

**MYNE CONDOS, MIXED USE PROJECT  
CALGARY, ALBERTA**

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**EASEMENTS, COVENANTS AND  
RESTRICTIONS ("ECR") AGREEMENT**

**RE: STRATA SUBDIVISION**

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AMONG/ BETWEEN:

**MYNE CONDOS (CALGARY) INC.**  
as registered owner of

- and -

**MYNE CONDOS (CALGARY) INC.**  
as registered owner of

- and -

**THE CITY OF CALGARY**  
in its capacity as a Regulatory Authority

## **SUMMARY OF EASEMENTS CONTAINED IN THE EASEMENTS, COVENANTS AND RESTRICTIONS ("ECR") AGREEMENT**

This Summary is provided for the purposes of convenience of reference and forms part of the ECR Agreement. It is intended to provide a brief overview of certain material terms of the ECR Agreement and a summary of the easements granted by and among the Owners of the respective Strata Lots. In all instances, the specific provisions and full text of the ECR Agreement should be reviewed as it is intended that those specific provisions will govern the interpretation and enforcement of this Agreement. In the event of any conflict or ambiguity between the terms of this Summary and the specific provisions of this ECR Agreement, then the specific provisions will govern and prevail. Words capitalized and not defined in this Summary shall have the same meaning as set forth in the ECR Agreement.

### **1. Easements of Support**

- (a) Easement of support by Owner of Strata Lot \_\_\_\_ in favour of all the Other Owners.
- (b) Easement of support by Owner of Strata Lot \_\_\_\_ in favour of all the Other Owners.
- (c) Easement of support by Owner of Strata Lot \_\_\_\_ in favour of all the Other Owners.
- (d) Any Owner of a Strata Lot entitled to an easement of support has the right to inspect such other Strata Lot to confirm adequate support and has the right to take action to ensure support if the granting Owner of such other Strata Lot is not taking appropriate action.
- (e) These Easements are general grants of Easement such that no formal easement plans need to be prepared or registered at Land Titles.

### **2. Shared Facilities**

- (a) Grant by Owner of Strata Lot \_\_\_\_ in favour of Other Owners as identified herein of various Easements for Shared Facilities located in or passing through Strata Lot \_\_\_\_.
- (b) Grant by Owner of Strata Lot \_\_\_\_ in favour of Other Owners as identified herein of various Easements for Shared Facilities located in or passing through Strata Lot \_\_\_\_.
- (c) Grant by Owner of Strata Lot \_\_\_\_ in favour of Other Owners as identified herein of various Easements for Shared Facilities located in or passing through Strata Lot \_\_\_\_.
- (d) Each Grantor is obligated to repair, maintain and rebuild any Shared Facilities, or any portion or component of the Shared Facilities, located within the property boundaries of its respective Strata Lot.
- (e) Each Grantee(s) has the right to rectify a default if any Shared Facilities are not properly repaired and maintained by the Owner of the Strata Lot in which they are located including the right to recover costs of such repairs.
- (f) Wherever possible separate metering for utilities (i.e. gas, water, electricity) is required for each Strata Lot. If required there will be an equitable allocation of utility charges to the extent that separate metering is not provided.
- (g) Without derogating from the foregoing general grants of Easement, certain specific Easement Areas are granted herein by the respective Owners of the Strata Lots as more particularly described in Article 3.

### **3. Specific Access Easements**

All references herein to a specific numeric or alphabetic area or room are references as described in and shown in attached Schedule "D": Site Plan and Easement Areas.

**A) GRANT OF EASEMENTS BY OWNER OF STRATA LOT \_\_\_\_:**

**IN FAVOUR OF OWNER OF [STRATA LOT \_\_\_\_/THE OTHER OWNERS] :**

- (i) The non-exclusive right, privilege and access for the Owner of Strata Lot \_\_\_\_, together with its invitees, of pedestrian access, as appropriate, over and through the following specific easement areas located in Strata Lot \_\_\_\_ and shown as:
  - (a) . . . shown in attached Schedule "D";
  - (b) . . . shown in attached Schedule "D";
  - (c) . . . shown in attached Schedule "D";
  - (d) the Shared Facilities; and
  - (e) the Amenity Areas located on Strata Lot \_\_\_\_.
- (ii) The non-exclusive right, privilege and access for the Owner of Strata Lot \_\_\_\_, together with its invitees, of vehicle and bike access, as appropriate, over and through the following specific easement areas located in Strata Lot \_\_\_\_ and shown as:
  - (a) . . . shown in attached Schedule "D";
  - (b) . . . shown in attached Schedule "D";
  - (c) the Shared Facilities; and
  - (d) the Amenity Areas located on Strata Lot \_\_\_\_.

**IN FAVOUR OF OWNER OF STRATA LOT \_\_\_\_:**

**B) GRANT OF EASEMENTS BY OWNER OF STRATA LOT \_\_\_\_:**

**IN FAVOUR OF OWNER OF [STRATA LOT \_\_\_\_/THE OTHER OWNERS]:**

- (i) The non-exclusive right, privilege and access for the Owner of Strata Lot \_\_\_\_, together with its invitees, of pedestrian access, as appropriate, over and through the following specific easement areas located in Strata Lot \_\_\_\_ and shown as:
  - (a) . . . shown in attached Schedule "D";
  - (b) . . . shown in attached Schedule "D"; and
  - (c) . . . shown in attached Schedule "D".
  - (d) the Shared Facilities; and
  - (e) the Amenity Areas located on Strata Lot \_\_\_\_.

- (ii) The non-exclusive right, privilege and access for the Owner of Strata Lot \_\_\_\_, together with its invitees, of vehicle and bike access, as appropriate, over and through the following specific easement areas located in Strata Lot \_\_\_\_ and shown as:
- (a) . . . shown in attached Schedule “D”;
  - (b) . . . shown in attached Schedule “D”;
  - (c) the Shared Facilities; and
  - (d) the Amenity Areas located on Strata Lot \_\_\_\_.

**IN FAVOUR OF OWNER OF STRATA LOT \_\_\_\_:**

**4. Emergency Equipment**

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## EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT

This ECR Agreement is dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2014

AMONG:

**MYNE CONDOS (CALGARY) INC.**  
as registered owner of \_\_\_\_\_

- and -

**MYNE CONDOS (CALGARY) INC.**  
as registered owner of \_\_\_\_\_

- and -

**THE CITY OF CALGARY**  
in its capacity as a Regulatory Authority

**WHEREAS** the Developer is the registered owner of the Lands; and

**WHEREAS** the Developer has received approval from the City of Calgary Subdivision Authority for the Strata Subdivision of the Lands into Strata Lot \_\_\_\_, Strata Lot \_\_\_\_, and Strata Lot \_\_\_\_; and

**WHEREAS** Strata Lot \_\_\_\_ contains the residential units, \_\_\_\_\_; and

**WHEREAS** Strata Lot \_\_\_\_ contains the Commercial Property, \_\_\_\_\_; and

**WHEREAS** it is a condition of approval by the Subdivision Authority of the Strata Subdivision Plan that the Developer enter into this ECR Agreement to provide for various cross mutual access easements and shared facility arrangements to ensure the integrated use and operation of the Project; and

**WHEREAS** the Developer wishes to provide certain required easements of support, specific utility easements and various other access easements between and among the Strata Lots in regard to certain structures, utilities, equipment and other facilities that are shared by and between the Strata Lots and to further provide for the mutual use, maintenance, repair, replacement and cost sharing of certain of the expenses related to any Shared Facilities; and

**WHEREAS** Section 68 of the *Land Titles Act* (Alberta) provides that an owner may grant an easement or restrictive covenant for the benefit of land that the owner owns and against land that the owner owns, which easement or restrictive covenant may be registered pursuant to the provisions of the *Land Titles Act* (Alberta).

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the sum of Ten (\$10.00) dollars and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged and of the mutual covenants and conditions herein contained, the parties hereby covenant and agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 In this Agreement, unless a contrary intention is expressed, the following terms shall have the following meanings:

(a) "Acceptable Standards" shall mean:

- (i) with respect to any equipment, device, apparatus or system: efficient and safe operation with respect to its intended purpose and in accordance with the standards specified by its manufacturer/supplier and prescribed by any applicable laws, regulations and bylaws; and
  - (ii) with respect to any building structure, element, part or component not included in Article 1.1(a)(i): good repair and maintenance, having regard to the standards maintained by a prudent owner of a comparable building of comparable age;
- (b) **"Agreement"** shall mean this Easement, Covenants and Restrictions Agreement and "ECR" or "ECR Agreement" means this Agreement as amended, updated, restated or supplemented from time to time;
- (c) **"Allocated Share"** shall mean the proportionate amounts, if any, of the Common Expenses which have been specifically allocated among the Owners pursuant to the provisions of this Agreement, as determined from time to time;
- (d) **"Amenity Areas"** means those areas of the Project below grade or at grade which are designed for non-exclusive use by the public as well as occupants of one or more of the Strata Lots, including +15 bridges surface parking areas, sidewalks, walkways, driveways, pedestrian access areas, public washrooms, public easement areas, and any corridors, exits, stairs, lobbies, vestibules, doors, escalators or other similar shared public amenity areas in the Project, which are made available for public access pursuant to a Development Agreement between the City and the Developer;
- (e) **"Arbitration"** shall mean arbitration proceedings conducted in accordance with Article 12 of this Agreement;
- (f) **"Arbitration Act"** means the *Arbitration Act*, R.S.A., 2000 c. A 43, as amended, and any regulations passed pursuant thereto;
- (g) **"Arbitration Notice"** shall have the meaning ascribed to it in Article 12.1;
- (h) **"City"** means The City of Calgary, a Municipal Corporation in its capacity as a development authority and subdivision authority under the Municipal Government Act and as an accredited municipality for the purposes of administering the Safety Codes Act;
- (i) **"City Assumption Agreement"** shall have the meaning ascribed to it in Article 14.2;
- (j) **"Commercial Property"** means collectively the airspace, retail premises, pedestrian and vehicular areas and surface areas located within Strata Lot \_\_\_\_;
- (k) **"Common Expenses"** mean all those costs and expenses incurred by an Owner in respect of the provision, operation, management, repair, maintenance, restoration, inspection, reconstruction and replacement of one or more components, equipment or improvement contained in Amenity Areas or in the Shared Facilities or forming part of the Emergency Equipment, or incurred by an Owner in the provision of a Shared Facility, which are intended to be shared or allocated between the Owners pursuant to the terms of this Agreement;
- (l) **"Common Foundation"** means the foundation structure for the Project which includes:
  - (i) the external walls and all supporting walls, pillars, columns and footings;
  - (ii) any wall or other vertical or horizontal structure on or adjacent to any border between the Strata Lots and so located either as a demarcation of such border or to support parts of the

structures of the Project or equipment servicing the Project, including side and cross beams;

- (iii) all floors and roof slabs bordering between any Strata Lots; and
- (iv) any component of a Strata Lot necessary for the support of any part of any other Strata Lot;
- (m) "**Condominium**" means all of the condominium units and common property to be formed by the registration of and set forth on the Condominium Plan;
- (n) "**Condominium Plan(s)**" means a condominium plan registered pursuant to the provisions of the Condominium Property Act in respect of any one or more of the Strata Lots;
- (o) "**Condominium Property Act**" means the *Condominium Property Act*, R.S.A. 2000, c. C 22, as amended, and any regulations passed pursuant thereto;
- (p) "**Condominium Unit(s)**" means any one or more condominium units created by the registration of a Condominium Plan registered in respect of any one or more of the Strata Lots;
- (q) "**Condominium Unit Owner(s)**" means the registered Owner(s) of each of the respective Strata Lots and upon the registration of a Condominium Plan in respect of a Strata Lot shall be deemed to mean the Condominium Corporation constituted pursuant to the provisions of the Condominium Property Act for such Strata Lot;
- (r) "**Defaulting Owner**" shall have the meaning ascribed to it in Article 13.3;
- (s) "**Defaulting Party**" shall have the meaning ascribed to it in Article 10.1;
- (t) "**Developer**" means \_\_\_\_\_, and any of its successors or assigns;
- (u) "**Dominant Lots**" means any one of Strata Lot \_\_\_, Strata Lot \_\_\_ or Strata Lot \_\_\_, as the case may be, which is in accordance with the terms of this Agreement, conferred the benefit or privilege of an Easement in this Agreement;
- (v) "**Easement**" means the full, free and uninterrupted right, liberty, privilege, entitlement and easement which is granted pursuant to the terms of this Agreement by an Owner of a Servient Lot to and in favour of the Other Owners of a Dominant Lot, for the benefit thereof and appurtenant to it, for the use and enjoyment of the Other Owners and their respective lessees, employees, licensees and invitees and including, but not limited to, any party or parties acquiring a subsequent successor title interest in the Dominant Lot, whether by registration of a consolidation plan, a further strata subdivision plan, a Condominium Plan, including a Condominium Corporation constituted by it, or otherwise;
- (w) "**Easement Area**" or "**Easement Areas**" means those areas of the Project which are described as easement areas pursuant to any terms or provisions of this Agreement including but not limited to those easements described in Article 3 and the Summary of Easements and all Schedules attached to this Agreement;
- (x) "**Emergency Equipment**" means all Utility Systems or Improvements located within any Strata Lot which are designed and intended to provide life safety systems to the Project during the occurrence of an emergency situation or which are designed to prevent or inhibit the occurrence of any emergency situation which include but are not limited to life safety systems, sprinkler systems, alarm systems, emergency lighting, emergency electrical generators, emergency fire pumps, fire exiting staircases, corridors and doors, fire-fighting equipment and all similar or other related emergency life saving improvements and equipment;



- (y) **"Encroachment"** shall have the meaning ascribed to it in Article 17.1;
- (z) **"Firewall"** means, as the case may be, concrete or masonry construction with a fire resistance rating or such other fire separation improvement or system which is determined by the Regulatory Authority as satisfying the requirements of the Alberta Building Code NBC 2019-AE as amended, revised or replaced;
- (aa) **"Force Majeure"** means an event causing a *bona fide* delay, notwithstanding the commercially reasonable best efforts of the Owner delayed with respect thereto, in the performance of any obligations under this Agreement arising from causes beyond the reasonable control of such Owner including strike, lockout, riot government restrictions, insurrection, war, fire, tempest, act of God, abnormally adverse weather conditions or lack of material and provided that the lack or shortage of funds or other financial incapacity shall not constitute such an event;
- (bb) **"Grantee"** means the registered owner(s) from time to time of the Dominant Lots, or any portion of the Dominant Lots, any subsequent purchasers and/or transferees of the Dominant Lots and their contractors and employees;
- (cc) **"Grantor"** means the registered owner(s) from time to time of the Servient Lots, or any portion of the Servient Lots, and any subsequent purchasers and/or transferees of the Servient Lots;
- (dd) **"Improvements"** means any buildings, structures, foundations, works, improvement, or mechanical systems now or hereafter constructed, erected or installed on or within a Strata Lot (including, without limiting the generality of the foregoing, the columns, brackets, bracings, footings, anchors, foundations, supporting walls, floors and ceilings of the Improvements situated thereon);
- (ee) **"Indemnified Owner"** shall have the meaning ascribed to it in Article 13.6;
- (ff) **"Indemnifying Owner"** shall have the meaning ascribed to it in Article 13.6;
- (gg) **"Insurance Policies"** shall mean the policies of property and liability insurance placed and maintained as contemplated in Article 7;
- (hh) **"Invitees"** means the tenants and licensees of the Owners and employees and contractors of the tenants and licensees of the Owners;
- (ii) **"Land Titles Act"** means *Land Titles Act*, R.S.A. 2000, c. L-4, as amended, and any regulations passed pursuant to it;
- (jj) **"Lands"** means those lands municipally described as \_\_\_\_\_, located in the City of Calgary, in the Province of Alberta and legally described as \_\_\_\_\_;
- (kk) **"Meter Rooms"** shall have the meaning ascribed to it in Article 3.5;
- (ll) **"Municipal Government Act"** means the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended, and any regulations passed pursuant to it;
- (mm) **"Non-Defaulting Party"** shall have the meaning ascribed to it in Article 10.1;
- (nn) **"Notice of Delay"** shall have the meaning ascribed to it in Article 13.10;
- (oo) **"Other Owners"** means all Owners other than the specified Owner providing the grant of easement, provided however, an Owner may be both an "Owner" and an "Other Owner" if it is concurrently an Owner of more than one Strata Lot;

- (pp) **"Owners"** means the owners of the Strata Lots together and "Owner" means the owner of a Strata Lot individually, as the context may require, and shall bind and benefit the parties referred to in Article 2;
- (qq) **"Parkade"** means the below grade parking structure with all associated ramps and drive aisles constructed and located within Strata Lot \_\_\_\_;
- (rr) **"Permitted Encumbrances"** means in respect of each Strata Lot, the charges and registrations set forth on and attached as Schedule "A": Permitted Encumbrances;
- (ss) **"Prime Rate"** means the prime rate announced from time to time by Royal Bank of Canada for Canadian dollar demand loans made in Canada;
- (tt) **"Project"** means the mixed use development know as Myne Condos;
- (uu) **"Properties"** or **"Property"** means any one or more of the Strata Lots or individually as the context may require;
- (vv) **"Property Management Service Provider(s)"** means the property managers or the property management companies that may provide property management services to the Project;
- (ww) **"Referring Party"** shall have the meaning ascribed to it in Article 12.1;
- (xx) **"Safety Codes Act"** means the *Safety Codes Act*, R.S.A. 2000, c. S-1, as amended, and any regulations passed pursuant to it;
- (yy) **"Schedules"** means those schedules attached hereto and forming a part of this Agreement as follows:
- "A" PERMITTED ENCUMBRANCES
  - "B" ASSIGNMENT AND ASSUMPTION AGREEMENT AMONG OWNERS
  - "C" CITY ASSUMPTION AGREEMENT
  - "D" SITE PLAN AND EASEMENT AREAS
- (zz) **"Services"** means and includes water, sanitary sewage, storm and ground water drainage, heat, ventilation, air conditioning, fire protection, gas, electricity, telephone, cable and other communication, emergency or security systems and other similar utilities or services;
- (aaa) **"Servient Lots"** means any one or both of Strata Lot \_\_\_, Strata Lot \_\_\_ and Strata Lot \_\_\_ as the case may be, which is in accordance with the terms of this Agreement made subject to and burdened by an Easement in this Agreement;
- (bbb) **"Shared Facility"** or **"Shared Facilities"** means one or more shared Services, shared Utility Systems, Emergency Equipment and Common Foundation located within a Strata Lot which are designed and intended to provide shared Services or Utilities Systems to more than one Strata Lot, which may or may not include the Strata Lot on which the shared Services or shared Utility System is situated, or one or more of the Emergency Equipment or Common Foundation, whether shared or not;
- (ccc) **"Strata Lot \_\_\_\_"** means Strata Lot \_\_\_, Block \_\_\_ Plan \_\_\_\_ following the Strata Lot Subdivision of Lands;
- (ddd) **"Strata Lot \_\_\_\_"** means Strata Lot \_\_\_, Block \_\_\_ Plan \_\_\_\_ following the Strata Lot Subdivision of Lands;

- (eee) **"Strata Lot \_\_\_\_"** means Strata Lot \_\_\_\_, Block \_\_\_\_ Plan \_\_\_\_ following the Strata Lot Subdivision of Lands;
- (fff) **"Strata Lots"** means collectively Strata Lot \_\_\_\_, Strata Lot \_\_\_\_ and Strata Lot \_\_\_\_ and **"Strata Lot"** means any one of them;
- (ggg) **"Strata Subdivision Plan"** means the strata plan of subdivision for the Lands which has been approved by the Subdivision Authority;
- (hhh) **"Subdivision Authority"** means the City, in its capacity as a subdivision approving authority under the provisions of the Municipal Government Act;
- (iii) **"Summary of Easements"** means the summary of easements on pages (i) to (vi) inclusive of this Agreement which is deemed incorporated in and forms a part of this Agreement;
- (jjj) **"Survey"** shall have the meaning ascribed to it in Article 17.1;
- (kkk) **"Transferee"** shall have the meaning ascribed to it in Article 14.1;
- (lll) **"Transferor"** shall have the meaning ascribed to it in Article 14.1; and
- (mmm) **"Utility Systems"** means all equipment or systems necessary for the passage or provision of any Services through or by means of any pipes, wires, cables or ducts and appurtenances thereto to the extent which those pipes, wires, cables or ducts and appurtenances thereto, including any modifications, replacements or additions which may be made to the Utility Systems from time to time.

## **ARTICLE 2 BENEFIT AND BURDEN**

- 2.1 The Owners hereby acknowledge and covenant with each other that:
- (a) the principles of reciprocal benefit and burden shall apply to this Agreement, and as such each of the Easements, rights and privileges referred to in this Agreement establishes a basis for the mutual and reciprocal use of certain parts of the Strata Lots including those parts of the Amenity Areas and Shared Facilities which are intended to be used and enjoyed in common by the Owners; and
  - (b) as an integral and material consideration for the continuing enjoyment of and right to the use and enjoyment by each Owner of such Easements, benefits and privileges, each Owner is hereby deemed to accept and agree to assume the burdens and obligations imposed on it and is deemed to be bound by each and every covenant contained in this Agreement.
- 2.2 The provisions of this Agreement are intended to run with the Strata Lots, to the extent that such covenants are able to run with title to the Strata Lots benefited and burdened hereby, and shall be binding on and enure to the benefit of every Owner and their respective successors in title.
- 2.3 Subject to compliance with Article 14.1 and Article 14.2, upon the sale, transfer or conveyance by any Owner of any Property: (i) such Owner shall automatically be released and discharged *pro tanto* from any of the liabilities and obligations it would bear hereunder as the Owner of such Property sold, transferred or conveyed, which are caused or occur subsequent to the date of such sale, transfer or conveyance relating to such Property; and (ii) any purchaser of the Property shall assume *pro tanto* such liabilities and obligations insofar as the burden of such liabilities are capable of passing to such person by operation of law.

**ARTICLE 3  
EASEMENT PROVISIONS**

**3.1 Easements of Support**

(a) Each Grantor hereby grants to each Grantee in favour of the Dominant Lots an Easement over, in and to the Servient Lands owned by each such Grantor for the following purposes:

(i) for the Servient Lots and Improvements thereon to provide support to the Dominant Lots and all the Improvements situated on them including but not limited to any Improvement on the Servient Lots or any addition to any of them or replacement of them which provides lateral, subjacent or other support to any element of a Dominant Lot; and

(ii) to enter within the Servient Lots and the Improvements situated on them, as applicable, to which it is reasonable to have access upon the expiry of Ten (10) days notice in writing to the Grantor (except in the case of emergency, upon such notice as is practicable under the circumstances) for the purposes of:

(A) inspecting and examining the Servient Lots and the Improvements situated on them, as applicable, and any other support structures constructed within the Servient Lots in replacement of them or in addition to them, to ascertain and determine whether any defect, damage or condition exists or is imminent which has resulted or may result in any loss of support from the Servient Lots, or the Improvements situated on them, as applicable, to the Dominant Lots or any other Improvements situate on them; and

(B) undertaking any repair, maintenance, replacement or reconstruction to address any condition, defect or damage to the Servient Lots or to the Improvements situated on them, as applicable, which has resulted in or is likely to result in any loss of support from the Servient Lots, or the Improvements situated on them, as applicable, to the Dominant Lots or any Improvements situate on them, except where such condition, defect or damage has been rectified by the Grantor or where the Grantor has commenced and is diligently pursuing such rectification at the sole cost and expense of the Grantor, provided however, should the Grantee undertake such repair, maintenance, replacement or reconstruction, then upon its completion the Grantor shall immediately pay to the Grantee who undertook such work, the full amount expended in undertaking such repair, maintenance, replacement or reconstruction, subject always to the applicable provisions of this Agreement together with an administration fee of Twenty (20%) percent of the total cost of such work as compensation to the Grantee for rectifying the Grantor's breach of its obligation.

The Grantor agrees with the Grantee that the Grantor shall ensure that no condition exists at any time in or upon the Servient Lots which may in any manner interfere with the support of the other Improvements on any part of the Dominant Lots and, without limiting the foregoing, the Grantor will maintain, repair, replace and reconstruct the Improvements situated on them, as applicable, in good condition and repair at its sole cost and expense and will not remove any earth, rock, concrete, steel, brick, lumber or other material or any constituent part of such support without providing or ensuring sufficient or equivalent alternate support for the Dominant Lots and all such Improvements situate on them,

(b) No Owner of a Strata Lot shall:

- (i) relocate, remove, replace, alter or damage any part of the Common Foundation or the soil or any structure supporting same, in any respect without the express written consent of the Other Owners, which consent shall not be unreasonably withheld; or
- (ii) do nor omit to do anything to impair any right of support granted in this Agreement, or to render unstable or unsafe any portion of the Common Foundation or any structure, foundation, supporting column, footing, wall or roof or floor slab of the other.

### **3.2 General Grant of Easements for Shared Facilities**

- (a) Each Owner hereby grants to the Other Owners with respect to the Servient Lots owned by each such Owner for the benefit of and appurtenant to the Dominant Lots, an Easement for the purposes of accommodating, operating, maintaining, inspecting, repairing and replacing, as necessary from time to time, the Shared Facilities and the provision of the Services thereby to the respective Properties. The Easement granted pursuant to this Article 3.2(a) shall be conclusively deemed to be extended to include any required rights of access to such Shared Facilities as may be described in Article 3.6(c) of this Agreement.
- (b) The parties hereto confirm and acknowledge that the Strata Lots have certain functional inter-dependencies and certain Shared Facilities servicing more than one of the Strata Lots that may be located outside of such Strata Lot, although intended to serve such Strata Lot. Each Owner of a Strata Lot expressly acknowledges and agrees that some of the Shared Facilities are, by their design and functional operational properties intended to be Shared Facilities between more than one of the Strata Lots. Such Shared Facilities shall be maintained and operated as a single system in accordance with all applicable legislation and relevant codes regardless of the separate ownership of the Strata Lots. Accordingly, each Owner of a Strata Lot expressly acknowledges and agrees that by virtue of the unique relationship between and among the Strata Lots, they shall act promptly and in good faith to ensure close communication and co-operation on a continuing and ongoing basis on all matters related to this Agreement.
- (c) Each Owner of a Strata Lot expressly acknowledges and agrees that in the event the Project is in breach of any legislation, including but not limited to the Act, the applicable building code or the fire code, all as amended from time to time, all parties will be named in any order to bring the Project into compliance regardless of whatever cost sharing arrangements would be applicable.
- (d) Each Owner of a Strata Lot shall be provided with as-built drawings of their respective properties by the Developer showing the Shared Facilities in order to facilitate future maintenance and repairs thereto. Each Owner of a Strata Lot agrees that no Shared Facility over which an Owner holds an easement herein or from which it derives a benefit shall be altered by any of them if such alteration affects, in any material way, the provision of Services or other benefits to any other Strata Lot, without first obtaining the written consent from the Other Owners to be provided within 20 days, acting reasonably, in addition to any approval required from an authority having jurisdiction. Additionally, the party who caused the alteration of the Shared Facilities shall provide updated "as built plans" to the Other Owners for their records.

### **3.3 Specific Grant of Easements**

- (a) Each Owner of any Servient Lands hereby grants to the Other Owners, each of the specific access Easements set forth and described in the Summary of Easements.
- (b) Each Owner hereby acknowledges and agrees that the Easements granted pursuant to the Summary of Easements to the Other Owners over the respective Easement Areas are incorporated in this Agreement and are in full force and effect in accordance with their respective terms.

### **3.4 Emergency Equipment**

- (a) Notwithstanding any other provision of this Agreement, each Owner covenants and agrees to be responsible for any and all of the cost and expense incurred in relation to the operation, repair, maintenance, replacement or reconstruction of Emergency Equipment which is located within its respective Strata Lot provided such Owner shall be entitled to recover such costs and expenses from the Other Owners as Common Expenses.
- (b) Notwithstanding any other provision of this Agreement, if the applicable Owner does not operate, repair, maintain, replace or reconstruct the Emergency Equipment which is located within its Strata Lot, the Other Owners shall be entitled upon prior written notice to such Owner to enter upon such Strata Lot and undertake such operation, repair, maintenance, replacement or reconstruction of any of the Emergency Equipment, as applicable, all at the sole cost and expense of the applicable Owner who is in breach of its obligations under this Agreement. In such event, the applicable Owner who is in breach of its obligations under this Agreement shall immediately pay to each of the Other Owners who undertook such operation, repair, maintenance, replacement or reconstruction, the applicable Allocated Share as provided in this Agreement, together with an administrative fee and penalty of Twenty (20%) percent of the total cost of such work as compensation to the Other Owners for rectifying the applicable Owner's breach of its obligations in this Agreement.
- (c) Notwithstanding any other provision of this Agreement, each Owner shall have the full, free and unfettered access to, and use of all Emergency Equipment wherever such Emergency Equipment may be located within the Project.

### 3.5 **Meter Rooms**

- (a) The parties acknowledge that within the Project, meter rooms for water and gas, as well as any electrical vaults, (the "**Meter Rooms**") have been constructed in one or more of the Strata Lots, but contain equipment for metering of Services for other Strata Lots, as well. The Owner of the Strata Lot in which a Meter Room is located agrees that the Other Owners whose services are metered from such Meter Rooms shall be entitled, without cost, to have access to the Meter Rooms in common with such Owner for the purpose of ensuring the proper and efficient functioning, monitoring and operation of the Utility Systems, or parts of them, located within the Meter Rooms, including without limitation for the purpose of installing, modifying, upgrading, improving, inspecting, repairing, maintaining and replacing the equipment owned by each such Owner located within the Meter Rooms.
- (b) Each Owner of a Strata Lot shall each be responsible for its own equipment located in the Meter Rooms, and shall pay all costs related to its own equipment and shall indemnify and save harmless the Other Owners in relation to any costs, expenses, damages or claims arising out of the use or presence of its equipment in the Meter Rooms.
- (c) To facilitate the use of and access to the Meter Rooms by all Owners with equipment located in a Meter Room, the Owner in whose Strata Lot the Meter Room is located, hereby grants to the Other Owners the right, privilege, entitlement and easement to cross over and through the Owner's Strata Lot for pedestrian access for the purposes of access to and use of its equipment located in the Meter Rooms.

### 3.6 **Provisions Applicable to All Easements**

- (a) No party to this Agreement, or their respective successors or assigns, shall use or permit to be used an Easement Area in any manner so as to interfere with the use and enjoyment of the Easement Area by the Other Owners except for temporary maintenance, and no party shall be entitled to construct, place or erect any structure, barrier or other fixture on an Easement Area except those

which are not inconsistent in function and design with the rights, licenses, privileges, liberties and Easement granted pursuant to this Agreement.

- (b) No party to this Agreement, or their respective successors or assigns, shall prohibit, restrict, deny or otherwise in any manner whatsoever interfere with or hinder access to the property of an Owner where reasonably required in respect of the exercise by the Other Owners of any Easement rights granted in this Agreement. Without limiting the generality of the foregoing, where any Easement Area or any portion of a Strata Lot that is reasonably required in the exercise by the Other Owners of any Easement rights granted herein, other than a residential unit or a demised commercial space, is in any way restricted or controlled for access (such as, by way of example only, locked doors, key fobs, code systems, etc.) then the Owner of such Strata Lot upon which such restriction of access exists shall provide to the Other Owners such items (such as, by way of example only, keys, key fobs or access codes) as are necessary to ensure that the Other Owners have unrestricted access to the Easement Areas and such portion of the Strata Lot as needed for access to the Easement Areas, as contemplated herein, at all times and without the need to contact the Owner upon which such restriction of access exists in order to access the Easement Area
- (c) Each Owner shall be deemed to have the right to access, pass, and re-pass over such portion of a Servient Lot as may be necessary and reasonably required by the Other Owner of the Dominant Lots in order to gain appropriate and timely access to a Shared Facility with any necessary trade persons, machinery and tools reasonably required to ensure a proper and efficient operation and functioning of the Shared Facility serving the Dominant Lots, including, without limitation for the purposes of the installation, construction, modification, upgrading, improvement, inspection, removal, replacement, reconstruction, relocation, repair and maintenance of any Shared Facility located therein and capable of being used in conjunction with the enjoyment of the Dominant Lots. Right of access granted pursuant to the terms of this Article shall include, as may be reasonably necessary, a right to utilize any required elevator, staircase, ramp or loading dock to effectively and economically repair, and maintain any Shared Facility.
- (d) In the event, the applicable Owner granting the Easement does not operate, repair, maintain, replace, restore or reconstruct any Shared Facility situated in the Servient Lot owned by such Owner as required by the terms of this Agreement, then the Other Owners, on not less than ten (10) days prior written notice to such Owner, shall be conclusively deemed entitled to enter into and upon the applicable Servient Lot and undertake such operation, repair, maintenance, replacement or reconstruction of any such Shared Facility, as may be required to ensure the prompt and continuous provision of Shared Facility to the Servient Lots. In such event, the applicable Owner who is in breach of its obligations hereunder shall immediately pay to each of the Other Owners who undertook such operation, repair, maintenance, replacement or reconstruction, the full amount so expended by such Other Owners in carrying out such work, or such applicable Allocated Share as provided herein, together with an administrative fee of Twenty (20%) percent of the total cost of such work as compensation to the Other Owners for rectifying the applicable Owner's breach of its obligations in this Agreement.
- (e) The Owners agree that wherever possible in exercising any rights pursuant to this Agreement, they shall do so in such a manner and during such hours as to minimize any interference with the quiet enjoyment or business activities of the other Strata Lots.
- (f) Each Owner shall cause its contractors, sub-contractors, officers, employees, agents, successors and assigns to observe the obligations of such Owner under the terms of this Agreement. The rights of an Owner under this Agreement may be extended by them to their respective contractors, sub-contractors, officers, employees and agents.
- (g) Each Owner agrees to promptly, when required, make payment of all property taxes, assessments or other charges which may be applicable or chargeable against its own Strata Lot in which the Easement Area is located.

- (h) Each Owner, in its capacity as Owner of one or more Dominant Lots agrees that in exercising the rights, liberties and easements granted to it pursuant to this Agreement, the following terms and conditions shall apply:
- (i) each such Owner acknowledges that such Easement rights granted herein shall only apply to the specific Easement Areas and only for the specific purposes stated herein and no Easement rights are to be implied or be extended by implication or otherwise to any portion of a Strata Lot not contained within the specifically described Easement Area excepting only those certain Easement rights which by their description, nature and intended function such as the easements of support and general rights of access to Shared Facilities as granted herein, shall be of general applicability and are incapable of being limited to or confined by specific Easement Areas;
  - (ii) each Owner shall use all reasonable efforts to cause as little interference with use and enjoyment of a Servient Lot by the Other Owners entitled to such use and enjoyment as possible;
  - (iii) each Owner shall, at such Owner's sole expense, but subject to any rights of recovery provided in this Agreement, immediately restore the Servient Lot to a condition as near as reasonably practicable to its condition existing immediately prior to such damage; and
  - (iv) if required as a result of damage to or destruction, renovation or reconstruction of its Strata Lot, each Owner shall duly execute such modifications to this Agreement or such replacement easements as are reasonably required to ensure the continued availability of the Shared Facilities provided in this Agreement. There shall be no additional compensation payable to any Owner providing a replacement easement. It is the intent of the Owners that any modification of this Agreement or replacement easements shall be at least equal in utility, security, value and convenience to the Owners as the Easements granted in this Agreement and, provided that such modification of this Agreement or replacement easements are so equal, it is also intended that the modification of this Agreement or replacement easements interfere as little as possible with the Owners' use and enjoyment of their respective Strata Lots and Improvements. If the Owners are unable to agree on the form and the terms and conditions of the replacement easements referred to in this Agreement, then the matter in question shall be determined by arbitration in accordance with the provisions of Article 12 of this Agreement. Any modifications of this Agreement or any replacement easements over the Strata Lots shall be registered in the Land Titles Office and shall have priority over any charges or encumbrances which permit the exercise of any rights or remedies which might prejudice, defeat or delay the rights so granted to the holder of the easements granted in this Agreement.
- (i) The burden of the easements, covenants and restrictions in this Agreement shall pass with and extend and be annexed to, shall run with and bind each Strata Lot to which they are annexed (and every part of such Strata Lot) as a Servient Lot, and shall bind each Owner and any lessee, user or occupier of all or any portion of each Strata Lot, or of all or any portion of the Improvements situated on each Strata Lot.
- (j) The benefit of the easements, covenants and restrictions set forth in this Agreement shall pass with, extend to, run with and benefit each Strata Lot to which they are appurtenant (and every part of such Strata Lot) as a Dominant Lot, and shall also extend to each Owner of all or any portion of each Strata Lot.
- (k) If any Strata Lot is subdivided either wholly or in part at any time either under the provisions of the *Land Titles Act* (Alberta) or the Act, as amended from time to time, or under other similar legislation enacted from time to time, on the deposit of a plan of subdivision, a strata plan of subdivision, Condominium Plan, or similar plan as the case may be, both:



- (i) the benefit of the Easements granted in this Agreement shall be annexed to and run with each of the new parcels, lots, or other subdivided parcels and areas so created; and
  - (ii) the burden of each of the Easements granted in this Agreement shall continue to charge each of the new parcels, lots, or other subdivided parcels and areas so created.
- (l) No part of the fee simple estate of the respective Servient Lots shall pass to or be vested in the holder of the Easements under or by virtue of this Agreement and the holder of the Easements may fully use and enjoy the Easements herein granted subject only to the rights and restrictions provided in this Agreement.
- (m) Except as expressly set forth in this Agreement, nothing contained in this Agreement shall restrict or prevent an Owner from enjoying the use of its respective Strata Lot and Improvements in any manner which is not contrary to law, this Agreement, or any other agreement, restriction or covenant binding upon such Strata Lot or Owner and which does not interfere with the security or efficient functioning of the access to and enjoyment of the rights, privileges and Easements granted in this Agreement.
- (n) Each Owner hereby agrees with each of the Other Owners with respect to the Strata Lots owned by each such Owner, that each such Owner will not in any way modify, or in any other way impede the use of or compromise the integrity of any Firewall located within a Strata Lot owned by such Owner, without obtaining the prior written consent of the affected Owner, which consent shall not be unreasonably withheld, in addition to any permits or approvals required from a Regulatory Authority for any such modification.

#### **ARTICLE 4 MAINTENANCE AND REPAIR**

##### **4.1 Easement Areas**

- (a) Each Owner shall repair and maintain those Easement Areas located on its respective Strata Lot which are necessary or desirable to provide the Shared Facilities and to provide access thereto including, without limiting the generality of the foregoing, installing and maintaining lighting, signage, directional markers, landscaping services, providing snow and ice removal, sidewalk repair, roadway, curb and gutter repair, cleaning service, janitorial service, and shall generally maintain and repair its respective Easement Areas to ensure it is in a clean, sightly, safe, unobstructed, good and useable condition at all times. With regard to the foregoing, each party shall comply with any and all Acceptable Standards and those required by federal, provincial or municipal land use bylaw and other statutes, guidelines, bylaws and regulations. In undertaking any repair and maintenance activities pursuant to this Agreement, the particular Owner shall use similar quality of finishings and materials, consistent with the other materials used in the Project to ensure that the look, quality and integrity of the overall Project is maintained.
- (b) Notwithstanding the foregoing, in the event the Easement Areas or any portion or part of the Easement Area is destroyed or damaged as a result of the negligence or willful misconduct of the Owner of one of the said Properties, then the entire costs of repair shall be borne by the party whose negligence or willful misconduct caused the damage or destruction.

##### **4.2 Responsibility for Shared Facilities**

- (a) Unless expressly provided otherwise by the terms of this Agreement, an Owner on whose Strata Lot a Shared Facility is located will have the primary and initial responsibility to operate, manage, maintain, repair, restore, inspect, reconstruct and replace the Shared Facility, to Acceptable Standards subject however, to any cost sharing or recovery of Common Expenses as provided in Article 5 and subject to Article 3.6(d).

- (b) All Services provided by or through a Shared Facility shall be provided expeditiously in a good and workmanlike manner without unnecessary interference with the normal use of the Project or any other Strata Lot, and shall have the benefit of the Easement Areas set forth herein, and where performed by contracting with third party tradesman or vendors the contract price shall be competitive except in an emergency situation which did not permit competitive selection.
- (c) Each Owner shall promptly notify, in writing, the Other Owners of any maintenance, repair or other attention required of which it becomes aware in relation to any Shared Facilities.

## **ARTICLE 5**

### **RESPONSIBILITY FOR MAINTENANCE AND REPAIR COSTS**

#### **5.1 Basis for Allocation of Costs of Shared Facilities**

- (a) The Developer has, concurrent with finalization of the Strata Subdivision Plan, undertaken a detailed analysis of the anticipated usage and parties benefiting from the respective Shared Facilities comprising the Project. Any rights of access over or through a Strata Lot to gain access to a Shared Facility which notionally or legally are required and which are intermittent or infrequent and which do not cause any meaningful degree of wear and tear or cost to the Strata Lot, ought not, by virtue of such access right alone, require the allocation of Common Expenses for such access to such Easement Areas. Such principles are to be consistently applied by the Owners in allocating any Common Expenses not set forth herein or by an arbitration panel considering any future dispute between the parties on the issue of Common Expenses. The governing principle for allocation of all Common Expenses for all Shared Facilities is as follows:
  - (i) Common Foundation: \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_, \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_ and \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_;
  - (ii) Emergency Equipment: \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_, \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_ and \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_;
  - (iii) Shared Services: \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_, \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_ and \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_;
  - (iv) Shared Utility Systems: \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_, \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_ and \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_; and
  - (v) Amenity Areas: \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_, \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_ and \_\_\_\_\_% to the Owner of Strata Lot \_\_\_\_.

#### **5.2 Costs for Exclusive Utility Systems**

In respect of each Strata Lot which has the exclusive use and benefit of a Utility System, the Owner of such Strata Lot shall be solely and exclusively responsible for all costs of such Utility System.

#### **5.3 Payment of Allocated Share**

- (a) Each Owner covenants and agrees to promptly pay when due hereunder, its respective Allocated Share of the Common Expenses in the manner herein provided. Prior to commencement of each fiscal operating period, the respective Owners shall estimate the amount of the Other Owners' share of the Common Expenses for the ensuing fiscal period or (if applicable) partial portion thereof, as the case may be, and notify the Other Owners in writing of such estimate. The amount so estimated shall be payable in equal monthly installments in advance over the fiscal period or partial portion thereof in question, each such installment being payable on the first day of such month. The Owners, by mutual agreement, may from time to time alter the fiscal period selected, in which case and in the case where only a partial portion of the fiscal period is included within

the term, the appropriate adjustment in monthly payment shall be made. From time to time during a fiscal period an Owner may re-estimate the amount of each Owner's Allocated Share of the Common Expenses in which event that the Owner shall notify the Other Owners in writing of such re-estimate and fix monthly installments for the then remaining balance of such fiscal period or partial portion thereof.

- (b) No later than ninety (90) days after the expiration of each fiscal operating period, the Owners shall provide each other with a reasonably detailed statement of Common Expenses for the preceding fiscal operating year or portion of the same. Such statement shall show each of the Owners' Allocated Share of Common Expenses and the amount actually paid by the Owners on account of Common Expenses for such period. Within thirty (30) days after delivery of the said statement, the Owners shall make any adjusting payments required in the amount of the difference between the total Common Expenses actually paid during the said period and the actual amount of Common Expenses that should have been paid by the respective Owners in accordance with this Agreement.
- (c) To the extent possible, the Property Management Service Provider shall manage, administer, account for, invoice and collect the various Allocated Shares of Common Expenses.

#### **5.4 Disputed Payment**

If an Owner disputes the inclusion of any specific expense on the basis that it has no responsibility for payment of all or part of the same, or if an Owner disputes the manner of calculation of, or the amount of Common Expenses, which the other Owner indicates is or was payable by it, the Owner charged with the expense shall nevertheless make the payment to the other Owner in accordance with the provisions of this Agreement but the Owner making such disputed payment shall be entitled, within thirty (30) days of making such payment, to refer such dispute to an arm's length, qualified consultant whose mandate shall be to re-assess the Allocated Share of such disputed items of the Common Expenses. If either Owner fails to implement or follow the recommendations of the professional consultants, then either party may require the dispute to be resolved by way of arbitration in accordance with Article 12. Within ten (10) days after the arbitrator determines the actual amount that should have been paid, the Owners shall make any adjusting payment required to be made by reason of the overpayment or underpayment, as the case may be. An Owner shall have the right to refer a disputed cost to professional consultants or for arbitration up to, but not after, one hundred and twenty (120) days from the date of receipt of the statement of its Allocated Share. During, and within sixteen (16) months after the expiration of each fiscal operating year an Owner shall have the right, after five (5) days notice has been given to the Other Owners, to inspect during the specified business hours the Other Owner's records pertaining to Common Expenses for such year.

### **ARTICLE 6 SPECIAL PROJECT PROVISIONS**

#### **6.1 Safety Code Variance**

If applicable, the Developer acknowledges and agrees that it will be required to submit and obtain approval of a Safety Code Act Variance or Alternative Solution application in connection with the approval and release for registration of the Strata Subdivision Plan.

### **ARTICLE 7 INSURANCE**

- 7.1 Each Owner shall obtain and maintain insurance on its respective Strata Lots (including all leasehold improvements and fixtures installed therein) and all the insurable property, both real and personal, of any nature whatsoever owned by an Owner and located on the Properties, to the full replacement value without deduction for depreciation and, without restricting the generality of the foregoing, such insurance shall provide the following:

- (a) coverage for "all risk" perils and such other perils as a prudent owner of similar property would maintain;

- (b) coverage to the full replacement value of the Improvements and all Improvements within each respective Strata Lot, but excluding all chattels and other property belonging to the occupants or tenants;
  - (c) adequate coverage for machinery and for boiler insurance on their respective boilers;
  - (d) coverage for such other risks or causes as a prudent owner of similar property would maintain;
  - (e) that no breach of any statutory condition or other condition of any policy by any party hereto shall invalidate the insurance or forfeit the insurance and, in the event of such breach by any party hereto, the insurance may only be subject to forfeiture or defence of breach of condition insofar as the separate interests of the person or party in breach are concerned and only upon the insurer establishing that the loss was caused by or contributed to by the breach of the statutory condition or other conditions;
  - (f) that in the event that insured property is damaged or destroyed and that property is replaced or repaired, no deduction shall be made from an insurance settlement for depreciation to the property;
  - (g) that no breach of any statutory or other condition of any policy by a party hereto shall invalidate the policy as against any mortgagee in any way or to any extent;
  - (h) standard mortgagee endorsements in favour of all mortgagees who have notified their interest to the respective Owners;
  - (i) that the insurers rights of recovery against Owners are waived and the insurer's rights of recovery against any Owner are waived, except with respect to intentional, criminal or fraudulent acts;
  - (j) such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the insureds, including all registered mortgagees of the Strata Lots;
  - (k) such "all risk" policies shall also provide that the Owners of damaged Strata Lots shall have the right, subject to the consent of the Other Owners, to obtain a cash settlement (actual cash value) or by order of a court of law having jurisdiction in that behalf to settle a scheme of distribution, and the insurer's option to reconstruct the damaged premises shall be deleted or waived, as the case may be.
- 7.2 If a Condominium has been constituted for any Strata Lot then its Owners shall cause a separate loss payable endorsement to be issued in respect of any policies issued pursuant to this Article 7. Subject to the provisions of the Act, insurance proceeds realized under any policy of insurance obtained and maintained hereunder and insuring against fire and any other supplemental perils shall be paid to the respective Owners and their loss payees.
- 7.3 Nothing in this Article 7 shall restrict the right of any Owner to obtain and maintain insurance of any nature or kind in respect of the ownership or use or occupation of their respective Strata Lot or any property associated therewith, or in respect of their personal liability, whether permitted by the Act or otherwise; provided that the liability of the insurers issuing insurance obtained by an Owner pursuant to Article 7.1(a) shall not be affected or diminished by reason of insurance carried by an Owner.
- 7.4 Policies of "All Risk" and physical damage insurance will not contain any co-insurance. Policies of fire or physical damage shall contain waivers of any rights of subrogation against the Owners or any of them, and shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Other Owners, the insureds and their mortgagees provided however, that in the event such policies are to be cancelled for nonpayment of premium, then only ten (10) days' written notice shall be required to be given to the Other Owners, the insureds and their mortgagees.
- 7.5 There shall be a provision of a certificate or memorandum of all insurance policies to be issued as soon as possible to each of the Owners and a duplicate original or certified copy to each mortgagee upon request;

renewal certificates or certificates of new insurance policies shall be furnished to each of the Owners prior to the expiry of any current insurance policy.

- 7.6 The Owners shall also obtain and maintain public liability insurance insuring their respective Owners (excluding individual condominium owners) against any liability to third parties or to the Owners and their invitees, licensees or tenants incident to the ownership or use of the Lots therein, and all property owned by the Owners. Limits of liability under such insurance shall not be less than Five Million (\$5,000,000.00) Dollars for any person insured or for any one accident and shall not be less than Five Million (\$5,000,000.00) Dollars for property damage per occurrence. The limits and coverage shall be reviewed at least annually by the parties and increased with their mutual consent, acting reasonably. The policy or policies shall provide cross-liability endorsements whereby the rights of an additional insured under the policy or policies shall not be prejudiced in respect of, his, her or their action against another additional or named insured.
- 7.7 Immediately upon the occurrence of any substantial damage to any of the Strata Lots the Owner of such damaged Strata Lots shall provide notification of such damage by registered mail to the Other Owners and the registered first mortgagees of such damaged Strata Lots who have notified the respective party of their interest.
- 7.8 Nothing herein shall alleviate either party from ensuring that their respective Strata Lots are adequately insured.
- 7.9 All general liability insurance policies shall name as additional insureds the Other Owners (excluding individual condominium owners) from time to time of the Strata Lots.
- 7.10 Each of the Owners shall deliver to the other upon request, adequate proof of the existence of all of the insurance policies of the first mentioned party.

## **ARTICLE 8 DAMAGE AND DESTRUCTION**

- 8.1 If any Improvements are damaged then the respective Owner shall expeditiously rebuild, restore and repair the damaged or destroyed Improvements in a good and workmanlike manner to Acceptable Standards, including all requirements of this Agreement to the extent necessary, to permit the Other Owners and those authorized by it, to enjoy and exercise all benefits, easements and entitlements intended by this Agreement, including the continued use and availability of all Shared Facilities and the Easement Areas. Subject to Sections 4.1(b) and Section 5.1 above, the cost of rebuilding such damaged Improvements shall be borne One Hundred (100%) percent by the Owner on whose Strata Lot the Improvements are located including the cost of replacing any Shared Facilities or Amenity Areas located on the Strata Lot.

## **ARTICLE 9 CERTIFICATE OF COMPLIANCE**

- 9.1 Each of the Owners, at any time but not more than twice per year, within Ten (10) days after written request by any party hereto, but including any Condominium Corporation, without payment of any fee, shall execute, acknowledge and deliver to the requesting party a certificate stating:
- (a) that this Agreement is unmodified and in full force and effect, or if there has been any modification that this Agreement is in full force and effect, as modified, and describing the modification;
  - (b) whether or not there is, to the knowledge of the said party, any existing default under this Agreement by any party and if there is any such default, specifying the nature and extent of such default;

- (c) whether or not a party has performed or caused to be performed, or is then performing or causing to be performed, any maintenance or other work required by this Agreement, specifying the nature and extent of such maintenance or other work; and
  - (d) the current addresses to which notices given to the parties are required to be delivered under the terms of this Agreement;
- 9.2 Any certificate of compliance given pursuant to Article 9.1 may be pleaded and shall be a complete defence by the requesting party to any action brought on a claim that is inconsistent with the facts recited in the certificate.

## **ARTICLE 10 DEFAULT**

- 10.1 Any amounts not contributed by a party (the "**Defaulting Party**") as required pursuant to this Agreement, after written demand with particulars has been delivered to the Defaulting Party and seven (7) days has expired without payment, shall, until advanced, bear interest at the Prime Rate plus six percent (6%) per annum calculated and compounded monthly on such amount as is from time to time unpaid, and such amounts until so paid, be and constitute a charge in favour of the other party or parties (the "**Non-Defaulting Party**") against the Strata Lot of the Defaulting Party, as of the date such amount was not contributed as required pursuant to this Agreement.
- 10.2 The Non-Defaulting Party shall be entitled to file a caveat against title to the Strata Lot of the Defaulting Party pursuant to the Land Titles Act or other applicable legislation claiming the amount of the charge outstanding at such date.
- 10.3 No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to Article 10, and any lien which would have arisen pursuant to Article 10 had there been no conveyance or divestiture of title shall not be defeated, or otherwise diminished or affected, by reason of such conveyance or divestiture of title.
- 10.4 Notwithstanding the foregoing, any charge or lien arising or resulting from this Agreement shall be subordinate at all times to any mortgage or mortgages, granted by an Owner or the Owners, or the lien or charge resulting from any other method of financing or refinancing, now or hereafter in force and to all advances made or hereafter to be made upon the security thereof, provided that the holder of any such mortgage, lien or charge shall not foreclose off title to the Servient Lands this Agreement or discharge this Agreement from title to the Servient Lands. This Agreement may be assigned by an Owner or the Owners to any mortgagee, lender, creditor or secured party as collateral security to any mortgage, charge or lien in respect of a Strata Lot and in the event of any mortgagee, creditor, secured party, receiver or purchaser pursuant to any realization of security including a purchaser pursuant to a judicial sale, becomes the registered owner of the applicable Strata Lot then such party will assume the obligations contained in this Agreement as they relate to or arise in respect of the applicable Strata Lot and shall enter into an assumption agreement with the other owners in the form attached hereto as Schedule "13"; Assignment and Assumption Agreement Among Owners *mutatis mutandis*, and shall enter into an assumption agreement with the City in the form attached hereto as Schedule "C": City Assumption Agreement *mutatis mutandis*.

## **ARTICLE 11 TERMINATION**

- 11.1 This Agreement shall remain in full force and effect for so long as the Project exists or is capable of being lawfully rebuilt and shall not be terminated in any event except by a written agreement to that effect executed by all parties. Notwithstanding the foregoing, if all the Strata Lots are consolidated into one fee simple parcel this Agreement shall be automatically terminated and at an end.
- 11.2 Notwithstanding the termination of any rights under this Agreement, if at the time of such termination, any party shall be obligated to pay any sum of money pursuant to the provisions of this Agreement, such

obligation shall not be extinguished until such sum of money, together with any accrued interest, has been paid, and any lien securing the payment of such sum of money shall remain in force and effect and continue to secure the payment and any interest which shall have accrued.

## **ARTICLE 12 ARBITRATION**

- 12.1 Subject to the Owner complying with the provisions of Article 5.4 if applicable, any Owner (the "**Referring Party**") may refer any matter of difference respecting this Agreement, including its interpretation, application or implementation to arbitration pursuant to the Arbitration Act in accordance with the following procedure:
- (a) the Referring Party shall give notice in writing (the "**Arbitration Notice**") to the Other Owners specifying the matter being referred for arbitration including reasonable detail and appointing an arbitrator;
  - (b) within Ten (10) days after the giving of an Arbitration Notice, the party receiving the Arbitration Notice shall nominate and appoint an arbitrator and shall notify the Referring Party and the other party in writing of the same;
  - (c) the arbitrators shall appoint in writing one of themselves to act as chairman and notify the parties in writing of the same;
  - (d) if any party does not appoint an arbitrator as contemplated in this Article, then the arbitrator shall be appointed by the Alberta Court of Queen's Bench, pursuant to the Arbitration Act;
  - (e) notwithstanding the foregoing, any Arbitration may be carried out by a single arbitrator if the Owners unanimously agree; and
  - (f) if a single arbitrator is appointed, the provisions of Article 12.2 shall apply *mutatis mutandis*.
- 12.2 Any Arbitration carried out pursuant to this Article 12.1 shall take place in the City of Calgary at the time and place fixed by the arbitrator appointed by the arbitrators to act as chairman, and such Arbitration shall be governed and conducted pursuant to the Arbitration Act.

## **ARTICLE 13 DEFAULT AND REMEDIES**

### **13.1 Enforcement**

The Owners acknowledge and agree that a breach of any of the Easements, covenants and restrictions or other provisions contained in this Agreement would result in irreparable harm and continuing damages to the Other Owners which could not be compensated by an award of monetary damages and that: (i) each and every Easement in this Agreement, shall be restrainable by injunction and be specifically enforceable at law or in equity; (ii) each and every provision of this Agreement, including without limitation, the covenants set out herein, shall be specifically enforceable at law or in equity; and (iii) each and every restriction in this Agreement shall be restrainable by injunction; in addition to any entitlement to an award of monetary damages which may arise.

### **13.2 Breach**

In the event of breach or threatened breach of this Agreement, only the Owner of the Strata Lot affected by such breach or threatened breach, shall be entitled to institute proceedings for full and adequate relief from the consequences of such breach, provided that no Owner shall have the right to terminate this Agreement in the event of any such breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party all legal fees of the prevailing party on a solicitor and its own client basis together with all

disbursements, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### 13.3 Remedies for Default

If the Owner of any Strata Lot (for the purposes of this Article 13.3, a "**Defaulting Owner**") shall, during the term of this Agreement, default in the full, faithful and punctual performance of any obligation required hereunder and if at the end of fifteen (15) days after written notice from any other Owner stating with reasonable particulars the nature and extent of such default, the Defaulting Owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any of the Other Owners shall, in addition to and without prejudice to, all other remedies it may have at law or in equity (including those set forth in this Agreement), including, without limitation, specific performance and damages, have the right to perform such obligation of this Agreement on behalf of the Defaulting Owner and be reimbursed by the Defaulting Owner for the actual cost thereof, together with interest in accordance with Article 13.8 to be calculated from the date of performance of the obligation to the date of reimbursement of the cost thereof by the Defaulting Owner and together with a pre-agreed penalty of Twenty (20%) percent of such costs incurred, provided no pre-agreed penalty of Twenty (20%) percent shall apply where an administrative fee of Twenty (20%) percent is otherwise provided for in this Agreement.

### 13.4 Remedies Cumulative

All of the remedies of an Owner at law or in equity including, without limitation, those provided in this Article 13 of this Agreement, shall be available in every instance and shall not be exclusive or in the alternative but shall be cumulative and may be exercised at such times and in such order as may be beneficial in the circumstances.

### 13.5 Limited Recourse

The Owners acknowledge that any obligation of an Owner for the payment of any monetary amount payable or which becomes or may become payable under this Agreement by such Owner or for the payment of any monetary damages in any way arising out of the breach of any of the obligations of such Owner under this Agreement shall be performed, satisfied and paid only out of and enforced only against and recourse shall be had only against such Owner's interest in the Strata Lot owned by that Owner and the Improvements situated on such Strata Lot, and no obligation of such Owner under this Agreement or in respect of it shall be personally binding on, nor shall any resort or recourse be had or judgment issued or other process be levied against such Owner for the enforcement or collection of any such monetary amounts or monetary damages, save and except to the extent that such process is necessary for the enforcement of such claims against that Owner's interest in the Strata Lot owned by that Owner and the Improvements situate on such Strata Lot, provided that the foregoing shall not in any way limit any other non-monetary remedy which any party may have for the breach of any of the obligations of any other party under this Agreement, including the right to seek any injunction or declaration of right (other than an injunction or declaration of right requiring the payment of money or any other expenditure by any party) and the right to cure defaults, whether provided by this Agreement or by law, subject always to the provisions of this Article 13.5.

### 13.6 Indemnity and Exclusion

Each Owner (the "**Indemnifying Owner**") covenants and agrees to indemnify and save harmless the Other Owners (each being an "**Indemnified Owner**") against and from any and all actions, causes of action, claims, costs, damages, expenses, liabilities, losses and proceedings of every nature whatsoever, made or brought by or on behalf of anyone arising from or in connection with (i) any breach or default by the Indemnifying Owner of any of its obligations set forth in this Agreement; or (ii) the exercise by the Indemnifying Owner or its lessees, employees, licensees, invitees and any registered owners of Condominium units of any right of entry or access, or any right to inspect, examine, operate, repair, maintain, replace or reconstruct granted to the Indemnifying Owner pursuant to this Agreement and against and from all reasonable costs, reasonable legal fees (on a solicitor/own client basis) and expenses and



liabilities (on a complete indemnity basis) incurred in or in connection with any such claim or action or proceeding.

#### 13.7 **Indemnity Exceptions**

An Indemnifying Owner shall not be obliged to indemnify an Indemnified Owner for damages or costs to the extent they are caused or contributed to by the acts, omissions or negligence of that Indemnified Owner or resulting from a breach by that Indemnified Owner of any of its obligations set forth in this Agreement.

#### 13.8 **Interest**

Any and all amounts payable in accordance with the provisions of this Agreement by a party to any other party shall bear interest thereon from and after the date on which payment is required to be made in accordance with the provisions of this Agreement to the date such payment is made, such interest to accrue daily and be calculated and payable monthly on the first day of each and every month at a rate equal to the Prime Rate per annum in effect from time to time plus six percent (6%) per annum.

#### 13.9 **Force Majeure**

Subject to Article 13.10, whenever in this Agreement it is provided that anything is to be done or performed by an Owner and such doing or performance is impossible due to Force Majeure, such Owner shall not be regarded as being in default in the performance of any obligation under this Agreement during the period of any such Force Majeure.

#### 13.10 **Notice of Delays**

The Owners shall not be entitled to claim the benefit of Force Majeure pursuant to Article 13.9 unless written notice (a "**Notice of Delay**") setting forth the particulars of the commencement, duration and consequences of such Force Majeure are given by the Owner seeking to rely thereon within Fifteen (15) days of the commencement of the alleged delay or, in the case of a continuing delay, within Fifteen (15) days of the initiation of the delay. If any other Owner receiving such Notice of Delay gives notice that it disputes such Notice of Delay within Five (5) business days of its receipt, the Owners shall attempt to resolve such dispute. If the Owners fail to resolve such dispute within Five (5) business days of the delivery of such notice of dispute, such dispute shall be referred to arbitration pursuant to Article 12. If the Other Owners receiving a Notice of Delay fail to deliver a notice of dispute to the other Owner within Five (5) business days following the delivery of a Notice of Delay, such receiving Owner shall be deemed to have accepted the delay as set forth in such Notice of Delay, for the purposes of Article 13.9.

### **ARTICLE 14 TRANSFERS**

#### 14.1 **Conveyances, Assignments and Transfers**

In each instance in which any party conveys, assigns or otherwise transfers all or any portion of its interest in all or any portion of the Strata Lots, to any person (the "**Transferee**"), the party so conveying, assigning or transferring (the "**Transferor**") shall require the Transferee to enter into an assumption agreement with the Other Owners in the form attached hereto as Schedule "B": Assignment and Assumption Agreement Among Owners. Alternately, whenever a Condominium Plan is to be registered over all or any portion of a Strata Lot, the Owner of such Strata Lot shall immediately cause the Condominium Corporation to enter in an Assumption Agreement with the Other Owners in the form attached as Schedule "B": Assignment and Assumption Agreement Among Owners. Upon the entering into of any such agreement with the then other parties to this Agreement (but not before), the Transferee or condominium corporation, as the case may be, shall be entitled to the benefit of this Agreement to the extent of such conveyance, assignment or transfer and either:

- (a) the Transferor (if the transfer was a conveyance of all of the interest of the Transferor in the portion of the Strata Lot so conveyed) shall be released from any further obligations hereunder arising thereafter with respect to the portion of the Strata Lots so conveyed; or
- (b) where this Agreement is being assigned to a condominium corporation the Owner of Such Strata Lot upon which a Condominium Plan has been registered shall be released from any further obligations hereunder arising thereafter, as the case may be. For clarity, where this Agreement is assigned to a condominium corporation in accordance with this Paragraph 14.1, the owners of individual units within such Condominium Plan shall not thereafter be required to comply with the provisions of this Paragraph 14.1 upon a subsequent sale, conveyance, assignment or transfer of all or any portion of its interest in the Strata Lot

#### **14.2 Assumption Agreement in Favour of the City**

In addition to the requirements for assumption agreements referred to in Article 14.1 and concurrently with any assignment, sale, transfer of all or any portion of a Strata Lot, an Owner shall cause the assignee, purchaser, transferee to enter into an assumption agreement with the City in the form attached as Schedule "C": City Assumption Agreement (the "City Assumption Agreement"), whereby the assignee, purchaser, transferee covenants and agrees in favour of the City, in its capacity as the Regulatory Authority, to be bound by, observe, assume, perform and cause to be performed all the covenants, terms and conditions contained in this Agreement, irrespective of whether said covenants, terms and conditions could have been performed prior to the date of this Agreement. Without limiting the generality of the preceding sentence, the registration of a Condominium Plan shall be deemed to be a transfer by the Owner of the Strata Lot and such Owner shall ensure that the resulting Condominium Corporation enters into a City Assumption Agreement with respect to the Strata Lot. Each Owner agrees that it shall not be relieved of its obligations hereunder insofar as they relate to the City until such time as it delivers a duly executed City Assumption Agreement to the City. Upon delivery of an executed City Assumption Agreement in accordance with this Paragraph 14.2, the Owner of the respective Strata Lot shall be released from any further obligations hereunder arising thereafter. For clarity, where this Agreement is assigned to a condominium corporation in accordance with this Paragraph 14.2, the owners of individual units within such Condominium Plan shall not thereafter be required to comply with the provisions of this Paragraph 14.2 upon a subsequent sale, conveyance, assignment or transfer of all or any portion of its interest in the Strata Lot

#### **14.3 Priority of this Agreement**

The Owners acknowledge that this Agreement is intended to and shall create and constitute an interest in the Strata Lots for the benefit of the Strata Lots and shall be registered and maintained against title to the Strata Lots in priority to all other encumbrances save and except for the Permitted Encumbrances and the Owners further agree that if and to the extent there are any other encumbrances encumbering the title of any Owner to the Strata Lots in priority to this Agreement (other than Permitted Encumbrances) the Owner holding such encumbered fee simple or leasehold title shall cause such other Encumbrances to be postponed to this Agreement to the satisfaction of the Other Owners, acting reasonably.

#### **14.4 Release from Liability**

An Owner shall be bound by this Agreement only as to the Strata Lot owned by it or, in the case of an Owner that is a Condominium Corporation, as to the Strata Lot (or portions of it) forming part of the parcel shown within the Condominium Plan which constituted such Condominium Corporation. Provided that it complies with this Article 14, an Owner shall be bound by this Agreement only while it is the Owner and shall thereafter be released, except as to obligations, liabilities or responsibilities that accrue during the time that it was an Owner. Although an Owner may be released under this subparagraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes upon the Strata Lots, and all portions of the Strata Lots running with the land.

**ARTICLE 15**  
**APPLICABILITY TO CONDOMINIUMS**

- 15.1 The parties acknowledge and agree that it is the intention of the Owners at the present time to condominiumize Strata Lot \_\_\_\_ and Strata Lot \_\_\_\_\_. The following provisions shall apply to any Strata Lot that is condominiumized:
- (a) in respect of the Condominium Units which do not constitute common property (as defined in the Act), the individual Condominium Unit Owners within the said condominium plan shall be entitled to all benefits and subject to all burdens associated with Easements granted in this Agreement which affect such Property to which the condominium applies; and
  - (b) in respect of the common property set forth on such condominium plan or common property condominium units, the obligations of any owner of any deemed or common interest in any Strata Lot which, as grantor, has granted an easement set forth in this Agreement, shall be deemed to vest exclusively with the Condominium Corporation formed in respect of that Strata Lot and not with the individual Condominium Unit Owners, provided however that the individual Condominium Unit Owners shall use their best efforts and vote their shares in the Condominium Corporation to ensure, and not take any steps to prevent, the Condominium Corporation from performing and honoring all of the provisions set forth herein as they relate to common property, Condominium Units owned by the Condominium Corporation, or both.
- 15.2 The parties agree that once a Condominium Corporation for a Strata Lot is formed, the interests of the Condominium Unit Owners contained in that Condominium Plan shall be exclusively represented by the Condominium Corporation formed in its respect, The Condominium Corporation shall be exclusively deemed to be appointed the lawful attorney and agent on behalf of all Condominium Unit Owners for the purposes of any and all legal proceedings amending this Agreement, or subsequent or collateral agreements, or for the purposes of providing any required consent, authorization or assurances to the Land Titles Office or other parties in respect of this Agreement or any related matter.

**ARTICLE 16**  
**CITY OF CALGARY**

**16.1 Indemnities in favour of the City**

- (a) Each Owner hereby indemnifies and saves harmless the City from and against all claims, damages, debts, suits, dues, actions, liabilities and causes of action, costs or sums of money including legal costs on a solicitor and own client basis that the City may suffer or be put to by reason of anything done or omitted to be done by any of the Owners in the exercise of any one or more of the rights and privileges granted in this Agreement.
- (b) Notwithstanding anything else contained in this Agreement, each Owner expressly acknowledges and agrees that notwithstanding the City is a party to this Agreement, the City:
  - (i) shall have no responsibility to initiate, undertake or pay for the placement, replacement, operation, maintenance, repair, inspection, modification, upgrading or improvement of any of the Utility Systems or Shared Facilities;
  - (ii) shall have no liability for any breach of any covenant set forth in this Agreement on the part of any Owner; and
  - (iii) shall have no obligation to keep, observe or perform any of the provisions of any easement granted in this Agreement.
- (c) Each Owner hereby represents and warrants, for the reliance of the City, that each Owner will inspect, test and keep in good repair and working order, all common fire and life safety systems

and shared exits on their Strata Lots, including the Emergency Equipment, and any Firewall. The Owners further covenant that the inspections, testing maintenance and repair of the common fire and life safety systems and shared exits will be carried on in an integrated and coordinated manner where need be in order to ensure that same is kept in good repair and working order. In addition, each Owner expressly acknowledges and agrees that in the event that the Project is in breach of any legislation, including but not limited to the Safety Codes Act, Municipal Government Act, Alberta Building Code, Alberta Fire Code, or any applicable regulations or municipal bylaws, all as amended from time to time, all Owners may be named in an order, in the sole discretion of a safety codes officer of the City.

- (d) Each Owner represents, warrants and covenants for the City's and the City of Calgary Manager of Business and Building Safety's reliance that:
- (i) this Agreement grants all easements necessary to ensure common access to all Emergency Equipment and Improvements, exits and any other services required for the Project to function as a single building and to allow the Owners to operate and maintain the Project and its Utility Systems or Shared Facilities including Emergency Equipment;
  - (ii) they have requested the Manager of Business and Building Safety to treat the Project as a single building;
  - (iii) they release and indemnify the Manager of Business and Building Safety for all liability arising from the Manager of Business and Building Safety agreeing to treat the Project or portion of the Project as a single building for the purposes of the Alberta Building Code, as amended; and
  - (iv) they agree to inspect, test and keep in good repair and working order all Emergency Equipment and Shared Systems and shared exits located on their respective Strata Lot.

## 16.2 City as a Party

Each Owner acknowledges that the City is a party to this Agreement only for the purpose of ensuring that this Agreement is not amended (except the Owners may amend the Allocated Share) or discharged from title to any of the Strata Lots without the written consent of the City (except in the event that the Dominant Lots and the Servient Lots are consolidated into a single fee simple parcel) and to receive the benefit of the indemnities and any easements granted in this Agreement. Each Owner also acknowledges that the City is not responsible or obliged to resolve disputes, that may arise, related to the exercise of any rights or privileges or the breach of any obligations contained in this Agreement or any other agreement between the parties, including those relating to cost sharing or maintenance.

## ARTICLE 17 POST CONSTRUCTION ADJUSTMENTS

- 17.1 The Owners confirm and agree that following substantial completion of construction of the Improvements comprising the Project any one or more of the Owners at its sole cost and expense may cause a survey (the "Survey") to be prepared of the constructed Improvements by a registered Alberta Land Surveyor. The Survey shall determine the precise location of the exterior walls, interior walls, floors, ceilings and other projections and components of the Improvements which may be in proximity to any property boundary of any of the Strata Lots, with a view to identifying any portions of an Improvement which is not located within the property boundary of the particular Strata Lot (an "Encroachment") and whether such Encroachment was referenced on, or intended by the Plans.
- 17.2 To the extent that any Encroachment is identified on the Survey, each respective Owner of a Strata Lot into which an Encroachment occurs hereby confirms and agrees that such Encroachment shall be conclusively deemed authorized and consented to without any further act or instrument herein required and without payment of any compensation by the Owner of the encroaching Improvement.

## ARTICLE 18 GENERAL

18.1 The covenants and agreements expressed in this Agreement are in addition to, and not in substitution or replacement of, all restrictions, building codes, regulations, bylaws, standards, and other legal requirements governing the development, use, maintenance and operation of the Strata Lots including, without limitation, the terms and conditions of this Agreement.

18.2 The Owners recognize and agree that the Owners of Strata Lot \_\_\_\_ may be use the Commercial Property for any lawful business or commercial purposes, including without limitation, retail, office, entertainment, food, restaurant, beverage, recreational, fitness and medical purposes. If any business activity of the Owner of Strata Lot \_\_\_\_ or the tenants of the Commercial Property is:

- (a) operating within the, normal course of the Owner's or its tenant's business, in its sole discretion; and
- (b) is in accordance with the Owner of Strata Lot \_\_\_\_ or the tenant's particular business license held from the City of Calgary, if same is required by the City of Calgary;

then the activity shall be conclusively deemed not to constitute a disturbance or nuisance and the Other Owners shall have no cause for complaint, action or damages in respect of same.

18.3 All notices between the parties shall be in writing and shall be sent to the parties by personal delivery at the following respective addresses:

Owners:

With a copy to:

As to the City:

The City of Calgary  
Community Planning  
Calgary Municipal Building  
12<sup>th</sup> Floor, 800 Macleod Trail SE  
PO Box 2100, Stn. M  
Calgary, AB T2G 2M3  
Attention: Director, Community Planning

With a copy to:

The City of Calgary  
Law Department  
Calgary Municipal Building  
12<sup>th</sup> Floor, 800 Macleod Trail SE  
PO Box 2100, Stn. M  
Calgary, AB T2G 2M3  
Attention: Manager, Planning and Real Estate

Each Owner shall be entitled to designate the Property Management Service Provider as its duly authorized agent to send and receive notices on behalf of the Owner, and notices sent and received by the Property Management Service Provider shall be deemed to have been sent and received on behalf of the respective Owner.

18.4 This Agreement shall be read and construed as the number and gender of the party or parties referred to in each case requires and as may otherwise be required by the context.

18.5 Any reference within this Agreement to an Article or Schedule means an Article or Schedule of this Agreement, unless indicated otherwise.

- 18.6 The parties hereto shall without reasonable delay execute all further assurances, easement agreements or other documents necessary or required to carry out the intent of this Agreement.
- 18.7 In this Agreement, words importing the singular number include the plural and vice versa, as the context requires.
- 18.8 Each of the parties to this Agreement shall have the right at all times to enforce the provisions of this Agreement in accordance with its terms, notwithstanding any conduct or custom on the part of such party in refraining from so doing at any time or times.
- 18.9 The failure of any party to this Agreement at any time to enforce any of its rights under the provision of this Agreement in strict accordance with its terms shall not be construed as having in any way established a custom contrary to such provisions, or as having in any way modified or waived such rights.
- 18.10 Should there be a conflict between this Agreement and any other agreement between the parties hereto, then this Agreement shall prevail.
- 18.11 Time shall in all respects be of the essence of this Agreement.
- 18.12 If a term, covenant or condition of this Agreement or its application to any person or circumstance is held to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of the terms, covenants or conditions, shall remain binding and enforceable.
- 18.13 This Agreement shall be binding upon its parties, and their successors and permitted assigns.
- 18.14 This Agreement shall be construed in accordance with and be governed by the laws of Alberta and the laws of Canada applicable therein.
- 18.15 This Agreement may be executed in counterpart, each of which when so executed shall be deemed to be an original and both when taken together shall constitute one and the same document and execution shall be as binding and effective as if executed as one.

*[Remainder of page intentionally left blank, signature page follows.]*

IN WITNESS WHEREOF the parties hereby have hereunto caused their respective corporate seals to be affixed,  
duly attested by the hands of their proper signing officers authorized in that behalf as of the date first above written.

**STRATA LOT \_\_\_\_ OWNER  
MYNE CONDOS (CALGARY) INC.**

Per: \_\_\_\_\_

(Corporate Seal)

Per: \_\_\_\_\_

**STRATA LOT \_\_\_\_ OWNER  
MYNE CONDOS (CALGARY) INC.**

Per: \_\_\_\_\_

(Corporate Seal)

Per: \_\_\_\_\_

**THE CITY OF CALGARY**

APPROVED AS TO CONTENT	INITIALS
Bus. Unit: Community Planning  Name: _____ <div style="text-align: right;">Print</div> Name	
APPROVED AS TO FORM BY LAW, LEGAL SERVICES	INITIALS
Name:  File: _____	

Per: \_\_\_\_\_

General Manager

Per: \_\_\_\_\_

City Clerk

**SCHEDULE "A"**  
**PERMITTED ENCUMBRANCES**

The Permitted Encumbrances are as follows:

<b>Instrument No.</b>	<b>Description of Instrument</b>



**SCHEDULE "B"**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT AMONG OWNERS**

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

AMONG:

\_\_\_\_\_  
(the "Assignor")

- and -

\_\_\_\_\_  
(the "Assignee")

- and -

\_\_\_\_\_  
[Each of the Other Owners]  
(the "Other Owners")

**WHEREAS** \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ have entered into an Easement, Covenants and Restrictions agreement dated as of \_\_\_\_\_, (the "ECR Agreement") respecting the Project;

**AND WHEREAS**, pursuant to the ECR Agreement an assignment of the Assignor's interest and an assumption of the Assignor's obligations under the ECR Agreement is required upon the transfer of the Assignor's interest in any or all of the Strata Lots;

**AND WHEREAS** the Assignor is transferring its interest in Strata Lot \_\_\_\_ to the Assignee;

**NOW THEREFORE THIS ASSIGNMENT WITNESSETH** that in consideration of these presents and other good and valuable consideration paid by each party to the others hereunder, the receipt and adequacy of which is hereby acknowledged by each of the parties hereto, the parties hereto covenant and agree as follows:

1. **Definitions.** All capitalized terms used herein (including in the recitals) and not otherwise defined shall have the respective meanings ascribed thereto in the ECR Agreement.
2. **Assignment.** The Assignor, as of \_\_\_\_\_ (the "Effective Date"), hereby absolutely grants, sells, assigns and transfers to the Assignee all of the Assignor's estate, right, title, interest, claim and demand whatsoever both at law and in equity, in its capacity as Strata Lot \_\_\_\_ Owner, in and to the ECR Agreement and all of the benefits and advantages to be derived therefrom and all covenants and agreements in connection therewith in respect of the period on and after Effective Date (the "Assigned Interest"), to have and to hold the Assigned Interest unto the Assignee and its successors and permitted assigns.
3. **Assumption.** The Assignee hereby assumes all of the covenants and obligations of the Assignor, in its capacity as Strata Lot \_\_\_\_ Owner, under the ECR Agreement in respect of the period on and after the Effective Date and the Assignee hereby covenants and agrees with the Assignor and the Other Owners that it shall be liable to each of the Other Owners for the observance, performance and fulfillment of each and every covenant, agreement, term, obligation, condition and stipulation on the part of the Assignor in respect of the period on and after the Effective Date, in its capacity as Strata Lot \_\_\_\_ Owner, contained in

the ECR Agreement to the same effect as if the Assignee were a party to the ECR Agreement in the place and stead of the Assignor, in its capacity as Strata Lot • Owner.

4. **Covenants of the Assignor to the Assignee.** The Assignor hereby covenants, represents and warrants to the Assignee that:
  - (a) the ECR Agreement is in good standing and in full force and effect as of the date hereof;
  - (b) the ECR Agreement has not been amended;
  - (c) notwithstanding any act of the Assignor, the Assignor now has good right to assign to the Assignee all of its right, title and interest in and to the ECR Agreement;
  - (d) the Assignor has not assigned its right, title and interest in the ECR Agreement other than as set forth herein; and
  - (e) the Assignor has done no act to encumber its right, title and interest in the ECR Agreement and has done no act and has been guilty of no default, omission or laches whereby the ECR Agreement or either of them have become in part or entirely unenforceable, impaired or invalid.
5. **Covenants of each of the Other Owners.** Each of the Other Owners represents and warrants to the Assignee that:
  - (a) the ECR Agreement is in full force and effect; and
  - (b) the ECR Agreement has not been amended.
6. **Consent of each of the Other Owners.** Each of the Other Owners consents to the within Agreement.
7. **Indemnification of the Assignor.** The Assignee hereby covenants with the Assignor to indemnify and save harmless the Assignor from and against any liability in connection with the terms, covenants and conditions contained in the ECR Agreement which the Assignor has agreed to observe, keep and perform on or after the Effective Date.
8. **Indemnification of the Assignee.** The Assignor hereby covenants with the Assignee to indemnify and save harmless the Assignee from and against any liability in connection with the terms, covenants and conditions contained in the ECR Agreement which the Assignor was obligated to observe, keep and perform prior to the Effective Date.
9. **Notices.** Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement to any parties shall be sufficiently given if delivered personally, or if transmitted by facsimile:
  - (a) in the case of notice to the Assignor at:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_
  - (b) in the case of notice to the Assignee at:  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**[add each of the Other Owners Notice Information]**

(c) in the case of notice to the \_\_\_\_\_ at:

\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

10. **Governing Law.** This agreement shall be construed in accordance with and be governed by the laws of Alberta and the laws of Canada applicable therein,
11. **Counterparts.** This agreement may be signed in counterparts and delivered by facsimile transmission and each of which when taken together shall be binding on the parties hereto.
12. **Headings.** The headings contained in this agreement are for convenience of reference only and shall not affect the construction or interpretation hereof.
13. **Successors and Assigns.** All covenants, agreements, conditions and obligations contained in this agreement shall be binding upon and enure to the benefit of the respective successors and assigns of the parties hereto.
14. **Further Assurances.** Each of the parties hereto covenants and agrees from time to time and at all times hereafter to do and perform such acts and things and to execute all such deeds, documents and writings and give all such further assurances as may reasonably be required to give effect to the intention of this agreement.
15. **Conflict.** If there is any conflict or inconsistency between any term or provision of this agreement and any term or provision of the ECR Agreement, the terms and provisions of the ECR Agreement shall prevail.

**IN WITNESS WHEREOF** the parties have hereunto affixed their names by their proper officers as of the date first above written.

**ASSIGNOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OTHER OWNERS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "C"**  
**CITY ASSUMPTION AGREEMENT**

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

\_\_\_\_\_  
(the "**Owner**")

- and -

\_\_\_\_\_  
(the "**Purchaser**")

- and -

**THE CITY OF CALGARY,**  
a municipal corporation in the Province of Alberta  
(the "**City**")

**ASSUMPTION AGREEMENT**

**RECITALS:**

**WHEREAS** the Owner owns a development located on, and lands legally described as: (the "Lands").

**AND WHEREAS** the Owner entered into an Easement, Covenant and Restriction Agreement (the "ECR Agreement") with the City dated \_\_\_\_\_ with respect to the development of the Lands.

**AND WHEREAS** the ECR Agreement provides that its provisions will be binding upon the respective assigns, transferees and successors in title of the parties to them, and requires that prior to the assignment, sale or transfer of any portion of the Lands, or any interest therein, the Owner shall cause the purchaser or transferee to execute an assumption agreement and deliver it to the City.

**AND WHEREAS** the ECR Agreement provides that upon receipt of an assumption agreement, the owner shall be deemed to be released from the obligations contained in the ECR Agreement.

**AND WHEREAS** the Purchaser has agreed to purchase the Lands from the Owner and enter into this Assumption Agreement.

**IN CONSIDERATION** of the sale of the Lands by the Owner to the Purchaser, the mutual covenants contained herein, and the sum of TEN (\$10.00) DOLLARS paid by the Owner to the Purchaser, the receipt and sufficiency of which consideration is hereby acknowledged, **THE PARTIES AGREE AS FOLLOWS:**

1. The Purchaser agrees to assume and be bound by and perform or cause to be performed all the obligations, covenants, terms and conditions contained in the ECR Agreement, irrespective of whether said obligations, covenants, terms, and conditions should have been performed prior to the date of this Agreement.
2. The City acknowledges, accepts and agrees to the Purchaser's assumption of the obligations, covenants, terms and conditions contained in the ECR Agreement.

3. The City agrees to release the Owner from any and all obligations, covenants, terms and conditions under the ECR Agreement as it relates to the Lands.
4. The City shall be entitled to file and maintain a caveat evidencing this Agreement against the interest of the Purchaser in any or all portions of the Lands.
5. This Agreement shall enure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns.

**IN WITNESS WHEREOF** the parties to this Agreement have executed this agreement under seal as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

**OWNER**

Per: \_\_\_\_\_

(Corporate Seal)

Per: \_\_\_\_\_

**THE CITY OF CALGARY**

APPROVED AS TO CONTENT	INITIALS
Bus. Unit: _____	
Name: _____ Print	
Name	
APPROVED AS TO FORM BY LAW, LEGAL SERVICES	INITIALS
Name: File: _____	

Per: \_\_\_\_\_  
General Manager

Per: \_\_\_\_\_  
City Clerk

**SCHEDULE "D"**  
**SITE PLAN AND EASEMENT AREAS**

**[SEE ATTACHED]**

DRAFT