "). An FAC will not be issued for this improvement. The Interim "Insert Improvement" shall be maintained until such time as a Construction Completion Certificate has been issued for the permanent "Insert Permanent Improvement" to be constructed on lands adjacent to the Said Lands, which will service the Said Lands; and
21. Any other improvements which may be shown on the Engineering Drawings. These other improvements shall be maintained for two (2) years.

SCHEDULE "D"
SPECIAL PROVISIONS

ARTICLE 1: NON APPLICABLE AND ADDITIONAL PROVISIONS

1.1 All references to Articles within Article 1 of this Schedule "D" shall be deemed to be references to Articles in the main body of the Agreement unless otherwise expressly noted.

1.2 For the purposes of this Agreement, Article(s) [REDACTED] shall not apply.

1.3 For the purposes of this Agreement the following Article(s) shall be added as follows:

(a) ARTICLE [REDACTED]:

(b) ARTICLE [REDACTED] in substitution for ARTICLE [REDACTED] previously deleted:

(c) ARTICLE 4.13:

4.13 The Owners acknowledge and agree that as of the date the City issues the FAC for the Entrance Feature, all property, ownership rights, responsibilities and obligations with respect to the Entrance Feature shall pass to the City. Thereafter the City shall be solely and exclusively responsible for the Entrance Feature and shall have absolute discretion over the maintenance, improvement, redesign, replacement and removal of the Entrance Feature.

(d) ARTICLE 4.14:

4.14 Notwithstanding Articles 4.5 and 4.7, an FAC for Paved Roads, Sidewalks, Curb and Gutter shall not be issued, nor be deemed to have been issued, until the Owners have constructed and a CCC has been issued for the Temporary Paved Turnarounds and the Temporary Emergency Access.

(e) ARTICLE 7.11:

7.11 Notwithstanding Articles 7.2 and 7.6, \$ **"Landscape Holdback Amount"** of the Letter of Credit shall be retained as security for construction of the Landscaping. This security shall not be released until an FAC has been issued for the Landscaping.

(f) ARTICLE 7.12:

7.12 Notwithstanding Articles 7.2 and 7.6, \$ **"Swale Security"** of the Letter of Credit shall be retained as security for maintenance of the Interim Drainage Swale. This security shall not be released until a CCC has been issued for the permanent Storm and Sanitary Sewers to be constructed on lands adjacent to the Said Lands, which will service the Said Lands. or This

security shall not be released until one (1) year after the date the last FAC is issued for the Said Lands. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Interim Drainage Swale.

(g) ARTICLE 7.13:

7.13 Notwithstanding Articles 7.2 and 7.6, \$ **"SWMF Security"** of the Letter of Credit shall be retained as security for the maintenance of the interim Storm Water Management Lake. This security shall not be released until a CCC is issued for the permanent Storm Water Management Lake to be located on lands adjacent to the Said Lands, which will service the Said Lands. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the interim Storm Water Management Lake.

(h) ARTICLE 7.14:

7.14 Notwithstanding Articles 7.2 and 7.6, \$ **"Dry Pond Security"** of the Letter of Credit shall be retained as security for the maintenance of the interim Dry Pond. This security shall not be released until a CCC is issued for the permanent Storm Water Management System to be located on lands adjacent to the Said Lands, which will service the Said Lands. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the interim Dry Pond.

(i) ARTICLE 7.15:

7.15 Notwithstanding Articles 7.2 and 7.6, \$ **"Access Security"** of the Letter of Credit shall be retained as security for the maintenance of the Temporary Emergency Access. This security shall not be released until a CCC is issued for the permanent Paved Roads, Sidewalks, Curb and Gutter to be located on lands adjacent to the Said Lands which will service the Said Lands. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary Emergency Access.

(j) ARTICLE 7.16:

7.16 Notwithstanding Articles 7.2 and 7.6, \$ **"Security"** of the Letter of Credit shall be retained as security for the maintenance of the Interim **"Insert Improvement"**. This security shall not be released until a CCC is issued for the permanent **"Insert Permanent Improvement"** to be located on lands adjacent to the Said Lands, which will service the Said Lands. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Interim **"Insert Improvement"**.

(k) ARTICLE 7.16:

7.16 Notwithstanding Articles 7.2 and 7.6, upon issuance of all CCCs for the Municipal Improvements listed in Schedule "C", and upon written request from the Owners, the City will accept a reduction in the Letter of Credit in the amount of \$

Insert Reduction Amount (Category C only).

1.4 For the purposes of this Agreement the following Articles shall be amended as follows:

(a) ARTICLE ____:

adding "____" after "...____," in the ____ line.

ARTICLE 2: BOUNDARY IMPROVEMENTS – OWNERS AGREEMENT

2.1 The Owners shall install certain municipal improvements, including paved roads, lateral storm and sanitary sewers, water distribution mains, power services in excess of the requirement for the Said Lands (the "Improvements"), for the benefit of such lands as shown outlined/cross-hatched, on Schedule "E" (the "Lands"). The Owners warrant to the City that they have, under an agreement in writing dated "Insert Date" between themselves and the owners of the Lands, agreed that the owners of the lands shall pay to the Owners compensation for the Owners constructing the Improvements. The Owners further acknowledge and agree that the City shall not make any effort or be under any obligation to collect any monies from the owners of the Lands with respect to the construction of the Improvements. The City is hereby expressly released, by the Owners of any obligation, statutory or otherwise, to collect any monies, on behalf of the Owners from the owners of the Lands, or their successors, in respect to the benefit of the Lands shall receive from the construction of the Improvements. Further, the Owners agree that they shall and do hereby indemnify and save harmless the City, its servants, agents and employees from any action, cause of action, demand, suit, loss, claim or expense made against the City by the owners of the Lands or their successors, in tort or contract or either of them, arising out of any failure, non-performance or delay on the part of the Owners in installing the Improvements or arising out of the construction or installation of the Improvements on the Lands.

2.2 The covenants contained in Article 2.1 of this Schedule "D" are subject to and conditional upon the following being provided to the City within forty five (45) days of the date of entering into this Agreement:

- a) a letter from the Owners under seal confirming that they have entered into an agreement, in writing, between themselves and the owners of the Lands, in accordance with the terms and conditions of Article 2.1 of this Schedule "D"; and

- b) the owners of the Lands providing a utility easement to the City upon terms and conditions agreeable to the City and in a form acceptable to the Corporate Services, Law Branch of the City permitting the Improvements to be on the Lands, and permitting their maintenance.

ARTICLE 3: BOUNDARY IMPROVEMENTS

3.1 The City acknowledges that the Owners are required to install certain municipal improvements, including paved roads, lateral storm and sanitary sewers, water distribution mains, power, curbs, gutters and sidewalks in excess of the requirement for the Said Lands (the "Requirement"), and which will benefit the land shown cross-hatched, on Schedule "E". If within ten (10) years of the date of execution of this Agreement, all or any part of the land shown cross-hatched is developed or subdivided, as the case may be, the City shall enter into agreements with the applicants for development permits or subdivision approval (the "Future Developers"), requiring the Future Developers to pay an amount in respect of those municipal improvements. If the Requirement has been constructed and as-constructed costs are available or can be readily determined, including engineering, surveying and administration, then the City will collect the as-constructed costs from the Future Developers and within sixty (60) days pay those funds to the Owners, or such portion thereof as the City actually collects. If the Requirement has not been constructed, then the City will collect from the Future Owners the estimated costs of construction, including engineering, surveying, administration and contingency, which are estimated to be \$ **"Boundary Conditions Receivable Amount"**, inclusive of Sales Taxes, and within sixty (60) days pay those funds to the Owners, or such portion thereof as the City actually collects. Nothing in this Article shall oblige the City to pay to the Owners any amount which the City is prevented by law from recovering from the Future Developers.

3.2 The covenants contained in Article 3.1 of this Schedule "D" are subject to and conditional upon the owners of the lands providing a utility easement to the City upon terms and conditions agreeable to the City and in a form acceptable to the Corporate Services, Law Branch of the City permitting the municipal improvements to be on the aforementioned lands, and permitting their maintenance, within forty five (45) days of the date of entering into this Agreement.

ARTICLE 4: PIPELINE RIGHTS OF WAY

4.1 The Owners acknowledge that they are responsible for ensuring that all surface disturbances in the vicinity of the pipeline rights-of-way within the Said Lands are undertaken in accordance with the *Pipeline Act* RSA 2000, Chapter P-15, as amended, the requirements of the Alberta

Energy and Utilities Board and the City's Interim Guidelines for Pipeline Corridors. Any and all cost incurred in ensuring that the requirements of the Act, Board or Guidelines are met shall be borne solely by the Owners.

4.2 The Owners shall, at their sole cost, demarcate the alignment of all pipelines within the Said Lands prior to any surface disturbance being undertaken within or near the said pipeline rights-of-way.

-- END OF SCHEDULE "D" --