

Neighbourhood:
Stage:

**BERM AND FENCE
RESTRICTIVE COVENANT
AND EASEMENT**

THIS RESTRICTIVE COVENANT MADE THE _____ DAY OF _____, 20__.

BETWEEN:

Developer's Name

a body corporate carrying on business in the
City of Edmonton, in the Province of Alberta
(hereinafter called the "Grantor")

OF THE FIRST PART

- and -

THE CITY OF EDMONTON

a body corporate carrying on business in the
City of Edmonton, in the Province of Alberta
(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS THE Grantor is the registered owner of those lands described as follows:

PLAN _____
BLOCK _____
LOTS _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as the "Servient Lands");

AND WHEREAS the Grantee is the registered owner of lands described as follows:

**ALL THAT PORTION OF PUBLIC ROADWAY ADJACENT TO THE SERVIENT
LANDS DESCRIBED AS _____ (Road name)**

(hereinafter referred to as the "Dominant Lands");

AND WHEREAS the Dominant lands either touch or are within the same neighbourhood plan as the Servient Lands;

AND WHEREAS it is intended by the Grantee to have developed on the Servient Lands certain improvements in the nature of a berm and standard fencing.

AND WHEREAS it is beneficial to the value of the Dominant Lands that the Servient Lands and the owners thereof acknowledge the aesthetic and practical value of the subdivision berm and standard fencing to the Dominant Lands and the Servient Lands and that they not in

CITY CLERKS

FILE NO.

any way interfere with the berm and standard fence or the use of the Servient Lands for the subdivision berm and standard fencing.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration now paid by the Grantee to the Grantor (the sufficiency and receipt whereof are hereby acknowledged by the Grantor), the Grantor, on behalf of itself, as owner for the time being of the Servient Lands and on behalf of each of its successors on title to the Servient Lands and any part thereof, hereby grants to the Grantee the Easement hereinafter described in and over the Servient Lands upon the terms and conditions hereinafter provided, and covenants with the Grantee, as owner for the time being of the Dominant Lands and with its successors in title to the Dominant Lands and any part thereof, to the intent that the benefit of the restrictive covenants hereinafter set forth shall be annexed to and run with the Dominant Lands and every part thereof and to the intent that the burden of the restrictive covenants hereinafter set forth shall be annexed to and be binding upon the Servient Lands and every part thereof, to observe and perform the following restrictive covenants, namely:

Other than for a fence along the side property lines, not to erect, construct, place or maintain or permit to be erected, constructed, placed or maintained on the Right-of-Way (as hereinafter described) on which the subdivision berm and standard fencing is constructed, any structure of any nature or kind, whether a fence or other barrier, whether permanent or temporary, whether affixed to the Lands or not, nor shall the Grantor remove, dig or otherwise destroy the elevation of the subdivision berm and standard fence and any appurtenances thereto.

Not to remove, replace or change in any way the standard fence which has been erected in the Right-of-Way on the Servient Lands.

The Easement herein granted shall be and is an Easement of access to and passage through and over:

ALL THAT PORTION IDENTIFIED AS AREA _____ ON RIGHT OF WAY PLAN _____

(hereinafter referred to as the "Right-of-Way")

for the installation and inspection of a subdivision berm and standard fence together with the appurtenances incidental thereto.

The said right, license, liberty, privilege and Easement and the said Restrictive Covenants shall be for so long a period as the Grantee, its successors and assigns shall require in order to exercise the right, license, privilege and easement hereby given and to benefit from the restrictions hereby imposed.

The Grantor shall pursuant to the terms of a Servicing Agreement that has or will be entered into an additional condition of subdivision approval construct upon the Right-of-Way, the berm, standard fence and other appurtenances necessary, for the use described herein.

The Grantor covenants with the Grantee that:

- (a) The Grantee shall have the right to do whatever may be requisite for the reasonable enjoyment of the rights herein granted; and
- (b) The Grantee performing and observing the covenants and conditions as herein contained shall peaceably hold and enjoy all rights, privileges, liberties and covenants hereby granted without any hindrance or interruption from the Grantor or any person or persons claiming by, through, under or in trust for them or any person or persons whatsoever.

The cost and expense of maintaining, repairing, or rebuilding the berm and standard fence and appurtenances upon the Right-of-Way in the same state as constructed by the Grantor shall be borne by the Grantor.

The Grantor and the Grantee mutually agree that the benefit of the restrictive covenants hereinbefore set forth shall be annexed to and run with the Dominant Lands and every part thereof and that the burden of the said restrictive covenants shall be annexed to, run with, and burden of the Servient Lands and every part thereof.

The Grantee forbids the registration of any person as transferee or owner of or of any interest affecting the Servient Lands unless the instrument or Certificate of Title, as the case may be, is stated to be subject to the claims of the Grantee herein stated.

The Grantor and the Grantee mutually agree that whenever the singular number or masculine gender is used in this instrument the same shall be construed as including the plural and feminine and neuter respectively, where the facts or context so requires, and any case, where this deed is executed by more than one party, all covenants and agreements herein contained shall be construed and taken as against such executing parties as joint and several.

The Grantor and the Grantee mutually agree that these presents shall bind and enure to the benefit of the Grantor and the Grantee and the successors in title of the Grantee as owner of the Dominant Lands and every part thereof and the successors in title of the Grantor as owner of the Servient Lands and any part thereof and the Grantee as the benefiting party of the rights, privileges, easements and restrictions herein contained may release, remove or relax any of the conditions or restrictions herein set forth without the necessity of obtaining the consent of the Grantor.

The Easements hereby granted shall not be extinguished in the event that title to or ownership of any of the Dominant Lands or the Servient Lands shall be vested in the same person and if any extinguishment shall occur and title for such lands shall thereafter be divested from such common ownership then and in such event the successors entitled to each such parcel shall be and remain bound to and in respect of the easements and restrictions hereby granted entitled to the benefits thereof, as rights, privileges and obligations as created under any by virtue of the Easement and Restrictive Covenant hereby granted.

This Easement and Restrictive Covenant and all of the provisions, hereof, are subject to and subordinate to any and all mortgage security registered or to be registered against the Servient Lands, and this Easement and Restrictive Covenant is deemed to be postponed in favour of the said mortgages. In the event a mortgagee is not prepared to rely on the deemed subordination contained in this clause, the Grantee will, forthwith following demand, sign a Postponement of this Easement and Restrictive Covenant and will deliver same to any such mortgagee requesting a Postponement.

IN WITNESS WHEREOF these presents have been executed by each of the parties hereto the day and year first above written under its corporate seal and by the hands of its officers duly authorized in that behalf.

DEVELOPER/OWNER

(Seal)

(Seal)

THE CITY OF EDMONTON

Clarence Wong, Director (Seal)
Subdivision and Development Coordination
Urban Form and Corporate Strategic Development

As to Contents
Urban Form and Corporate Strategic Development

Print Name

DATED THIS _____ DAY OF _____, 20____.

NAME OF DEVELOPER

TO

THE CITY OF EDMONTON

RESTRICTIVE COVENANT AND EASEMENT

RE: BERM AND FENCING
