APPENDIX B – SAMPLE SERVICING AGREEMENT

THIS AGREEMENT made in duplicate as of the Effective Date,

BETWEEN:

THE CITY OF WINNIPEG,
(the "City")

OF THE FIRST PART,

- and -

OWNER NAME,
(the "Owner")

OF THE SECOND PART.

WHEREAS the Owner is or is entitled to be the registered owner of the Land;

AND WHEREAS the Owner has applied for a development permit in respect of the Land for proposed development of the Land in accordance with the PDO-1 Malls and Corridors; and

AND WHEREAS the City has determined that Municipal Services are required to support the said proposed development of the Land;

AND WHEREAS the City has approved the Owner's application for a development permit, subject to the condition that the Owner enter into this Agreement with the City;

NOW THEREFORE, in consideration of the said approval and of the mutual covenants in this Agreement, the sufficiency of which is acknowledged by the Parties, the City and the Owner agree as follows:

SECTION 1
DEFINITIONS AND INTERPRETATION

Preamble

1.01 The preamble forms an integral part of this Agreement.

Definitions

1.02 In this Agreement, the following words and phrases have the following meanings:

(a) "**Agreement**" means this agreement, including all schedules to this agreement;

(b) "**Builders' Liens Act**" means *The Builders' Liens Act*, CCSM, c. B91, including any amendments and successor legislation;

(c) "**Business Day**" means a day which is not a Saturday, a Sunday, a statutory holiday in the Province of Manitoba or a day on which chartered banks or government offices are generally closed in the Province of Manitoba;

(d) "**City**" means The City of Winnipeg, a municipal corporation continued under The Charter;

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(e) "**Charter**" means *The City of Winnipeg Charter*, SM 2002, c. 39;

(f) "**City Specifications**" means the City's construction, installation and maintenance standards and requirements for Municipal Services as more particularly set out in Schedule "B";

(g) "**Council**" means the municipal council for the City;

(h) "**Development Permit**" means a development permit in respect of the proposed development of the Land in accordance with the Malls and Corridors PDO;

(i) "**Director of PPD**". "**Director of PWD**", "**Director of WWD**" and "**City Solicitor**" means the Director of the City's Planning, Property and Development Department, the Director of the City's Public Works Department, the Director of the City's Water and Waste Department and the City Solicitor and Director of the City's Legal Services, respectively, whether in a permanent, acting or interim capacity, and includes their respective delegates, designates and successors;

(j) "**Directors"** means, collectively, the Director of PPD, the Director of PWD and the Director of WWD, and "**Director**" means any one of them;

(k) "**Effective Date**" means the date on which the last Party executes this Agreement;

(l) "**Force Majeure**" means:

(i) forces of nature, war or other catastrophe, riot or insurrection, strike, lockout or labour disturbance;

(ii) inability to obtain material, goods, equipment, services or utilities required by a Party to perform its obligations under this Agreement where such inability results from matters beyond the reasonable control of such a Party; and

(iii) any other instance where a Party is prevented, hindered or delayed in fulfilling any obligation under this Agreement as a result of any law, by-law, regulation or other of a public authority or is unable to obtain any permission or authority required in order to perform its obligations under this Agreement;

(m) "**highway**" has the same meaning as in *The Highway Traffic Act*, CCSM, c. H60;

(n) "**Land**" means the property commonly referred to as Address and legally described in Certificate of Title No. XXXX as follows:

LEGAL DESCRIPTION TO BE INSERTED

(o) "**Letter of Credit**" means a letter of credit in the form shown in Schedule "D" issued by a Canadian chartered bank or other financial institution licensed to carry on business in Canada or such other form or forms of security determined by the City Solicitor to provide equivalent immediate cash protection;

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(p) "**Malls and Corridors PDO**" means the *Malls and Corridors Planned Development Overlay 1*, attached as Schedule AA to the Winnipeg Zoning By-law No. 200/2006;

(q) "**Municipal Services**" means the services, improvements and landscaping that the Owner is required to install, supply or construct to serve the Land and, where applicable, Privately-Owned Lands, as more particularly set out in Schedule "D";

(r) "**Parties**" means the City and the Owner, and "**Party**" means either of them;

(s) "**Person**" means any individual, corporation, association, partnership, joint venture, trust, estate or other entity or organization, and includes the heirs, executors, administrators or agents of that Person;

(t) "**Privately-Owned Land**" means any land that is not owned by the Crown, the City or the Owner;

(u) "**private road**" means any highway located within the Land that is not a street;

(v) "**street**" means any highway that is legally-opened as public right-of-way;

(w) "**Substantial Performance**" means substantial performance as certified by a professional engineer having delivered a Certificate of Substantial Performance in accordance with the Builders' Liens Act;

(x) "**WLTO**" means the Winnipeg Land Titles Office; and

(y) "**Works**" means the installation, supply or construction of any Municipal Services and related works required pursuant to this Agreement.

Schedules

1.03 The following schedules form an integral part of this Agreement:

(a) **Schedule "A"** – terms relating to the installation of Municipal Services and payment of fees;

(b) **Schedule "B"** – construction, installation and maintenance specifications;

(c) **Schedule "C"** – conceptual servicing drawings; and

(d) **Schedule "D"** – sample form Letter of Credit.

Headings

1.04 The headings in this Agreement have been inserted for convenience of reference only and are not intended to be considered in any construction or interpretation of this Agreement, in whole or in part, or to in any way define or limit the scope or content of this Agreement.

Number and Gender

1.05 This Agreement is to be read with all changes in gender or number as required by the context.

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Monetary Amounts

1.06 All monetary amounts referred to in this Agreement, and all payments required by this Agreement, are to be read as and made in Canadian funds and may be subject to the Goods and Services Tax where required by law.

No Expense to the City

1.07 Except where otherwise provided, every obligation of the Owner set out in this Agreement is intended to be at the sole expense of the Owner and at no expense whatsoever to the City.

Jurisdiction

1.08 This Agreement shall be interpreted under and is governed by the laws of the Province of Manitoba and of Canada as applicable, and except to the extent that Arbitration is provided for in this Agreement, is subject to the exclusive jurisdiction of the courts of the Province of Manitoba.

Time of the essence

1.09 Time is of the essence in all respects of this Agreement.

Term

1.10 This Agreement is effective as of the Effective Date and continues until the Owner has performed each and every obligation to the satisfaction of the City, unless otherwise terminated as provided in this Agreement.

SECTION 2
GENERAL INSTRUCTIONS

No Development Without Approval

2.01 The Owner shall not undertake the Works or any work authorized by the Development Permit without prior approval from the Directors.

City Specifications

2.02 The Owner shall ensure that all materials and workmanship installed or carried out by the Owner or on the Owner's behalf in connection with the Works or any work authorized by the Development Permit comply with the City Specifications. Where there is any conflict between the City Specifications and the requirements of a Director under this Agreement, the requirements of the Director shall prevail.

Free and Uninterrupted Access

2.03 The Owner shall at all reasonable times throughout the term of this Agreement grant to the Directors free and uninterrupted access to the Land and any part thereof for the purpose of making inspections and taking samples of materials used in the Works or any work authorized by the Development Permit. If any material, design or installation does not comply with this Agreement or any requirement of a Director, the Director is authorized, acting reasonably, to order a stoppage of any further work and the removal and replacement of any unsatisfactory work.

SAMPLE

Taxes

2.04 Before undertaking the Works or any work authorized by the Development Permit, the Owner shall pay all outstanding municipal taxes in respect of the Land, including arrears, penalties and the commuted value of any local improvement levies.

City-Shared Services

2.05 Before undertaking any work or supplying any materials for which the City is required to pay, in whole or in part, the Owner shall obtain written authorization from the City to proceed, which authorization will not be unreasonably withheld. All work or materials for which the City is required to pay shall be done and supplied by the Owner at prices agreed to by the Director of PWD and the Director of DWW, as applicable, and paid for by the City.

Engineering Drawings

2.06 The Owner shall not proceed with the Works or with any work authorized by the Development Permit until detailed engineering drawings and specifications for same have been approved by the City.

Landscaping Approvals

2.07 The Owner shall not proceed with any landscaping within any street serving the Land until the Director of PWD has approved drawings and specifications in respect of the landscaping.

Easements

2.08 The Owner shall grant to the City and register at WLTO any easements required by the City in respect of any Municipal Services in a form satisfactory to the City Solicitor.

Payments

2.09 Except where otherwise provided in this Agreement, any payment required to be made by the Owner to the City under this Agreement shall be made as follows:

(a) where the Owner is required to make a payment to the City based on a standard City rate, the amount of the payment shall be calculated based on the rate in effect as of the date of the payment;

(b) where the Owner is required to make a payment “on demand”, interest shall be payable to the City if the payment is not made within 14 days of the demand at a rate of interest equal to the average borrowing rate paid by the City over that period;

(c) where the Owner is required to make a payment for future works based on an estimate, the amount of the payment shall be calculated based on the known costs and revised estimates at the time of payment as determined by the Director of PWD and the Director of DWW, as applicable; and

(d) where the Owner is required to make a payment that is not a payment “on demand” or based on a standard City rate and the payment is not made during the year of the Effective Date, the payment shall be calculated and payable based on Statistics Canada Cost of Living Index on the date on which the payment is made.

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SECTION 3
OWNER REIMBURSEMENT

Local Improvement By-law

3.01 Where any Privately-Owned Lands benefit from a Municipal Services, upon written notice by the Developer, the City agrees to endeavor to pass a local improvement by-law in respect of the Privately-Owned Land in respect of the Municipal Service in accordance with the Charter and the Local Improvement Regulation By-law No. 98/72.

Reimbursement for Local Improvement

3.02 Where Council enacts a local improvement by-law pursuant to subsection 3.01, and upon completion of the Municipal Service or within a reasonable period of time following Council's approval of capital funds for the Municipal Service, the City shall pay to the Owner the lesser of:

(a) the cost to the Owner of the Municipal Service in respect of the Privately-Owned Lands; and

(b) an amount calculated on the basis of the City's local improvement rate for the Municipal Service upon construction completion of the Municipal Service.

Other Reimbursement

3.03 Where Council does not enact a local improvement by-law pursuant to subsection 3.01, the Owner shall install the Municipal Service and the City shall endeavor within the limits of its authority and to the extent permitted by law to not allow the registered owner of any benefitting Privately-Owned Lands to utilize or connect to the Municipal Service unless and until the said registered owner has paid their proportionate share of the cost of the Municipal Service, which the City shall further pay to the Owner.

No Petition By Owner

3.04 The Owner shall not petition against, or sign or support any petition against, any proposed local improvement in respect of any Municipal Service.

No Assurances

3.05 The Owner acknowledges and agrees that each member of Council must vote as he or she sees fit in respect of any local improvement and the City makes no representations or warranties that Council will enact a local improvement by-law in respect of any Municipal Service.

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SECTION 4
PLANNED AND ORDERLY DEVELOPMENT

Orderly Installation

4.01 The Owner shall

(a) install wastewater sewers, land drainage sewers and water mains required to service the Land in such orderly sequence as directed by the Director of WWD; and

(b) install street pavements, private road pavements, sidewalks, signage and lighting required to service the Land following installation under clause (a) and in such orderly sequence as directed by the Director of PWD.

Access Roads

4.02 Until street and private road pavements have been installed in accordance with this Agreement, the Owner shall gravel and maintain in a passable and usable condition any street or private road to be used as an access road for the Land or upon which buildings are being constructed, to the satisfaction of the Director of PWD. Nothing in this subsection shall relieve the Owner of any obligation to install street or private road pavements as provided in this Agreement and nothing shall obligate the City to provide snow clearance for any street being used as an access road.

Occupancy Restricted

4.03 The Owner shall not permit occupancy of any building on the Land until

(a) the building and the Land have been serviced with wastewater sewers, land drainage sewers and water to the satisfaction of the Director of DWW; and

(b) the street private road on which the building or Land is located has been paved to the satisfaction of the Director of PWD.

Ornamental Street Lighting and Street Signs

4.04 The Owner shall ensure that ornamental street lighting and street signs are ordered for installation within 3 months following completion of the pavement of any street or private road or the occupancy of any building on the street or private road, whichever is earlier. If the Owner is unable to arrange for timely installation of ornamental street lighting, the Owner shall not permit any building on the Land to be occupied until temporary lighting has been installed on the street or private road on which the building fronts to the satisfaction of the Director of PWD and the Owner has provided the Director of PWD with written evidence that it has arranged for the installation of permanent ornamental street lighting.

Tidiness

4.05 Until the Works and any work authorized by the Development Permit are complete, the Owner shall maintain the Land so as to not be unsightly, at its own expense and to the satisfaction of the Director of WWD and the Director of PWD. For the purposes of this subsection, “maintain” includes:

(a) leveling the Land to the same grade as the surrounding area;

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(b) cutting of grass and removal of weeds;

(c) removal of debris and litter;

(d) providing proper drainage.

Maintenance

4.06 Subject to anything else in this Agreement, the Owner shall maintain the Municipal Services in good operating condition for a period of 1 year following the date of Substantial Performance and any Letter of Credit provided by the Developer under Section 5 shall guarantee such maintenance.

SECTION 5
LETTERS OF CREDIT

Builders' Liens

5.01 The Owner shall indemnify and save the City harmless from and against all loss, claims, costs (including on a solicitor and client basis), expenses and professional fees paid or incurred by the City related to any obligation imposed on the City by the Builders' Liens Act in respect of any work done by or on behalf of the Owner pursuant to this Agreement.

Letter of Credit Required

5.02 Prior to the issuance of the Development Permit, the Owner shall provide to the City an irrevocable Letter of Credit in favour of the City as follows:

(a) in an amount equal to 7.5% of the value of the Works and any work authorized by the Development Permit, as determined by the Director of PWD and the Director of WWD, to secure the Owner's obligations under the Builders' Liens Act; and

(b) in an amount determined by the Directors to be sufficient to guarantee the Owner's obligations under this Agreement, including the obligation to make payments on demand.

Replacement Letter of Credit

5.03 If within 30 days before the date of expiry of a Letter of Credit provided under subsection 5.02 the Owner has any outstanding obligations under this Agreement, as determined by any of the Directors, including the obligation to provide as-built drawings, the City shall be entitled to draw the full amount of the Letter of Credit or any portion thereof unless the Developer provides a replacement Letter of Credit, in which case this section applies to the replacement Letter of Credit. Failure to provide a replacement Letter of Credit constitutes a default under this Agreement.

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SECTION 6
DEFAULT

Notice of Default

6.01 If the Owner defaults in respect of any of its obligations under this Agreement, the City shall give 10 days' written notice of the default to the Owner.

Diligent Remedy

6.02 Where the City provides notice of default in accordance with subsection 6.01, the Owner shall remedy the default within the 30-day notice period. Where the default cannot reasonably be remedied within the 30-day notice period, the Owner shall commence to remedy the default and shall diligently and expeditiously pursue and complete the remedy of the default.

Self Help

6.03 Where the Owner fails to remedy (or fails to commence or diligently pursue the remedy) of the default within the 30-day notice period, in addition to all other remedies it may have at law or in equity, the City shall have the right to perform the obligation in question or otherwise remedy the default on behalf of the Owner, and the Owner shall immediately upon written demand pay to the City in cash an amount equal to the costs incurred by the City in remedying the default plus interest on that amount from the date the cost was incurred until the date it is paid at a rate equal to the average borrowing rate paid by the City over the period.

Remedies

6.04 Upon default by the Owner, and at any time following the default, the City shall have all rights and remedies provided by law and by this Agreement.

Use of Monies on Default

6.05 In the event of any default under or termination of this Agreement, the City shall be entitled to:

(a) draw the full amount of any Letter of Credit;

(b) complete, repair, maintain or operate, or cause to be completed, repaired, maintained or operated, to whatever extent and within whatever time as determined by the Directors

(i) any of the Works;

(ii) any work authorized by the Development Permit; and

(iii) any other work related to or required by or as a result of the Works or any work authorized by the Development Permit;

(c) enter upon and use the Land for the purposes of clause (b); and

(d) use any monies drawn under clause (a) and any monies held in the place of a Letter of Credit for the purposes of clause (b).

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Force Majeure

6.06 The Owner shall be released from its obligations under this Agreement to the extent that performance of those obligations is delayed, hindered or prevented by Force Majeure, provided that the Owner:

(a) provides notice to the City as soon as is practicably possible, which notice shall specify the cause and expected duration of the delay or non-performance;

(b) takes all commercially reasonable steps to minimize the effects of the delay or non-performance.

Non-Terminable Agreement

6.07 No default or breach of any provision of this Agreement by the Owner shall entitle the Owner to cancel, rescind or otherwise terminate this Agreement.

SECTION 7
INDEMNITY AND INSURANCE

Due Care

7.01 The Parties shall use due care in the performance of their rights or obligations under this Agreement to ensure to the extent possible that no person is injured, no property is damaged and no rights are infringed.

City Not Liable

7.02 The City shall not be liable to the Owner or to any other Person in respect of any failure or inability by the City to perform any obligation under this Agreement where the failure or inability is beyond the control of the City or is caused by the operation of law.

Indemnity by Owner

7.03 The Owner shall indemnify and save harmless the City from and against all claims, losses, damages, costs, expenses, fees, actions and other proceedings made, sustained, brought or prosecuted that are in any manner caused by or attributable to:

(a) any act or failure to act by the Owner or its subcontractors, employees or agents in the performance or non-performance of this Agreement; and

(b) any third-party claim for which the Owner is determined to be legally responsible by a court of competent jurisdiction.

Contractors to be Licensed

7.04 The Owner shall ensure that any contractors engaged by the Owner for the construction of wastewater and land drainage sewers, water mains, pavements or landscaping pursuant to this Agreement are licensed by the City for said construction.

SAMPLE

Liability Insurance Required

7.05 For the purposes of this Agreement, the Owner shall ensure that any contractor engaged by the Owner in connection with this Agreement maintains at all times during the term of this Agreement:

(a) commercial general liability insurance in the amount of not less than two million ($2,000,000.00) dollars per occurrence covering bodily injury and property damage, products and completed operations, which insurance must include cross-liability, contractual liability, 30 days' notice of cancellation and add the City as an additional insured; and

(b) automobile liability insurance for licensed automobiles used or to be used in connection with this Agreement in the amount of no less than two million ($2,000,000.00) dollars.

Insurance Certificates Required

7.06 Each contractor engaged by the Owner in connection with this Agreement must provide the City with evidence of the insurance required under subsection 7.04 by way of a certificate in a form satisfactory to the City, acting reasonably, as soon as is practicably possible following the Effective Date of this Agreement or the date on which the contractor is engaged by the Owner.

Deductibles

7.07 Deductibles for all required insurance shall be borne by the Owner and their respective contractors.

Manitoba Insurers

7.08 All insurance policies required under this section shall be taken out with insurers licensed to carry on business in the Province of Manitoba.

Coverage Alterations

7.09 The City shall have the right to alter the coverages and limits as reasonably required from time to time during the term of this Agreement.

SECTION 8
DISPUTE RESOLUTION

Commencing arbitration

8.01 If any dispute, difference or question will arise between the City and the Owner in respect of this agreement, except for any matter set out herein as being to the satisfaction or approval of a Director or of the City, then every such dispute, difference or question may be referred to arbitration where both the Director of PPD, on behalf of the City, and the Owner consent.

Consent not to be withheld

8.02 The Party desiring arbitration will request in writing the consent of the other Party to refer a particular dispute, difference or question to arbitration, which consent will not be unreasonably withheld, and the other Party will reply to the request within 10 Business Days of receiving same.

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Parties to appoint arbitrators

8.03 If the other Party consents to arbitration, the Parties will appoint a mutually agreeable arbitrator within 10 Business Days. If the Parties cannot agree on a single arbitrator, then the matter will be referred to a panel of three arbitrators, with one to be appointed by each Party and the third to be chosen by the first two named.

Governing dispute resolution law

8.04 *The Arbitration Act*, CCSM, c. A120, or any successor legislation, will apply to the arbitration in all respects. The arbitrator(s) will determine the procedure to be followed in the arbitration, which will be consistent with The Arbitration Act or any successor legislation thereto.

Costs of arbitration

8.05 Each Party will be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the arbitrator(s) and of any other expenses related to the arbitration.

Appeal

8.06 Either Party may appeal the award or determination made by the arbitrator or majority of the arbitrators (including the appointment and awarding of costs of the arbitration) may appeal the award or determination to the court on a question of law, on a question of fact or on a question of mixed fact and law.

Other remedies

8.07 If the either Party does not consent to arbitration, then the other Party has the right to pursue any and all other options for dispute resolution or remedies as available at law or in equity.

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SECTION 9
NOTICE

Notice

9.01 Any notice, demand, request, statement, consent, objection or other communication (collectively referred to as a "Notice") required or permitted to be given under this Agreement shall be in writing and shall be made by personal delivery, delivered by courier, sent by pre-paid registered mail or transmitted by way of fax or email, and addressed as follows:

(a) To the City:

The City of Winnipeg
Water and Waste Department
110 – 1199 Pacific Avenue
Winnipeg, Manitoba R3E 3S8

Attention: Marek Gajda, Services Development Engineer

with copy to:

The City of Winnipeg
Legal Services Department
3rd Floor, 185 King Street
Winnipeg, Manitoba R3B 1J1

Attention: Doug Brown, City Solicitor and Director of Legal Services

(b) To the Owner:

XXX
Winnipeg, Manitoba XXXXXX

Attention: XXX

with copy to:

XXX
Winnipeg, Manitoba XXXXXX

Attention: XXX

Determining date of service

9.02 The date of service for any Notice sent or given under this Agreement shall be deemed to be

(a) for any Notice sent or given by pre-paid registered mail, the third Business Day after the date on which the Notice was sent;

(b) for any Notice given by personal delivery or delivered by courier, the Business Day on which the Notice was delivered; and

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(c) for any Notice sent or given by fax or email,

(i) the Business Day on which the Notice was sent where the Notice is sent before 16:30; or

(ii) the first Business Day following the date on which the Notice was sent where the Notice is sent after 16:30.

Designated address for service

9.03 Either Party may, by Notice to the other Party, designate another address in Canada to which a Notice may be sent and following the giving of such Notice, and effective the date of service of such Notice, the address so specified will be the address of that Party for the giving of Notice pursuant to this Agreement.

SECTION 10
REPRESENTATIONS AND WARRANTIES

Owner Representations

10.01 The Owner represents and warrants that:

(a) it is a valid and existing corporation, duly incorporated under the laws of Manitoba;

(b) the execution, delivery and performance of this Agreement are within the proper corporate powers and capacities of the Owner and have been duly authorized by corporate proceedings;

(c) it possesses and will continue to possess all rights, interests, powers and expertise necessary to properly perform its obligations under this Agreement;

(d) it has or will secure at its own expense all personnel required to perform its obligations under this Agreement, which personnel shall not be employees of or have any contractual relationship with the City;

(e) all of the Owner's obligations under this Agreement shall be performed by the Owner or under its supervision and all personnel engaged by the Owner in meeting these obligations shall be fully qualified for these purposes; and

(f) there are no actions, suits or any legal proceedings pending or, to the Owner's knowledge, threatened against or adversely affecting the Owner which might materially affect the financial condition of the Owner or which will or may restrict or interfere with the Owner's capacity to carry out the activities set out under the terms of this Agreement.

Representations True

10.02 The Owner declares that all representations and warranties set out in subsection 10.01 are true in substance and in fact and acknowledges that the City has relied on them in entering into this Agreement.

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Notice of Actions

10.03 The Owner shall promptly provide notice to the City of any actions, suits or legal proceedings brought or threatened against or adversely affecting the Owner during the term of this Agreement which might materially affect the Owner's financial condition or which will or may restrict or interfere with the Owner's capacity to fulfill its obligations under this Agreement.

SECTION 11
MISCELLANEOUS

Performance by the City

11.01 Any obligation imposed on the City by this Agreement shall be performed by the City only within the limits of the City's authority and nothing in this Agreement shall hold the City to any higher standard or duty than to exercise its best efforts within the limits of its authority.

Remedies Cumulative and Not Alternative

11.02 The rights and remedies of a Party under this Agreement are cumulative and in addition to, not in alternative to, any right or remedy that may be available at law. In addition to any remedy provided in this Agreement or at law, either Party is entitled to restrain any breach of or enforce compliance with any provision of this Agreement by way of injunction in a court of competent jurisdiction.

Successors and assigns

11.03 This Agreement will extend to and bind the successors and assigns of the City and the legal representatives, heirs, executors, administrators, permitted successors and permitted assigns of the Owner. No rights under this Agreement, however, benefit an assignee of the Owner unless the assignment was consented to in accordance with this Agreement.

Joint and several

11.04 If the Owner is more than one Person, the obligations under this agreement will be deemed joint and several of each such Person. If the Owner is a partnership or other business association, the members of which are by virtue of Provincial or general law subject to personal liability, the liability of each member is joint and several.

Relationship of the parties

11.05 Nothing contained in this Agreement creates or is deemed to create the relationship of principal and agent or of partnership or joint venture between the Parties, it being understood and agreed that no provision of this Agreement, nor any acts of the Parties, will be deemed to create any relationship between the Parties. The Parties acknowledge and agree that the Owner is an independent entity and that neither the Owner, or any officer, servant, or agent of the Owner, will be deemed to be an employee, agent, representative or servant of the City.

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Entire Agreement

11.06 This Agreement, including any documents to be executed pursuant to this Agreement, contains the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any and all promises, representations, warranties, undertakings or other statements, whether written or oral, made by or on behalf of one Party to the other Party of any nature or contained in any document given by one Party to the Party other, other than a document to be executed pursuant to the provisions of this Agreement

Waivers

11.07 Neither Party is deemed to have waived any provision of this Agreement unless such waiver is made explicitly in writing and, the waiver of a provision of this Agreement shall not be deemed to be a waiver of that provision in any other instance or of any other provision and shall not be deemed to be a continuing waiver unless otherwise expressly provided in writing.

Amendments and Waivers

11.08 The City's agents are not authorized to change or waive any provision of this Agreement and any purported changes or waivers by them or any of them are null and void unless approved or authorized by Council or pursuant to powers delegated by Council.

Assignment

11.09 This Agreement and any of the rights or obligations under this Agreement must not be assigned or transferred by the Owner unless the assignment or transfer is approved by Council and agreed to in writing by the City. This provision does not apply in respect of any of the Owner's successors-in-title and shall in no way restrict the Owner's ability to sell, mortgage, lease or otherwise transfer title to or dispose of the Owner's Land.

Agreement Validity

11.10 The Owner represents and agrees on behalf of itself and its successor and assigns that it will not:

(a) attempt to impeach the validity of this Agreement; or

(b) challenge or attempt to impeach the capacity of the City to enter into this Agreement.

Severability

11.11 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, for any reason, the remaining provisions of this Agreement and its schedules will continue in full force and effect and be binding upon the Parties.

Survival

11.12 Any section of this Agreement which contains obligations and indemnifications that by their very nature are intended to survive the termination or expiration of this Agreement shall so survive.

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Further Assurances

11.13 Each Party will promptly and duly execute and deliver to the other Party such further documents and assurances and take such further action as the other Party may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created hereby.

Non-Dedication

11.14 Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Owner's Land to the general public or for any public use or purpose whatsoever, and nothing in this Agreement, expressed or implied, confers upon any Person, other than the Parties and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Responsibility

11.15 Notwithstanding anything to the contrary contained in this Agreement, each Party to this Agreement shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its Proportionate Share of the Properties.

Counterparts and Digital Documents

11.16 This Agreement may be executed in any number of counterparts, by facsimile or by e-mail transmission of .pdf file, each of which shall be deemed to be an original, and all of which, together, shall constitute one and the same instrument. Any Party executing this Agreement by facsimile or by way of .pdf file shall immediately upon the request by the other Party provide an originally signed counterpart of this Agreement; however, any failure to provide such originally signed counterpart shall not constitute a breach of this Agreement except to the extent that such electronic execution is not otherwise permitted by The Electronic Commerce and Information Act of Manitoba.

[execution page follows]

SAMPLE

SIGNED AND DATED this _____ day of _____, 2024.

Owner Name

Per: _____

Name:

Title:

SIGNED AND DATED this _____ day of _____, 2024.

The City of Winnipeg

Per: _____

Name:

Title:

Reviewed as to Engineering Details:

_____
Planning, Property and Development Department
Land Development Branch

Reviewed as to Engineering Details:

_____
Water and Waste Department
Engineering Division

_____
Public Works Department
Engineering Division

Legally Reviewed and Certified as to Form:

_____
for City Solicitor
and Director of Legal Services Department

SAMPLE

SCHEDULE "A"

PART I - SERVICING

1.00 Cross Access Easement Agreement

1.01 The Owner register at the Winnipeg Land Titles Office (WLTO) under Section 76 of the Real Property Act and maintain in perpetuity by way of instrument against the title to the lots, a private cross-access easement declaration so as to ensure vehicular access to every part of the Land at all times via internal roads.

1.02 The instrument must contain the substance of the following terms:

(a) "User" means and includes any Owner and the tenants of any Owner and, with the permission or consent (expressed or implied) of any Owner, each and all of their respective agents, employees, customers, licensees, invitees, suppliers, contractors, servants or workmen, and any other occupier for the time being on the land of any Owner; and the term "Users" shall have the same meaning as the context permits or requires, mutatis mutandis;

(b) the Owner, for itself and its successors and assigns, hereby irrevocably agrees and declares that from and after the date of registration of this Declaration in the Winnipeg Land Titles Office an easement and right of way is hereby created over the Lands for the purposes of ingress and egress that shall permit common usage of driveways, vehicular passageways, entrances and exits leading to one or more private approaches on and from Public Streets as they may exist from time to time to ensure access (but for no other purpose whatsoever) to every such lot on the Lands at all times by Users and vehicles;

(c) the rights, liberties and easements herein granted are to be construed as running with the Land and shall attach to and run the Land or any part thereof as may be subdivided, but no part of the Land shall pass to or be vested in any other Owner;

(d) as it is the intent that the burden of all rights, liberties and easements declared herein shall run with the Land, it is declared that the rights, liberties and easements declared shall enure to the benefit of every Owner and, without limiting the generality of the foregoing, shall enure to the benefit of the successors and assigns of any part or parts of the Land and shall bind the successors in title of the Owner, and each of their respective successors in title, and the owners or occupiers for the time being of the Land or any part or parts thereof.

2.00 Water Mains

2.01 The Owner shall, at no expense to the City, construct and install all water mains required to serve the Land and adjacent lands, to the satisfaction of the Director of Water and Waste.

3.00 Wastewater Sewers

3.01 The Owner shall, at no expense to the City, construct and install all wastewater sewers required to serve the Land and adjacent lands, to the satisfaction of the Director of Water and Waste.

SAMPLE

4.00 Land Drainage

4.01 The Owner shall, at no expense to the City, construct and install all land drainage sewers required to serve the Land and adjacent lands, to the satisfaction of the Director of Water and Waste.

5.00 Regional Land Drainage System

5.01 For any land parcels that have not yet contributed their fair share to the regional land drainage system(s) serving the Land, the Owner shall pay to the City, in cash and on demand, their portion of the land drainage system costs as determined by and to the satisfaction of the Director of Water and Waste.

6.00 Services Benefiting The Land

6.01 The Owner shall pay to the City, in cash and on demand, their share of local municipal services that the City or a third-party has previously constructed, or that are to be constructed in the future, and which directly benefit the Land, as determined by the Director of Water and Waste and to the satisfaction of the Director of Public Works and the Director of Water and Waste.

7.00 Reimbursement for Oversizing Services

7.01 Where the City requests oversizing local municipal services to benefit third-party lands, the City shall reimburse the Owner subject to available funding or when funds are collected from the benefiting property owner(s), in accordance with the Development Agreement Parameters.

7.02 The necessary calculations to determine the cost of additional capacity shall be provided by the Owner and shall be made to the satisfaction of the Director of Water and Waste.

8.00 Easements

8.01 The Owner shall, at no expense to the City, provide any easements required by the City or by a utility company in respect of the installation of utilities including natural gas, hydro and telecommunications, and for the installation of municipal works and related issues such as water, swales, sewer, maintenance access and snow storage.

8.02 The width and location of easements required under subsection 8.01 shall be identified on the construction drawings in respect of the Land and agreed to between the City and the Owner.

8.03 The Owner agrees to register any easements required under subsection 8.01 in the Winnipeg Land Titles Office as caveats against the Land.

8.04 Any easements required under subsection 8.01 shall be in a form satisfactory to the City.

SAMPLE

9.00 Sidewalks and Pathways

9.01 The Owner shall, at no expense to the City, construct concrete sidewalks and asphalt pathway and all related works within the Land, on an alignment determined by Public Works, all as determined by and to the satisfaction of the Director of Public Works.

10.00 Public Road and Intersections Modifications

10.01 The Owner shall, at no expense to the City, construct any required modifications to Public Roads and intersections, and all related works, all as determined by and to the satisfaction of the Director of Public Works.

11.00 Pedestrian and Traffic Control Signals

11.01 The Owner shall pay to the City, in cash and on demand, their share of the costs associated with the installation or modifications of pedestrian control signals and traffic control signals, and all related works, including but not limited to pedestrian and vehicular actuation and interconnection to adjacent traffic-control signals and countdown and audible pedestrian signals at intersections, when and as determined by and to the satisfaction of the Director of Public Works.

12.00 Railway Crossings

12.01 The Owner shall pay to the City, in cash and on demand, their share of the costs associated with modifications required at road/rail crossings, and all related works, all as determined by and to the satisfaction of the Director of Public Works.

12.02 Where the Land abuts a Railway Subdivision, the Owner shall, at no expense to the City, construct within the portion of the Land abutting the Railway Subdivision, a uniform fence 2.0m in height, intended to ensure that “pedestrian trespass, to the tracks does not become a consequence of the subject development, thereby creating safety issues and jeopardizing existing and/or future anti-whistling regulations along the subject railway line, as determined by and to the satisfaction of the Director of Public Works.

12.03 The Owner agrees to register a caveat against the title of the Land requiring that the owner of the Land maintain, repair and replace the fence as originally constructed, to the satisfaction of the Director of Public Works.

13.00 Boulevards

13.01 The Owner shall, at no expense to the City, sod and plant trees on all boulevards within and fronting the Land, all in accordance with City specifications and guidelines and, where required, with concept plans prepared by the Owner and submitted to and approved by the Director of Public Works, all to the satisfaction of the Director of Public Works.

13.02 The Owner shall, at no expense to the City, maintain the sod for a period of one year and trees for a period of two years, in accordance with specifications approved by the Director of Public Works.

SAMPLE

14.00 Two Means of Vehicle Access

14.01 The Owner shall, at no expense to the City, ensure that two means of paved vehicular access are available at all times to each stage of development of the Land, to the satisfaction of the Director of Public Works.

14.02 The Owner shall, at no expense to the City, construct temporary paved roadways, and provide easements or rights-of-way in respect of same, as required to satisfy the Owner's obligation under clause (a).

15.00 Street Name Signs

15.01 The Owner shall, at no expense to the City, cause to be installed standard, reflectorized, permanent street name signs at each new intersection within or adjacent to the Land, as determined by and to the satisfaction of the Director of Public Works.

16.00 Transit Facilities

16.01 The Owner shall construct bus stop platforms to service the Land, as determined and to the satisfaction of the Director of Transit.

17.00 Utilities

17.01 The Owner shall, at no expense to the City, cause underground electrical and telephone services to be installed to serve the Land and will pay the full cost to convert any existing overhead services within the Land to underground to the satisfaction of the Director of Public Works.

17.02 The Owner shall pay all costs associated with the relocation of street lights and other utilities made necessary as a result of, or required to accommodate, the works to be constructed by the Owner to serve the Land, as determined by and to the satisfaction of the Director of Public Works.

18.00 Construction Traffic

18.01 The Owner shall ensure that construction traffic uses access routes as determined by the Director of Public Works.

18.02 The Owner shall maintain, at no expense to the City, the access routes in a clean, dust free and safe condition, free of dropped and tracked-on mud, and shall undertake regular scraping and sweeping of streets until building construction, including landscaping is complete, all as determined by and to the satisfaction of the Director of Public Works.

SAMPLE

19.00 Litter and Refuse Control and Clean-Up

19.01 The Owner shall, at no expense to the City, and of its own volition, initiate and control the regular cleanup of litter and refuse from the contractors and builders for this development, both on-site and off-site, during the installation of services and construction of buildings, until substantial completion of all construction, as determined by and to the satisfaction of the Director of Public Works.

19.02 The cleanup of litter and refuse shall be done on a regular basis as determined by the Director of Public Works and shall include initiating action and assuming any costs in remedying the situation to the satisfaction of the Director of Public Works.

PART II – COSTS AND FEES

1.00 Approvals

1.01 The Owner shall pay all of its and the City's costs, fees, and expenses associated with this Agreement, including all Municipal Board, Winnipeg Land Titles Office and other fees and expenses, all survey, engineering and advertising fees and costs, and all expenses incidental to the preparation of this Agreement and the physical development of the Land.

2.00 Professional Fees

2.01 The Owner shall pay the full cost of all design services, including preliminary engineering studies, servicing reports, servicing criteria, construction drawings and specifications, and grading and landscaping plans and specifications, to be provided by Consulting Engineer(s) approved by the City, for the design of the municipal services and associated works required to serve the Land.

2.02 The Owner shall pay the full cost of construction and landscaping supervision services provided by or on behalf of the City for field inspection, preparation of progress estimates, provision of as-built drawings by March 31 of the year following substantial performance of the work, and all other engineering consulting services related to the installation and acceptance of municipal services and all associated works required to serve the Land.

2.03 The Owner shall pay to the City, prior to the release of a development permit in respect of the Land, their share of the cost for qualified consulting services for the servicing of the Land and any other benefitting Third-Party Lands, as determined by and to the satisfaction of the Director of Planning, Property and Development.

3.00 Administration Fees

3.01 To defray the City's administration and related costs associated with the preparation and implementation of this Agreement, the Owner shall pay to the City, prior to the release of a development permit in respect of the Land, an administration fee, plus applicable Goods and Services Tax.

SAMPLE

SCHEDULE "B"

CONSTRUCTION, INSTALLATION AND MAINTENANCE SPECIFICATIONS

a) Documents to be obtained:

Before commencing construction, installation and maintenance of the respective works required by this Agreement, it must obtain from the City the latest revision of the following City documents:

(i) *Standard Construction Specifications*;

(ii) *Water and Sewer Standards Manual*;

each of which documents is hereby incorporated in this Agreement as fully and to the same extent as if attached as a schedule to this Agreement.

b) Roads, Lanes and Sidewalks:

The *Standard Construction Specifications* apply as minimum standards to all construction, installation and maintenance of roads, lanes, sidewalks, and appurtenances thereto, and all materials supplied for those purposes.

c) Sewers and Water Mains:

The *Standard Construction Specifications* and the *Water and Sewer Standards Manual* apply as minimum standards to all construction, installation and maintenance of sewers, water mains, and appurtenances thereto, and all materials supplied for those purposes.

SAMPLE

SCHEDULE "C"

CONCEPTUAL SERVICING DRAWINGS

[PLACEHOLDER TEXT]

SAMPLE

SCHEDULE "D"

THE BANK OF _____

(date): _____

TO: THE CITY OF WINNIPEG

Credit No. _____

Amount: ($Cdn.) _____

Expiry Date: _____

Developer: _____

Dear Sirs:

IRREVOCABLE LETTER OF CREDIT

1. _____ (the "Bank"), for valuable consideration, the receipt of which is hereby acknowledged, hereby establishes in your favour an irrevocable Letter of Credit (the "Credit") in the amount of $_____, on which you may draw up to but not after _____ (the "Expiry Date").

2. This Credit is issued in connection with obligations incurred or to be incurred by _____ (the "Owner") under _____ Agreement No. AG __/__ dated _____, 2016.

3. A drawing under this Credit shall be made on or before the Expiry Date by you presenting to the Bank at _____, Winnipeg, Manitoba, this Credit and a Demand in writing *(street address)* signed by a person who has been duly authorized to sign on your behalf.

4. The Demand shall refer to this Credit by the above number, shall state the amount demanded, and shall certify that the Owner has failed to perform any one or more of its obligations as stipulated in Agreement No. AG __/__.

5. Upon receipt of the Credit and Demand on or before the Expiry Date, the Bank shall pay to you the amount stated in the Demand, without enquiring whether the City has a right to such amount as between yourself and the Owner, provided that such amount, together with other amounts paid to you under this Credit, if any, do not exceed in the aggregate the amount of the Credit.

6. This Credit is deemed to be automatically extended for _____ from the Expiry Date and any future expiration date, unless the Bank (*minimum 60 days*) notifies you in writing at least 30 days prior to any such date that the Bank elects not to renew it, which notice must be directed and sent by fax to:

The City of Winnipeg
Legal Services Department
3rd Floor – 185 King Street
Winnipeg, Manitoba R3B 1J1 Fax: 204 947 9155

Attn: Director of Legal Services and City Solicitor

Yours truly,

THE BANK OF _____

_____ _____

Authorized Signature Authorized Signature

NOTE: The concluding clause does not prevent cancellation at any time with the City's consent.

SAMPLE