

Servicing Agreement

The effective date of this Agreement is _____, 2017.

Between:

The City of Saskatoon, a municipal corporation pursuant to the provisions of *The Cities Act*, S.S. 2002, Chapter C-11.1 (the "City")

- and -

Avenue L Holdings Inc., a Saskatchewan corporation, carrying on business in the City of Saskatoon, in the Province of Saskatchewan (the "Developer")

Whereas the Developer has made application to the City for the redevelopment of municipal services, a copy of which is attached to this Agreement and marked as Schedule "A" (the "Plan");

Whereas the City requires as a condition of approval of the Plan that the Developer enter into an Agreement with the City respecting the installation and construction of certain services and other matters referred to in this Agreement; and

Whereas the City deems it advisable that the Development Area be developed as provided in this Agreement, and that the Developer and the City provide the facilities as set out in this Agreement.

Now therefore the City and the Developer agree as follows:

Part I Introduction

Plans of Proposed Development

1. The Plan showing the proposed development of Lots 1-20, Block 12, Plan F5554, located in the City of Saskatoon, in the Province of Saskatchewan, in the Dominion of Canada, attached to this Agreement as Schedule "A" is made part of this Agreement.

Definitions and Term

2. (1) Throughout this Agreement:
 - (a) "Development Area" means all that portion of the lands outlined in red on Schedule "A", consisting of approximately 152.4 metres of frontage and .459 hectares in area, being those lands which, have been approved for development;
 - (b) "Area I" means all that portion of the lands outlined in blue designated for marketable housing as defined by the City of Saskatoon consisting of 38.1 metres of frontage and .115 hectares in area;
 - (c) "Area II" means all that portion of the lands outlined in green designated for affordable housing as defined by the City of Saskatoon consisting of 114.3 metres of frontage and .344 hectares in area; and
 - (d) "Manager" means the General Manager of the City's Transportation & Utilities Department.
- (2) The term of this Agreement shall be two years commencing on the effective date and ending on the day two years from the effective date (the "Term").

Part II Off-Site Servicing

3. Upon the execution of this Agreement the City shall within a reasonable time, and in coordination with the Developer's various stages of service construction, cause the Development Area to be improved and benefited by the supply, placement, installation, construction, use and enjoyment of the following services:
 - (a) Trunk Sewer Service;
 - (b) Primary Water Main Service;
 - (c) Arterial Road Service;
 - (d) Parks and Recreation Service;
 - (e) Street Lighting Service;
 - (f) Inspection Service;
 - (g) Prepaid Extended Maintenance Service; and

(h) Servicing Agreement Service.

The City warrants that all such services shall be of a size and capacity sufficient to satisfy the servicing requirements of any and all permitted uses to be situated within the Development Area.

Levies Payable by the Developer

4. (1) In consideration of the City providing the various services upon and in relation to Area I and Area II as specified in Section 3, the Developer shall pay to the City the following fees, levies and other charges calculated in accordance with and at the rates described in Schedule "B":

	<u>Area I</u>	<u>Area II</u>
(a) Trunk Sewer Levy;		-
(b) Primary Water Main Levy;		-
(c) Arterial Road Levy;		-
(d) Parks and Recreation Levy;		-
(e) Street Lighting Charge;		Street Lighting Charge;
(f) Inspection Levy;		Inspection Levy;
(g) Prepaid Extended Maintenance Fee;		Prepaid Extended Maintenance Fee;
(h) Servicing Agreement Fee;		-

(collectively the "Development Charges").

- (2) The Developer shall pay to the City the Development Charges as follows:
- (a) within 21 calendar days after the execution of this Agreement, the Developer shall pay to the City 25% of all the Development Charges with the balance of the Development Charges being due and payable in three equal installments upon October 31, 2017, February 28, 2018 and June 30, 2018;
 - (b) the Developer acknowledges that the Development Charges will be subject to such rates as the Council of The City of Saskatoon has

established and has in general force and effect for the 2016 construction season; and

- (c) the Developer further acknowledges that should any of the Area II lands be converted from affordable housing to marketable housing within 10 years of the original designation of affordable housing the fees levies and other charges as noted within Clause 4(1) for the Trunk Sewer Levy, Primary Watermain Levy, Arterial Road Levy and Parks and Recreation Levy shall be due and payable immediately upon all of the Area II lands at the rates approved by the Council of the City of Saskatoon at that time.

Payment Dates and Interest

- 5. (1) All of the Development Charges and other fees, levies and charges payable by the Developer to the City pursuant to this Agreement shall be due and payable upon the various dates specified in this Agreement.
- (2) Should any amount or invoice not be paid at the times or within the period so specified, interest shall be payable at Royal Bank of Canada prime rate plus two (2%) percent per annum on all such overdue amounts. In addition to any other remedy which may be available to the City, should any amount invoiced to the Developer not be paid within the times specified, the City shall upon seven (7) days written notice to the Developer have the right to immediately stop construction until such amount or invoice has been paid.

Retroactive Charges

- 6. The Developer acknowledges that this Agreement is retroactive in effect and all Development Charges and other levies, fees or charges provided for in this Agreement shall specifically apply to any lands developed or services provided before the execution of this Agreement.

Letter of Credit

- 7. Upon the execution of this Agreement, the Developer shall deposit with the City Clerk, City of Saskatoon, a letter of credit ("Letter of Credit") in a form acceptable to the City Solicitor, City of Saskatoon, from a chartered bank carrying on business in the Province of Saskatchewan. The Letter of Credit shall be calculated in the amount of \$387,544 including an estimate for direct services in noted in Section 12, and shall secure the Developer's performance of the provisions of this Agreement. The Letter of Credit shall be irrevocable during the currency of this Agreement, but may be reduced from time to time in proportion to the amount of construction and

Development Charges paid. The Developer shall keep the Letter of Credit current until completion of all construction of services provided for in this Agreement and until the full payment of all Development Charges and all other levies, fees and charges have been received by the City.

Shallow Buried Utilities

8. (1) The City agrees to make all necessary arrangements for the installation of street lighting facilities on streets within the Development Area in accordance with the City's standard specification for commercial development. Any deviation required by the Developer may result in additional charges.
- (2) The Developer shall have the responsibility to consult with the Saskatchewan Power Corporation, Saskatchewan Energy Corporation, the Saskatchewan Telecommunications Corporation and the Electric System Branch of the City of Saskatoon as to the timing and construction of utilities within the Development Area.

Maintenance in Accordance with *The Cities Act*

9. All services and other facilities supplied, placed, installed and constructed by the City pursuant to the provisions of this Agreement shall be maintained in keeping with the provisions of *The Cities Act*.

City's Indemnification

10. The City will indemnify and save harmless the Developer with respect to any action commenced against the Developer as a result of any act or omission of the City upon or in relation to the City's obligations set out in this Agreement, including the acts or omissions of its officers, employees, servants or agents, or anyone for whom the City is responsible at law.

Part III Development Area Servicing

Developer Servicing Responsibilities

11. Except as herein expressly provided, the Developer agrees that development and servicing is its sole responsibility and it agrees to cause the Development Area to be serviced and developed by the supply, placement, installation, construction and maintenance of the following services:

- (a) Direct Services:
 - (i) Water mains;
 - (ii) Sanitary sewer mains;
 - (iii) Storm sewer mains;
 - (iv) Water and sewer service connections;
 - (v) Sidewalks and curbing;
 - (vi) Paved lanes;
 - (vii) Street cutting; and
 - (viii) Street paving.

(b) Fire Flow Levels:

The Developer shall provide a stamped and signed Certificate of Authenticity of the fire flow calculations within the Development Area. The City shall review the calculation and if the City considers it necessary, it shall inform the Developer of the requirement to implement any recommended remediation procedures. The Developer agrees to complete the recommended remediation procedures at its cost. The work shall be completed to the satisfaction of the Manager.

Developer Warranties

12. (1) All works constructed by the Developer pursuant to Subsection 12(a) of this Agreement on, in or under any street, avenue, lane, easement or other public place shall be the property of the City upon completion of construction. Such works shall be warranted and maintained by the Developer for the periods specified as follows:

Water Mains	2 years from the date of Construction Completion Certificate
Sanitary Sewer Mains	2 years from the date of Construction Completion Certificate
Storm Sewer Mains	2 years from the date of Construction Completion Certificate

Service Connections	2 years from the date of Construction Completion Certificate
Sidewalks and Curbs	2 years from the date of Construction Completion Certificate
Lane Paving	2 years from the date of Construction Completion Certificate
Street Paving	2 years from the date of Construction Completion Certificate
All others	2 years from the date of Construction

A Construction Completion Certificate shall be issued on completion and acceptance of each phase of work. The warranty periods as outlined in this Subsection shall apply notwithstanding the expiration of the Term of this Agreement.

- (2) The Developer shall put up such barricades, lights or other protection for persons and property as will adequately protect the public or any person in the neighbourhood and maintain same during the course of construction, and, upon the request of the Manager or the Saskatoon Police Service, shall improve or change same.
- (3) When the Developer has completed all of the storm sewers, sanitary sewers, waterworks, easement cutting, sidewalks and curbs and paving pursuant to any work done under Subsection 12(a), it may so notify the Manager, in writing, who shall within 15 days of such a notice, carry out the required inspection, and if the Manager is satisfied on inspection that the work is substantially complete and will not be materially affected by other work, he shall within 15 days issue a Construction Completion Certificate to that effect, and the maintenance period for the works included in the Certificate shall start on the day the Certificate is issued.
- (4) Upon completion and acceptance by the Manager as required in Subsection 13(3) hereof, the Developer shall carry out any work, by way of repair or replacement, as directed by the Manager, and which the Manager acting reasonably deems necessary to conform to the approved plans and specifications:
 - (a) after the issuance of the Construction Completion Certificate, the Developer shall be responsible for any and all repairs and replacement to any utilities and improvements which may become necessary up to the end of the maintenance periods set out in Subsection 13(1);
 - (b) if during the construction or maintenance period any material defects become apparent in any of the utilities or improvements installed or constructed by the Developer under this Agreement, and the Manager

requires repairs or replacements to be done, the Developer shall be so notified, and within a reasonable time after said notice shall cause any repairs or replacements to be done, and if the Developer shall default, or any emergency exists, the City may complete the repairs or replacement and recover the reasonable cost thereof from the Developer;

- (c) the Developer shall be responsible for adjusting all hydrants and main valve boxes and all service valve boxes to the established grades as they are developed, until such time as the City issues the Construction Completion Certificates for the maintenance of streets and lanes; and
 - (d) the Developer agrees that maintenance is a continuous operation that must be carried on until the expiry date of the maintenance period for each and every utility, and that no releases from liability of any kind will be given until all repairs or replacements required by the Manager acting reasonably in his final inspection reports have been made. The final inspection reports shall be completed no later than 60 days prior to the end of the warranty period. A formal release will be issued upon correction of all deficiencies listed in the final inspection reports.
- (5) During the maintenance periods referred to in this Agreement and notwithstanding any other provisions to the contrary, in the case of an emergency involving the breakage of a waterline or the stoppage of a sewer line constructed by the Developer, the City may take such emergency repair measures as it deems necessary, through its officers, servants or agents, on its behalf, to prevent damage to property, and the reasonable costs of such repair work shall be payable by the Developer on demand.

Developer Covenants

13. In relation to the development and servicing of the Development Area, the Developer agrees:
- (a) that all topsoil excavated from any streets, lanes, walkways and easements shall be stockpiled and used in the following order or priority:
 - (i) development of boulevards;
 - (ii) development of parks; and
 - (iii) allocation to lots or building sites requiring additional topsoil.

In no case shall any topsoil be removed from the Development Area without the express written permission of the Manager;

- (b)
 - (i) to provide all utility, construction and service easements which may be required, at no cost to the City or any other utility agency or service, and to comply with the terms of any easement agreement entered into by the Developer with respect to such easements provided that such easements shall not materially adversely affect the development of the Development Area;
 - (ii) to provide and register a utility easement plan if required by the Manager; and
 - (iii) to provide for a covenant in all sale, ground lease or transfer agreements within the Development Area to the effect that the grades set on any such easements shall not be altered without the prior approval of the Manager, whose approval will not be unreasonably withheld;
- (c) to indemnify and save harmless the City with respect to any action commenced against the City as a result of any act or omission of the Developer in relation to the Developer's obligations set out in this Agreement, including the acts or omissions of its officers, employees, servants or agents, or anyone for whom the Developer is at law responsible;
- (d) that all work carried out by the Developer shall be designed and the works supervised by a qualified firm of consulting engineers retained by the Developer. Plans and specifications of design must be approved by the Manager acting reasonably, and all design and work carried out must conform to the current City of Saskatoon specifications as to material and construction practices for such services;
- (e) that the Developer shall obtain all approvals required by Saskatchewan Environment and Resource Management and the Saskatchewan Water Corporation, together with any other consent or approvals which may be required by law, copies of all such approvals shall be provided to the Manager;
- (f) to supply all necessary labour, material, equipment and to construct, provide and maintain all sanitary sewers complete with manholes and all other accessories throughout the Development Area;

- (g) to supply all necessary labour, material, equipment and to construct, provide and maintain all water mains, including valves, hydrants and all other accessories throughout the Development Area;
- (h) to supply all necessary labour, material, equipment and to construct, provide and maintain a storm water drainage system for the Development Area, including all storm sewer mains, piping, manholes, catch basins and other accessories;
- (i) to supply all necessary labour, materials, equipment, and to construct and provide all sidewalks and curbs throughout the Development Area;
- (j) to supply all necessary labour, materials, equipment, and to construct and pave all streets and lanes as required throughout the Development Area;
- (k) to provide the City with all such detailed plans, specifications, tests and records as the Manager may reasonably require both before and after construction. The "as built" plans shall be to the City's standard in size, scale and form and shall be on both mylar transparencies and digital copy;
- (l) to supply the City with proof of adequate commercial general liability insurance which includes a non-owned vehicle endorsement and vehicle liability insurance, minimum coverage to be as follows:

Commercial General Liability Insurance which includes a non-owned vehicle endorsement:

\$5,000,000.00 for each occurrence

Vehicle Liability Insurance:

\$5,000,000.00 for each occurrence

which coverage shall be maintained throughout the Term of this Agreement;

- (m) The Developer agrees to remove and sweep the accumulation of mud and dirt on all paved streets up to the issuance of the final acceptance certificate for paving within the Development Area.

Standard of Construction

14. With respect to work undertaken by the Developer pursuant to Subsection 12(a), where for any reason the Manager requires construction by the Developer to be different from the City's standards, or different from the conditions of this Agreement, the Developer shall construct in accordance with the instructions of the Manager, but the City shall pay to the Developer any reasonable excess costs involved.

Changes in City Services

15. In the event that the Developer requires changes in City services, other than those contemplated in this Agreement, same shall be provided at the expense of the Developer. Changes requested by the Developer shall be in writing addressed to the Manager.

Part IV General

Approval for Installation of Services

16. The City shall consider all applications for approval made by the Developer as are required respecting the development and servicing of the Development Area by the Developer. All approvals resulting from the applications shall be issued in the normal course and under usual conditions and in accordance with the City's standard specifications respecting the class of works in question.

Expeditious Construction

17. All works required to be performed by this Agreement shall be carried out as expeditiously as time and construction conditions permit.

Assignment

18. During the Term of this Agreement, the Developer shall not assign this Agreement without the prior express written consent of the City being first obtained, such consent shall not be unreasonably withheld or delayed by the City.

Dispute Resolution

19. In the case of any dispute between the City and the Developer arising out of the performance of this Agreement, or afterwards as to any matter contained in this Agreement, either party shall be entitled to give to the other notice of such dispute and demand arbitration thereof. Such notice and demand being given, each party shall at once appoint an arbitrator and these shall jointly select a third. The decision of any two of the three arbitrators shall be final and binding upon the parties, who covenant that their dispute shall be so decided by arbitration alone, and not by recourse to any court or action of law. If the two arbitrators appointed by the parties do not agree upon a third, or a party who has been notified of a dispute fails to appoint an arbitrator, then the third arbitrator and/or the arbitrator to represent the party in default shall be appointed by a Judge of the Court of Queen's Bench at the Judicial Centre of Saskatoon. *The Arbitration Act, 1992* of the Province of Saskatchewan shall apply to any arbitration hereunder, and the costs of arbitration shall be apportioned equally between the parties hereto.

Applicable Law

20. The laws of the Province of Saskatchewan shall apply and bind the parties in any and all questions pertaining to this Agreement.

Force and Effect

21. This Agreement shall remain in full force and effect until such time as both the City and the Developer have fully completed their respective obligations hereunder, and, for greater certainty, until such time as all Development Charges, fees, levies and other charges payable by the Developer to the City pursuant to the terms of this Agreement have been paid.

Agreement Runs With the Land

22. The Developer acknowledges and agrees that this Agreement runs with the land, and binds it, and subject to Section 22, its successors and permitted assigns; and, further, agrees that the City may elect, at its sole option, to register an Interest based on this Agreement against the property subject to this Agreement in the Land Titles Registry for Saskatchewan charging all those lands comprising the Development Area with the performance of this Agreement.

Notices

23. (1) Any notice or consent (including any invoice, statement, request or other communication) required or permitted to be given by any party to this Agreement to the other party shall be in writing and shall be delivered or sent by registered mail (except during a postal disruption or threatened postal disruption) or facsimile transmission, email or other electronic communication to the applicable address set forth below:

(a) in the case of Avenue L Holdings Inc. to:

Avenue L Holdings Inc.
RR#4, Site 404, Comp 9
Saskatoon, Saskatchewan
S7K 3J7
Attention: Shane Olson, President, Shercom Industries Inc.
Facsimile: (306)-933-0660
Email: Shercom@Sasktel.net

(b) in the case of the City to:

The City of Saskatoon
c/o Office of the City Clerk
222 3rd Avenue North
Saskatoon, Saskatchewan
S7K 0J5
Attention: General Manager,
Transportation & Utilities Department
Facsimile: (306) 975-2784

- (2) Any notice delivered personally shall be deemed to have been validly and effectively given and received on the date of such delivery provided same is on a business day (Monday to Friday, other than a statutory holiday).
- (3) Any notice sent by registered mail shall be deemed to have been validly and effectively given and received on the fifth business day following the date of mailing.
- (4) Any notice sent by facsimile or email or other electronic communication shall be deemed to have been validly and effectively given and received on the business day next following the date on which it was sent (with confirmation of transmittal received).
- (5) Either party to this Agreement may, from time to time by notice given to the other party, change its address for service under this Agreement.

Entire Agreement

24. This Agreement constitutes the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications or representations between the parties, relating to the subject matter of this Agreement.

Illegality

25. If one or more of the phrases, sentences, clauses or articles contained in this Agreement is declared invalid by a final and unappealable order or decree of any court of competent jurisdiction, this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not been inserted in this Agreement.

Amendment

26. This Agreement may be changed only by written amendment signed and sealed by authorized representatives of the parties.

Headings

27. The headings contained in this Agreement are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.

Covenants

28. Each obligation of the City or of the Developer in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

Time of Essence

29. Time shall be of the essence of this Agreement and every part of this Agreement.

Further Assurances

30. The Developer and the City shall, at their own expense, promptly execute such further documentation to give effect to this Agreement as the Developer and the City, as the case may be, may reasonably require from time to time.

In Witness Whereof the parties hereto have hereunto affixed their corporate seals, duly attested by the hands of their proper officers in that behalf, as of the day and year first above written.

The City of Saskatoon

City Manager

c/s

City Clerk

Avenue L Holdings Inc.

c/s

SCHEDULE 'A'



Schedule "B"

Fees, Levies and Other Charges Applicable to the Development Area

The charges payable by the Developer to the City pursuant to Section 4 hereof shall be calculated in accordance with the rates as the Council of The City of Saskatoon has established and are in general force and effect for the 2016 construction season as follows:

(a) Trunk Sewer Levy	\$ 855.65 per front metre;
(b) Primary Water Main Levy	\$ 154.90 per front metre;
(c) Arterial Road Levy	\$ 567.75 per front metre;
(d) Parks and Recreation Levy	\$ 407.00 per front metre;
(f) Street Lighting Charge	\$ 90.95 per front metre;
(g) Inspection Levy	\$ 19.95 per front metre;
(h) Prepaid Extended Maintenance Charge.....	\$ 17.25 per front metre;
(i) Servicing Agreement Fee	\$2,510.00 per Agreement.