

SERVICING AGREEMENT

THIS AGREEMENT made this _____ day of _____, 200X.

BETWEEN:

THE RURAL MUNICIPALITY OF RUDY NO. 284,
PO Box 1010
OUTLOOK, SK S0L 2N0
(hereinafter called the "Municipality")

- and -

a corporation incorporated under the
laws of the Province of Saskatchewan,
with head office at the Town of Outlook,
in the Province of Saskatchewan,
(hereinafter called the "Owner")

WHEREAS:

1. The Owner is the registered owner of the lands described in Schedule "A" (the "Lands"), which are the subject of a proposed plan of Subdivision as shown on Schedule "B" (the "Plan").
2. As a condition of rezoning the Lands and approval of the subdivision under *The Planning and Development Act, 1983*, the Municipality requires the Owner to perform certain works, install certain services, convey certain lands for public purposes and make certain financial commitments and other arrangements.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET OUT IN THIS AGREEMENT and the sum of \$2.00 paid by each of the parties and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

1. DEFINITIONS

In this agreement the following terms have the following meanings:

- (a) "Completion Certificate" means the certificate issued by the Municipality under section 8.4 of this agreement signifying that all of the Works have been completed to the satisfaction of the Municipality;
- (b) "Construct" includes construct, design and install;

- (c) “Consulting Engineer” means a person registered as a Professional Engineer with the Association of Professional Engineers and Geoscientists of Saskatchewan with expertise in municipal engineering;
- (d) “Lands” means the lands referred to in Schedule A to this agreement;
- (e) “Plan” means Plan of Subdivision;
- (f) “Public Services” means the works and services to be done by the Owner under this Agreement for Municipal use and assumption including wastewater disposal system, water supply system and roadways;
- (g) “Roadway System” means the roads to be constructed to municipal standards and dedicated as public roads described in Schedule C;
- (h) “Security” means the security provided by the Owner pursuant to section 4.3;
- (i) “Water Supply System” means all watermains, valves, hydrants, controls, private water services, any and all connections and all related and necessary appurtenances;
- (j) “Works” means all of the works and services required to be done by the Owner under the terms of this agreement, and, without limiting the generality of the foregoing, shall include the wastewater disposal system, water supply system, roadways, walkways, grading, sodding, driveways, landscaping, street lighting, street signage, works and services described in Schedules C and D.

2. INTERPRETATION

- 2.1 *Governing Law.* This agreement shall be construed in accordance with and be governed by the laws of the Province of Saskatchewan and the laws of Canada.
- 2.2 *Time.* Time shall be of the essence of this agreement and every part thereof except as herein otherwise provided.
- 2.3 *Entire Agreement.* This agreement constitutes the entire agreement between the parties with regard to the matters dealt with in it and precedes and replaces all prior representations, negotiations, understandings and agreements whether oral or written between the parties with respect to this agreement.
- 2.4 *Schedules.* The schedules attached to and forming an integral part of this agreement are:
 - Schedule “A” – Lands
 - Schedule “B” – Plan of Subdivision
 - Schedule “C” – Roadway and Drainage Systems
 - Schedule “D” – Water Supply and Waste Water Disposal Systems
 - Schedule “E” – Overall Water Supply and Waste Water Disposal Systems
 - Schedule “F” – Estimated Cost of Works
- 2.5 *Subsequent Owners Bound.* Subject to the provisions of *The Planning and Development Act, 1983* and *The Land Titles Act, 2000*, the covenants, agreements, conditions and understandings contained

in this agreement on the part of the Owner shall be conditions running with the land and shall be binding upon the Owner, the Owner's heirs, executors, administrators, successors and assigns.

- 2.6 *Separate Covenants.* All of the provisions of this agreement are, and are to be construed as, covenants and agreements as though the words importing such covenants and agreements were used in each separate clause hereof. Should any provision of this agreement be adjudged unlawful or not enforceable, it shall be considered separate and severable from the agreement and its remaining provisions as though the unlawful or unenforceable provision had never been included.
- 2.7 *Obligations as Covenants.* Each obligation or agreement of the Municipality or the Owner expressed in this agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.
- 2.8 *Gender and Number.* Where the context requires, this agreement shall be read as if the appropriate alterations have been made to provide for changes for gender and the singular and the plural.
- 2.9 *Deemed Expense of Owner.* Except where otherwise provided herein, whenever the Owner is obligated in any way under this agreement, such obligation shall be deemed to include the words "at the expense of the owner."

3. OWNER'S OBLIGATIONS

- 3.1 The Owner agrees that its obligations shall apply to the Lands.
- 3.2 The Owner agrees that the final plan for registration shall be prepared in accordance with the Plan and agrees that the Plan shall be given to the Land Registry within 30 days of approval by the Community Planning Branch of the Saskatchewan Department of Government Relations.
- 3.3 The Owner agrees to construct promptly upon registration of the Plan all the Works in a good and workmanlike manner, to the satisfaction of the Municipality and within such time limits as are specified herein and to pay all costs related thereto including all costs set out in this agreement.
- 3.4 The Owner agrees that when undertaking the construction of the Public Services and to take all precautions as are reasonably necessary to avoid any impact on the public from dust, noise and other nuisances whether such impact is within the Municipality or the Town of Outlook adjacent thereto.
- 3.5 Provided all lawful approvals have first been obtained, the Owner agrees to commence construction of the Works no later than 150 days from the date of execution of this agreement and to complete the Works no later than December 31, 2009.
- 3.6 If the Owner fails to commence construction as provided in paragraph 3.5, the Municipality may require the Owner to enter into a revised agreement, and the Municipality is authorized to register in the Land Registry such revised agreement against the title or titles to the Lands.
- 3.7 Notwithstanding the completion date contained in section 3.5 and section 8.2, the Owner may elect to construct the Works in stages such that only specific lots in the Plan are serviced at each stage and provided that only serviced lots may be sold by the Owner. If the Owner makes such an election, then each proposed stage of construction must be approved by the Municipality and must conform to the overall plans and specifications contained in this agreement. For greater certainty,

the Completion Certificate contemplated under section 8.4 will not be issued until all of the Public Services have been completed to the satisfaction of the Municipality, and, until final acceptance of the Public Services by the Municipality pursuant to section 8.5, the Owner will be responsible for the maintenance of the Public Services in accordance with section 8.3.

3.8 *Default of Owner/Emergency.*

- (a) If, in the opinion of the Municipality, the Owner fails to perform any of the Works required under this agreement within the specified time, or fails to do any act that public safety or convenience requires, the Municipality shall notify the Owner in writing of such default or neglect and if the said default or neglect is not remedied within ten (10) clear days of the date of giving of the notice, then the Municipality may forthwith thereafter purchase such materials, tools and machinery and employ such workmen as, in its opinion, will be required for proper completion of the Works.
- (b) If, in the opinion of the Municipality, the Owner's actions or the Owner's inactions under this Agreement have created an emergency situation, corrective action may be undertaken forthwith by the Municipality or its agents and the Owner shall be notified forthwith of the action taken.
- (c) All costs and expenses incurred by the Municipality in carrying out the works under clauses (a) and (b) shall be calculated by the Municipality, whose decision shall be final, and payment of these costs and expenses shall be made by the Owner. It is agreed that the costs shall include an administration fee of ten per cent (10%) of the actual cost of labour, equipment and material. If the Owner does not pay the Municipality for the costs and expenses incurred by the Municipality under this section on or before the expiration of the 30th day after being invoiced by the Municipality, then the Municipality may draw down on any Security provided by the Owner to the Municipality under this agreement to satisfy this debt.
- (d) Any work done at the direction of the Municipality under this section shall not be deemed to be an assumption by the Municipality of any liability in connection therewith or a release of the Owner from any of its obligations under this agreement.
- (e) The Owner hereby grants to the Municipality, its servants, agents, and contractors, the right in the nature of a licence to enter upon the Lands for the purpose of inspection of any of the Works and to perform such Works as may be required as a result of a default or in an emergency situation in accordance with clauses (a) and (b) of this section.

3.9 *Existing Public Services.*

- (a) The Owner agrees to pay to the Municipality within 30 days of the account thereof being rendered to the Owner by the Municipality, any costs incurred by the Municipality in repairing damage done to any existing Public Service caused by any Works done by the Owner in the course of development of the Lands under this agreement.
- (b) The Owner agrees to pay to the Municipality, on or before the 30th day, after the account has been rendered to it by the Municipality, any costs incurred in relocating any existing Public Service where such relocation is made necessary by reason of any work done by the Owner in the course of development of the Lands.

4. FINANCE AND INSURANCE

- 4.1 *Payment of Taxes and Other Charges.* Prior to the execution of this agreement by the Municipality, the Owner agrees to pay the arrears of all taxes outstanding against the Lands within the Plan and all other existing and outstanding charges registered on the tax rolls against the Lands.
- 4.2 *Cash-in-Lieu of Public Reserve.* The Owner may elect to pay to the Municipality cash-in-lieu of the public reserve to be calculated in accordance with the provisions of *The Planning and Development Act, 1983*.
- 4.3 *Financial Security.*
- (a) The Owner agrees to deposit with the Municipality as a performance guarantee a Letter of Credit in the amount of
 - (b) The Letter of Credit required under this section shall be deposited immediately prior to the commencement of construction of any of the Works, or, if the Works are to be constructed in stages, prior to the commencement of construction of a particular stage of the Works.
 - (c) The Letter of Credit must:
 - (i) be irrevocable;
 - (ii) be in a form and from a financial institution satisfactory to the Municipality which form shall include:
 - (A) automatic renewal; and
 - (B) 30 days' notice of cancellation.
- 4.4 *Reduction of Financial Security for Works.* From time to time during construction of the Works, the Owner may apply to the Municipality for reductions in the Security required under section 4.3 and the Municipality, in its sole discretion may reduce the amount of Security required. No such reduction shall allow the Security to fall to an amount that is less than 10% of the estimated cost of the Works as estimated in Schedule F until the Security is released pursuant to section 4.6.
- 4.5 *Maintenance Period.*
- (a) The Owner shall maintain all of the Works for a minimum period of one (1) year following the date of the issuance of the Completion Certificate.
 - (b) Prior the completion of the one-year maintenance period, the Municipality shall make a final inspection of the Works and any and all defects disclosed through such inspection shall be remedied by the Owner at the Owner's expense. When all Works have been completed to the satisfaction of the Municipality, any Security held in this regard by the Municipality shall be released.
 - (c) Prior to Final Acceptance, the Municipality shall cause the Works to be inspected and all defects disclosed through such inspection shall be remedied by the Owner at the Owner's expense.

4.6 *Release of Securities.* When the maintenance period provided in clause 4.5(a) has expired, satisfactory final inspection has been completed and there is to be Final Acceptance in accordance with section 8.5 of this agreement, the Municipality shall release to the Owner all remaining Security held under this agreement.

4.7 *Insurance.*

- (a) Prior to the execution of this agreement, the Owner shall deposit with the Municipality a certificate of insurance for the Works in a form typically issued by major insurance companies certifying that the Owner has obtained from an insurance company, insurance coverage in respect of liability for property damage and personal injury. Such policy or policies shall:
 - (i) be issued in the joint names of the Owner and the Municipality (or include the Municipality as an additional insured);
 - (ii) provide insurance coverage in respect of any one accident or occurrence in the amount of at least \$2,000,000, exclusive of interest and costs;
 - (iii) be effective from the date of execution of this agreement by the Municipality, until Final Acceptance;
 - (iv) contain a clause indicating that the insurance coverage applies to both hazard from and damage to works already performed on the Lands;
 - (v) contain no exclusions for damage or loss from blasting or from any other work that may be associated with the development and construction of the Lands; and
 - (vi) contain a provision that the policy or policies will not be changed or cancelled without at least thirty (30) days' prior written notice being given to the Municipality.
- (b) The Owner agrees, if requested by the Municipality, to provide proof to the satisfaction of the Municipality that all premiums on all insurance policies required hereunder have been paid and that the insurance is in full force and effect.
- (c) The Owner agrees to file a renewal certificate with the Municipality no later than thirty (30) days before the expiry date of any policy obtained under this agreement, unless the Municipality has given written direction to the contrary. If the renewal certificate is not received, the Municipality shall be entitled to renew the policy at the expense of the Owner and such expense shall become a debt due and payable by the Owner to the Municipality.

5. GENERAL CONSTRUCTION REQUIREMENTS

5.1 During the Construction of the Works on the Lands, the Owner shall observe the following provisions and shall deliver a copy of this part of the agreement to every contractor responsible for any of the aforementioned construction or installation:

- (a) all municipal roads to be used for access to the Lands during the Construction on the Lands shall be kept in good and usable condition, and, if damaged, shall be repaired immediately to the satisfaction of the Municipality;

- (b) all vehicles, making deliveries to or taking materials from the Lands or working on the Lands, shall be covered and loaded so that they do not scatter refuse, rubbish or debris on any municipal road. If refuse, rubbish or debris is scattered, the Owner shall immediately remove it and remedy any resulting damage, and, if it fails to do so, the Municipality may do so at the expense of the Owner;
- (c) all construction refuse, rubbish or debris shall be collected and disposed of in an orderly manner at the Town of Outlook's waste disposal site. No refuse, rubbish or debris shall be disposed of by burning on the Lands without the prior written authorization of the Municipality;
- (d) the Owner will neither dump nor permit to be dumped, any fill, rubbish or debris on any lands, nor shall it remove or permit to be removed any fill from any lands, without the prior written consent of the owner of the lands and where a consent is given, the Owner shall provide the Municipality with a copy of that consent on request;
- (e) the Owner shall keep the Lands free and clear of all noxious weeds to the satisfaction of the Weed Inspector for the Municipality and shall comply forthwith with any order issued by the Weed Inspector;
- (f) the Municipality may make qualitative or quantitative tests of any materials which have been or are proposed to be used in the construction of the Works and the cost of such tests shall be paid by the Owner within thirty (30) days of the date of delivery of the account to the Owner;
- (g) no building, equipment, including contractors' equipment, vehicles or materials which are to be used in the construction of any Works shall be parked or placed at any time on any of the Municipality's roads;
- (h) the Owner shall maintain the roads on the Lands free of debris and buildings materials to the satisfaction of the Municipality;
- (i) the Owner shall not place or erect or cause to be placed or erected any building, fence, other structures or materials at a distance closer than 3 meters to any fire hydrant, connection, valve or stand-pipe without the prior written approval of the Municipality and the Fire Chief for the Town of Outlook;
- (j) the Owner shall maintain at all times on the Lands all access routes to the satisfaction of the Municipality and the Fire Chief for the Town of Outlook;
- (k) the Owner shall keep all boulevards clear and free from all materials and obstructions which might interfere with the installation of electrical, telephone, natural gas or other utilities.

6. ENGINEERING GENERAL

6.1 Consulting Engineer

- (a) The Owner shall employ, until Final Acceptance, a Consulting Engineer, who shall be responsible for performing for the Owner the following services:

- (i) acting as the Owner's representative in all matters pertaining to the Construction of the Works on the Plan according to this agreement;
- (ii) coordinating all required geological, environmental and hydrological investigations including, where required, the preparation and submission of engineering reports;
- (iii) preparing designs, including all geological, environmental, hydrological and other aspects for the Works;
- (iv) obtaining all necessary approvals for the Works from the Municipality;
- (v) analysis and submission to the Municipality of tender results for the construction of the Works and recommendations of contractors for approval;
- (vi) submission to the Municipality for approval of a schedule for the proposed order of construction of the Works including estimated dates of completion;
- (vii) provision of the field layout, contract administration, full-time supervision and inspection for the construction of the Works, in a manner acceptable to the Municipality (Supervision for the purposes of this paragraph means full-time supervision of each area, job or location under construction at any given time);
- (viii) maintenance of records of all phases of the construction and the records shall be available to the Municipality upon reasonable request;
- (ix) holding of at least one preconstruction meeting with respect to the Works and thereafter weekly on-site construction meetings during the construction of the Works only and the preparation of minutes of the meetings and circulation to the attendees;
- (x) preparation of Progress Payment Certificates;
- (xi) provision of final "as constructed" reproducible drawings, inspections and testing reports to the Municipality prior to the issuance of the Completion Certificate;
- (xii) certification and recommendation of the acceptability of the Works to the Municipality as required under this agreement;
- (xiii) preparation of and provision to the Municipality, for each lot prior to registration, of a certificate of final grade elevations certifying that the finished buildings and grade elevations have been found to be in conformity with a grading plan approved by the Municipality;
- (xiv) upon the request of the Municipality, supplying copies of any or all contracts entered into by or on behalf of the Owner for the construction of the Works herein together with any or all of the following contract documentation:
 - (A) Progress Payment Certificates;
 - (B) Certificates of Substantial Performance given under *The Builders' Lien Act*;

- (xv) upon request of the Municipality, furnishing of a Statutory Declaration certifying that there are no lien claims or existing liens under *The Builders' Lien Act* relating to any of the completed Works, or as to the amount of the required holdbacks in respect of the completed Works;
 - (xvi) ensuring that all utilities, i.e. telephone, natural gas, cable television, electricity and others, are located in the road allowance in accordance with plans approved by the Municipality.
- (b) Prior to the commencement of construction of the Works, the Consulting Engineer shall file with the Municipality, in a form acceptable to the Municipality, a written undertaking that:
- (i) he or she has been engaged by the Owner to perform the services set forth in subsection 6.1(a);
 - (ii) the Works will be constructed in accordance with the Construction Drawings and specifications and the provisions of this agreement; and
 - (iii) he or she will obtain the prior written approval of the Municipality for all phases of the Works.
- (c) If the Owner terminates the services of the Consulting Engineer in favour of another Consulting Engineer at any time during the term of this agreement, the Owner shall first deliver to the Municipality an undertaking pursuant to subsection 6.1(b) hereof signed by the new Consulting Engineer.

6.2 *Contractors*

- (a) Before the commencement of any Works, the Owner shall provide the Municipality with the following:
- (i) satisfactory proof of sufficient valid liability insurance for the contractors retained for the aforesaid Works;
 - (ii) a Certificate from the Workers' Compensation Board indicating that each contractor is in good standing;
 - (iii) evidence, satisfactory to the Municipality, that each Contractor is qualified, experienced, has sufficient equipment to successfully complete the Works, and will guarantee performance and maintenance to the Owner in accordance with this agreement.
- (b) All contractors and subcontractors shall be approved in writing by the Municipality before commencement of the Works. The Municipality shall provide written reasons for recommending approval or non-approval of a contractor within ten (10) days of receipt of the Owner's notification of the contractors' names.

6.3 *Grading and Drainage*

- (a) Prior to commencing any construction of the drainage system, the Owner must submit an overall drainage plan for approval by the Municipality which plan incorporates the proposed drainage plan shown in Schedule C.
- (b) The Owner agrees to grade the Lands to drain in accordance with the approved drainage plan and to construct all drainage works to the satisfaction of the Municipality.
- (c) The Owner shall retain until Final Acceptance of the Plan a right of access over any private property within the Lands, in order to construct, maintain or repair any drainage works.
- (d) The Owner agrees to grant to the Municipality, free of any charges, and clear of any and all encumbrances, such easements across the Lands as are necessary to provide for any drainage work required for an outlet for storm water or natural water courses across the Lands.
- (e) The Owner agrees not to alter the grading or change the elevation or contour of the Lands established in the approved drainage plan.

6.4 *Maintenance of Grading and Drainage*

- (a) Prior to the sale of each Lot, the Owner shall be responsible for the drainage of all of the lots within the plan, and shall reserve and register such rights on title to the Plan as are necessary to enable the Owner or the Municipality to enter, for a period of up to two (2) years calculated from the date of occupancy of the first dwelling unit on the Plan, to undertake modifications to the surface drainage features in accordance with the approved grading plan.
- (b) If, during the two-year period referred to in subsection (1), the Municipality deems it necessary to correct the drainage and the Owner fails to make such correction when reasonably notified to do so by the Municipality, the Municipality may carry out the drainage correction and all costs incurred shall be charged back to the Owner together with an administrative fee to be calculated at 10% of the cost of labour, equipment and materials.

6.5 *Topsoil Removal and Stockpiling.* The Owner agrees not to remove topsoil from the Lands except as required for building operations and the construction of the Works. The Owner agrees that when topsoil must be removed, it shall be stockpiled in a location approved by the Municipality and shall be replaced upon the Lands after the completion of all construction. If there is a surplus of topsoil, it shall be offered to the Municipality at no cost if it is picked up at the stockpile.

6.6 *Topsoil and Sodding.* The Owner agrees that it shall within 3 months of the date of completion of construction of the last dwelling on the Plan deposit topsoil and lay sod on all unimproved open areas of the Lands within the Plan to the satisfaction of the Municipality.

7. THE WORKS

7.1 *Owner's Obligations Prior to the Construction of Public Services.* Before tendering or entering into any contract relating to the construction of any Wastewater Disposal System, Water Supply System or Roadway System, the Owner shall:

- (a) prepare all final contract drawings and specifications for all Public Services in accordance with engineering drawings approved by the Municipality. (Municipal approval shall not absolve the

Owner or its Consulting Engineers of responsibility for any errors or omissions in the engineering drawings, and shall not fix responsibility upon the Municipality);

- (b) submit, for approval by the Municipality, the final tender costs for the construction and installation of the Public Services;
- (c) prepare, for approval by the Municipality, for the construction of all Public Services, a construction schedule showing the various stages of construction, the location of each stage, the anticipated date of commencement of construction and the anticipated completion date for each stage of construction;
- (d) obtain all approvals required by any authority other than the Municipality, relating to the Public Services and deposit proof of such required approvals with the Municipality;
- (e) give the Municipality at least 7 clear days notice prior to the commencement of construction of any of the Public Services. If any stoppage other than in the normal course should occur in construction of the Public Services, the Owner shall give the Municipality at least 7 clear days' written notice prior to the recommencement of construction;
- (f) submit, for approval by the Municipality, the agreement, or agreements, entered into between the Owner and the Town of Outlook with respect to the overall water supply and wastewater disposal systems shown on Schedule E.

7.2 *Roadway System*

- (a) The Owner shall construct those roads and boulevards shown on Schedule C to the satisfaction of the Municipality.
- (b) The Owner shall maintain the roadway system in a condition suitable, in the opinion of the Municipality, for vehicular traffic and as free from dust as is reasonably possible.
- (c) The Owner shall repair the constructed road, or any portion thereof, within 48 hours of receiving written notice to do so from the Municipality, or within such greater period of time as the Municipality may allow.

7.3 *Street Lights.* The Owner shall construct and install, to the Municipality's specifications, a street lighting system to the satisfaction of the Municipality and SaskPower. It is agreed that street lights shall not be installed later than 3 months after the first occupancy of any dwelling on the Plan.

7.4 *Street Name Signs and Traffic Control Signs.*

- (a) Immediately prior to the issuance of the first building permit the Owner shall pay to the Municipality the cost of permanent street name signs and traffic control signs.
- (b) The Owner agrees to assume all financial responsibility for the maintenance of the street name signs and traffic control signs until Final Acceptance of the Roadway System by the Municipality.

7.5 *Landscaping.* Unless otherwise specified herein, the Owner agrees that any Lands to be conveyed directly or indirectly to the Municipality for municipal purposes, shall be graded, sodded and

landscaped in accordance with the policies of the Municipality and to the satisfaction of the Municipality.

- 7.6 *Use of Public Services.* Prior to the Final Acceptance, the Public Services may be used by the Municipality, or any person authorized by the Municipality, for the purposes for which they were designed, but such use by the Municipality shall not be deemed to be an acceptance by the Municipality of the Public Services nor shall it in any way relieve the Owner from any of its obligations under this agreement or otherwise with respect to construction, installation or maintenance.
- 7.7 *Water Utility.* Notwithstanding any other provision in this agreement, the Municipality may, at any time prior to final acceptance of the Water Supply System by the Municipality, require the Owner to transfer the Water Supply System to a utility established by the Municipality under *The Municipalities Act* for the purpose of owning and operating the system, and, upon creation of the utility, the Owner will ensure that the owner of each lot subscribes to the utility.

8. COMPLETION, MAINTENANCE AND FINAL ACCEPTANCE

8.1 Inspection of Public Services

- (a) All Public Services to be constructed by the Owner under this agreement, shall be subject to the inspection and approval of the Municipality, which shall have the right to require such changes or alterations as are deemed necessary to ensure conformity to the engineering drawings and specifications approved by the Municipality pursuant to clause 7.1(a).
- (b) Inspections may be made at such times and so often as the Municipality may, in its sole discretion, deem necessary.
- (c) The Owner agrees to comply with all orders and directives made under this agreement by the Municipality relating to construction activities.
- (d) If, in the opinion of the Municipality, any of the Public Services are not satisfactory, the Municipality may stop the construction by the issuance of a stop work order delivered in person or by prepaid registered mail, stating the reasons for the order and the steps required to remedy the situation. The Owner agrees that it shall stop construction immediately upon receipt of a stop work order and shall not recommence construction until there is written withdrawal of the stop work order. It is agreed that neither the Owner nor anyone acting on its behalf shall do any works in construction of the Public Services when a stop work order is issued except to rectify the matters which gave rise to the stop work order.
- (e) The Owner agrees that at any time and from time to time, employees, contractors, or agents of the Municipality, acting on instructions from the Municipality, may enter upon the Lands for the purpose of carrying out assigned tasks.
- (f) The Owner agrees that an inspector working on behalf of the Municipality is not acting in a supervisory nature and the Municipality's inspector shall not be deemed to have assumed or

accepted any public service required to be performed by the Owner or its agents and has no authority to do so.

- (g) It is agreed that the Municipality's standard specifications are the minimum specifications for Public Services and that the Municipality neither warrants nor makes any claims as to the adequacy of its specifications. It shall be the sole responsibility of the Owner and the Consulting Engineer to provide adequate design and supervision to ensure that the Public Services are installed in a good and workmanlike manner and that they will withstand reasonable time and usage. The failure of any Public Service to withstand reasonable time and usage shall be the Owner's responsibility and the Owner shall repair any such failure at its expense immediately upon receipt of a written notice from the Municipality to do so. Upon failure of the Owner to undertake any such repairs within reasonable time as requested by the Municipality, the Municipality may undertake such repairs as the Municipality deems necessary and the Municipality shall be reimbursed for all of its costs in so doing. The Owner's obligation under this section shall cease upon Final Acceptance.
- (h) Prior to Final Acceptance of Public Services, the Municipality may require or undertake testing, by whatever means the Municipality may consider necessary, of any or all Public Services and the costs of such testing shall be borne by the Owner. If any testing indicates unsatisfactory or deficient Public Services, in addition to the Municipality having the right to refuse to accept the Public Services, the problem shall be corrected by the Owner at its expense, upon written notice from the Municipality to do so. In the event the Owner does not commence to remedy the problem within seven (7) days after receipt of the written notices or such longer period as may be reasonable in the circumstances, the Municipality shall have the right to enter upon the Lands and to perform the required remedial works with entitlement to reimbursement of its costs and/or the right to any other remedy provided for in this agreement.

8.2 *Completion of Public Services.* The Owner shall complete the Public Services within two (2) years from the date of this agreement. Failing completion of the Works within two (2) years, the Municipality may, upon seven (7) days' notice to the Owner, enter upon the Lands and proceed to supply all materials and do all necessary work in order to complete the Public Services including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications. The Owner shall pay for the cost of the work done and materials supplied by the Municipality and shall pay to the Municipality any and all municipal engineering fees incurred by the Municipality in connection therewith.

8.3 *Maintenance of Public Services.* The Owner is responsible for the maintenance of all Public Services until Final Acceptance thereof.

8.4 *Completion Certificate*

- (a) Upon the completion of the Public Services to the satisfaction of the Municipality, and subject to the requirements set out in clause (b) hereof, the Municipality shall issue to the Owner a Completion Certificate stating that the Public Services have been constructed and installed in the manner approved by the Municipality and that all grades and levels have been established to the satisfaction of the Municipality.
- (b) Prior to the issuance of the Completion Certificate, the Owner shall supply to the Municipality in a form satisfactory to the Municipality:

- (i) A Statutory Declaration that all accounts for work and materials, taxes, levies, fees and all other costs and expenses whatsoever have been paid, except for statutory holdbacks, and that there are no claims for liens or otherwise for work done or materials supplied for or on behalf of the Owner; and
- (ii) One (1) reproducible mylar copy of the 'as constructed' engineering drawings for the Public Services.

8.5 *Final Acceptance of Public Service by Municipality.* Two (2) years after the issuance of the Completion Certificate, the Owner may request the Municipality to accept the Public Services provided the Owner has performed its obligations under this agreement to the satisfaction of the Municipality. Prior to the Final Acceptance of the Public Services by the Municipality, the Owner shall:

- (a) arrange for a final inspection by the Municipality of all Public Services and correct all deficiencies to the satisfaction of the Municipality. Final inspection shall be carried out between May 1st and October 31st in any given year. Inspections of any Public Services outside of the aforesaid period may be undertaken by the Municipality at its discretion;
- (b) give the Municipality a Statutory Declaration by or on behalf of the Owner stating that the Owner has paid all accounts that are payable in connection with the Public Services and that there are no outstanding claims relating to the Public Services.

8.6 *Condition of Approving Subdivision Application.* The parties agree that the Municipality shall issue its approval of the Owner's subdivision application for the Lands subject to the Owner entering into this agreement.

9. LEGAL REQUIREMENTS

9.1 *The Builders' Lien Act*

- (a) The Owner shall comply with all of the provisions of *The Builders' Lien Act*, and, without limiting the generality of the foregoing, shall hold in its possession all the statutory holdbacks and any additional funds required to be held by the said Act. These holdbacks and funds shall not be disbursed except in accordance with the said Act.
- (b) The Owner shall, at its own expense, within thirty (30) days of receiving written notice from the Municipality to do so, pay, discharge, vacate, and obtain and register a release of all charges, claims, liens, and all preserved or perfected liens, made, bought, or registered under *The Builders' Lien Act*, which affect any lands owned by the Municipality, including public highways, road allowances and other lands, and which arise out of the performance of this agreement by the Owner.
- (c) The Owner shall indemnify and hold harmless the Municipality from all losses, damages, expenses, actions, causes of actions, suits, claims, demands and costs whatsoever which may arise either directly or indirectly by reason of any failure, neglect or refusal by the Owner to comply with *The Builders' Lien Act*, or by reason of any action brought against the Municipality under *The Builders' Lien Act*, and arising out of the performance of this agreement by the Owner.

- (d) The Municipality may at any time authorize the use of all or any part of the Security to pay, discharge, vacate and obtain and register a release of all charges, claims, liens and interests made, brought or registered under *The Builders' Lien Act* which affect any lands owned by the Municipality, including public highways, road allowances and other lands, and to pay to the Municipality any amounts owing to the Municipality under this section.
 - (e) The Owner acknowledges that the Municipality shall not be required to reduce or release the Security until the Municipality is satisfied that all of the provisions of this section have been complied with.
- 9.2 *Conveyance of Lands for Municipal Purpose.* The Owner agrees to convey to the Municipality, free of charge and free of all encumbrances, the following interests within the Plan:
- (a) all easements;
 - (b) all blocks and reserves; and
 - (c) any other lands required for municipal purposes.
- 9.3 *Owner charges Land.* The Owner hereby pledges and charges as security for all its obligations under this agreement all its right, title and interest in the Lands.
- 9.4 *Other Applicable Laws.* Nothing contained in this agreement shall relieve the Owner from complying with all applicable municipal by-laws, provincial and federal statutes and regulations thereunder.
- 9.5 *Enforceability of Agreement.* The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this agreement and to enforce each and every term, covenant and condition herein contained, and this agreement may be pleaded as an estoppel against the Owner in any such proceedings.
- 9.6 *Certificate of Ownership of the Lands.* The Owner agrees that prior to execution of this agreement, it will provide the Municipality with copies of the title or titles to the Lands, certified by a lawyer in good standing in the Province of Saskatchewan, indicating that the Owner has good title to the lands and listing all other legal interests in the Lands.
- 9.7 *Agreement Non-Assignable.* The Owner shall not assign this agreement without the written consent of the Municipality, such consent not to be unreasonably withheld.
- 9.8 *Registration of Agreement.* The Owner agrees that this agreement shall be registered on the title(s) to the Lands in the Saskatchewan Land Registry.
- 9.9 *Postponement of Mortgage(s).* The Owner covenants and agrees to have every mortgagee or other party having an interest in the Lands, at the time this agreement is registered in the Saskatchewan Land Registry on title who is not a party to this agreement, to postpone the priority of his, her or its interest in relation to this agreement and register the postponement on title to the satisfaction of the Municipality.
- 9.10 *Maintenance of Roads on Early Occupation.* The Owner agrees that if any dwelling unit is occupied within the Plan before Final Acceptance by the Municipality of the Public Services, the

Municipality, through its servants, contractors or agents, may, at its sole discretion, maintain the Public Services. In so doing, the Municipality shall be deemed to have acted as an agent for the Owner and shall not have accepted the Public Services or assumed the Plan. If the maintenance by the Municipality interferes with the Works by the Owner, the Owner agrees to waive all claims against the Municipality arising therefrom and covenants that it will make no claim(s) against the Municipality for such interference or damage provided, it was not caused intentionally by actions of the Municipality, its servants, contractors or agents.

9.11 *Charge Upon the Lands.* The Owner agrees that the costs, charges and expenses for which it is responsible shall form a charge and lien upon the Lands until such time as they are paid, or until Final Acceptance, whichever is sooner. The Municipality agrees to postpone any such charge or lien in favour of development or construction financing which is arranged for the Lands.

9.12 *Indemnification*

- (a) Until Final Acceptance, the Owner shall indemnify and save harmless the Municipality against all actions, causes of action, suits, claims, demands and costs whatsoever arising by reason of the Owner, its agents or employees doing, failing to do, or doing incorrectly or negligently anything the Owner is required to do by the terms of this agreement.
- (b) The Owner shall take all precautions necessary to protect the public against injury on the Lands.

IN WITNESS WHEREOF the parties hereto have set their hands and seals this _____ day of _____, 2007.

The Rural Municipality of Rudy No. 284

Per: _____

Per: _____

Per: _____

Per: _____