

OVERLAND DRAINAGE EASEMENT AND RESTRICTIVE COVENANT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

GRANTOR
[address]
(the "Grantor")

OF THE FIRST PART

- and -

GRANTEE
[address]
(the "Grantee")

OF THE SECOND PART

WHEREAS:

- A. The Grantor is registered as an owner in fee simple, subject to any registered encumbrances and liens, of the lands situate in the Province of Alberta, as more particularly described in Schedule "A" hereto (the "Lands");
- B. The Grantor wishes to provide for the provision and protection of a drainage plan for the benefit of the Lands;
- C. Section _____ [check the Act, section numbers may change] of the *Land Titles Act* provides that an owner may grant to itself an easement or restrictive covenant for or against land that it owns which easement or restrictive covenant may be registered against title to the owner's lands under the said Act;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

- 1. In this Agreement, including this paragraph, unless the context otherwise requires:
 - (a) "Benefited Lands" means any one or more of the Units in favour of which an easement is granted under this Agreement;
 - (b) "Burdened Lands" means the Units which are the subject of an easement under this agreement.
 - (c) "Easement Area" means that portion or portions of the Units described as such in Schedule "B" attached hereto.
 - (d) "Engineer" means a professional engineer or firm of professional engineers engaged by the Grantor from time to time for the purpose of providing engineering services to the Grantor.
 - (e) "overland Drainage Facility" means any facility or facilities for the drainage or control of storm water including, without restricting the generality of the foregoing:
 - (i) a grass swale;
 - (ii) a concrete or asphalt sidewalk, walkway, gutter or swale;
 - (iii) a drainage swale of any kind;
 - (iv) a drainage control structure; and
 - (v) the sloping and contouring of Land to facilitate the drainage or control of storm water.

- (f) "Owner" or "Owners" means the registered owner or owners of any one or more of the Units.
 - (g) "Unit" or "Units" means any one or more of the bare land condominium units described in Schedule "___" attached hereto.
- 2.(a) Subject to the terms and conditions herein contained, the Grantor, as registered owner in fee simple of the Units does for itself and its successors and assigns HEREBY COVENANT AND AGREE AND GRANT unto itself for the benefit of each Unit (being the Benefited Lands) the following rights, privileges and easements in, under, over, across and through the Units (being the Burdened Lands):
- (i) to construct, operate, inspect, maintain, repair and replace an Overland Drainage Facility in, under, over, across and through the Easement Area;
 - (ii) to alter the surface grades on any of the Burdened Lands so that such surface grades conform to the surface grades approved by the Engineer for such lands; and
 - (iii) for the Owners of the Benefited Lands, the Grantor and their contractors, servants and agents, to have ingress, egress and to pass and to repass over those portions of the Burdened Lands which and only for so long as such portions are not occupied by a building or structure other than a fence, either on foot or by means of a vehicle or necessary machine whatsoever, and to remain on any such portion of the Burdened Lands in order to exercise any of the rights herein granted provided always that such rights shall be exercised in a manner so as to cause as little damage as reasonably practicable to existing landscaping.
- (b) An Overland Drainage Facility shall only be constructed in a manner and at the location approved by the Engineer.
- (c) Notwithstanding anything elsewhere contained herein except for paragraph 6(c), an Owner other than the Grantor shall not exercise any of the rights granted in paragraph 2(a) or in paragraph 6(b) with respect to any Unit unless such Owner has first obtained a judgement from a court of competent jurisdiction declaring that an Owner of the Unit has failed to comply with a notice given pursuant to paragraph 6(a).
3. The Grantor covenants and agrees for itself and its successors in title that with respect to the Burdened Lands it will not:
- (a) build, erect or maintain nor permit or suffer to be built, erected or maintained on the Easement Area any building or structure (except for the Overland Drainage Facility or a fence which does not obstruct the flow of water through the Overland Drainage Facility) that would prevent, restrict or interfere with construction, operation, inspection, maintenance, replacement or repair of the Overland Drainage Facility;
 - (b) cause, permit or maintain any deviation from the surface grades approved for the Burdened Lands by the Engineer;
 - (c) plant or maintain on the Easement Area any trees, shrubs or landscaping which would or could prevent, restrict or interfere with the exercise of any of the rights herein granted;
 - (d) cause or permit any interference with, alteration to, removal of or damage to the Overland Drainage Facility;
 - (e) suffer or permit dirt, fill, loam, gravel, paper debris, plant material, snow, ice or slush to accumulate on the Burdened Lands in such a manner that:
 - (i) the surface grades approved by the Engineer are altered to the extent that in the opinion of the Engineer the drainage of the Benefited Lands is adversely affected, or;

- (ii) the use or operation of the Overland Drainage Facility is interfered with, restricted or prevented.

4. Any Person entitled to carry out any of the aforesaid options will do so in a good and workmanlike manner and will do or cause as little damage and inconvenience to the Owner or occupier of the Burdened Lands as is reasonably possible, and any excavations or workings made or done in connection therewith shall, so far as is reasonably practicable, be restored to its former condition. The replacement of trees, shrubs and landscaping within the Easement Area other than grass shall be deemed to be impracticable. When exercising a right pursuant to paragraph 2(a)(ii), the person carrying out such options shall not be required to replace any trees, shrubs or landscaping other than grass.

5. The Owner of the Burdened Lands upon which an Overland Drainage Facility or portion thereof has been constructed or installed shall, at its expense, maintain and repair in good operating condition that portion of the Overland Drainage Facility constructed or installed on any Unit owned by such Owner.

6.(a) If any Owner of the Burdened Lands:

- (i) fails to maintain or repair the Overland Drainage Facility as required in paragraph 5; or
- (ii) alters or maintains any surface grades other than those approved by the Engineer,

the Grantor or any Owner of the Burdened Lands may, at its option, serve a notice in writing on the Owner of the Burdened Lands. requiring such Owner to remedy the default within such reasonable period of time as may be specified in the notice.

(b) Subject to paragraph 2(c), if the Owner of the Burdened Lands fails to remedy such default within the time specified in the notice, the person who gave the notice shall have the right (but not the obligation under this Agreement) to enter upon the Burdened Lands and remedy the default at the expense of such Owner of the Burdened Lands. The Owner of the Burdened Lands shall, upon demand, forthwith reimburse such person for all expenses incurred in remedying the default. Any dispute in regard to the costs incurred in remedying the default may be referred to arbitration in accordance with paragraph 7.

THIS IS A 5-PAGE DOCUMENT.