

THIS RESTRICTIVE COVENANT is made this 23 day of October, 2006.

BETWEEN:

**THE CITY OF EDMONTON**

- and -

**THE CITY OF EDMONTON**

- A. The City is the registered owner of the Dominant Lands.
- B. The City is the registered owner of the Servient Lands.
- C. The subsurface soil conditions of the Servient Lands, which includes, for greater clarity and without limitation, the bedrock, are potentially restrictive of the type and manner of the construction, erection or placement of any Improvements on the Servient Lands.
- D. The Servient Lands may contain native soils, placed under controlled compaction with engineering inspection and density testing, commonly known as engineered fill.
- E. Any construction, erection or placement of any Improvements on the Servient Lands, except in accordance with the restrictive covenants as contained herein will be detrimental to the Dominant Lands and the Servient Lands.
- F. The Grantee desires to obtain from the Grantor certain restrictive covenants and other rights pertaining to the development of the Servient Lands, all in the manner hereinafter stated.

**NOW THEREFORE** for the benefit and protection of the Dominant Lands or any parts thereof, and in consideration of the promises, stipulations and covenants herein contained, the parties hereto agree as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

- (a) "City" means The City of Edmonton;
- (b) "Dominant Lands" includes the lands legally described in Schedule "A" to this Agreement, and the public utility lot legally described as:

PLAN 0324198  
BLOCK 6  
LOT 25PUL

EXCEPTING THEREOUT ALL MINES AND MINERALS



- (c) "Engineer" shall mean a professional engineer duly qualified and certified in accordance with the relevant laws of the Province of Alberta;
- (d) "Engineering Standards" shall mean those standards and specifications as prescribed by an Engineer;
- (e) "Grantee" means the owner of all or any of the Dominant Lands;
- (f) "Grantor" means the owner of all or any of the Servient Lands;
- (g) "Improvements" means any buildings, structures or improvements; and
- (e) "Servient Lands" means the lands legally described in Schedule "B" hereto together with all Improvements thereon and thereunder.

1.2 This Restrictive Covenant Agreement shall be interpreted in accordance with the laws of the Province of Alberta.

1.3 The preamble to this Restrictive Covenant Agreement is expressly incorporated into and forms part of this Restrictive Covenant Agreement.

1.4 In reading and interpreting this Agreement:

- (a) the insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Restrictive Covenant Agreement;
- (b) the masculine gender shall include the feminine or a body corporate where in this Agreement, the context or the parties require; and
- (c) the word "shall" is to be read and interpreted as mandatory and the word "may" is to be read and interpreted as permissive.

## **2. GRANT OF RESTRICTIVE COVENANTS**

The Grantor, on behalf of itself, its successors and assigns, hereby covenants with the Grantee, its successors and assigns, to the intent that the burden of the restrictive covenants hereinafter set forth may run with and bind the Servient Lands and every part thereof, and to the further intent that the benefit thereof may be annexed to and run with the Dominant Lands and every part thereof, to observe and perform the following restrictive covenants:

2.1 Not to construct or place or permit or cause to be constructed or placed on the Servient Lands any Improvements:



- (a) unless the design of all footings and foundations of such Improvements shall include specific requirements for suitability with the subsurface soil (which includes, for greater clarity and without limitation, the bedrock, and engineered fill, if present) composition and stability of the Servient Lands;
- (b) unless the design of all footings and foundations of such Improvements shall be in accordance with Engineering Standards;
- (c) unless the soils at and below the footing level of such Improvements shall be inspected and approved by an Engineer prior to commencement of the construction of any foundation or Improvement;
- (d) without a weeping tile foundation and drainage system constructed in accordance with Engineering Standards, such that discharge from the weeping tile shall be either discharged to a foundation drain service if available, or in absence of such foundation drain service, to surface splash pads located at a minimum 1.17 metres from an Improvement's foundation or footing; and
- (e) unless all drainspouts from roof tops of Improvements situated on the Servient Lands shall discharge to splash pads such that discharge from drainspouts to the soil surface is a minimum of 1.17 metres from an Improvement's foundation or footing.

2.2 Not to permit or cause to be permitted any permanent alteration of the lot grading for the Servient Lands, as a result of the Improvements, or otherwise, or change the elevations shown on the lot grading plan for the Servient Lands.

2.3 Not to permit or cause to be permitted any excavation of the Servient Lands unless in accordance with the restrictive covenants herein.

2.4 Not to permit or cause to be permitted the construction of any Improvements including:

- (a) swimming pools, fish ponds or similar reservoirs;
- (b) permanent lawn watering systems.

2.5 Not to submit an application for a development permit or a building permit for an Improvement that is contrary or inconsistent with the restrictive covenants herein.

### **3. BENEFIT DOMINANT LANDS**

The Grantor acknowledges that the covenants herein contained are expressly intended to benefit the Dominant Lands and to burden the Servient Lands and to prevent the disposition, use or development of the Servient Lands or any part thereof, except in conformity with the said restrictive covenants.

#### **4. WAIVER, BREACH AND ENFORCEMENT**

Neither the granting of time by the Grantee to the Grantor or any other owner for the time being of any of the Servient Lands to remedy any breach of the aforesaid restrictive covenants, nor the fact of the Grantee failing to take action upon any breach by the Grantor or any owner of the Servient Lands, of any of the aforesaid restrictive covenants, shall operate as a waiver or otherwise estop the Grantee from taking action thereafter against the Grantor or any owner of the Servient Lands, to enforce these presents, and any breach by the Grantor or any owner of the Servient Lands, of any of the aforesaid restrictive covenants shall be deemed to be a continuing breach which may be restrained, enjoined or otherwise remedied by appropriate proceedings by the Grantee. Nothing herein contained shall obligate the Grantee to enforce the aforesaid restrictive covenants or any of them or otherwise render the Grantee liable in damages or otherwise for any breach or non-performance of any of the aforesaid restrictive covenants.

#### **5. COVENANT RUNNING WITH THE LAND AND BINDING ON SUCCESSORS**

Each covenant herein contained shall be of the same force and effect to all intents and purposes as a covenant running with the land and these presents, shall extend to, be binding upon and enure to the benefit of the successors and assigns of the Grantor, and of the successors and assigns of the Grantee.

#### **6. SEVERABILITY**

If any of the covenants herein contained shall at any time be held by any court of competent jurisdiction to be invalid or unenforceable in the manner contemplated herein, then such covenant shall be severed from the rest of the covenants herein contained and such severance shall not prejudicially effect the enforceability of the remaining covenants in accordance with the intent of these presents.

#### **7. NON-STATUTORY WAIVER**

Nothing in this Restrictive Covenant Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the **Municipal Government Act**, R.S.A. 2000 Ch. M-26, and any amendments thereto, or any other legislation in force in the Province of Alberta. The City, as far as it can legally do so, shall only be bound to comply with and carry out the terms and conditions of this Restrictive Covenant Agreement, and nothing in this Restrictive Covenant Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.



**8. WAIVER**

The waiver of any covenant, condition or provision hereof must be in writing. The failure of any party at any time to require strict performance by the other party of any covenant, condition or provision hereof, shall in no way affect such parties right thereafter to enforce such covenant, condition or provision nor shall the waiver by any party of any breach of any covenant, condition or provision hereof be taken or held to be taken as a waiver of any future breach of any such covenant, condition or provision.

**9. NO ASSIGNMENT**

No assignment of this Restrictive Covenant Agreement shall be valid unless for the entire interest of the Grantor.

IN WITNESS WHEREOF of this Restrictive Covenant Agreement is hereby executed as at the day and year first above written.

APPROVED:

AS TO FORM:

AS TO CONTENT:

THE CITY OF EDMONTON, as  
Represented by the Manager of the Land and  
Buildings Branch, Asset Management and  
Public Works Department

Per:

Terry J. Loat

(Seal)

RES: Brintnell-RCSC-Stg13

## **SCHEDULE 'A'**

The Dominant Lands:

LOTS 20 TO 41 INCLUSIVE, BLOCK 11, PLAN 0624661;  
LOTS 34 TO 61 INCLUSIVE, BLOCK 12, PLAN 0624661;  
LOTS 22 TO 34 INCLUSIVE, BLOCK 13, PLAN 0624661;  
LOTS 72 TO 137 INCLUSIVE, BLOCK 15, PLAN 0624661;  
LOTS 15 TO 26 INCLUSIVE, BLOCK 23, PLAN 0624661; AND  
LOTS 1 TO 36 INCLUSIVE, BLOCK 26, PLAN 0624661.

EXCEPTING THEREOUT ALL MINES AND MINERALS

**SCHEDULE 'B'**

The Servient Lands:

LOTS 20 TO 41 INCLUSIVE, BLOCK 11, PLAN 0624661;  
LOTS 34 TO 61 INCLUSIVE, BLOCK 12, PLAN 0624661;  
LOTS 22 TO 34 INCLUSIVE, BLOCK 13, PLAN 0624661;  
LOTS 72 TO 137 INCLUSIVE, BLOCK 15, PLAN 0624661;  
LOTS 15 TO 26 INCLUSIVE, BLOCK 23, PLAN 0624661; AND  
LOTS 1 TO 36 INCLUSIVE, BLOCK 26, PLAN 0624661.

EXCEPTING THEREOUT ALL MINES AND MINERALS