

# Attachment A

SPECIFIC AREA 45A



BOUNDARY OF SPECIFIC AREA



LOCATION OF WORKS

FILE No: 3068



DEVELOPMENT SERVICES COMMISSION

DWN BY: DD

CHK BY: FI

SCALE 1: 14000

DATE: 04/10/06



3068.dgn 20/04/2006 8:29:49 AM



May 24, 2005

VIA FACSIMILE (905) 479-7769

Ms. Jennifer Nelson  
Manager, Accounting and Expenditure Control  
The Corporation of the Town of Markham  
101 Town Centre Boulevard  
Markham, Ontario  
L3R 9W3

Dear Ms. Nelson:

**Re: Area Specific Development Charges Bylaw for the Wismer Area 45A  
Development Charge Credit Agreement  
Wismer Commons Developers Group**

On behalf of the members of the Wismer Commons Developers Group Inc. we are hereby requesting the preparation of a development charge credit agreement in accordance with the provisions of the *Development Charges Act* for municipal services undertaken and installed by the Developers Group which are contained and set out in the Area Specific Development Charge Bylaw.2004-245 (Area 45A-Wismer).

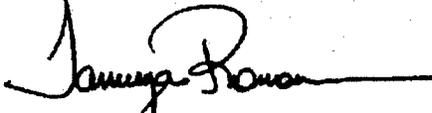
The following is a list of the works completed and/or under completion by the Developers Group which we are hereby requesting a credit for:

- **Intersection Works**
  - Bur Oak Avenue at Roy Rainey Avenue
  - Bur Oak Avenue/ at Mingay Avenue
  - Castlemore Avenue at Roy Rainey Avenue
  - Castlemore Avenue at Mingay Avenue
  - Markham Road at Bur Oak Avenue
  - Markham Road at Castlemore Avenue
  - Markham Road at Edward Jeffreys Avenue
- **Illumination and Road Works – Markham Road**
- **Stormwater Management – storm sewer connection from Pond 6 to Mount Joy  
Pond outfall**

**Attachment B**

We trust that the above is satisfactory. Please advise if you require any additional information from us or our consulting engineers to proceed with the preparation of the Credit Agreement for the above noted works.

Yours Very Truly,  
**ANISON MANAGEMENT INC.**



**Tanya M. Roman**

**c.c.: Alan Brown, Director of Engineering**  
**Members of the Wismer Commons Developers Group Inc.**

**THIS CREDIT AGREEMENT** dated the            day of            , 2006.

B E T W E E N:

**WISMER COMMONS DEVELOPERS GROUP INC.**  
(hereinafter collectively called the "Owner")

- and -

**THE CORPORATION OF THE TOWN OF MARKHAM**  
(hereinafter called the "Town")

**WHEREAS** the Owner is desirous of constructing and installing services in lieu of development charge payments for Development Charge Area Specific No. 45A (2004-245) (hereinafter referred to as "Area 45A") in accordance with ss. 38(1) of the *Development Charges Act*, 1997 and has requested that the Town enter into a credit agreement for their benefit;

**AND WHEREAS** Town of Markham Area Specific Development Charge By-law No. 2004-245 applies to the lands in Area No. 45A;

**AND WHEREAS** the parties to this Agreement declare that the recitals herein are true.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the funds provided and the services constructed by the Owner, it is hereby agreed as follows:

In this Agreement:

**"Original Acceptance"** means the date the Director of Engineering shall advise the Owner or its Engineer that the Works have been accepted for maintenance and the Maintenance Period can commence in accordance with Clause 1.13.

**"Final Acceptance"** shall mean the date upon which the Maintenance Period has expired and all conditions of final acceptance have been met to the satisfaction of the Director of Engineering in accordance with Clause 1.13.

**"Lands"** means those lands which will benefit from the Works.

**"Works"** means the external storm sewer system infrastructures, intersection works and

improvements identified and included in the Town's Area Specific Development Charge By-law 2004-245.

## **PART 1      GENERAL CONDITIONS**

### 1.1      Scope of Agreement:

This Agreement shall define some of the obligations and duties of the Owner with respect to the Works, and without limiting the generality of the foregoing, shall include the installation, construction, repair and maintenance of the Works to be provided and payments required to be made to the Town and such other matters as more specifically set out herein and shall define the responsibilities of the Owner related to the final acceptance of the Works set out in Schedule "A" attached hereto.

The parties acknowledge and agree that construction of the Works will proceed in phases and that the provisions of this Agreement are to be read as being applicable to the respective phases of the construction of the Works as construction proceeds.

### 1.2      Estimated Cost of Works:

The Owner acknowledges that the cost for the Works as set out in Schedule "A" is an estimate only and that if the cost of construction is greater than the estimated amount, the Owner covenants and agrees to pay the balance owing as solely determined by the Director of Engineering.

### 1.3      Works Vest in the Town:

The Owner covenants and agrees that the Works, when constructed and upon final acceptance by the Town, shall vest in the Town and the Owner shall have no claims or rights thereto.

### 1.4      Consulting Engineer:

The Owner covenants and agrees to retain a competent consulting engineer experienced in the municipal engineering field. This consulting engineer or a successor shall be approved by the Director of Engineering and shall carry out all necessary engineering requirements for the development of the Works in accordance with this Agreement and with the Guideline for Engineering Services to Municipalities, dated 1991, or the latest edition as prepared by the Association of Professional Engineers of Ontario.

Such consulting engineer shall be retained by the Owner until all requirements of this agreement have been completed to the satisfaction of the Director of Engineering. The consulting engineer for the Owner, as approved by the Director of Engineering shall be Schaeffers Consulting Engineers and any reference to "Engineer" within this agreement shall refer to such consulting engineer.

1.5 Drawings, Specifications:

The Owner shall pay for and provide to the Town all engineering drawings and specifications required by the Town and for approval by the Director of Engineering for the construction of Works.

1.6 According to Prepared Drawings:

The Owner covenants and agrees to construct the Works as shown on a set of drawings prepared by the Engineer, Project No. 99-E-2059, Phase I, Drawings GP-1, GP-2, GP-3, GR-1, GR-3, GR-9, PP-8, PP-10, PP-12, D-1, D-2, D-3, RW-1 and TR-1, Project No. 99-E-2058, Drawing No. PP-19, Project No. 2000-2263, Drawing Nos. GP-1, GR-1, PP-1, PP-2, SWM-5, D-1, SEC-1 and TR-1, Project No. 2001-2356, Drawing Nos RW-1 and RW-2, Project No. 2001-2283, Drawing Nos. GP-2, GR-7, PP-3, PP-13, D-1 and D-2, Project No. 2003-2568, Drawing Nos. PP-2, RW-1 and RW-2 and Project No. 2005-2755, Drawing No. LM-1, LM-2 and LM-3 inclusive and any latest revisions thereof signed by the Director of Engineering. The preparation of the drawings will be undertaken according to the Town's design criteria, design standards, specifications, and procedures contained in the Town of Markham document "Survey, Cadastral and Infrastructure Digital Data Requirements for New Developments". The Engineer shall provide the Director of Engineering with a list of the numbers, lengths, sizes, materials, etc. of all the Works including appurtenances upon signing of the engineering drawings by the Director of Engineering and also a final as-constructed copy prior to final acceptance by the Town.

Prior to the start of the maintenance period as required under Clause 1.13, the Owner shall submit to the Town a set of as-constructed digital files and drawings of the Works required to be done by this Agreement in a form as specified in the Town of Markham document "Survey, Cadastral and Infrastructure Digital Data Requirement for New Developments".

1.7 Contractor for Construction of Public Works:

The Owner covenants and agrees not to let any contract for the performance of any of the Works unless the contractor has been first approved by the Director of Engineering, which approval shall not be unreasonably withheld. The contract(s) shall provide that the Director of Engineering may inspect the construction of the Works and shall have authority to instruct the contractor(s) to stop work should any construction be undertaken contrary to the provisions of this Agreement and the Town's design criteria, standards and specifications.

1.8 Commencement of Construction:

The Owner covenants and agrees, prior to the construction of the Works, to give to the Town seven (7) days advance written notice of the date upon which construction of the Works is scheduled to commence.

1.9 Inspection by Director of Engineering:

The Owner covenants and agrees that the Director of Engineering may inspect the Work under any contract, but such inspection shall in no way relieve the Owner from its responsibility to inspect the said Work itself. If, at any time, the construction of the Works is not, in the opinion of the Director of Engineering, being carried out in accordance with the provisions of this Agreement, and in accordance with good engineering practices, the Director of Engineering may issue instructions to the Owner and/or to the Engineer to take such steps as deemed necessary to procure compliance with the provisions of this Agreement. Such instructions may be written, or may be verbal, in which case the Director of Engineering shall confirm them in writing within forty-eight (48) hours. In the event that neither the Owner nor the Owner's Engineer is present at the site of the Works to receive such verbal instructions, the Director of Engineering may instruct the contractor(s) or workers to cease work forthwith.

1.10 Damage to Municipal or Regional Owned Lands and Fouling of Roadways Inside and Outside the Limit of the Works:

The Owner covenants and agrees that all lands owned by the Town or The Regional Municipality of York inside and outside the limits of the Works that may be used by the Owner or parties employed by the Owner during the construction of the Works shall be kept in a good and usable condition during the construction period and, if damaged by the Owner or parties employed by the Owner in construction of the said Works, will be repaired or restored immediately.

The Owner covenants and agrees not to foul the public roads, inside and outside the limits of the Works, and further agrees to provide the necessary persons and equipment to be available on reasonable notice at all times to keep such roads clean. All trucks making deliveries to or taking materials to the Works shall be adequately covered and reasonably loaded so as not to scatter refuse, rubbish, or debris on the abutting streets.

If, in the opinion of the Director of Engineering, these requirements are not complied with, the Town will do the Work as required and the Owner shall forthwith upon demand pay to the Town the full cost thereof. If the Owner fails to make the payment as required by the Town, the Town may draw on the Letter of Credit filed pursuant to this Agreement to complete the Work to the satisfaction of the Director of Engineering.

1.11 Town May Repair the Works:

In the event that the Owner fails to keep any of the Works in a proper state of repair up to the date of Final Acceptance, the Town may, upon seven (7) days notice by registered mail of such default, enter upon the Lands and make such repairs as are necessary and the Owner shall forthwith upon demand pay to the Town the cost thereof. If the Owner fails to make the payment as required by the Town, the Town may draw on the Letter of Credit filed pursuant to this Agreement to complete the Works to the satisfaction of the Director of Engineering.

1.12 Emergency Repairs of the Works:

When, after the Owner has commenced construction of the Works but before Final Acceptance by the Town, any of the Works to be provided by the Owner do not function, or do not function properly, and in the opinion of the Director of Engineering, repairs are necessary to be made immediately to prevent damage or hardship to persons or property, the Owner agrees that the Town, its servants, employees or agents, may enter upon the Lands and make whatever repairs may be deemed necessary, and further covenants and agrees to reimburse the Town for any expense incurred in making the said repairs. If the Owner fails to make the payment as required by the Town, the Town may draw on the Letter of Credit filed pursuant to this Agreement to complete the said Works to the satisfaction of the Director of Engineering. The Town covenants and agrees to advise the Owner within seven (7) days from the date of entry by the Town of the nature and extent of the emergency and repairs which were necessary.

1.13 Maintenance Period:

After completion of the Works, as certified by the Engineer and as originally accepted by the Town, the Owner covenants and agrees to maintain and keep that portion of the Works, as defined in Clause 1.6, including appurtenances, in a proper state of repair for a period of two (2) years from the date of Original Acceptance (the "Maintenance Period").

At the end of the Maintenance Period, the Town may initiate Final Acceptance of the Works subject to completion of all conditions required for Final Acceptance within this Agreement. If the Works have not been completed and maintained to the satisfaction of the Director of Engineering, he may, at his discretion, extend the Maintenance Period.

1.14 Indemnification:

The Owner covenants and agrees to indemnify and save harmless the Town from all actions, causes of action, suits, claims and demands whatsoever which may arise directly or indirectly, by reason of constructing or failing to construct the Works, or by reason of the maintenance or lack of maintenance of such Works by the Owner pursuant to the terms of this Agreement or by reason of any defect in workmanship or material, until Final Acceptance by the Town.

### 1.15 Original Acceptance:

The Town covenants and agrees that the Original Acceptance of the Works shall take place upon fulfilment of the following conditions:

- (a) That all sewers and manholes are free of road materials, building debris, and any other foreign matter and the Owner have completed any deficiencies the video inspection may have revealed;
- (b) That the Director of Engineering has received:
  - i. A statement by a registered Ontario Land Surveyor that the surveyor has located or replaced all standard iron bars as shown on the Reference Plan and a reproducible mylar of the Reference Plan;
  - ii. A statutory declaration from the Owner that all contractors and subcontractors associated with the construction of the Works have been paid;
  - iii. A satisfactory set of as-constructed drawings in digital format and hard copy plot as specified in the Town of Markham document 'Survey, Cadastral, and Infrastructure Digital Data Requirements for New Developments';
  - iv. A certificate from the Engineer stating the Works have been constructed in accordance with the approved engineering drawings, proper Engineering practices, and the Town's design criteria, standards and specifications;
  - v. A certificate from the Consulting Engineer indicating the final construction costs for Works based on the actual construction contract;
  - vi. Payment of additional engineering fees, if required by the Director of Engineering, based on the final construction costs of the Works certified by the Engineer; and
  - vii. A list of numbers, lengths, sizes, material, etc., of all municipal infrastructure included in the Works.

### 1.16 Final Acceptance:

Final Acceptance of the Works by the Town, shall take place upon the fulfilment of the following conditions by the Owner to the satisfaction of the Director of Engineering:

- (a) That all sewers and manholes are free of road materials, building debris, and any other foreign matter and the Owner has completed any deficiencies the video

inspection may have revealed; and

- (b) Any other requirements as specified in this Agreement or as directed by the Director of Engineering.

## **PART 2      FINANCIAL ARRANGEMENTS**

### **2.1      Payments to the Town:**

The Owner covenants and agrees to pay to the Town, upon execution of this Agreement, the amounts set out in Schedule "B" to this Agreement.

The Engineer shall provide and certify to the Town a summary of the final construction costs prior to Final Acceptance by the Town. If the Engineering Fee, paid in accordance with Schedule "B", is less than the fee would be, based on actual construction costs, the Owner covenants and agrees to pay additional engineering fees as required.

### **2.2      Performance, Maintenance and Other Guarantees:**

The Owner covenants and agrees to provide the Town, upon execution of this Agreement, with security in an amount equal to One Hundred percent (100%) of the cost of Works as estimated in Schedule "A", to guarantee the construction and maintenance of the Works, in accordance with the specifications as provided herein.

### **2.3      Reduction of Public Works Related Securities:**

Prior to the reduction of security held by the Town for the Works, the Owner shall supply the Town with the following documentation:

- i.      Statutory declaration of Works completed;
- ii.     Workplace Safety and Insurance Board; and
- iii.    Proof of Expiration of Construction Lien Period (45 days).

### **2.4      Reduction of Securities:**

- (a)      Reduction at Original Acceptance:

Upon the completion of the Works as certified by the Engineer and accepted by the Town (Original Acceptance), and the Town receiving the documents identified in Clause 2.3, the Town may reduce the security provided pursuant to Clause 2.2 to Twenty Percent (20%) of the value of the completed Works plus 100% of the value of outstanding Works.

(b) Reduction at Final Acceptance:

Upon the satisfactory completion of the maintenance period as noted in Clause 1.13 and the Town receiving the documents listed in clause 2.3, the Town may reduce the remaining security to zero (0).

2.5 Construction Liens:

- (a) If any lien is filed under the *Construction Lien Act*, this shall constitute a default and upon such default, the Town may draw upon the aforementioned Letters of Credit for payment into court of the hold-back monies, plus interest and costs, if necessary, for the Town to satisfy its requirements under the *Construction Lien Act*.
- (b) The Owner covenants and agrees not to suffer or to permit any construction liens or other liens for work, labour, services or materials order by it or for the cost of which it may be in any way obligated to be registered against any part of the Lands, and that whenever and so often as any such liens are registered or shall attach or claims therefore shall be filed, the Owner shall as soon as reasonably after the Owner has notice of the claim or lien procure the discharge thereof by payment or by giving security or in such other manner as is or may be required or permitted by law and the Owner further covenants that whenever and so often as a certificate of action is registered relating to any of the liens referred to in the preceding sentence, the Owner shall as soon as reasonably possible after the Owner has notice of the registration of such certificate of action have the same vacated.
- (c) The Owner shall indemnify and save harmless the Town from all claims, demands, losses, costs, expenses, causes of action or suits of whatsoever nature arising out of the work, labour, services or materials furnished by the Owner or its contractors or subcontractors under this Agreement and shall promptly cause to be discharged any liens registered against any part of the Lands. Any such liability, claims, damages or expenses incurred by the Town shall be paid by the Owner to the Town forthwith upon demand.

2.6 Development Charges:

The Owner hereby specifically acknowledges that this Agreement is not a Front-Ending Agreement as provided for in Part II of the *Development Charges Act, 1997* and that the front-end payment scheme provided for in Part II, requiring reimbursement from owners in a defined benefitting area, is specifically not being utilized at this time. The Owner acknowledges that it has requested that the Town enter into a credit/services-in-lieu agreement for its benefit in accordance with ss. 38(1) of the *Development Charges Act, 1997* in relation to the Works. The Owner acknowledges that by entering into this Agreement it becomes entitled only to credits against development charges as provided for in s. 38 of the *Development Charges Act, 1997*, being the component of the development

charges related to the Works in Area Specific Development Charges By-law No. 2004-245.

## 2.7 Credits:

The Owner shall be entitled to receive a credit equal to the component of the development charges applicable to the reasonable costs of the Works under the Town's Area Specific Development Charges By-law No. 2004-245 for Area 45A. The Owner shall not be entitled to any credits under any other Town development charges by-laws.

The Owner acknowledges and agrees that the Town shall not be obligated to recover moneys from Benefitting Owners and to pay the same to the Owner as compensation for its front-ending of the costs of the Works if the Town is prohibited in law from recovering or assisting the Owner to recover such front-ended costs. The Owner hereby waives its right to assert or to claim any right against the Town for reimbursement for the front-ended costs except to the extent noted above.

The Owner acknowledges that the *Development Charges Act, 1997* is currently under review and that it may be amended to render certain services ineligible and to require the municipality to discount certain development charges. The Owner covenants and agrees that if the *Development Charges Act, 1997* is so amended, that it specifically waives and will not assert any claim against the Town for any municipal discounting the Town may be required to make or to recover any credits or refunds for ineligible services provided in respect of any front-end work or services herein provided by the Owner.

## **PART 3**      **LIABILITY INSURANCE**

- 3.1 Before commencing any of the Works provided for herein, the Owner shall supply the Town with a liability insurance policy in the amount of five million dollars (\$5,000,000.00) in a form satisfactory to the Town Solicitor, indemnifying the Town from any loss arising from claims or damages, injury or otherwise in connection with the Work done by or on behalf of the Owner. Such policy shall contain a completed operations clause and shall have no exclusion for blasting. The policy shall be maintained in full force and effect until Final Acceptance of the Works by the Town. In the event any renewal premium is not paid, the Town, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within fourteen (14) days of the account therefor being rendered by the Town.

## **PART 4**      **ESTIMATE OF COSTS**

- 4.1 The Owner acknowledges that the fees, securities and Works established under Schedules "A", "B" and "C" are based on the Town's best estimates and do not limit the Owner's responsibilities with regards to completing the Works. The Owner agrees to pay all costs (subject to reimbursement by way of development charge credits in Section 2.6) to complete the Works to their ultimate condition to the satisfaction of the Town.

## **PART 5      ADMINISTRATION**

### 5.1      Notice:

- (a)      If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed or delivered:

Anison Management Inc.  
Land Management and Consulting  
20 Valleywood Drive, Suite 106  
Markham, Ontario L3R 6G1  
Attention: Tanya Roman

or such other address of which the Owner has notified the Town Clerk, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

- (b)      If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed or delivered to:

Attention: Director of Engineering  
The Corporation of the Town of Markham  
101 Town Centre Boulevard  
Markham, Ontario L3R 9W3

or such other address of which the Town has notified the Owner, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this Agreement.

### 5.2      Nullification of this Agreement:

If the proposed Works are not commenced within one (1) year from the date of execution of this Agreement, the Town may, at its option and on 30 days notice to the Owner, declare this Agreement null and void and of no further effect. The Owner shall not be entitled to a refund or credit of any fees, levies, development or other charges paid by the Owner or for any credits for services or Works in lieu of payment of any development charges made pursuant to this Agreement.

## **PART 6      LETTERS OF CREDIT**

- 6.1      (a)      In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file with the Town, upon execution of this Agreement, Letter(s) of Credit in the amount(s) set out in Schedule "C" hereto. The Letter(s) of Credit shall be in a form approved by the Town, and the Owner covenants and agrees that the Letter(s) of Credit shall be kept in full force and effect and that it will

pay all premiums as the Letter(s) of Credit becomes due or until such time as the Town returns the Letter of Credit.

- (b) The Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out any Work or matter required by any clause of this Agreement, whether or not such Work or matter is specifically secured by way of letter of credit, and the Owner fails to comply, within thirty (30) days written notice, with a direction to carry out such Work or matter, the Town may draw on the Letter(s) of Credit and enter onto the Lands and complete all outstanding Works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- (c) The Owner hereby acknowledges and agrees that the Town reserves the right to draw on and use the proceeds from the Letter(s) of Credit to complete any Work or matter required to be done by the Owner pursuant to this Agreement. The Owner further acknowledges and agrees that, notwithstanding Schedule "C" to this Agreement, in the event that the Town determines that any reduction in the Letter(s) of Credit will create a shortfall with respect to securing the completion of any Work or matter remaining to be carried out by the Owner pursuant to this Agreement, the Town will not be obligated to reduce the Letter(s) of Credit until such time as such Work is satisfactorily completed or the Town has sufficient security to ensure that such Work will be completed.
- (d) Wherever in this Agreement a Letter(s) of Credit is required to be filed with the Town, the Owner may deposit with the Treasurer cash or a certified cheque to be cashed, in an amount equal to the Letter(s) of Credit and such deposit shall be held by the Town as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.

## **PART 7      LIST OF SCHEDULES**

The following schedules are attached hereto and form part of this Agreement:

"SCHEDULE A" being an estimate of cost of construction of Works.

"SCHEDULE B" being a summary of financial payments to the Town by the Owner.

"SCHEDULE C" being a list of Letters of Credit to be filed with the Town.

"SCHEDULE D" being a calculation of credit/recovery for Area 45A.

"SCHEDULE E" being a calculation of credit given to the Owner through subdivision agreements.

**IT IS HEREBY DECLARED THAT** this Agreement and the covenants, provisions, conditions and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.



**SCHEDULE "A"**

**ESTIMATE OF COST OF CONSTRUCTION OF WORKS**

DELETED

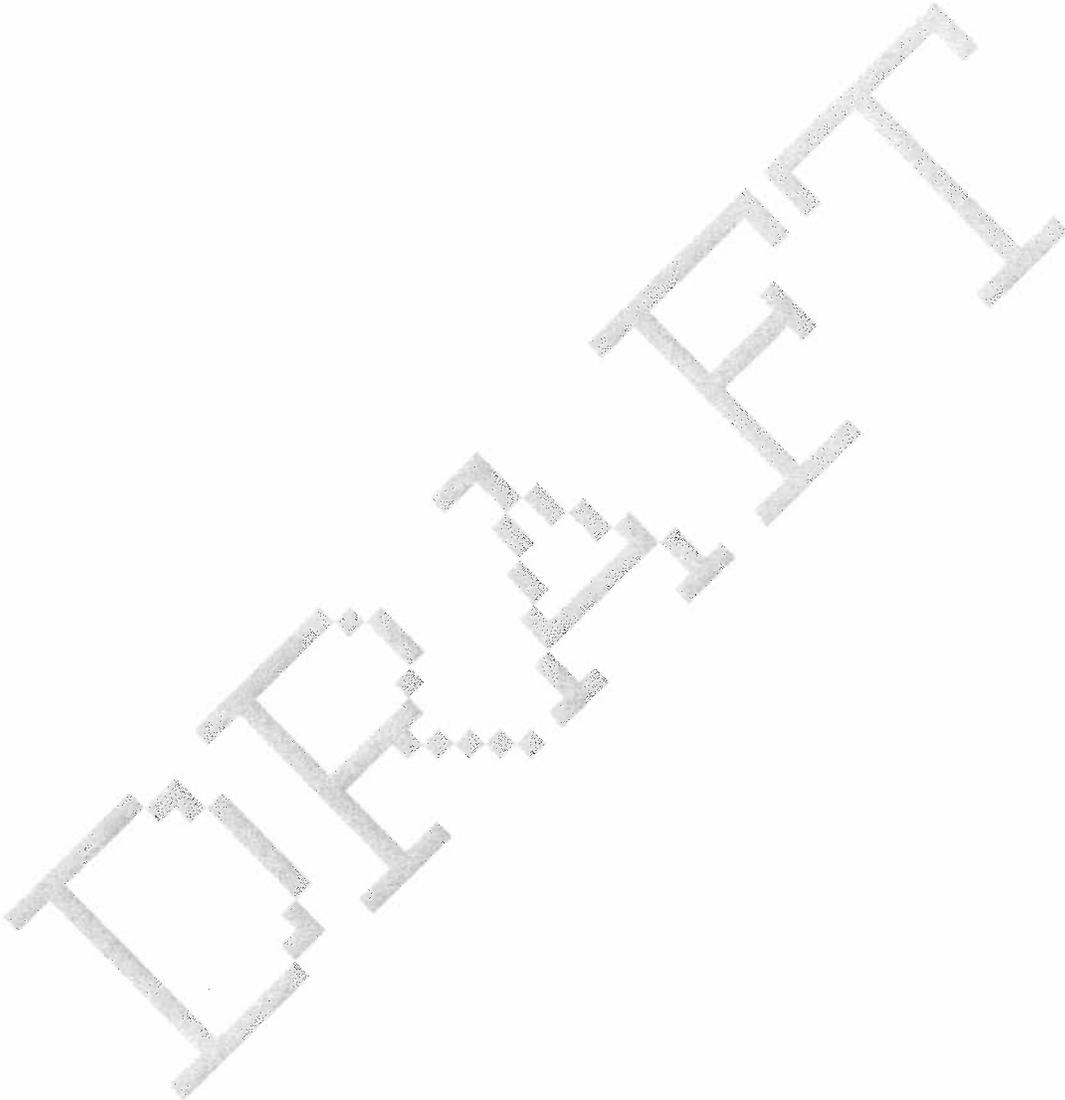
**SCHEDULE "B"**

**SUMMARY OF FINANCIAL PAYMENTS TO THE TOWN BY THE OWNER**

RECEIVED

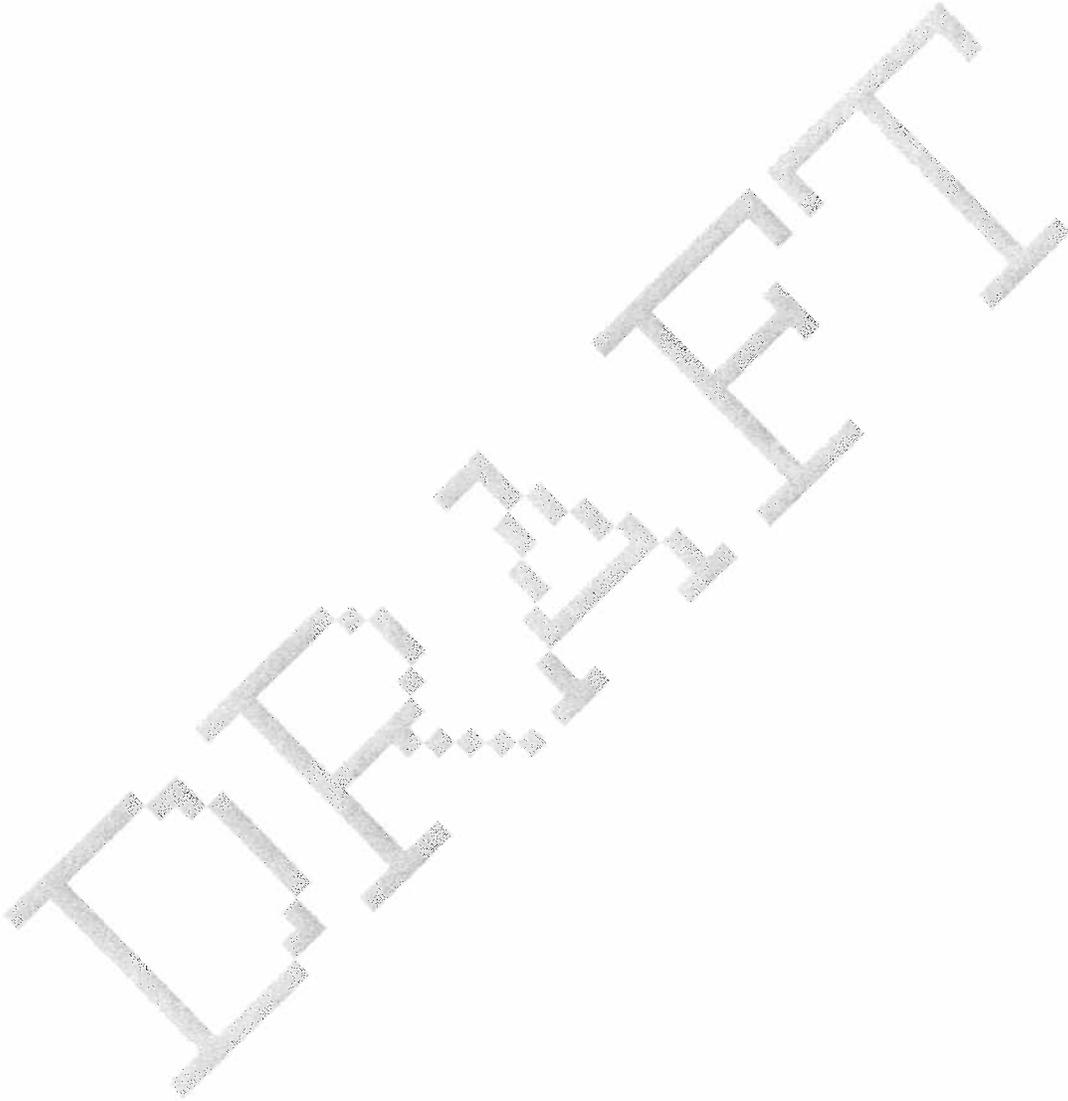
**SCHEDULE "C"**

**LETTERS OF CREDIT TO BE FILED WITH THE TOWN**



**SCHEDULE "D"**

**CALCULATION OF CREDIT/RECOVERY FOR AREA 42A-1**



**SCHEDULE "E"**

**CALCULATION OF CREDIT GIVEN TO THE OWNER THROUGH  
SUBDIVISION AGREEMENTS**

