

**TOWN OF FORT MACLEOD**

**Development Agreement #**

**[insert development name]**

**between:**

**TOWN OF FORT MACLEOD**

**AND**

**[DEVELOPER NAME]**

TABLE OF CONTENTS

1	DEFINITIONS .....	3
2	PLAN OF SUBDIVISION .....	4
3	PLANS .....	4
4	CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS .....	5
5	ACCEPTANCE OF MUNICIPAL IMPROVEMENTS AND TRANSFER OF MUNICIPAL IMPROVEMENTS TO THE TOWN .....	8
6	MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER .....	10
7	UTILITY EASEMENTS AND OTHER INSTRUMENTS .....	11
8	OVERSIZING AND SHARING OF SERVICING COSTS (ENDEAVOUR TO ASSIST) .	12
9	LEVIES AND FEES .....	12
10	AMOUNTS PAYABLE UNDER THIS AGREEMENT .....	13
11	DEFAULT BY THE DEVELOPER .....	14
12	ARBITRATION .....	15
13	INSURANCE, INDEMNITY AND SECURITY .....	15
14	DELIVERY OF DOCUMENTS TO MUNICIPALITY .....	17
15	COMPLIANCE WITH LAW .....	188
16	GENERAL .....	18
17	EXECUTION OF AGREEMENT .....	20
	<b>SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS .....</b>	<b>21</b>
	<b>SCHEDULE "B" - DEVELOPMENT AREA .....</b>	<b>22</b>
	<b>SCHEDULE "C" - MUNICIPAL IMPROVEMENTS .....</b>	<b>23</b>
	<b>SCHEDULE "D" - ADDITIONAL PROVISIONS .....</b>	<b>24</b>
	<b>SCHEDULE "E" - OVERSIZE COSTS, LEVIES AND FEES .....</b>	<b>25</b>
	<b>SCHEDULE "F" - SECURITY .....</b>	<b>26</b>
	<b>SCHEDULE "G" - INAPPLICABLE PROVISIONS .....</b>	<b>27</b>
	<b>SCHEDULE "H" - CONSTRUCTION COMPLETION CERTIFICATE .....</b>	<b>28</b>
	<b>SCHEDULE "I" - FINAL ACCEPTANCE CERTIFICATE .....</b>	<b>29</b>
	<b>SCHEDULE "J" - SUBDIVISION/DEVELOPMENT PROCESS &amp; CHECKLIST .....</b>	<b>30</b>

MEMORANDUM OF AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**TOWN OF FORT MACLEOD**  
a municipal corporation  
(hereinafter referred to as "the Municipality")

OF THE FIRST PART

- and -

**[DEVELOPER NAME]**  
a body corporate duly authorized to carry on business  
in the Province of Alberta  
(hereinafter referred to as "the Developer")

OF THE SECOND PART

**WHEREAS:**

- A.** The Developer is, or is entitled to become, the registered owner of all or a portion of the lands described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands").
- B.** The Developer proposes to subdivide part or all of the lands (hereinafter referred to as "the Development Area") as shown on the Plan attached as Schedule "B" to this Agreement.
- C.** The Municipality and the Developer are agreeable to the Developer completing or contributing to the Municipal Improvements required throughout and adjacent to the Development Area, in accordance with the provisions of this Agreement, with the Developer, solely, bearing the costs of the Municipal Improvements.
- D.** The Municipality and the Developer have agreed to enter into this Agreement to ensure adequate and timely provision of required services to the Development Area.
- E.** Upon satisfactory completion of the construction and installation of the Municipal Improvements by the Developer and the Final Acceptance of them by the Municipality, the Municipal Improvements which are on or under Public Property shall become the property of the Municipality.
- F.** The Municipality and the Developer have agreed that the said construction and installation of the Municipal Improvements and all matters and things incidental thereto and all other matters or things relating to the development of the Development Area, shall be subject to the terms, conditions and covenants hereinafter set forth.

NOW THEREFORE, in consideration of the premises and mutual terms, conditions and covenants to be observed and performed by each of the parties hereto, the Municipality and the Developer agree as follows:

## 1 DEFINITIONS

1.1 "Construction Completion Certificate" shall mean a Certificate issued by the Municipality, certifying the completion of all or a portion of the Municipal Improvements. As contained within Schedule "H".

1.2 "Commencement of Construction" or "Commence Construction" shall mean the date upon which the Developer commences the actual grading of the Development Area for purposes of servicing the Development Area, or such other date as may be agreed upon in writing by the Municipality and the Developer; provided, that commencement of grading shall not include the placement of machinery or equipment within the Development Area nor any work preparatory to grading such as the removal of any buildings, materials or things whatsoever within or under the Development Area.

1.3 "Design Standards" shall mean the designs, procedures, standards and specifications established by the Municipality respecting the design, construction and installation of the Municipal Improvements, as outlined in the City of Lethbridge Construction Standards and Specifications, Fire Code, and including but not limited to all pertinent Provincial standards, as amended and revised from time to time.

1.4 "Developer's Consultant" shall mean the consulting professionals retained by the Developer and shall include, but not be limited to professional engineers, landscape architects, land use planners, and land surveyors.

1.5 "Essential Services" shall mean those Municipal Improvements and services to be constructed or installed within the Development Area and identified as Essential Services within Schedule "C" to this Agreement

1.6 "Final Acceptance Certificate" shall mean a written acceptance issued by the Municipality for the Municipal Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Maintenance Period. As contained within Schedule "I".

1.7 "Maintenance Period" except where otherwise stated within this agreement, shall mean a period of ONE (1) years for all Municipal Improvements, including landscaping, but in any event the Maintenance Period shall not expire before the issuance of a Final Acceptance Certificate.

1.8 "Lands" means those lands legally described in Schedule "A" to this Agreement.

1.9 "Municipal Improvements" shall mean and include, within and outside the Development Area, those services and facilities identified in Schedule "C" to this Agreement.

1.10 "Municipality" shall mean the municipal corporation executing this Agreement as the development or subdivision authority, and the Municipality shall be represented by the Municipality's Chief Administrative Officer or as otherwise designated by the Municipality.

1.11 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location and installation of all Municipal Improvements, and shall include a construction management plan which shall delineate, to the Municipality's satisfaction, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of the Municipal Improvements.

1.12 "Plan of Subdivision" or "Plans of Subdivision" shall mean the subdivision or subdivisions which subdivide the Development Area into separate lots for further development.

1.13 "Prime Rate" shall mean the prime lending rate established from time to time at the nearest Alberta Treasury Branch, in relation to the Development Area.

1.14 "Public Property" or "Public Properties" shall include all properties within and adjacent to the Development Area to be owned or administered by the Municipality, including roadways, utility rights-of-way or easements, following the registration of the Plan or Plans of Subdivision for the Development Area.

## 2 PLAN OF SUBDIVISION

2.1 Prior to construction or installation of any of the Municipal Improvements, the Developer shall cause a Subdivision Plan of the said Lands to be prepared and approved by all necessary approving authorities.

2.2 The Developer covenants and agrees that it shall register in the Land Titles Office a Plan of Subdivision for the Development Area within Twelve (12) months of the date of this Agreement.

2.3 In the event that the Developer does not register the Plan of Subdivision within Twelve (12) months the Municipality shall be entitled to terminate this Agreement, and the Developer shall not register any Plan of Subdivision for any portion of the Development Area until a further written Agreement is entered into between the Developer and the Municipality. The termination of this Agreement in whole or in part as provided in this Section shall be effective upon the Municipality serving written notice of termination on the Developer.

2.4 If the Municipality terminates this Agreement in whole or in part pursuant to the Section 2.3, it is understood and agreed that any financial obligations of the Developer to the Municipality shall survive and the Municipality shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect.

2.5 The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approval which may be imposed by the subdivision authority (or if the subdivision authority's decision is appealed, the final decision upon appeal).

2.6 No Plan of Subdivision shall either be endorsed by the Municipality or permitted to be registered, nor shall the Developer commence any work within or adjacent to the Development Area, unless and until the Municipality in its discretion has:

- (a) rezoned the Development Area to a district that the Municipality deems appropriate;
- (b) passed amendments to the Municipality's Land Use Bylaw relating to the regulations applicable to the development within the Development Area that the Municipality deems appropriate;
- (c) passed any new statutory plans or amendments to any existing statutory plans that the Municipality deems appropriate;
- (d) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Municipal Improvements, or the Plans;
- (e) approved of all Plans respecting the construction and installation of all Municipal Municipal Improvements;
- (f) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permit;
- (g) confirmed that registered ownership of the lands comprising the Development Area is satisfactory to the Municipality, including, without restriction, confirmation that the registered owner is the Developer.

## 3 PLANS

3.1 Prior to Commencing Construction and installation of the Municipal Improvements within or adjacent to the Development Area, the Developer shall submit Plans for the Municipal Improvements for approval by the Municipality. The Plans shall give all necessary details of the Municipal Improvements to be constructed by the Developer, and shall conform to the Design Standards. The Plans shall include a construction timetable for the construction and installation of all of the Municipal Improvements and the Developer shall comply with all time limits and dates specified in the construction timetable. Where the design of all or any portion of the required Municipal Improvements are entirely contained within the Design Standards, the Developer shall submit the Municipality's standard design obtained from the Design Standards.

3.2 The Municipality agrees that it shall not unduly delay in granting its approval, or in rejecting Plans which have been submitted by the Developer to the Municipality.

3.3 The Plans for the construction and installation of the Municipal Improvements for the Development Area shall conform strictly to the Design Standards.

3.4 If the Municipality does not approve whatever Plans submitted by the Developer in a timely manner, the Developer shall be entitled to refer any dispute with regard to the Plans to the Municipality's Council. The decision of the Municipality's Council shall be final and binding.

3.5 The Developer shall not Commence Construction or commence installation of the Municipal Improvements, or any portion, until such time as the Municipality has issued written approval of the Plans. Subject to the terms of this Agreement, it is understood and agreed between the Municipality and the Developer that the Developer shall be entitled to construct the Municipal Improvements in accordance with the Plans once such Plans have been approved by the Municipality.

3.6 The Developer acknowledges and agrees that the Municipality's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the Municipality or its engineer respecting the content of the Plans, including, without restricting the generality of the foregoing:

- (a) whether the Plans are suitable for the intended purpose;
- (b) whether the Plans comply with any required federal, provincial or municipal legislation or regulation;
- (c) whether the Plans comply with the Design Standards; and
- (d) whether the Plans are in accordance with standard acceptable engineering practices.

#### 4 CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

4.1 Except as otherwise specified in the construction timetable approved under Section 3.1, the Developer shall Commence Construction and installation of the Municipal Improvements within Twelve (12) months of endorsement of this Development Agreement and shall complete the construction and installation within Twenty four (24) months of the endorsement of this Agreement.

4.2 The Developer warrants to the Municipality that all of the Municipal Improvements shall, at the Developer's sole cost and expense, be constructed and installed in a good and workmanlike manner, in strict conformance with the Plans and proper and accepted engineering and construction practices, in accordance with the terms of this Agreement, in accordance with the Design Standards and in accordance with the requirements of law applicable to the work.

4.3 In the event that the Developer has not commenced construction of the Municipal Improvements within the time limits required above, then the Municipality shall be entitled at its sole option to terminate this Agreement, and further, the Developer agrees:

- (a) that the termination of this Agreement in whole or in part shall be effective upon the Municipality serving written notice of termination on the Developer;
- (b) that in the event that this Agreement is terminated in whole or in part, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the Municipality; and
- (c) that such termination shall be without prejudice to any and all other obligations then due, outstanding and owed by the Developer to the Municipality in relation to the Lands or their development (including, without restriction, the security provisions contained within this Agreement), which shall remain in full force and effect until satisfied in full.

4.4 In the event that it is necessary or reasonable, in the opinion of the Municipality, to construct or install any temporary or emergency access during the construction and installation of the Municipal Improvements, the Developer shall construct and install any such temporary or emergency accesses in accordance to specifications, and in such

locations, as determined by the Municipality acting reasonably and the Developer shall grant to the Municipality an easement, in a form acceptable to the Municipality, across the required land for the period for which the access is required. Any such access shall be constructed to an all-weather standard.

4.5 At all times during the construction and installation of the Municipal Improvements and during all work by the Developer or its agents related thereto:

- (a) The Municipality shall have free and immediate access to all records of or available to the Developer and the Developer's engineer or consultant relating to the performance of the work, including, but without limiting the generality of the foregoing, all design, inspection, material testing and "as constructed" records.
- (b) The Municipality may:
  - (i) exercise such inspection of the performance of the work as the Municipality may deem necessary and advisable to ensure to the Municipality the full and proper compliance by the Developer with the Developer's undertakings to the Municipality, and to ensure the proper performance of the work;
  - (ii) reject any design, material or work which is not in accordance with the Design Standards or accepted engineering and construction practices;
  - (iii) order that any unsatisfactory work be re-executed at the Developer's cost;
  - (iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material, at the Developer's cost;
  - (v) order the Developer within a reasonable time to bring on the job and use additional labour, machinery and equipment, at the Developer's cost, as the Municipality deems reasonably necessary to the proper performance of the work;
  - (vi) order that the performance of the work or part thereof be stopped until the said orders can be obeyed;
  - (vii) order the testing of any materials to be incorporated in the work and the testing of any Municipal Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the Municipality unless the Developer takes issue with any such order or requirement, in which case the Developer shall request, in writing, that such issue be arbitrated in accordance with the provisions of Section 12 hereof; PROVIDED, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the Municipality pursuant to Sections (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, except as otherwise agreed by the Municipality in writing, shall stop until such arbitration has taken place.

4.6 Notwithstanding anything expressed or implied in the preceding Section, it is agreed between the Municipality and the Developer:

- (a) that the Municipality shall have no obligation or duty to exercise any of the Municipality's powers of inspection nor any obligation or duty to discover or advise the Developer of any deficiencies in construction or workmanship during the course of the construction and installation of the Municipal Improvements;
- (b) that the Developer shall during the course of the construction and installation of the Municipal Improvements provide and maintain adequate inspection services, supervised by a professional engineer; and
- (c) that nothing set forth in the preceding Section shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in this Agreement, and without restricting the generality of the foregoing, the

Developer shall fulfill all responsibilities in respect to the design, construction, installation and maintenance of the Municipal Improvements as required by the terms of this Agreement.

4.7 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements, and during the Maintenance Period for the Municipal Improvements, that the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under this Agreement and that the failure of the Developer to pay any such contractors or other parties shall constitute a breach of this Agreement by the Developer unless there is a bona fide dispute between the Developer and the contractor or other party.

4.8 The Developer shall take effective measures to reasonably control dust, dirt and garbage in and around the Development Area caused by the construction or installation of the Municipal Improvements. In the event, however, that the Municipality deems that there are dust, dirt or garbage problems the Municipality shall attempt to notify the Developer or the Developer's Consultant of the problem in writing and by telephone. The Developer shall rectify the problem within Seventy-two (72) hours of the notice by taking effective measures to control the dust, dirt or garbage problem. The Seventy-two (72) hours notice may be waived or shortened by the Municipality:

- (a) in an emergency (as deemed by the Municipality);
- (b) if the Municipality is not able to contact the Developer or its Consultant; or
- (c) if the Developer by its conduct or statements leaves the Municipality with the impression that it will not perform the necessary work within the required time frames.

The Municipality may take effective measures to control the dust, dirt or garbage problem after expiry of the notification period, or if the notice is waived; such measures shall be at the expense of the Developer and the Municipality shall within Seventy-two (72) hours notify the Developer of the action taken by the Municipality.

4.9 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Municipal Improvements, the Developer's Consultant shall submit to the Municipality a statement under his professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with the Design Standards.

4.10 In addition to whatever other testing requirements may be imposed upon the Developer by the Municipality, the Developer shall undertake t.v. camera video inspection of all storm and sanitary sewer lines and shall provide the video and corresponding report prior to the issuance of the Construction Completion Certificate of such lines by the Municipality. Prior to the issuance of the Final Acceptance Certificate for all storm and sanitary sewer lines, the Developer shall undertake t.v. camera video inspection of ten percent (10%) of such lines; if any deficiencies are discovered, the Developer shall be required to undertake such an inspection of any further portion or all of the said lines, to be determined by the sole discretion of the Municipality.

4.11 It is understood and agreed between the Municipality and the Developer that during the course of constructing the Municipal Improvements, the re-execution or replacement of unsatisfactory work which is of a minor nature (as determined by the Municipality in its discretion) and which does not pose a health or safety danger, may be re-executed or replaced by the Developer, in its discretion, at any time prior to the request by the Developer for a Construction Completion Certificate for the Municipal Improvements in question.

4.12 The Developer covenants and agrees as follows:

- (a) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the Municipality that the Essential Services will have been installed and rendered operative in any part of the Development Area before any buildings or facilities are occupied in any such part of the Development Area;
- (b) to undertake and complete to the satisfaction of the Municipality such work as may be necessary to ensure that the Development Area has positive drainage away from any building to the gutter, ditch or drainage channels and that there will be no unacceptable ponding of water within any of the lots within the Development Area;



(c) the Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation and relocation, to the Municipality's satisfaction, of electric power, natural gas, and telecommunication services to the Development Area and within the streets adjoining the Development or the lots to be created in the Development Area;

(d) subject to the approval of the utility service provider, the Developer shall install electric power, whether it be underground or overhead, and street lighting, and shall endeavour to have the poles and guide wires located within the utility right-of-way or 0.6m off property line if being installed within the road allowance; and

(e) that not less than Fourteen (14) days prior to the date that the Developer intends to enter upon any Public Property (except in the case of emergency repair work) the Developer shall provide detailed written proposals for the work to be done within any such property, for approval by the Municipality and to the satisfaction of the Municipality, and no such work shall be commenced prior to the Developer obtaining the written consent of the Municipality to enter upon such Public Properties and complete the work, and the Developer shall indemnify and save harmless the Municipality from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a solicitor and client basis) which may arise by reason of the performance of work by the Developer.

## 5 ACCEPTANCE OF MUNICIPAL IMPROVEMENTS AND TRANSFER OF MUNICIPAL IMPROVEMENTS TO THE TOWN

5.1 For purposes of this Section, the Municipality and the Developer agree that no Improvement shall be considered complete unless and until:

- (a) the Improvement has been fully constructed and installed in accordance with the approved Plans;
- (b) the Improvement has been constructed and installed in accordance with the Design Standards and accepted engineering and constructed practices;
- (c) all testing has been completed and the results approved by the Municipality;
- (d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the Municipality;
- (e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;
- (f) the Improvement is suitable for the purpose intended;
- (g) the Developer has provided the Municipality with any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements; and
- (h) the Developer has provided the Municipality with the actual costs and sufficient supporting documentation of all Municipal Improvements located on, in or under Public Properties (including utility rights-of-way and easements) in order that the Municipality is able to meet its accounting and reporting requirements for the acquisition of Tangible Capital Assets. Sufficiency of supporting documentation and costs information shall be determined by the Municipality and its auditors.

5.2 When the Developer claims that the Municipal Improvements for the Development Area have been constructed and installed in accordance with the requirements of this Agreement, then the Developer shall give notice in writing of such claimed completion to the Municipality.

5.3 Within Forty-Five (45) days of the receipt by the Municipality of a request for a Completion Construction Certificate, the Municipality shall undertake an inspection of the Municipal Improvements and the Municipality shall within the said Forty-Five (45) days advise the Developer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Municipal Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies).

5.4 Notwithstanding the preceding Section, the Municipality may give notice to the Developer of the Municipality's inability to conduct an inspection within the said Forty-Five (45) days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until Forty-Five (45) days following the elimination of such adverse site or weather conditions.

5.5 In the event that any inspection contemplated in Section 5.3 or 5.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement, the Municipality may refuse to issue a Construction Completion Certificate for the Improvement and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and issuance of a Construction Completion Certificate.

5.6 In the event that any inspection contemplated in Sections 5.3, 5.4 or 5.5 reveals that there are no deficiencies in relation to the Municipal Improvements, the Municipality shall issue in writing its Completion Construction Certificate for the Municipal Improvements.

5.7 It is understood and agreed between the Developer and the Municipality that the Municipality shall be at liberty in its sole discretion to issue a written conditional Construction Completion Certificate for the Municipal Improvements and such Certificate shall be conditional upon the completion of minor deficiencies by the Developer within a time specified by the Municipality; PROVIDED, that the commencement of the Maintenance Period in relation to any such deficiency, if rectified within Thirty (30) days (or such other time frame stipulated on the Construction Completion Certificate), shall be back-dated to the date of the said conditional Construction Completion Certificate; AND PROVIDED FURTHER, that the Maintenance Period in relation to any such deficiency, if not rectified within the said Thirty (30) days (or such other time frame stipulated on the Construction Completion Certificate), shall not commence until such time as such deficiency has been rectified by the Developer and received acceptance of the Municipality in accordance with this Agreement.

5.8 Not more than Ninety (90) days nor less than Forty-Five (45) days prior to the expiration of any Maintenance Period for the Municipal Improvements or any portion the Developer shall give notice to the Municipality of expiration of the Maintenance Period for the Municipal Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Municipal Improvements. The Developer's notice shall be accompanied by a list of any deficiencies.

5.9 Within Forty-Five (45) days of the receipt by the Municipality of a request for a Final Acceptance Certificate, the Municipality shall undertake an inspection of the Municipal Improvements and the Municipality shall within the said Forty-Five (45) days advise the Developer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the provisions of Section 5.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.

5.10 In the event that there are any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement the Municipality may refuse to issue the Final Acceptance Certificate of the Municipal Improvements and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that a further inspection and issuance of a Final Acceptance Certificate.

5.11 In the event that any inspection contemplated in Sections 5.9 or 5.10 reveals that there are no deficiencies in relation to the Municipal Improvements, the Municipality shall issue in writing its Final Acceptance Certificate for the Municipal Improvements.

5.12 It is understood between the Municipality and the Developer that the Municipality shall be at liberty to issue a conditional Final Acceptance Certificate for the Municipal Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within Thirty (30) days.

5.13 It is understood and agreed between the Developer and the Municipality that the notices required under this Section 5 shall be given only between the Municipality and the Developer and in no event shall either the Municipality

or the Developer give such notices through any contractor or sub-trade which may be engaged by the Developer in the construction of the Municipal Improvements.

5.14 Upon the issuance of a Final Acceptance Certificate by the Municipality for the Municipal Improvements, the Developer hereby acknowledges that all right, title and interest in the Municipal Improvements (excluding facilities owned by private utility companies) located on or under Public Properties (including utility rights-of-way and easement areas) vests in the Municipality without any cost or expense to the Municipality therefore, and the Municipal Improvements shall become the property of the Municipality.

5.15 Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the Maintenance Period for the Municipal Improvements shall not expire before the issuance of a Final Acceptance Certificate for the Municipal Improvements by the Municipality to the Developer; PROVIDED, that in the event that either party refers to arbitration the Developer's right to the issuance of a Final Acceptance Certificate for the Improvement, the arbitrator shall, in accordance with the terms of this Agreement, determine the date upon which any such Final Acceptance Certificate is to be effective.

5.16 Following the issuance of a Final Acceptance Certificate for the Municipal Improvements, the Municipality agrees that it shall assume the normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvements excluding Landscaping, fencing and facilities owned by private utility companies.

5.17 The Municipality and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements, that the Developer shall be responsible, for a period of Five (5) years following the issuance of a Final Acceptance Certificate for the Municipal Improvements, to repair or replace any of the Municipal Improvements where there were any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in any of the Municipal Improvements, which are causally connected to the performance or non-performance of the obligations of the Developer under this Agreement and were not discovered prior to the issuance of the Final Acceptance Certificate. In the event of a dispute regarding this provision, and in addition to the Section 12 on arbitration, the parties may mutually agree to resolve any dispute under this provision by means of a mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Municipal Improvements installed and constructed pursuant to this Agreement.

## 6 MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

6.1 The Maintenance Period in respect to any of the Municipal Improvements shall commence with the Municipality's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair (ordinary wear and tear excepted).

6.2 The Developer shall repair or replace the whole or any portion of an Improvement at its cost and expense during the Maintenance Period where such repair or replacement is required due to anything other than normal wear and tear, in the reasonable opinion of the Municipality. In the event that the Developer fails to take steps to repair or replace the whole or portion of the Improvement the Municipality may affect the repair or replacement, at the Developer's cost and expense.

6.3 The Developer covenants that it shall fully comply with the Design Standards and accepted engineering and construction practices, in undertaking and completing the repair or replacement of any of the Municipal Improvements pursuant to the requirements of this Section.

6.4 The Developer agrees that in the event of any emergency arising during the Maintenance Period, the Municipality being the sole judge of what constitutes an emergency, then the Municipality shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate by the Municipality and all costs and expenses incurred by the Municipality in that regard shall be paid by the Developer to the Municipality upon demand.

7 UTILITY EASEMENTS AND OTHER INSTRUMENTS

7.1 The Plans, as approved by the Municipality, shall designate road allowances, public utility lots, easements or rights-of-way of widths adequate to the needs of the Municipality and utility companies, for the construction and installation of Municipal Improvements and services, natural gas, power, and telephone service to and through the Development Area, and for storm drainage systems, and shall be of a width and in such locations as required by the Municipality.

7.2 The road allowances, public utility lots, easements and utility rights-of-way shall be granted and registered to the Municipality (without further compensation payable to the Developer), upon the earlier of submission for registration of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision, or Commencement of Construction of the Municipal Improvements. The Developer shall within One (1) month of registration of the Plan of Subdivision, and prior to the sale of any lots within the Development Area, provide to the Municipality proof of the registration of all road allowances, public utility lots, easements and utility rights-of-way required by the Municipality.

7.3 The Developer agrees that the road allowances, easements and utility rights-of-way shall be in a form acceptable to the Municipality and shall be a first charge (excepting other easements and utility rights-of-way) and that the Developer shall obtain and register postponements of all liens, charges and encumbrances in favour of the easements.

7.4 Such road allowances, easements or utility rights-of-way shall provide that the Municipality shall have the right either:

- (a) to assign all or any parts of the rights thereby granted to operators of the respective utilities; or
- (b) to grant permits or licenses to install, repair and replace gas, power and telephone lines, and all drainage systems.

7.5 The Developer covenants that it shall register or cause to be registered against the Development Area or other lands controlled by the Developer, in a form acceptable to the Municipality, restrictive covenants and other instruments which are required by any subdivision approval for the Development Area or otherwise required under the terms of this Agreement.

7.6 The Developer hereby grants, conveys, transfers and sets over to and unto the Municipality, its servants, agents, contractors, successors, assigns and licensees:

- (a) the right, license, liberty, privilege and easement across, over, under, on and through all of the Lands, described within Schedule "A" of this Agreement, for the purposes of laying down, installing, constructing, operating, inspecting, maintaining, repairing, replacing, altering, removing and reconstructing from time to time sanitary sewer, storm sewer, drainage, water, gas, electrical, telephone, telecommunications, and cable television lines, services or distribution systems, and temporary roadways, together with any and all appurtenances incidental or necessary in relation to the above, together with the right of ingress and egress over the Lands with vehicles, supplies and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights and privileges granted within this Agreement; and
- (b) the dedication of all roads shown within the subdivision approval for the Lands, as amended by this Agreement or the Plans subsequently approved by the Municipality, which dedications may be registered at any time by the Municipality by road plan in accordance with Section 62 of the Municipal Government Act (Alberta).

The grant of the right of way provided above is and shall be for as long as is necessary for the Municipality and is intended to be a covenant that runs with the Lands, until such time as the Plan of Subdivision and/or any applicable and required public utility lots, easements, road allowances and utility rights-of-way have been registered with Land Titles, and shall survive termination of this Agreement.

## 8 OVERSIZING AND SHARING OF SERVICING COSTS (ENDEAVOUR TO ASSIST)

8.1 The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Municipal Improvements which have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas. The Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the Municipality in the amount provided within Schedule "E" attached to this Agreement. The Developer shall provide proof of payment satisfactory to the Municipality prior to the earlier of endorsement of the Plan of Subdivision or the Commencement of Construction of the Municipal Improvements upon the Development Area.

8.2 The Developer, in constructing the Municipal Improvements as contemplated herein, shall bear the costs of oversizing and extending Municipal Improvements designed and installed to accommodate future developments on land adjacent to the Development Area and other benefiting areas, and shall design, construct and install the Municipal Improvements so that such future developments can utilize or benefit from such oversizing or extensions. The Municipality's requirements for oversizing shall be evidenced within the additional provisions contained within Schedule "D" attached to this Agreement, within the Design Standards, or otherwise required to be shown within the Developer's Plans at the time of the Municipality's review and approval.

8.3 The costs of the oversizing or extensions contemplated in Section 8.2 shall be shared costs and the Municipality and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with any applicable provisions contained in Schedule "D" attached to this Agreement. The method of calculating the proportionate shares of such shared costs shall be determined solely by the Municipality in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the Municipality, in accordance with any agreements which the Municipality has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of such Municipal Improvements, and where deemed appropriate by the Municipality taking into account the expended useful life span of the oversized/shared Municipal Improvements.

8.4 The Municipality shall not be responsible for payment of any portion of the shared costs, except as may be specifically provided elsewhere in this Agreement, or except in respect to lands owned or acquired by the Municipality, but the Municipality shall use reasonable efforts to give such assistance to the Developer as it can legally give and endeavours to assist in the recovery of shared costs by making it a term of any Development Agreement between the Municipality and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and by requiring payment of the same by such owners as a condition of the use of the Municipal Improvements or as a condition of the approval of any development or subdivision applications.

## 9 LEVIES AND FEES

9.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and storm drainage facilities that will be utilized to provide municipal services to the Development Area, and accordingly, the Developer covenants and agrees to pay to the Municipality off-site levies if and when established by the Municipality. Unless otherwise specifically provided within Schedule "E" attached to this Agreement, off site levies (or other subdivision or development charges) payable by the Developer shall be calculated and paid upon the earlier of submission for registration of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision, and Commencement of Construction of the Municipal Improvements.

Any deferral of payment of off-site levies by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the Municipality and the Developer as contained within Schedule "E" attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for payment, and/or registration and reliance upon the charge contained within Section 19.2 of this Agreement). If at the time of registration of a Plan of Subdivision the Municipality has not imposed off site levies or other subdivision or development charges, and subsequently the Municipality imposes such levies or charges, nothing in this Agreement precludes the Municipality from collecting off site levies at the development permit stage. Subject to the provisions of Schedule "E", in the event that payment of any off-site levy for each parcel created upon subdivision of the Development Area has been specifically agreed to be postponed (e.g. until the parcel is transferred by

the Developer to a third party or when an application for a Development Permit is received by the Municipality to construct a building within the parcel, whichever first occur), all unpaid off-site levies for the Development Area shall in any event be paid by the Developer to the Municipality on the date One (1) year following the date of the execution of this Agreement.

9.2 The Developer covenants and agrees that the off-site levies currently established by the Municipality and payable by the Developer to the Municipality are the amounts specified in Schedule "E" of this Agreement. Unless otherwise required by the applicable bylaw, or otherwise already apportioned and applied within Schedule "E" to the lands contained within the Development Area, the Municipality shall distribute any off-site levies specified in Schedule "E" which are shown or levied on the basis of gross hectares in the manner the Municipality considers equitable amongst the parcels within the Development Area (excluding any lands to be owned by the Municipality) so that a specified amount shall be attributed to each parcel within the Development Area.

9.3 The Developer acknowledges that in the event that at the time of execution of this Agreement the Municipality does not impose off site levies (or other subdivision or development charges), the Municipality may in the future impose such levies or charges in accordance with a bylaw of general application which shall establish the various levies or charges applicable to similar developments within the Municipality.

9.4 The Developer acknowledges that the Municipality will incur costs and expenses in the checking of the Plans for the Municipal Improvements, as well as costs and expenses for the testing and inspection of the Municipal Improvements, which costs and expenses are properly part of the costs of constructing and installing the Municipal Improvements and should properly be borne by the Developer. The Municipality and the Developer agree that unless otherwise required by any applicable fees bylaw or any other bylaw of general application, or unless otherwise stipulated within Schedule "E", upon the execution of this Agreement the Developer shall pay to the Municipality approval and inspection fees as per the fees established from time to time by the Municipality. Such fees may be applied on a flat rate basis or for each hectare within the gross area of the Development Area, or applied on the rate and/or basis required by any applicable fee bylaw or other applicable bylaw of general application, as set forth in Schedule "E", and failing those as may be established from time to time by the Municipality.

## 10 AMOUNTS PAYABLE UNDER THIS AGREEMENT

10.1 The Developer acknowledges and agrees that the Municipality and the Developer are properly and legally entitled to make provision in this Agreement, for the purposes specified herein, for the payment by the Developer to the Municipality of the various sums prescribed in this Agreement, AND FURTHER:

- (a) the Developer acknowledges and agrees that the Agreement by the Developer to pay the said sums is an inducement offered by the Developer to the Municipality to enter into this Agreement;
- (b) the Developer acknowledges that the Municipality has agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the Municipality the sums specified in this Agreement;
- (c) the Developer agrees that the Municipality is fully entitled in law to recover from the Developer the sums specified in this Agreement;
- (d) the Developer hereby waives for itself and its successors and assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the Municipality in respect to the Developer's refusal to pay the sums specified in this Agreement; and
- (e) the Developer for itself and its successors and assigns hereby releases and forever discharges the Municipality from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the Municipality in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Municipality pursuant to this Agreement.

10.2 Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the Municipality shall bear interest calculated semi-annually and calculated from the date upon which such sum or monies are due and payable and such interest shall be calculated at a rate per annum equal to the Prime Rate plus Two (2%) percent and such interest rate shall be adjusted from time to time in accordance with any change to the Prime Rate.

10.3 The Municipality and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the Municipality pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the lands described in Schedule "A" of this Agreement, the Developer does hereby mortgage, charge and encumber the said lands as security for the payment or performance of the Developer's obligations within this Agreement, and further, that the Municipality shall be entitled to recover any such monies owing, together with all costs on a solicitor and client basis, by enforcing the charge and encumbrance against the lands described in Schedule "A" of this Agreement.

## 11 DEFAULT BY THE DEVELOPER

11.1 In the event that the Municipality claims that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the Municipality may give the Developer Thirty (30) days notice in writing of such claimed default and requiring the Developer to rectify same within the said period of Thirty (30) days.

11.2 If the Developer denies that it is in default as claimed in such notice, the Developer shall within Ten (10) days of receipt of such notice request a reference to arbitration pursuant to the provisions of Section 12 hereof. If the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of Section 11.1, have a period of Thirty (30) days from the receipt of the arbitration ruling within which to rectify such default.

11.3 The Developer agrees that in the event that the Municipality has given the Developer written notice of default and the Developer does not, within Ten (10) days of receipt of the written notice, dispute that it is in default, then the Developer shall conclusively be deemed to have acknowledged the default.

11.4 In the event that the Developer has failed to rectify such default within the period of Thirty (30) days from the receipt of the notice of Default provided by the Municipality pursuant to Section 11.1 and no arbitration been requested by the Developer or from confirmation of the default by the Arbitrator pursuant to Section 11.2, the Municipality may, but shall not be obligated to, undertake any work it considers necessary in order to remedy such default and any costs or liability incurred by the Municipality in respect thereof shall be at the Developer's sole cost and expense. The Developer shall pay such costs to the Municipality within Thirty (30) days of receiving demand for payment from the Municipality.

11.5 Notwithstanding anything to the contrary herein, in the event that the Municipality, in its discretion, considers it necessary to undertake any immediate work in connection with the construction, installation or repair of the Municipal Municipal Improvements in a situation which the Municipality considers to be an emergency, the Municipality shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done; PROVIDED, that upon completion of said emergency work, the Municipality shall give notice in writing to the Developer if the Municipality claims that such repair work was made necessary by reason of a default on the part of the Developer in the observance or performance of the terms, covenants and conditions of this Agreement, and if the Developer denies the claimed default, it shall within Ten (10) days request a reference to arbitration pursuant to the provisions of Section 12 hereof.

11.6 The Developer agrees that the Municipality shall, for purposes of undertaking any work under this Section, have free and uninterrupted access to all portions of the Development Area and any other areas under the control of the Developer and that the Municipality shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such right of access.

11.7 The decision of the Arbitrator in any reference respecting a claimed default on the part of the Developer shall be final and binding upon the Municipality and the Developer.

11.8 The Municipality and the Developer agree that any rights and remedies available to the Municipality whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the Municipality shall be entitled to enforce any right or remedy in any manner the Municipality deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the Municipality.

## 12 ARBITRATION

12.1 Subject to any other provisions of this Agreement to the contrary, if any dispute or difference between the Parties shall arise under this Agreement, either party may give to the other notice of such dispute or difference and refer such dispute or difference to arbitration in accordance with the provisions of this Agreement.

12.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Municipality and the Developer, and his decision shall be final and binding. In the event that the Municipality and the Developer shall fail to agree on an arbitrator within Forty-eight (48) hours of either party giving to the other party notice of a dispute or difference pursuant to Section 12.1 hereof, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

12.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the Municipality or the Developer, or proportionately by both the Municipality and the Developer, depending upon their respective fault as found by the arbitrator.

12.4 Nothing in this Agreement shall authorize any reference to arbitration as to any matter or question which under this Agreement is expressly or by implication required or permitted to be decided by the Municipality, the Committee of the Whole or the Council of the Municipality or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the Municipality, the Committee of the Whole or the Council of the Municipality. In any such instance the discretion, decision, opinion or determination of the Municipality, the Committee of the Whole or the Council of the Municipality, as the case may be, shall be final and binding upon the Developer.

## 13 INSURANCE, INDEMNITY AND SECURITY

13.1 The Developer shall indemnify and save harmless the Municipality from any and all losses, costs (including, without restriction, all legal costs on a solicitor and his own client full indemnity basis), damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.

13.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance in the amount of \$2,000,000.00 per occurrence, which insurance shall name the Municipality as an additional insured (as its interest may appear, including with respect to any and all operations by the Developer or its contractors upon or affecting property owned by, or under the care, control and management of, the Municipality), include extended coverage and malicious damages endorsement (as per industrial standard) insuring the full value of the work undertaken by the Developer and require that the Municipality shall receive Thirty (30) days notice of change or cancellation.

13.3 Upon execution of this Agreement and in any event prior to the Commencement of Construction and registration of the Plan of Subdivision, the Developer shall deliver and deposit with the Municipality security in an amount equal to One Hundred Percent (100%) of the estimated costs of constructing and installing all of the Municipal Improvements and the letter of credit or the pledge of the cash security deposit shall be in terms and form acceptable to the Municipality's solicitor. The estimated cost for the Municipal Improvements are as set out in Schedule "F" of this Agreement, based on actual tenders or cost estimates provided by the Developer's engineer or consultant and approved by the Municipality.

13.4 The security referred to above shall consist of an "Irrevocable Letter of Credit" issued by a "Chartered Bank" or the "Treasury Branch", or such other security as may be approved by the solicitors for the Municipality, or a cash security deposit, or a combination thereof, in the amount of the security required from time to time as described above; PROVIDED, that all security shall be in terms and form to be approved by the Municipality's solicitors. Provided further that the Developer covenants and agrees that upon the occurrence of a default on the part of the Developer under this Agreement, the Municipality may, at its option and without limiting any of its other remedies,



accelerate and require payment in full of the security amount that would otherwise be required for a cash security deposit account, and such obligation shall be secured by the mortgage charge and/or encumbrance.

13.5 Any Irrevocable Letter of Credit provided as security by the Developer shall contain provisions for either:

- (a) a covenant by the issuer that if the issuer has not received a release from the Municipality Sixty (60) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of One (1) year; or
- (b) a right on the part of the Municipality to draw upon the full amount of the Irrevocable Letter of Credit, or any portion thereof, in the event that the Municipality has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least Sixty (60) days prior to the expiry of the security.

13.6 In regards to security providing under this Agreement, the following terms and conditions shall apply:

- (a) any cash security deposit, Irrevocable Letter of Credit, or other security required or otherwise provided by the Developer to the Municipality pursuant to this Agreement is hereby assigned and pledged to the Municipality as security for the performance of the Developer's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);
- (b) the Developer acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and
- (c) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the Municipality, the obligation of the Municipality or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including, without restriction, any cash deposit) is subject to the Municipality's right to deduct or set off any amount which may be due by the Developer to the Municipality or the amount of any claim by the Municipality against the Developer under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Developer is in breach or default of any provision of this Agreement or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the Municipality may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the Municipality in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Developer under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.

13.7 In the event that the irrevocable letter of credit shall expire prior to the date for release of the security under this Agreement, and the Developer has failed to provide a replacement or letter of credit or evidence of renewal satisfactory to the Municipality not less than Thirty (30) days prior to that expiration date, the Municipality may draw upon all or any portion of the security and hold or apply the proceeds in the same manner as a cash security deposit. In the event that the Municipality negotiates or calls upon the security the Municipality may, at its option and discretion, use any funds thereby obtained in any manner the Municipality deems fit to discharge the obligations of the Developer pursuant to this Agreement.

13.8 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Maintenance Period for the Municipal Improvements prescribed by this Agreement), maintain in full force and effect all security and liability insurance prescribed herein.

13.9 In the event that the Municipality is of the opinion that:

- (a) a default by the Developer has not been rectified by the Developer in accordance with the provisions of this Agreement;

- (b) a default by the Developer has been rectified by the Municipality in accordance with the provisions of this Agreement and the Developer has failed to pay the costs and expenses of such rectification within Thirty (30) days after receipt from the Municipality of an account therefore;
- (c) emergency repair work has been done to Municipal Improvements by the Municipality in accordance with the provisions of this Agreement and the Developer fails to pay the costs and expenses of such repair work within Thirty (30) days after receipt from the Municipality of an account therefore;
- (d) the Developer by any act or omission is in default of any term, condition or covenant of this Agreement; or
- (e) the security to be provided by the Developer to the Municipality pursuant to this Agreement is due to expire within a period of Sixty (60) days and the Developer has not deposited with the Municipality a renewal or replacement of such security in terms and form acceptable to the Municipality's solicitors;

the Municipality may invoke the provisions of this Section, and make demands as payee and beneficiary under the security provided by the Developer to the Municipality pursuant to the requirements of this Agreement.

13.10 Any security or insurance herein required to be deposited by the Developer may be required to be increased or decreased by the Municipality upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the Municipality in its discretion that the security or insurance deposited is excessive or insufficient in relation to the costs or protection to the Municipality, for which security or insurance has been provided. Without limiting the generality of the foregoing the Municipality may require an increase in security if the Developer has failed to comply with the construction timetable approved under Section 3.1, or if the Developer has been issued a notice of default under Section 11.

13.11 The amount of security and insurance to be provided by the Developer to the Municipality may, in the sole and absolute discretion of the Municipality, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements, or any of them, so completed; PROVIDED THAT, after the issuance of any Construction Completion Certificates and prior to the issuance of Final Acceptance Certificates for all of the Municipal Improvements, the security maintained by the Municipality shall not be less than:

- (a) Fifteen (15%) percent of the estimated costs of the Municipal Improvements which were the subject of the Construction Completion Certificate; and
- (b) One Hundred (100%) percent of the estimated costs of constructing and installing all of the Municipal Improvements yet to be completed, being all those portions of the Municipal Improvements for which no Construction Completion Certificate has been issued.

13.12 The security requirement contained within and provided by the Developer is without prejudice to the Developer's responsibility under this Agreement. Nothing shall prevent the Municipality from demanding payment or performance by the Developer in excess of the required security, and without having to call upon or otherwise exhaust its remedies in respect of the required security prior to making such demand.

#### 14 DELIVERY OF DOCUMENTS TO MUNICIPALITY

14.1 The Developer shall, within SIX (6) months following issuance of the Construction Completion Certificate, deliver to the Municipality all inspection and testing records and "as built" Plans and records, in a form and to standards specified by the Municipality which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the Municipality. The Developer shall, before application for the Construction Completion Certificate, provide the Municipality with the actual costs and sufficient supporting documentation of all Municipal Improvements located on, in or under Public Properties (including utility rights-of-way and easements) in order that the Municipality is able to meet its accounting and reporting requirements for the acquisition of Tangible Capital Assets. Sufficiency of supporting documentation and costs information shall be determined by the Municipality and its auditors.

15 COMPLIANCE WITH LAW

15.1 The Developer shall, at all times during the construction, installation, maintenance, repair and/or replacement of the Municipal Improvements, comply fully with all terms, conditions, provisions, covenants and details relating to this Agreement, including as may be set out in the Plans as approved by the Municipality, as may otherwise be required pursuant to this Agreement, or as may be agreed upon in writing between the Municipality and the Developer.

15.2 The Developer shall at all times comply with all legislation, regulations and municipal bylaws and resolutions relating to the development of the Development Area by the Developer. The provisions of this Agreement shall be additional to and not in substitution for any law, whether federal, provincial or municipal, prescribing requirements relating to construction standards and the granting of development, building and occupancy permits. This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the Municipality, and it is understood and agreed that the Developer shall obtain and produce to the Municipality within Twenty-four (24) months of the endorsement of this Agreement all approvals and permits which may be required by the Municipality or any governmental authority.

15.3 If any provision hereof is contrary to law, the same shall be severed and the remainder of this Agreement shall be of full force and effect.

16 GENERAL

16.1 The Agreement shall be governed by the laws of the Province of Alberta.

16.2 The parties to this Agreement shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge the respective obligations of the parties.

16.3 A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not, of itself, constitute a waiver of any subsequent breach of such covenant or provision or any other covenant or provision of this Agreement.

16.4 Whenever under the provisions of this Agreement any notice, demand or request is required to be given by either party to the other, such notice, demand or request may be given by delivery by hand to, or by registered mail sent to, the respective addresses of the parties being:

**TOWN OF FORT MACLEOD**  
P.O. Box 1420  
Fort MacLeod, Alberta T0L 0Z0

Phone: (403) 553-4425  
Fax: (403) 553-2426  
Attention: Chief Administrative Officer

[DEVELOPER NAME]

address  
Fort Macleod, Alberta, T0L 0Z0

Phone: (403) [REDACTED]  
Attention: [REDACTED]

16.5 The Developer covenants and agrees that in addition to the provisions contained in the text of this Agreement, the Developer shall be bound by the additional provisions found in the Schedules of this Agreement as if the provisions of the Schedules were contained in the text of this Agreement.

16.6 The Developer acknowledges and agrees that the Municipality shall be at liberty, pursuant to the Municipal Government Act (Alberta), upon the execution of this Agreement, to file at the Land Titles Office for the North Alberta Land Registration District a caveat against the Development Area and against the undeveloped portion of the lands described in Schedule "A" for purposes of protecting the Municipality's interests and rights pursuant to this Agreement.

16.7 Notwithstanding anything contained within this Agreement, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the Municipality for the performance by the Developer of all the Developer's obligations as set forth in this Agreement; AND FURTHER the Developer acknowledges, understands and agrees that the Municipality shall not be obligated in any circumstances whatsoever to commence or prosecute any

claim, demand, action or remedy whatsoever against any person with whom the Developer may contract for the performance of the Developer's obligations.

16.8 This Agreement shall not be assignable by the Developer without the express written approval of the Municipality. Such approval shall be subject to Section 16.9 and may be withheld by the Municipality in its discretion. This Agreement shall enure to the benefit of, and shall remain binding upon (jointly and severally, where multiple parties comprising the Developer), the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of all individual parties and their respective estates, and shall enure to the benefit of, and shall remain binding upon, all successors and assigns (if and when assignment permitted herein) of all corporate parties.

16.9 It is understood between the Municipality and the Developer that no assignment of this Agreement by the Developer shall be permitted by the Municipality unless and until:

- (a) the proposed assignee enters into a further agreement with the Municipality whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Developer as set forth in this Agreement; and
- (b) the proposed assignee has deposited with the Municipality all insurance and security as required by the terms of this Agreement.

16.10 Time shall in all respects be of the essence in this Agreement.

16.11 The Developer shall be responsible for and within thirty (30) days of the presentation of an account, pay to the Municipality all legal and engineering costs, fees, expenses and disbursements incurred by the Municipality through its solicitors and engineers for all services rendered in connection with the preparation, fulfillment, execution and enforcement of this Agreement.

16.12 In the event that either party is rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such party shall give written notice to the other party stating full particulars of such force majeure. The obligation of the party giving such notice shall be suspended during the duration of the delay resulting from such force majeure, to a maximum of One Hundred and Eighty (180) days. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances of a general nature affecting an industry critical to the performance of the Work, acts of the Queen's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the party claiming a suspension, which, by the exercise of due diligence, such party shall not have been able to avoid or overcome; provided however, the term "force majeure" does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

17 EXECUTION OF AGREEMENT

17.1 The Developer hereby acknowledges that it is hereby executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Developer is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Developer is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals, duly attested by the hands of their respective proper officers in that behalf, as of the day and year first above written.

**TOWN OF FORT MACLEOD**

Per: \_\_\_\_\_  
Chief Administrative Officer

**[developer name]**

Per: \_\_\_\_\_ (c/s)  
Chief Executive Officer

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness  
[Name]

**SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS**

[insert legal description of lands]

DRAFT

**SCHEDULE "B" - DEVELOPMENT AREA**

**[insert map of approved development area]**

DRAFT

## SCHEDULE "C" - MUNICIPAL IMPROVEMENTS

1. Municipal Improvements – Subject to confirmation from the Municipality with respect to either the current existence of any of the following satisfactory to the Municipality, or confirmation that the Municipality has assumed responsibility to initially construct and install them, Municipal Improvements may include the following to be constructed in and adjacent to the Development Area.

- (a) all sanitary sewer systems including holding tanks, service lines, manholes, mains and appurtenances;
- (b) all drainage systems, including storm sewers, storm sewer connections, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds, catch basins, catch basin leads, manholes and associated works, all as and where required by the Municipality;
- (c) all water wells, pumps and lines, including all fittings, valves, and hydrants and looping as required by the Municipality, in order to safeguard and ensure the continuous and safe supply of water in the Development Area;
- (d) all concrete curb and gutter, subgrade, base gravel and base asphalt, sidewalks and sub-grade, base and asphaltic pavement; and all surface asphalt;
- (e) all lighting systems for streets, walkways, parking areas and Public Properties as and where required by the Municipality;
- (f) such electrical conduit as may be required by the Municipality for the installation of traffic control signals and traffic control devices;
- (g) all traffic signs, street signs, development identification signs, zoning signs, and directional signs, berming and noise attenuation devices all as and where required by the Municipality; and
- (h) all walkway systems and landscaping on both private property and Public Property which are to be constructed and installed to the satisfaction of the Municipality, and in accordance with the Plans for landscaping to be submitted for the approval of the Municipality; and
- (i) such construction or development of streets and lanes as may be required by the Municipality; including, but in no manner limited to, a second or temporary access for vehicular traffic from the Development Area;
- (j) the restoration of all Public Properties to the Municipality's satisfaction which are disturbed or damaged in the course of the Developer's work;
- (k) the relocation, to the Municipality's satisfaction, of all existing utilities and Municipal Improvements as required by the Municipality as a result of the installation and construction of other utilities and Municipal Improvements pursuant to this Agreement;
- (l) the establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the Municipality throughout and adjacent to the Development Area;
- (m) public information signs, of a size and location to be approved by the Municipality, and to contain such public information regarding the completion of services and the completion of the construction of other facilities as may be required by the Municipality in order to provide proper and complete and up to date information to proposed purchasers and residents within the Development Area;
- (n) such uniform fencing, (noise attenuation, or screen) either permanent or temporary, of a standard and of a design satisfactory to the Municipality, all of which is to be constructed and located to the satisfaction of the Municipality; and
- (o) all utilities including electricity, natural gas, and telecommunication services. Such utilities to be provided in a location and a standard to be approved by the appropriate utility company and the Municipality.

2. Essential Services – Essential Services shall consist of the following Subsections (a), (b), (c), (d), (e), (f), (g), (i), and (o) of Section 1 above.



## SCHEDULE "D" - ADDITIONAL PROVISIONS

In addition to the terms, covenants and conditions contained within this Agreement, the Developer shall be responsible for the satisfaction of the following additional conditions:

1. Construction Timetable - Notwithstanding Section 4.1, the Developer shall, on or before the \_\_\_ day of \_\_\_\_\_, 20 \_\_, commence construction and installation of the Municipal Improvements within the Development Area and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within the Development Area on or before the \_\_\_ day of \_\_\_\_\_, 20 \_\_.

**[DRAFT NOTE: INSERT ANY ADDITIONAL SITE SPECIFIC INFRASTRUCTURE REQUIREMENTS PER ENGINEERING OR PLANNING RECOMMENDATIONS OR GOVERNMENT AGENCY CIRCULATIONS].**

**SCHEDULE "E" - OVERSIZE COSTS, LEVIES AND FEES**

**A. Developer Contributions and Off-Site Levies**

1. The Developer shall pay the following as servicing contributions, pursuant to the provisions of this Agreement and Sections 650 or 655 of the MGA:

Water Offsite Levy	= \$4,535/acre x ____ acres	= \$ _____
Sanitary Sewer Offsite Levy	= \$8,575/acre x ____ acres	= \$ _____
Storm System Offsite Levy	= \$1,195/acres x ____ acres	= \$ _____
Arterial Roads Offsite Levy	= \$5,695/acre x ____ acres	= \$ _____

TOTAL OFFSITE LEVIES = \$ \_\_\_\_\_

2. Payment – the Developer shall pay the amounts described in this Schedule as and when required within Sections 8 and 9 of this Agreement.

**B. Approval & Inspection Fees**

1. Fees and Calculation – the approval and inspection fees currently due and payable by the Developer pursuant to Section 9 of this Agreement are as follows:

***[DRAFT NOTE: Insert Current Fees, Refer to General Fees Bylaw, or Leave Blank as Section 9 Will Apply]***

2. Payment – the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 9 of this Agreement.

***[DRAFT NOTE: Insert Special Payment Terms or Leave Blank Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]***

**SCHEDULE "F" - SECURITY**

1. For purposes of calculating the security required to be deposited by the Developer pursuant to Section 13, and subject to the provisions below, the cost estimates for the construction and installation of the Municipal Improvements are as follows:

<u>Underground Improvements</u>	
Water Distribution System	\$
Drainage Systems (including Storm Sewer System)	\$
Sanitary Sewer System	\$
Storm Sewer System	\$
Engineering and Contingency	\$
Underground Subtotal	\$
 <u>Surface Improvements</u>	
Earthworks and Berming	\$
Sidewalk, Curb and Gutter	\$
Granular Base	\$
Asphalt	\$
Fencing and Landscaping	\$
Signage	\$
Engineering and Contingency	\$
Above Ground Subtotal	\$
 Shallow Bury	
Utilities Subtotal	\$
 Servicing contributions and/or Off-site Levies	\$
 Specific Fees or Charges	\$
 Total Value of all Municipal Improvements & Services	\$
 Total Value of Security required for Municipal Improvements	\$
 Total Value of Other Security Required	\$
<b>Total Value of Security Required</b>	<b>\$</b>

2. The Parties hereby represent, warrant, covenant and agree that all of the costs for the construction and installation of the Municipal Improvements for the Development Area, as set out above, are estimates, and as such shall in no way limit or restrict the Developer’s responsibility under this Agreement, nor in any way whatsoever establish or otherwise suggest a maximum amount of the Developer’s obligations under this Agreement.
3. Where estimates are not available as at the date of this Agreement, the Developer shall provide such estimates as contemplated within Section 13, and the amount of the security shall be established by the Municipality at that time.
4. In the event that any of the actual or tendered costs for the construction and installation of the Municipal Improvements for the Development Area are higher or lower than as estimated above, the security to be provided by the Developer shall be adjusted in accordance with Section 13 so as to be based upon those actual or tendered costs.

## **SCHEDULE "G" - INAPPLICABLE PROVISIONS**

The parties agree that the following terms, covenants and conditions contained within this Agreement shall not apply:

SCHEDULE "H" – CONSTRUCTION COMPLETION CERTIFICATE



TOWN OF FORT MACLEOD  
CONSTRUCTION COMPLETION CERTIFICATE

Date of Application: \_\_\_\_\_

**DEVELOPMENT INFORMATION**

Development Area: \_\_\_\_\_

Developer: \_\_\_\_\_

Contractor: \_\_\_\_\_

Municipal Improvement(s): \_\_\_\_\_

Pursuant to the Development Agreement, I \_\_\_\_\_ of the Firm \_\_\_\_\_  
"Consulting Engineers" hereby certify that of the above date, the said Municipal Improvement is complete and in  
accordance with the Town of Fort Macleod design standards as set out in the Development Agreement, and I hereby  
recommend this Municipal Improvement for approval.

Date: \_\_\_\_\_

\_\_\_\_\_  
Project Engineer (Consultant Engineering Firm)

**APPROVAL INFORMATION**

Conditionally Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Rejected On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Reason for Conditional Approval or Rejection: \_\_\_\_\_

**CONDITIONAL APPROVAL OR REJECTION DECLARATION**

I HEREBY CERTIFY THAT THE ITEMS LISTED FOR CONTIONAL APPROVAL OR REJECTION HAVE BEEN CORRECTED

Date: \_\_\_\_\_

\_\_\_\_\_  
Project Engineer (Consultant Engineering Firm)

Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

**MAINTENANCE PERIOD**

Maintenance Period to Start Date: \_\_\_\_\_

Maintenance Period to End: \_\_\_\_\_

SCHEDULE "I" – FINAL ACCEPTANCE CERTIFICATE



TOWN OF FORT MACLEOD  
FINAL ACCEPTANCE CERTIFICATE

Date of Application: \_\_\_\_\_

**DEVELOPMENT INFORMATION**

Development Area: \_\_\_\_\_

Developer: \_\_\_\_\_

Contractor: \_\_\_\_\_

Municipal Improvement(s): \_\_\_\_\_

Pursuant to the Development Agreement, I \_\_\_\_\_ of the Firm \_\_\_\_\_  
"Consulting Engineers" hereby certify that of the above date, the said Municipal Improvement is complete and in  
accordance with the Town of Fort Macleod design standards as set out in the Development Agreement, and I hereby  
recommend this Municipal Improvement for approval.

Date: \_\_\_\_\_

\_\_\_\_\_  
Project Engineer (Consultant Engineering Firm)

**APPROVAL INFORMATION**

Conditionally Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Rejected On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

Reason for Conditional Approval or Rejection: \_\_\_\_\_

**CONDITIONAL APPROVAL OR REJECTION DECLARATION**

I HEREBY CERTIFY THAT THE ITEMS LISTED FOR CONTIONAL APPROVAL OR REJECTION HAVE BEEN CORRECTED

Date: \_\_\_\_\_

\_\_\_\_\_  
Project Engineer (Consultant Engineering Firm)

Approved On: \_\_\_\_\_

\_\_\_\_\_  
Town of Fort Macleod – Director of Operations

**MAINTENANCE PERIOD**

Maintenance Period to End: \_\_\_\_\_

## SCHEDULE "J" – SUBDIVISION/DEVELOPMENT PROCESS & CHECKLIST

Without restricting in any manner whatsoever the terms, covenants, conditions and requirements of this Agreement, the subdivision and/or development contemplated within this Agreement shall proceed in the following manner, and subject to the satisfaction of the following requirements:

### **A. Information**

1. Inspection/Review Fees – prior to commencing any inspections or review of the Developer's Plans or other information, the Developer shall deliver to the Municipality the required inspection and/or review fees (**Reference Schedule "E" Section 2**).
2. Plans – the Developer shall submit to the Municipality all Plans requested or otherwise required by the Municipality to show the Municipal Improvements to be constructed and installed by the Developer, which shall be prepared in accordance with the terms of this Agreement (**Reference Sections 3, 4 and 14**).
3. Additional Information – the Developer shall assemble and submit to the Municipality such additional information or documentation as may be required by the Municipality to review and assess the Developer's Plans, or otherwise carry out the provisions of this Agreement including, without restriction, the Developer's construction timetable (**Reference Sections 3, 4, 7, 8, 9, and 14**).

### **B. Approvals**

1. Alberta Infrastructure and Transportation – where applicable, must be received and confirmed in writing.
2. Alberta Environment – where applicable, must be received and confirmed in writing.
3. Plan Approval – subject always to the receipt of the foregoing, the Municipality may approve final Plans prepared and submitted by the Developer or the Developer's Consultant.
4. Federal licenses, certifications or approvals – where applicable, must be received and confirmed in writing.  
Subject to the balance of the provisions of this Agreement, upon approval of all applicable Plans by the Municipality, the Developer may proceed with Plan of Subdivision endorsement and/or Commencement of Construction as contemplated within this Schedule and this Agreement.

### **C. Endorsement/Registration and Commencement of Construction**

1. Checklist – prior to endorsement and registration of any Plan of Subdivision, or the Commencement of Construction of any Municipal Improvements or other improvements upon or within the Development Area by the Developer, the Developer shall provide and/or the Municipality shall confirm the following:

- Rezoning** - receipt/confirmation of rezoning, if applicable (**Reference Section 2.6(a)**);
- LUB Amendments** - receipt/confirmation of amendments to Land Use Bylaw, if applicable (**Reference Section 2.6(b)**);
- Statutory Plans/Amendments** - receipt/confirmation of passage of any statutory plans or amendments, if applicable (**Reference Section 2.6(c)**);
- Provincial Approvals** - receipt/confirmation of approvals of:
  - Alberta Infrastructure and Transportation;
  - Alberta Environment; and
  - any other Provincial Department, as applicable; (**Reference Section 2.6(d)**);
- Conditions** – receipt/confirmation of satisfaction of all conditions contained within the applicable subdivision approval or development permit (**Reference Section 2.6(f)**);
- Plan Approval** - receipt of final approved Plans (**Reference Section 2.6(e)**);
- Registered owner** – confirmation that the registered owner of the lands is the Developer (**Reference Section 2.6(g)**);
- Construction Timetable** - receipt/confirmation of Developer's construction timetable, if applicable (**Reference Section 3.1**);

- Other Utilities** - confirmation of commitments to install electrical power, natural gas, and telephone services within and to the Development Area including, without restriction, confirmation of payment of costs of utility providers (**Reference Section 7**):
  - Electrical Power;
  - Natural Gas; and
  - Telephone.
- Utility Easements/Instruments** - receipt/confirmation of all utility easements and other instruments (**Reference Section 7**), comprised of:
  - Receipt of executed instruments; and
  - Receipt of either:
    - (a) confirmation of registration of all registerable instruments at the Land Titles Office; or
    - (b) confirmation of registration requirement upon or within Plan of Subdivision endorsement, or written solicitor's undertaking to complete registration concurrent with Plan of Subdivision;
- Oversized Municipal Improvements** - confirmation of oversizing to be constructed by Developer (**Reference Section 8 and Schedule "E"**);
- Oversizing/Shared Costs** - payment of oversizing/shared costs contribution (**Reference Section 16 and Schedule "E"**);
- Off-Site Levies** - payment of Off-Site Levies (**Reference Section 9 and Schedule "E"**), or receipt of separate security for any deferred payment of Off-Site Levies;
- Inspection/Review/Approval Fees** - payment of all Inspection/Review/Approval Fees not collected prior to review and approval of Plans (**Reference Schedule "E"**);
- Insurance** - receipt/confirmation of all required insurance coverage, additional insured notations, riders, and additional terms (**Reference Section 13**);
- Security** - receipt/confirmation of all required security (**Reference Section 13 and Schedule "F"**); and
- Caveat** - receipt of either:
  - (a) confirmation of registration of Caveat Re: Development Agreement at the Land Titles Office; or
  - (b) confirmation of registration requirement upon or within Plan of Subdivision endorsement, or written solicitor's undertaking to complete registration concurrent with Plan of Subdivision;

2. Public Property – prior to the Commencement of Construction of any Municipal Improvements or other improvements upon or within or upon any Public Properties by the Developer, the Developer shall provide and/or the Municipality shall confirm the items referenced within **Section 5**.

#### **D. Inspections & Certificates**

1. Pre-Occupancy Checklist - prior to occupancy of the Development Area, the Developer shall provide and/or the Municipality shall confirm the following, at minimum:

- Operational water** – confirm that water service is operational (for fire protection) prior to issuance of building permits or development permits for buildings on lots (**Reference Schedule "C"**);
- Essential Services** – confirm that all Essential Services have been installed and rendered operative in any part of the Development Area, except as otherwise permitted in writing by the Municipality (**Reference Schedule "C"**);
- Satisfactory test results** – receipt/confirmation of all required test results, including: t.v. camera video inspection of all storm and sanitary sewer lines (**Reference Section 5**);

2. Developer Notice – receipt/confirmation of Developer written claim that the Municipal Improvements for the Development Area have been constructed and installed in accordance with the requirements of this Agreement (**Reference Section 5.2**).

3. Municipality Notice - within forty five (45) days of receipt of Developer Notice, Municipal notice to the Developer in writing of: acceptance (by the issuance of a Construction Completion Certificate), rejection of the Municipal Improvements, or inability to inspect (**Reference Section 5.2**).

4. Pre-Completion Certificate Checklist – prior to acceptance by the Municipality of the Municipal Improvements and prior to issuance of Construction Completion Certificates, the Developer shall provide and/or the Municipality shall confirm the following:



- Consultant's statement** – receipt of Developer's Consultant statement under seal confirming: adequate periodic inspection services and completion of work in a good and workmanlike manner and in accordance with the Plans, accepted engineering and construction practices, and the Design Standards (**Reference Section 4.9**);
- Satisfactory test results** – receipt of all required test results, including: t.v. camera video inspection of all storm and sanitary sewer lines (**Reference Section 4.10**);
- Registration** - receipt/confirmation that all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the Municipality (**Reference Section 7**);
- Public Properties** – confirm that all Public Properties which have been disturbed or damaged have been fully restored by the Developer (**Reference Section 5.1**);
- Manuals** - receipt/confirmation of any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements (**Reference Section 5.1**).

5. Construction Completion Certificate and Guarantee Period – upon the issuance of a Construction Completion Certificate, the Municipality assumes normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvements excluding Landscaping, fencing and facilities owned by private utility companies (**Reference Section 5**) and the Maintenance Period shall commence (**Reference Section 6**).

6. Developer Notice – receipt/confirmation of Developer written notice, not more than Ninety (90) days nor less than Sixty (60) days prior to expiration of any Maintenance Period, of expiration of the Maintenance Period and request of Final Acceptance of Municipal Improvements. The Developer's notice shall be accompanied by a list of any deficiencies (**Reference Sections 5.8**).

7. Municipality Notice or Final Acceptance Certificate - within Sixty (60) days of receipt of Developer Notice, Municipal notice to the Developer in writing of: deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements, or inability to inspect (**Reference Section 5.8**). The Municipality will issue the Final Acceptance Certificate (**Reference Section 5.11 and 11.5**), if:

- Inspection** - no deficiencies exist upon inspection; and
- Notice of oversizing costs** - the Developer has provided the Municipality with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land adjacent to the Development Area and in other benefiting areas for approval by the Municipality (**Reference Section 8**).

#### **E. Cost Recoveries & Deferred Contributions**

1. Levies Cost Recovery and Deferred Contribution - if levies have been deferred by agreement, then either upon One (1) year following the date of the execution of this Agreement or upon an alternate triggering of their payment pursuant to written agreement, the Municipality may demand and the Developer shall pay the levies, plus interest (**Reference Section 9.1**); alternatively, these costs may be collected at the development permit stage.

2. Oversizing Cost Recovery and Deferred Contribution - if oversizing costs have been deferred by agreement until completion of the works or some other agreed upon event, then upon completion or the event occurring, the Municipality may demand and the Developer shall pay its proportionate share of the costs that the Developer agreed to pay on a deferred basis, plus interest (**Reference Section 9.1**); alternatively, these costs may be collected at the development permit stage.

3. Endeavour to Assist - the Municipality shall make it a term of any Development Agreement between the Municipality and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and shall require payment of the same by such owners as a condition of the use of the Municipal Improvements or as a condition of the approval of any development applications. Such endeavor to assist shall remain in place for 10 years from the date of the Development Agreement (**Reference Section 8**).

4. Municipal Notice of Benefiting Development - in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the Municipality is advised of any such development, the Municipality will endeavour to notify the Developer in writing of the intended development (**Reference Section 8**).

## **F. Final Release of Security**

1. Checklist for Reduction of Security or Insurance - prior to reduction of the amount of security and/or insurance to be provided by the Developer to the Municipality, the Developer shall provide and/or the Municipality shall confirm the following:

- Respecting Construction Completion for Municipal Improvements** - receipt/confirmation of a Construction Completion Certificate or Final Acceptance Certificate, provided that prior to the issuance of Final Acceptance Certificates for all of the Municipal Improvements, the security maintained by the Municipality shall not be less than the amounts set out in Section 13.3;
- Deferred Cost Recovery** – security taken for deferred cost recovery (e.g. for oversizing, levies, or fees) shall not be released until all of those costs have been paid (plus interest) by the Developer in accordance with the agreement for deferral (**Reference Sections 9.1, and Schedules "E"**)
- Charge Against Land** - the charge, mortgage, and encumbrance registered against the Developer's Lands will not be discharged until all of the Developer's obligations under this Agreement, including all deferred obligations or payments, have been completed.

**AFFIDAVIT OF EXECUTION**  
*[To Be Sworn by Witness if Developer is an Individual]*

CANADA	)	I, _____
	)	
PROVINCE OF ALBERTA	)	of the _____ of _____, in
	)	
TO WIT:	)	the Province of Alberta,
	)	
	)	MAKE OATH AND SAY THAT:

1. I WAS PERSONALLY present and did see \_\_\_\_\_ named in the within (or annexed) Instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. THAT THE SAME was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.

3. THAT I KNOW the said \_\_\_\_\_ and he/she is, in my belief, of the full age of eighteen years.

SWORN BEFORE ME at the	)	
	)	
_____ of _____, in	)	
	)	
the Province of Alberta,	)	
	)	
this ____ day of _____, 20__.	)	
	)	_____
	)	

\_\_\_\_\_  
 A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

**AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY**  
*[To Be Sworn if Developer is a Corporation with no Corporate Seal]*

CANADA ) I, \_\_\_\_\_  
 )  
 PROVINCE OF ALBERTA ) of the \_\_\_\_\_ of \_\_\_\_\_, in  
 )  
 TO WIT: ) the Province of Alberta,  
 )  
 ) MAKE OATH AND SAY THAT:

1. That I am an officer, director or agent of \_\_\_\_\_ named in the within or annexed instrument.
2. That I am authorized by \_\_\_\_\_ to execute the instrument without affixing a corporate seal.

SWORN BEFORE ME at the )  
 )  
 \_\_\_\_\_ of \_\_\_\_\_, in )  
 )  
 the Province of Alberta, )  
 )  
 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. )  
 ) \_\_\_\_\_

\_\_\_\_\_  
 A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

**AFFIDAVIT OF EXECUTION**

CANADA ) I, \_\_\_\_\_  
 )  
 PROVINCE OF ALBERTA ) of the \_\_\_\_\_ of \_\_\_\_\_, in  
 )  
 TO WIT: ) the Province of Alberta,  
 )  
 ) MAKE OATH AND SAY THAT:

1. I WAS PERSONALLY present and did see \_\_\_\_\_ named in the within (or annexed) Instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
2. THAT THE SAME was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I KNOW the said \_\_\_\_\_ and he/she is, in my belief, of the full age of eighteen years.

SWORN BEFORE ME at the )  
 )  
 \_\_\_\_\_ of \_\_\_\_\_, in )  
 )  
 the Province of Alberta, )  
 )  
 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. )  
 ) \_\_\_\_\_

\_\_\_\_\_  
 A COMMISSIONER FOR OATHS IN AND FOR ALBERTA