

LAND TRANSFER AGREEMENT

BETWEEN:

STRATHCONA COUNTY
(hereinafter referred to as the “County”)

-and-

**THE BOARD OF TRUSTEES OF ELK ISLAND PUBLIC SCHOOLS REGIONAL
DIVISION NO. 14**
(hereinafter referred to as the “Board”)

WHEREAS:

1. The County is the registered owner of the Lands legally described in Schedule “A”;
2. The Lands are classified as Municipal Reserve as such term is defined in the *Municipal Government Act* (Alberta);
3. The County has installed certain Municipal Improvements (as herein after defined) on the Lands;
4. The County has determined that it is in its best interests to sell the School Lands (as hereinafter defined) to the Board for the purpose of constructing and operating the School Building (as hereinafter defined); and,
5. The Board has determined that it is in its best interests to purchase the School Lands from the County on the terms and conditions contained herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement the parties agree as follows:

1. DEFINITIONS

In this Agreement, the following words shall have the following meanings:

- a. “Agreement” means this Land Transfer Agreement;
- b. “Appraisal Date” means the day which is 60 days from the date of the Declaration Date;
- c. “business day” means Monday through Friday excluding any statutory holiday in Alberta;
- d. “Closing Date” means the date that is thirty (30) days after the day on which the County confirms that the Lands have been subdivided and the parcel containing the School Lands has been created;

- e. “Declaration” means a declaration by the Board and approved by the Minister in accordance with the Board’s policy on surplus lands or a declaration by the Minister in accordance with any Ministerial Policy that the Facility or the School Lands are surplus all in accordance with the *Disposition of Property Regulation* (A/R 181/2010).;
- f. “Declaration Date” means the date of the Declaration Notice;
- g. “Facility” means all improvements to be constructed upon the School Lands, together with all equipment, parking areas and landscaping constructed or located on the School Lands, as they may exist from time to time;
- h. “Fair Market Value” of the Surplus Buildings shall be the fair market value for the Surplus Buildings which would reasonably be obtained from an arm’s length purchaser in the market then prevailing determined as at the Declaration Date for the School Lands, the Facility located thereon and all other improvements, buildings and structures, located thereon;
- i. “Hazardous Substances” means toxic, hazardous, dangerous or potentially dangerous substances of any kind whatsoever including, without restricting the generality of the foregoing, urea formaldehyde, asbestos, PCB transformers and those elements, materials, substances or compounds which are regulated by federal, provincial or local statute, law, code, rule, regulation order or decree including but not limited to, the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, as amended, supplemented or replaced from time to time, and any regulations thereunder, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous or potentially dangerous waste, substance or material of any kind of nature whatsoever;
- j. “Lands” means the County owned lands as legally described in Schedule “A”;
- k. “MGA” means the *Municipal Government Act*, RSA 2000, c M-26 as amended, supplemented or replaced from time to time, and any regulations thereunder;
- l. “Minister” has the meaning given to it in the *School Act*;
- m. “Municipal Improvements” means those improvements installed by the municipality on the Lands and more particularly set out in Schedule “C”;
- n. "Municipal Improvements Agreement" means an agreement in a form satisfactory to the County that allows the County and the public to use the Municipal Improvements that are located on the School Lands; and
- o. “Municipal Service Connection Agreement” means the municipal service connection agreement in such form that is satisfactory to the County;
- p. “Permitted Encumbrances” means the encumbrances set out in Schedule “E”;

- q. “Reciprocal Use Agreement” means the reciprocal use agreement between the County and the Board, dated August 29, 2012 with respect to the use by each party of the other party’s facilities including the sharing of maintenance obligations and the sharing of costs of maintenance as the same may be extended, renewed, amended or replaced from time to time;
- r. “Reciprocal Use Amending Agreement” means the amendment to the Reciprocal Use Agreement in a form satisfactory to the County;
- s. “*School Act*” means the *School Act*, RSA 2000, c S-3 as amended, supplemented or replaced from time to time, and any regulations thereunder including the Disposition of Property Regulation;
- t. “School Building” means the building to be constructed on the School Building Envelope that is to be operated as a school by the Board pursuant to the provisions of the *School Act* and in accordance with the Reciprocal Joint Use Agreement as amended;
- u. “School Building Envelope” means the area upon which a school building is constructed;
- v. “School Lands” means that portion of the Lands to be subdivided from the lands and to be transferred by the County to the Board outlined in red on the attached Schedule “B”.
- w. “Surplus Buildings” mean the buildings located on the School Lands as of the Declaration Date;
- x. “Surplus Property” means the Facility and the School Lands upon which the Facility is situated which is the subject of a Declaration;
- y. “Surplus Property Closing Date” has the meaning given to it in section 8(b)(iv); and
- z. “Surplus Property Price” means the price to purchase the Surplus Property to be determined in accordance with Schedule “D”.

2. PURCHASE AND CONVEYANCE

The Board shall purchase the School Lands from the County and the County shall sell the School Lands to the Board for a purchase price of ONE (\$1.00) DOLLAR (the “Purchase Price”) free and clear of all encumbrances except Permitted Encumbrances and upon the terms and conditions contained herein. The Purchase Price shall be paid to the County by the Board on the Closing Date.

3. AS IS, WHERE IS

- a. The County shall provide, and the Board shall accept, the School Lands in as is, where is condition.
- b. Without limiting the foregoing, the Board agrees that:
 - i. the County or its agents or employees has not made any promise or collateral agreement to alter or improve the School Lands, the Lands or any property neighbouring or surrounding the Lands; and
 - ii. the County or its agents or employees have made no warranties or representations whatsoever respecting the School Lands (including, without restriction, the condition or quality of the School Lands, or its suitability for the purposes and use intended by the Board).

4. SUBDIVISION

- a. On the execution of this Agreement, the County shall make an application for subdivision to the subdivision authority to subdivide the School Lands from the remainder of the Lands and make diligent efforts to achieve subdivision.
- b. The County and the Board shall share equally all costs and expenses for the subdivision, including but not limited to surveying costs and the cost of registration of the subdivision plan. The County shall invoice the Board for the Board's share of the costs and expenses of subdivision. The Board shall pay its share within 30 days of receipt of the County's invoice.
- c. Within thirty (30) days of registration of the subdivision plan, the County will submit a registerable transfer of land for the School Lands to Alberta Land Titles for registration with the request that the register designate the School Lands as school reserve in accordance with section 673(2) of the *MGA* and provide the Board with confirmation of registration within a reasonable period after registration occurs.
- d. The County and the Board shall share equally all costs and expenses for the transfer of the School Lands, including but not limited to the cost of registration of the transfer of land. The County shall invoice the Board for the Board's share of the costs and expenses of the transfer of the School Lands. The Board shall pay its share within 30 days of receipt of the County's invoice.
- e. The County and the Board shall work collaboratively to identify the need for and complete any easements or utility right of way agreements to provide for utility services to the School Lands.

5. CONDITION PRECEDENTS

- a. The sale of the School Lands by the County to the Board is subject to the following terms and conditions for the exclusive benefit of the County, to be fulfilled or performed on or prior to the Closing Date unless otherwise indicated:

- i. the approval of the Council of the County of this Agreement and of the transactions contemplated herein;
 - ii. subdivision of the School Lands from the Lands has been completed;
 - iii. the Board shall have been issued a development permit from the County for the School Building on the School Lands, and shall have entered into any development agreement required by the County as a condition of the issuance of such development permit;
 - iv. the Board shall have executed and delivered to the County:
 1. the Municipal Service Connection Agreement;
 2. the Reciprocal Use Amending Agreement;
 3. the Municipal Improvements Agreement; and
 - v. the Board will have complied with the *School Act* in all respects including but not limited to notifying the Minister of this Agreement within thirty (30) days of the date of this Agreement as required by section 196(2) of the *School Act*.
- b. The purchase of the School Lands by the Board from the County is subject to the following terms and conditions for the exclusive benefit of the Board, to be fulfilled or performed on or prior to the Closing Date unless otherwise indicated:
- i. the County shall have executed and delivered to the Board:
 1. the Municipal Service Connection Agreement;
 2. the Reciprocal Use Amending Agreement; and
 3. the Municipal Improvements Agreement.

6. USE OF SCHOOL LANDS

The Board acknowledges and agrees that the County is transferring the School Lands to the Board for the sole purpose of constructing and operating the School Building on the School Lands.

7. CONSTRUCTION OF SCHOOL

- a. Prior to starting any construction of the School Building the Board shall have been issued a development permit from the County and shall have obtained any other permits necessary (including a building permit) to develop and construct the School Building in accordance with applicable laws. The Board shall comply with all terms of the development permit and any other permits obtained for the construction of the School Building.

- b. In the event that the County allows the Board to begin construction prior to the registration of the transfer of School Lands being complete, such decision to be within the County's sole discretion and subject to the issuance of the development permit and any other necessary permits, the Board will, prior to beginning construction, enter into an indemnity agreement in a form satisfactory to the County.

8. FUTURE OF SCHOOL LANDS

- a. This Article 8 is subject to the regulations and constraints established by the Alberta Government in connection with the disposal of school buildings and related improvements situated upon the site including but not limited to section 200 of the *School Act* and section 672 of the *MGA*.
- b. If the Board is directed to transfer the School Lands by the Minister in accordance with the *School Act*, the Board will immediately notify the County of such direction. If the School Lands are transferred by the Board at the direction of the Minister, the Board will also assign all of its rights and obligations under the Municipal Service Connection Agreement, the Reciprocal Use Amending Agreement and the Municipal Improvements Agreement to the transferee.
- c. If a Declaration is made in respect of the Surplus Property, the County will purchase the Surplus Property from the Board in accordance with section 672 of the *MGA* and in accordance with the following:
 - i. The Board shall notify the County in writing of the Declaration within 15 days of the Declaration being made (the "Declaration Notice").
 - ii. The price to be paid by the County for the Surplus Property will be the aggregate of \$1.00 for the lands and the fair market value of the building as determined in accordance with Schedule "D" (the "Surplus Property Price").
 - iii. The County shall purchase the Surplus Property at the Surplus Property Price on an as is, where is condition free and clear of all encumbrances except Permitted Encumbrances subject only to the Board providing the County along with its officers, employees, servants, agents, counsel and administrators as the case may be (the "Indemnified Parties") with an indemnity for any claims, demands, losses, costs, damages and expenses whatsoever which may be brought or made against the Indemnified Parties or which the Indemnified Parties may sustain, pay or incur as a result of or in connection with
 - 1. a breach or non-observance by the Board of any covenant required to be performed or observed by the Board under statute, regulation, contract or agreement;

2. a breach of any environmental legislation or as a result of any environmental liabilities including but not limited to claims relating to storage or spillage of Hazardous Substances on or emanating from the Surplus Property; and
3. the negligence of the Board to maintain the School Building or its equipment in accordance with reasonable standards of maintenance for buildings and equipment of the same character,

before the Surplus Property Closing Date (as hereinafter defined) and in connection with the Board's ownership, use and occupation of the Surplus Property and School Building.

- iv. The purchase and sale of the Surplus Property shall occur on the day that is 90 days after the determination of the Surplus Property Price (the "Surplus Property Closing Date").
 - v. All normal adjustments for the Surplus Property including but not limited to rents and utilities that are applicable with respect to the Surplus Property shall be adjusted as of 12:01 a.m. on the Surplus Property Closing Date.
 - vi. The County shall pay the Board the Surplus Property Price on the Surplus Property Closing Date.
 - vii. The Board and the County will cooperate in preparing and executing any documents required for the closing of the sale of the Surplus Property on the Surplus Property Closing Date, including but not limited to the delivery of a registerable transfer of land and a statement of adjustments, together with all other conveyancing documents normally expected in a transaction of this nature. The closing documents shall be prepared within a reasonable time to be able to confirm registration prior to the Surplus Property Closing Date.
 - viii. Reasonable trust conditions, consistent with commercial real estate transactions, may be utilized to complete this Transaction.
 - ix. The County's obligation to purchase and the Board's obligation to sell the Surplus Property are subject to the provisions of the *MGA* and *School Act*, including any required ministerial approval.
- d. This section 8 shall not merge and shall survive the closing of the purchase and sale of the School Lands from the County to the Board and the Closing Date.

9. RISK

- a. Each parcel of land is held at the sole risk of the party who is the registered owner at the time of any event or loss until the registration of a transfer of land which results in a new registered owner to that parcel of land.
- b. At any time that the Board is permitted on the School Lands when the Board is not yet the registered owner of the School Lands or on the Lands, the Board shall maintain such insurance coverage that the County directs from time to time and will name the County as an additional insured in respect of such insurance.
- c. The Board will indemnify the County for:
 - i. any environmental liability or any claim arising out of the storage, handling or transport of Hazardous Substances on the School Lands and the Lands; and
 - ii. Any negligence of the Board, its employees or invitees,

during any period that the Board owns the School Lands or when the County has granted the Board the right to enter on the School Lands and the Lands pursuant to this Agreement.

10. GENERAL

- a. Any notice required or permitted pursuant to this Agreement shall be given by delivery to the address of the party for whom the notice is intended which is set out below, or such other address of which the parties may have been duly notified in writing in accordance with this provision:

To the County:

2001 Sherwood Drive
Sherwood Park, AB T8A 3W7
Attention: Land Management Services

To the Board:

683 Wye Road
Sherwood Park, AB T8N 1N2
Attention: Superintendent

Any notice delivered in accordance with the foregoing shall be deemed to have been delivered to and received by the named addressee on the date of delivery provided that such delivery occurs prior to 4:30 p.m. on a business day but if delivered later then delivery and receipt shall be deemed to occur on the next business day of the addressee.

- b. The County enters into this Agreement in its capacity as seller of the School Lands and not in its capacity as a regulatory, statutory, or approving body

pursuant to applicable laws. Nothing in this Agreement constitutes the granting by the County of any permit as may be required by applicable laws.

- c. The schedules to this Agreement for an integral part of this Agreement.
- d. This Agreement shall be governed in accordance with the laws of the Province of Alberta.
- e. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.
- f. If one or more provisions of this Agreement are for any reason held to be invalid, the parties intend that all remaining provisions remain in full force and effect.
- g. This Agreement shall enure to and be binding upon the successors of the parties regardless of how that succession occurs.
- h. This Agreement may be amended by the mutual written agreement of the parties.
- i. The parties will act cooperatively and in the utmost good faith in carrying out this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the ____ day of _____, 2018.

STRATHCONA COUNTY

Per: _____

Per: _____

**THE BOARD OF TRUSTEES OF ELK
ISLAND PUBLIC SCHOOLS
REGIONAL DIVISION NO. 14**

Per: _____

Per: _____

SCHEDULE “A”

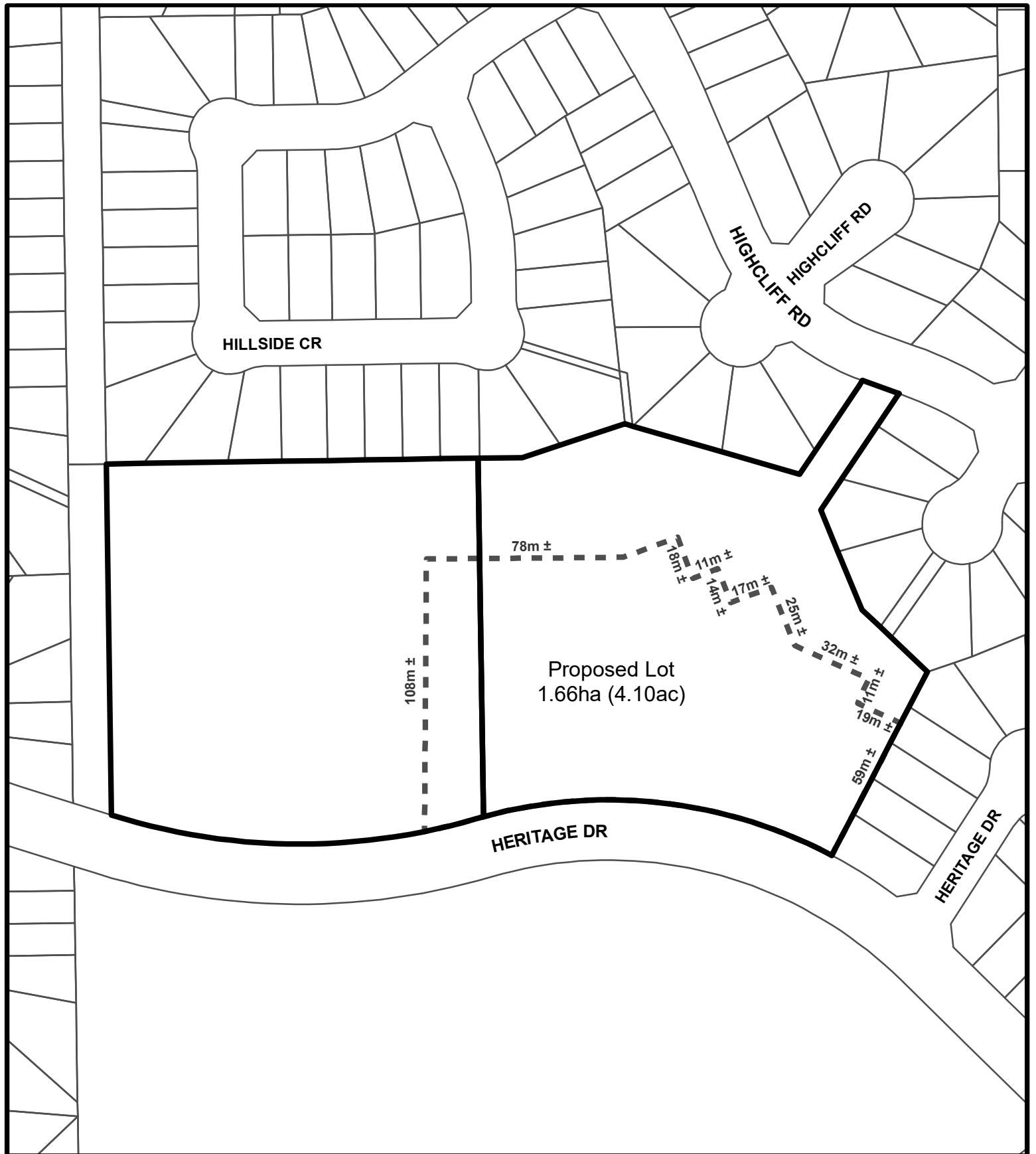
THE LANDS

PLAN 8922571
BLOCK 303
LOT 70MR (MUNICIPAL RESERVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

AND

PLAN 9221752
BLOCK 303
LOT 204MR (MUNICIPAL RESERVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS

SCHEDULE “B”
THE SCHOOL LANDS



Heritage Hills School

Tentative Plan

NE 36-52-23

922 1752, 303, 204MR

& 892 2571, 303, 70MR

PLANNING & DEVELOPMENT SERVICES



Date Drawn: September 05, 2018

SCHEDULE “C”
MUNICIPAL IMPROVEMENTS

NONE

SCHEDULE "D"

FAIR MARKET VALUE

1. The Surplus Property Price shall be the aggregate of \$1.00 for the Surplus Lands and the Fair Market Value of the Surplus Buildings.
2. The Fair Market Value of the Surplus Buildings shall be determined as at the date of the Declaration.
3. From Declaration Date to the Appraisal Date, the County and the Board shall, acting reasonably and in good faith, attempt to determine and agree upon the Fair Market Value for the Surplus Buildings as at the Declaration Date.
4. If the County and the Board are unable to agree on the Fair Market Value for the Surplus Buildings, the County and the Board shall each appoint an appraiser within 10 days of the Appraisal Date.
5. Any appraiser appointed under this Agreement must:
 - a. Be independent of the party appointing the appraiser;
 - b. Be an accredited member of the Appraisal Institute of Canada; and
 - c. Have been ordinarily engaged in the business of commercial real estate appraisal in Northern and Central Alberta for a period of at least 10 years.
6. If one party fails to appoint an appraiser, the other party may provide the party failing to appoint the appraiser with written notice to appoint an appraiser.
7. If:
 - a. The County and the Board are unable to agree upon the Fair Market Value for the Surplus Property;
 - b. Either the County or the Board fails to appoint an appraiser within 10 days of the Appraisal Date; and
 - c. Such failure continues 5 days following written notice of such failure from the other party,

the appraisal provided by the appraiser appointed within the 10 day period by the other party shall determine the Fair Market Value.
8. Upon the preparation of their appraisals, the appraisers shall provide the appraisals to their respective clients and the County and the Board shall, acting reasonably and in good faith, attempt to determine and agree upon the Fair Market Value for the Surplus Property as at the Exercise Date. The County and the Board shall attempt to determine and agree upon the Fair Market Value no later than 20 days after the Appraisal Date.

9. If County and the Board agree upon the Fair Market Value for the School Land as at the Exercise Date, the agreed upon Fair Market Value shall be final and binding on the County and the Board.
10. If, within 20 days of the Appraisal Date, the County and the Board are not able to agree upon the Fair Market Value for the School Land as at the Exercise Date, within 10 days after, the County and the Board shall jointly appoint a third appraiser.
11. The third appraiser must provide a Fair Market Value appraisal to both the County and the Board within 60 days of the appointment of the third appraiser.
12. Fair Market Value of the Surplus Property shall be the average of the Fair Market Value as determined by each of the three appraisers which average shall be final and binding on the County and the Board.
13. If the parties are required to appoint a third appraiser and cannot agree upon the appointment of such third appraiser within the 10 day period provided for under paragraph 10 of this schedule, the appointment of such appraiser shall be determined by arbitration pursuant to the provisions of the *Arbitration Act*, RSA 2000, c A-43, as amended, supplemented or replaced from time to time, and any regulations thereunder. Either the County or the Board may initiate proceedings thereunder to appoint such appraiser by arbitration. The County and the Board shall share equally the costs of the arbitration, unless otherwise determined by the arbitrator.
14. The County and the Board shall each bear the costs of their appraiser.
15. The County and the Board shall share equally the costs of the third appraiser.

SCHEDULE "E"

PERMITTED ENCUMBRANCES

922 164 237 UTILITY RIGHT OF WAY

922 164 238 UTILITY RIGHT OF WAY