



TOWN POLICY

POLICY NUMBER: 6602

REFERENCE:

Council 380.09.11
Council 222.07.13

ADOPTED BY:

Town Council
7 September 2011
17 July 2013

PREPARED BY: Planning & Development

DATE: 7 July 2004

TITLE: Development Agreement Policy

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Policy Statement:

The Town of Strathmore will provide development and subdivision agreements as the basis for approvals of development and subdivision of land.

1. Definitions

- 1.1 Council means the Council of the Town of Strathmore, in the Province of Alberta.
- 1.2 Developer means a landowner, or his agent, who intends the new or revised development of land by subdivision.
- 1.3 Development means a change in use or intensity of use of land.
- 1.4 Development Agreement means an agreement between a Developer and the Town.
- 1.5 Infrastructure means the systems under the control of the Town necessary for water, sanitary sewer, storm sewer and motorized vehicle transportation and all appurtenances thereto.
- 1.6 Subdivision means the division of a title or lot into two or more titles or lots.

- 1.7 CAO shall mean the Chief Administrative Officer of the Town or his designate as employed or retained by the Town.

2. Responsibilities

2.1 Council

- 2.1.1 To review proposed development and subdivision as required as an approving authority in accordance with the Land Use Bylaw.
- 2.1.2 To review and make changes to the development agreement as required or as recommended by the Planning department.

2.2 CAO

- 2.2.1 To provide comment on all development agreements to the Planning and Infrastructure departments as and when requested or at the CAO's request.
- 2.2.2 To be the signing authority for all Development Agreements or to delegate signing authority where development or subdivision has been approved.
- 2.2.3 To sign all documents and contracts, and to authorize all payments or services provided for, by, or as a result of, the conditions of the development agreement or to delegate said authority.

2.3 Engineering and Operations department

- 2.3.1 To provide comment on all development and subdivision referred to the department by the CAO or the Planning Department.

2.4 Planning and Development department

- 2.4.1 To prepare a development agreement based on this policy, negotiations with the Developer, direction by Council and the CAO, Off-Site Levy Bylaw(s) and any other relevant direction or documentation.
- 2.4.2 To submit the development agreement to Council for approval, where substantial changes or a departure from the standard agreement is requested by the developer or recommended by administration.

2.4.3 To be the signing authority for all Development Agreements where development or subdivision has been approved.

2.4.4 To sign all documents and contracts, and to authorize all payments or services provided for, by, or as a result of, the conditions of the development agreement.

3. Basis for Discussion

3.1 This Policy shall form the basis for discussion with a developer and any or all of the requirements of the Development Agreement, and shall be applied to any development or subdivision that has a condition of approval that requires the Developer to enter into a Development Agreement with the Town.

3.2 Where the Town considers that a development or subdivision is of a nature that requires special conditions or requirements in addition to those contained within the agreement, those extra conditions or requirements shall form part of the agreement.

4. Development Agreement

4.1 The Agreement attached as Schedule "A", dated August 31, 2011 shall be the Development Agreement for the Town as may be modified to provide for subsections 4.2 and 4.3.

4.2 When the developer services a subdivision prior to registration of the plan of subdivision, the developer will be required to have Construction Completion Certificates issued for all municipal underground and surface infrastructure including submission of As-built drawings and a performance security deposit of TEN PERCENT (10%) of the construction costs of all municipal improvements at the time the subdivision plan is submitted for endorsement.

4.3 When the developer wishes to register the subdivision prior to the installation of municipal infrastructure, the developer will be required to have a performance security deposit of ONE HUNDRED PERCENT (100%) of the construction costs of all municipal improvements at the time the subdivision plan is submitted for endorsement.

4.4 Offsite Levies will be paid at the time of endorsement of the subdivision by the Town or, at the option of the Developer, prorated over the lots created in the Subdivision area and collected prior to the issuance of a Development Permit to develop the individual lot. The prorated option

Offsite Levies that are unpaid, will be updated for the Development when the Offsite Levy Bylaw is updated.



**DEVELOPMENT AGREEMENT
UTILITY INSTALLATION PRIOR TO
PLAN OF SUBDIVISION REGISTRATION**

BETWEEN:

TOWN OF STRATHMORE

AND

Subdivision

Phase

File

Area

Date

,

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- SCHEDULE "A"** - DEVELOPMENT AND SUBDIVISION AREAS
- SCHEDULE "B"** - SUBDIVISION APPROVAL
- SCHEDULE "C"** - DESIGN STANDARDS AND PROCEDURES
- SCHEDULE "D"** - ADDITIONAL PROVISIONS
- SCHEDULE "E"** - ACCESS AGREEMENT
- SCHEDULE "F"** - THIRD PARTY COST ALLOCATION
- SCHEDULE "G"** - OVERSIZE ALLOCATION TO BENEFITING LANDS
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- SCHEDULE "L"** - VARIATIONS AND CHANGES FROM DESIGN STANDARDS

TOWN OF STRATHMORE a municipal corporation,
(Hereinafter referred to as "the Town")

OF THE FIRST PART

- and -

_____,
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 the Developer is, or is entitled to become, the registered owner of those lands situate in the Town and as legally described in and outlined in green in **Schedule "A"** attached to this Agreement;

AND WHEREAS the Developer proposes to develop and/or subdivide the said lands (hereinafter referred to as "the Development Area") as outlined in red in **Schedule "A"** to this Agreement in accordance with the Subdivision Approval as set out in **Schedule "B"** attached to this agreement and this agreement;

AND WHEREAS the Town and the Developer have agreed to enter into an Agreement to provide and to ensure adequate and timely provision of services required within and adjacent to the Development Area;

AND WHEREAS the Town is agreeable to the Developer developing the Development Area in accordance with the terms and conditions of this Agreement;

AND WHEREAS the Town and the Developer agree that the Developer shall construct and install the Municipal Improvements required throughout and adjacent to the Development Area at the Developer's sole cost and expense;

AND WHEREAS upon satisfactory completion of the construction and installation of the Municipal Improvements and the Final Acceptance of them by the Town, the said Municipal Improvements, which are on or under Public Property and those on or under land subject to easements and utility rights of way shall become the property of the Town;

AND WHEREAS the Town 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 of the mutual terms, conditions and covenants to be observed and performed by each of the parties hereto, the Town agrees with the Developer and the Developer agrees with the Town as follows:

1. INTERPRETATION

- 1.1 **"Construction Completion Certificate"** shall mean the Certificate issued by the Town certifying the completion of the Municipal Improvements, or a portion thereof, once the Municipal Improvements have been constructed and installed by the Developer to the satisfaction of the Town in accordance with this Agreement.
- 1.2 **"Commencement of Construction"** or "Commence Construction" shall mean the date upon which the Town issues a stripping and grading permit to the Developer and the Developer commences the actual stripping and 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 Town and the Developer; provided, that commencement of stripping and grading shall not include the placement of machinery or equipment within the Development Area nor any work preparatory to stripping and grading such as the removal of any buildings, materials or things whatsoever within or under the Development Area.
- 1.3 **"Developer's Consultant"** shall mean the consulting professionals, identified in **Schedule "J"** retained by the Developer and shall include, but not be limited to professional engineers, landscape architects or designers, urban planners, and land surveyors.
- 1.4 **"Development Area"** shall mean that portion of the lands, which are delineated and outlined in red on the map attached hereto as **Schedule "A"** to this Agreement.
- 1.5 **"Development Standards and Procedures or Design Standards"** shall mean procedures, standards and specifications as specified by the Town as set forth in the **"Town of Strathmore Engineering Servicing Standards"** as set out in **Schedule "C"** latest revision (at the time of commencement of construction for the particular phase or Engineering Plan Review, which ever is the latter) for the design, construction and installation of the Municipal Improvements including any alterations to or amendments of such standards and specifications as set out in SCHEDULE "L" or after the signing of this agreement, as agreed upon, in writing, by the Town and the Developer.
- 1.6 **"Engineering Plans"** shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction and installation of all Municipal Improvements and shall include a "Construction Management Plan" which shall delineate, to the Town's satisfaction, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of the Municipal Improvements.
- 1.7 **"Essential Services"** shall mean:
- (a) Concrete curbs and gutters and sidewalks;
 - (b) Lanes with gravel base and surface (if applicable);
 - (c) Natural gas distribution mains;
 - (d) Roads with gravel base and first lift of asphalt surface;
 - (e) Sanitary sewer mains including all manholes and other related appurtenances sanitary sewer connections from the sanitary mains to the property as noted in the Design Standards;

- (f) Storm sewer system including catch basins, retention and retention facilities and ponds, culverts, manholes and other related appurtenances;
 - (g) Street lighting with underground wiring supplied to the lots and subdivision area;
 - (i) Water Mains including all fittings, valves, pressure reducing valves, hydrants and other related appurtenances and water connections from water mains to the property as noted in the Design Standards;
- 1.8 **"Final Acceptance Certificate"** shall mean a written acceptance issued by the Town for the Municipal Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.
- 1.9 **"Guarantee Period"** shall mean the time period for which the developer is responsible for the maintenance and repair of all Municipal Improvements and as set out in this Agreement.
- 1.10 **"Landscape Drawings"** shall mean drawings or plans prepared by a landscape architect or landscape designer showing landscaping features such as trees, berms, grassed areas, and other landscaping features.
- 1.11 **"Landscaping"** shall mean the modifications and enhancement of a site, including:
- (a) by means of the growing and planting of any type of vegetation whatsoever;
 - (b) by means of the installation, construction or placement of inanimate materials such as brick, stone, concrete, tile and wood (excluding monolithic concrete and asphalt); and
 - (c) by means of any alteration of any grades or elevations of the surface of the site which is not done solely for the purposes of drainage control.
- 1.12 **"Municipal Improvements"** shall mean and include, throughout the Development Area, the following:
- (a) All "Essential Services"
 - (b) Alberta Survey Control Monuments complete with survey ties;
 - (c) Final surfaces on all roads;
 - (d) Landscaping including grading of boulevards;
 - (e) Subdivision identification signs, where applicable; and
 - (f) Uniform fencing where applicable.
- 1.13 **"Plan of Subdivision" or "Plans of Subdivision"** shall mean the subdivision or subdivisions, which subdivide the Subdivision Area into separate lots for further development and which is registered in the Southern Alberta District Land Titles Office.
- 1.14 **"Prime Rate"** shall mean the prime-lending rate established from time to time at the TOWN OF STRATHMORE branch of the Royal Bank of Canada.
- 1.15 **"Public Property" or "Public Properties"** shall include all properties within and adjacent to the Development Area to be owned or administered by the Town, including roadways and utility rights-of-way, municipal reserve lots and public utility lots following the registration of the Plan of Subdivision for the Subdivision Area.

- 1.16 **"Subdivision Area"** shall mean the area within the Development Area outlined in green in **Schedule "A"** and which is to be registered and developed.
- 1.17 **"Town"** shall mean the municipal corporation of the TOWN OF STRATHMORE and the Town shall be represented by those persons delegated by Council to perform such duties and responsibilities, namely the CAO, Deputy CAO, Director of Engineering and Operations, Subdivision Officer, and the Town's Consultant Engineer.

2. PLAN OF SUBDIVISION

- 2.1 The Developer covenants and agrees that it shall register in the Land Titles Office for the South Alberta Land Registration District a Plan of Subdivision for the Subdivision Area in accordance with the Subdivision Approval as set out in **Schedule "B"** and further, the Developer agrees:
- (a) that the Plan of Subdivision will not be endorsed until the Construction Completion Certificates or other acceptable documents for natural gas and electrical power are issued for the Essential Services, the required performance security and applicable off-site levies are deposited with the Town;
 - (b) that the Developer covenants and agrees that it shall register in the Land Titles Office for the South Alberta Land Registration District a Plan of Subdivision for the Subdivision Area within twelve (12) months of the date of this Agreement (unless otherwise agreed to in writing);
 - (c) that in the event that the Plan of Subdivision is not registered within the said periods prescribed in this Agreement, then the Town shall be entitled to terminate this Agreement unless a time extension has been granted by the Town;
 - (d) that the termination of this Agreement in whole or in part as provided in Clause (c) shall be effective upon the Town serving written notice of termination on the Developer;
 - (e) that in the event that this Agreement is terminated in whole or in part, then the Developer shall not be entitled to register any Plan of Subdivision for any portion of the Subdivision Area unless and until a further written agreement is entered into between the Developer and the Town; and
 - (f) that in the event that the Town terminates this Agreement in whole or in part pursuant to the provisions of this Section, it is understood and agreed that any financial obligations of the Developer to the Town shall survive and the Town shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect.
- 2.2 The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approvals which may be imposed by the subdivision approving authority, Town

of Strathmore Subdivision and Development Appeal Board or the Municipal Government Board, as the case may be.

- 2.3 No Plan of Subdivision shall either be endorsed by the Town or permitted to be registered, nor shall the Developer commence any work within or adjacent to the Development Area, unless and until the Town in its discretion has:
- (a) redistricted the Subdivision Area to a district that the Town deems appropriate;
 - (b) passed amendments to the Town's Land Use Bylaw relating to the regulations applicable to the development within the Development Area that the Town deems appropriate;
 - (c) passed any new statutory plans or amendments to any existing statutory plans that the Town deems appropriate;
 - (d) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Improvements or the Engineering Plans;
 - (e) reviewed and approved all Engineering Plans, at its discretion, respecting the construction and installation of the Municipal Improvements or issued a permit for site grading and stripping;
 - (f) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permits; and
 - (g) confirmed that registered ownership of the lands comprising the Development Area and Subdivision Area is satisfactory to the Town including, without restriction, confirmation that the registered owner is the Developer.
- 2.4 The Developer covenants and agrees that in the event that the Plan of Subdivision for the Subdivision Area is not registered within the time limits prescribed herein, or in the event that the Plan of Subdivision for the Subdivision Area is cancelled as contemplated in this Section, or in the event that the Developer does not complete construction within the Development Area within the time limits prescribed herein, THEN the Town shall be at liberty, in the Town's sole discretion, to re-district the lands within the Subdivision Area back to the land use district in place prior to the Subdivision Area being districted for development purposes.
- 2.5 Providing that the Developer is not in default of any of the provisions of this Agreement or any condition of subdivision approval, the Town shall, at the request of the Developer, deliver to the Provincial Department of Environment any confirmations or undertakings reasonably required (and in respect to which the Town can attest) in order for the Developer to obtain any necessary permits and licenses from the said Department of Environment.
- 2.6 In the event that a Plan of Subdivision of the Subdivision Area has been registered by the Developer, and the Developer fails to comply with or is in default of the terms of this agreement, the Developer shall, upon receiving written notice from the Town to do so,

immediately proceed to take all steps necessary to cancel the registration of said Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the said Plan of Subdivision within THREE (3) months of the Town providing written notice to the Developer as herein provided.

- 2.7 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the Town as its attorney in fact and in law for the purposes of making all necessary or desirable (in the Town's discretion or opinion) applications, executing all necessary or advisable (in the Town's discretion or opinion) documents, and taking all further necessary or advisable (in the Town's discretion or opinion) steps or actions in order to obtain the cancellation of the registration of the said Plan of Subdivision in accordance with Subsection 2.6 of this Agreement.
- 2.8 The power of attorney conferred upon the Town by the Developer in paragraph 2.7 of this Agreement may be exercised by the Town in the event that the Developer has not applied for the cancellation of the registration of the Plan of Subdivision within ONE (1) month of the Town providing written notice to the Developer pursuant to Subsection 2.6 of this Agreement, or may be exercised in the event that the Developer has not obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the Town providing written notice to the Developer pursuant to Subsection 2.6 of this Agreement.
- 2.9 The Town in its discretion may extend the time limits specified in Subsection 2.8, but the Town and the Developer agree that no act or omission on the part of the Town, intentional or unintentional, shall constitute a waiver of the Town's right to exercise the power of attorney conferred upon the Town by the Developer pursuant to Subsections 2.7 and 2.8 of this Agreement.

3. **ENGINEERING PLANS**

- 3.1 Prior to Commencing Construction and installation of the Municipal Improvements within or adjacent to the Development Area, the Developer shall submit Engineering Plans for the Development Area to the Town for approval in accordance with the Design Standards and Procedures as set out in **Schedule "C"** attached to this Agreement. The Engineering Plans shall give all necessary details of the Municipal Improvements to be constructed by the Developer, including any necessary specifications to be attached thereto.
- 3.2 The Town agrees that it shall not unduly delay in reviewing or rejecting the Engineering Plans, which have been submitted by the Developer to the Town.
- 3.3 The Developer agrees that in the event that any Engineering Plans are reviewed and accepted for two or more phases of the Subdivision Area and the Design Standards are amended by the Town prior to the commencement of the construction for a particular phase, then the Developer shall be required, prior to Commencement of Construction for a particular phase, to amend the Engineering Plans to the satisfaction of the Town so that the Engineering Plans conform to the new Design Standards.

- 3.4 The Developer covenants and agrees that a Construction Management Plan shall be submitted with the Engineering Plans and shall include a construction timetable for the construction and installation of all of the Municipal Improvements within and adjacent to the Development Area and the Developer shall, upon acceptance of the Construction Management Plan by the Town, comply with all time limits and complete all phases of the Developer's work within the dates specified in the construction timetable.
- 3.5 The Developer covenants and agrees that the Landscape Drawings for Public Properties shall comply with the Design Standards, and shall include all Landscaping required by the Town including, but not so as to limit the generality of the foregoing, Landscaping of all utility rights of way and public walkways, construction of berms, construction of uniform fencing, installation of recreational equipment and facilities, and Landscaping of other Public Properties.
- 3.6 Subject to the terms of this Agreement, it is understood and agreed between the Town and the Developer that the Developer shall be entitled to construct the Municipal Improvements for each phase in accordance with the Engineering Plans once such Engineering Plans for the Subdivision Area have been accepted by the Town.
- 3.7 It is understood and agreed that the Town's acceptance of the Engineering Plans for the Municipal Improvements shall be in principle only. In the case of unforeseen conditions which may adversely affect the development and construction has not commenced, or in the case where a Municipal Improvement is to be constructed or installed in accordance with the accepted Engineering Plans, however is determined to not be suitable or reasonable for the purposes intended, the detailed design specifications affecting that condition or the Municipal Improvement shall be subject to review and revision by the Town in consultation with the Developer's Engineer in accordance with the Design Standards and in accordance with accepted engineering and construction practices.
- 3.8 The Developer shall not Commence Construction or commence installation of the Municipal Improvements, or any portion, until such time as the Town has issued written approval of the Engineering Plans.
- 3.9 The Developer acknowledges and agrees that the Town's approval of the Engineering Plans is in no way intended to be a warranty, representation or guarantee by the Town or its engineer respecting the content of the Engineering Plans, including, without restricting the generality of the foregoing:
- (a) whether the Engineering Plans are suitable for the intended purpose;
 - (b) whether the Engineering Plans comply with any required federal, provincial or municipal legislation or regulation;
 - (c) whether the Engineering Plans comply with the Design Standards; and
 - (d) whether the Engineering Plans are in accordance with standard acceptable engineering practices.

4. DRAINAGE STANDARDS

- 4.1 The Developer covenants that the preparation of the storm management and drainage system, the construction and installation of all storm water facilities both within private and public lands, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction), and the maintenance of all storm water management systems during the Guarantee Period shall be undertaken and conducted in accordance with accepted engineering and construction practices and in accordance with the Design Standards and the Town's Master Servicing Plan.
- 4.2 The Developer covenants that all proposed purchasers and optionees of any of the lots within the Development Area shall be fully advised by way of registered overland easement agreements and the registration of this Agreement of the requirements of the Town relating to the management and disposal of storm water within lots in the Development Area.
- 4.3 It is agreed between the Town and the Developer that all of the standards within the Master Servicing Plan and requirements of the Town pursuant to this Agreement shall be and hereby constitute covenants running with the lands and are binding upon the Developer and any subsequent owners of any lots within the Development Area.

FURTHER DRAINAGE PROVISION:

- 4.4 The Developer further covenants and agrees to ensure that any portion of the Development Area that has fill areas in excess of One (1) meter shall be compacted, and the Developer shall ensure that the Town shall be provided with certified test results to ensure compliance with this Section and further, will provide to the Town a plan of the Development Area that has fill areas in excess of the said One (1) meter.
- 4.5 The Developer covenants and agrees that prior to the Construction Completion Certificate for any of the Municipal Improvements to be constructed and installed within the Development Area, that the Developer shall undertake and complete to the satisfaction of the Town such grading work as may be necessary to ensure that all lots within the Development Area have positive drainage and that there will be no unacceptable pooling of water within any of the lots within the Area.
- 4.6 It is further agreed and hereby declared by the Parties that all herein specified standards, requirements and any unfulfilled obligations due and owing to the Town by the Developer constitute covenants running with the land and binding upon any subsequent owners or leaseholders of all or any portion of the Development Area.

5. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

- 5.1 The Town agrees that the Developer shall be entitled to construct and install the Municipal Improvements in phases as shown on **Schedule "A"** of this Agreement; PROVIDED, that the Developer may with the written approval of the Town, which may be granted in the discretion of the Town, change the order of the phases to be developed or the area of any particular stage.

- 5.2 Except as otherwise specified in the construction timetable approved under Subsection 3.4, the Developer shall have **ONE (1)** year from the signing of this Agreement to 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 within **TWO (2)** years of signing of this Agreement within all phases of the Development Area.
- 5.3 The Developer warrants to the Town that all Municipal Improvements shall, at the Developer's own cost and expense, be constructed and installed in a good and workmanlike manner, in strict conformance with the Engineering Plans, including any Landscape Drawings, and proper and accepted engineering and construction practices, in accordance with the requirements of this Agreement, and in accordance with the Development Standards and Procedures and in accordance with the requirements of law applicable to the work.
- 5.4 In the event that the Developer has not commenced construction of any phase within the time limits specified in Subsections 5.2, then the Town shall be entitled to terminate this Agreement in respect to the Development Area, and further, the Developer agrees:
- (a) that the termination of this Agreement in whole or in part as provided in this section shall be effective upon the Town serving written notice of termination on the Developer;
 - (b) that in the event that this Agreement is terminated in whole or in part as provided in this section, the provisions of Section 2 relating to the cancellation of Plans of Subdivision shall apply to all phases of the Development Area in respect of which a Plan of Subdivision has been registered and in respect of which the construction of the Municipal Improvements has not been commenced;
 - (c) that in the event that this Agreement is terminated in whole or in part as provided in this section, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for any undeveloped stage of the Development Area unless and until a further written agreement is entered into between the Developer and the Town and
 - (d) that such termination shall be without prejudice to any and all other obligations then due, outstanding and owed by the Developer to the Town 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.
- 5.5 The Developer covenants and agrees that it shall, upon being directed in writing by the Town to do so, construct and install within THIRTY (30) days Essential Services, failing which the Town may, in its discretion, construct and install such Essential Services and the Developer shall forthwith pay to the Town all costs incurred by the Town in connection with the construction and installation of such Municipal Improvements.

- 5.6 In the event that it is necessary or reasonable, in the opinion of the Town, 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 Town acting reasonably and the Developer shall grant to the Town an easement, in a form as set out in **Schedule "E"** to the Town, across the required land for the period for which the access is required.
- 5.7 The Developer shall erect a Land Use and Development Identification Sign prior to Commencement of Construction of Municipal Improvements showing all phases of the Development Area. The Sign must be located in a prominent location as approved by the Town. The copy area maximum size is not to exceed Eight (8) feet by Eight (8) feet, showing within the Development Area all land use classifications, roadway designations, reserve parcels, and other features. The design, colour codes, and legend shall be approved by the Town prior to preparation and installation. The Sign and the area around it, shall be maintained until issuance of the last Final Acceptance Certificate, or such earlier date as may be approved by the Town in writing.
- 5.8 The Developer covenants and agrees that it will complete the installation of all development identification signs and any temporary signage required by the Town.
- 5.9 The Developer shall be responsible for the installation of all traffic control signs and street identification signs and the Developer agrees to pay all costs associated with the fabrication and installation of the signs.
- 5.10 The Developer covenants and agrees that it shall, prior to the public having access within the Development Area, complete the installation of all traffic control signs and street identification signs as required by the Town.
- 5.11 The Developer shall, at no expense to the Town, install Survey Control Stations and Monuments in accordance with **Schedule "C"**, the Design Standards and Procedures, and place all of the Survey Control Stations, Monuments or legal pins and markers which were removed or damaged due to the development of the area up until the last application for Final Acceptance Certificate is submitted to the Town for approval.
- 5.12 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 Town shall have free and immediate access to all records of or available to the Developer and the Developer's 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 Town may:
 - (i) exercise such inspection of the performance of the work as the Town may deem necessary and advisable to ensure to the Town the full and proper

compliance by the Developer with the Developer's undertakings to the Town, and to ensure the proper performance of the work;

- (ii) reject any design, material or work which is not in accordance with the accepted Engineering Plans, 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 Town 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 Town 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 22 hereof; **PROVIDED**, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the Town pursuant to clauses 5.12 (b)(v), (b)(vi) or (b)(vii); **AND PROVIDED FURTHER**, that the affected work, except as otherwise agreed by the Town in writing, **shall stop** until such arbitration has taken place.

5.13 Notwithstanding anything expressed or implied in Subsection 5.12, it is agreed between the Town and the Developer:

- (a) that the Town shall have no obligation or duty to exercise any of the Town'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, to the standard of the Urban Development Institute/City of Calgary arrangement set forth in the current publication entitled "Consulting Engineers Field Service Guidelines"; and
- (c) that nothing set forth in Subsection 5.12 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.

- 5.14 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements, and during the Guarantee 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.
- 5.15 The Developer shall take effective measures to reasonably control dust and dirt in the Development Area, including, and without limiting the generality of the foregoing, on any loam stockpile site so that dust and dirt originating therein shall not be conveyed there from by any means whatsoever or cause annoyance or become a nuisance to property owners and others within or adjacent to the Development Area. The Developer is solely responsible for ensuring dust and dirt control within the Development Area; the Developer is also responsible for ensuring that work done by the Developer or its contractors in and around the Development Area does not result in dust or dirt becoming an annoyance or nuisance.

In the event, however, that the Town deems that there is dust or dirt problems the Town shall attempt to notify the Developer of the problem by telephoning the Developer, or the Developer's Engineering Consultant. If the Town is not able to contact the Developer, or the Developer's Engineering Consultant within a 24 hour period of the event, or if the Developer, or the Developer's Engineering Consultant, shall fail to take effective measures to control the dust or dirt problem after being notified, or in the opinion of the Town it is an emergency, then the Town may take such steps as are necessary to eliminate the dust or dirt problem at the expense of the Developer and shall within SEVENTY-TWO (72) hours notify the Developer in writing of the action taken by the Town.

- 5.16 It is understood and agreed between the Town 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 Town 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.
- 5.17 Notwithstanding anything hereinbefore contained to the contrary, the Developer covenants and agrees (such covenant being of the essence of this Agreement) that it shall plan and phase the development of the Development Area so as to guarantee and ensure to the Town that all Essential Services shall have been installed and rendered operative in any part of the Development Area before any building permits or development permits are issued for the intended use for any such part of the Development Area, except as otherwise permitted in writing by the Town.

- 5.18 Notwithstanding Section 5.17, no Plan of Subdivision registration or building permits or development permits will be issued for any structure for the intended use for any part of the Subdivision Area until Construction Completion Certificates have been issued for the Essential Services, and as built drawings have been provided to the Town or where Security has been provided by the Developer and accepted by the Town as specified in Section 23.5.
- 5.19 The Developer shall take effective measures to reasonably control garbage in and around the Development Area, including, and without limiting the generality of the foregoing, any building and Landscaping so that garbage originating therein shall not cause annoyance or become a nuisance to property owners and others within or adjacent to the Development Area. The Developer shall at its own expense provide dumpsters or such other containers suitable for the collection and containment of garbage within the Development Area.

6. USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF THE WORK

- 6.1 The Town hereby grants to the Developer the right, permission and power to use, break-up, dig, trench, or excavate in the public streets, roads, lanes, boulevards, parks and similar Public Places under the control of the Town, within the Development Area, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Municipal Improvements forming part of the work of the Developer, as may be necessary for the purpose of this Agreement, PROVIDED:
- (a) 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 to the Town detailed written proposals, for approval by the Town, for the work to be done within any such property, including:
 - (i) a specific work schedule and procedures proposed to be followed;
 - (ii) detailed engineering plans of all connections to existing municipal services, if not set out in the original set of Engineering Plans submitted;
 - (iii) a traffic and pedestrian accommodation plan shall be submitted to the Town, showing provisions to be implemented for temporary access and services;
 - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and
 - (v) form and schedule of notification and public relation strategy to minimize traffic disruption to be utilized.
 - (b) No such work shall be commenced prior to the Developer obtaining the written consent of the Town to enter upon such Public Properties; and the Town shall not unreasonably delay or withhold such written consent;

- (c) That the work within Public Properties by the Developer and its agents, contractors and subcontractors shall be subject to the inspection rights of the Town as set forth in this Agreement and all directions and requirements of the Town shall be obeyed;
- (d) That the Developer shall do as little damage as possible in the performance of such work, and will cause as little obstruction to such Public Properties as possible;
- (e) That upon completion of such work the Developer shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such work, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs, for a period of Two (2) years thereafter, ordinary wear and tear excepted;
- (f) That the restoration of Public Properties shall be part of the Municipal Improvements to be constructed and installed by the Developer and the Developer shall be required to obtain Construction Completion Certificates and Final Acceptance Certificates for the restoration work; and
- (g) That the Developer shall indemnify and save harmless the Town and it's officers, employees, agents and contractors 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 or material used by the Developer.

7. INSTALLATION OF OTHER UTILITIES

- 7.1 The Developer shall, at no cost to the Town whatsoever, arrange for and ensure the installation, to the Town's satisfaction, of electric power and natural gas lines to the Development Area and within the streets adjoining the lots to be created in the Development Area. The Developer shall indemnify and save harmless the Town and it's officers, employees, agents and contractors, 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 or non-performance of such installation of such services.
- 7.2 The said electric power and natural gas lines within the Development Area shall be installed within the roadways, utility lots or easement areas, in accordance with the Engineering Plans, adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners within the Development Area to hook up to such services upon paying the normal hook-up fees charged by the Utility Company or franchise holder.
- 7.3 The Developer will submit to the Town documentation from the franchise holder of
 - (a) contractual arrangement for the installation of electric power and natural gas utility expansion for the Development Area prior to the issuance of Development Permits for the use of the lots being created; and

- (b) satisfactory completion of installation of the electric power and natural gas utility expansion for the Development Area prior to the application for any Final Acceptance Certificates for any Municipal Improvement.

8. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS

- 8.1 Notwithstanding anything contained in this Section, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the Town 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 Town 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.
- 8.2 The Developer covenants and agrees that any contract entered into between the Developer and a Third Party in respect to the performance of all or any of the Developer's obligations as set out in this Agreement to construct and maintain the Municipal Improvements, or any of them, shall provide:
 - (a) That the Third Party shall indemnify and save harmless the Town and its officers, employees, agents and contractors, and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the Third Party or arising in any way from the negligence of the Third Party's servants, agents or employees;
 - (b) That the Third Party shall provide reasonable proof of financial responsibility;
 - (c) That the Third Party shall comply with the provisions of the Workers Compensation Act for the Province of Alberta;
 - (d) That the Third Party will allow the Town access to the work for the purpose of inspection;
 - (e) That the works to be performed by the Third Party shall not be deemed to be duly and adequately completed under the contract except upon the issuance of a Construction Completion Certificate for the same by the Town;
 - (f) The Third Party shall coordinate with the Town work forces and others to facilitate the installation of utilities and shall protect such utilities from damage;
 - (g) That the Third Party will carry adequate public liability insurance of an amount and coverage satisfactory to the Town to protect the Third Party and the Town from any claims, actions or demands arising from the pursuance or purported pursuance of the work being performed by such Third Party.

9. COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS

9.1 The Developer shall, at all times during the construction and installation of the Municipal Improvements comply fully with all terms, conditions, provisions, covenants and details as may be set out in the Engineering Plans and Landscape Drawings as accepted by the Town, and such terms and conditions as may otherwise be required pursuant to this Agreement or be agreed upon in writing between the Town and the Developer.

9.2 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.

10. ACCEPTANCE OF MUNICIPAL IMPROVEMENTS AND TRANSFER OF MUNICIPAL IMPROVEMENTS TO TOWN

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

- (a) the Municipal Improvement has been fully constructed and installed in accordance with the agreed upon Engineering Plans and Landscape Drawings, the Design Standards and accepted engineering and construction practices. Upon the completion of the work within each phase by the Developer, the Developer's Engineering Consultant shall submit to the Town a statement under his professional seal certifying that the Developer's Engineering Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Engineering Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Engineering Plans and in accordance with accepted engineering and construction practices.
- (b) all testing has been completed and the results accepted by the Town. In addition to whatever other testing requirements may be imposed upon the Developer by the Town, the Developer shall submit as-built drawings, and shall undertake TV camera video inspection of all storm and sanitary sewer lines, and submit the data, as per the Town's standards, with the application for Construction Completion Certificates.
- (c) all easements, utility rights-of-way and restrictive covenants have been submitted to the Town for endorsement and in a form acceptable to the Town;
- (d) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;
- (e) the Municipal Improvement is suitable for the purpose intended; and
- (f) the Developer has provided the Municipality with any applicable operations plans, operations manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements.

10.2 When the Developer claims that the Municipal Improvements for a particular phase of the Development Area have been constructed and installed in accordance with the requirements of this Agreement, then the Developer or the Developer's Consultant Engineer shall give notice in writing of such claimed completion to the Town.

- 10.3 Within **THIRTY (30)** days of receipt of such claim of completion, the Town shall undertake an inspection of the Municipal Improvements and the Municipality will notify the Developer or the Developer's Consultant Engineer in writing of its acceptance (by the issuance of a **Construction Completion Certificate**) or rejection of the Municipal Improvements so completed with a list 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).
- 10.4 Notwithstanding Subsection 10.3, the Town may give notice to the Developer of the Town's inability to conduct an inspection within the said **THIRTY (30)** days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until **THIRTY (30)** days following the elimination of such adverse site or weather conditions.
- 10.5 It is understood and agreed between the Developer and the Town that the notices required under Subsections 10.2 and 10.3 shall be given only between:
- (a) the Town and the Developer; or
 - (b) the Town and the Developer's Consultant Engineer.

In no event shall either the Town 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.

- 10.6 In the event that any inspection contemplated in paragraph 10.3 or 10.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement, the Town may refuse to issue a **Construction Completion Certificate** for the Municipal 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 or Developer's Consultant Engineer may request a further inspection and issuance of a **Construction Completion Certificate** at the sole cost of the Developer.
- 10.7 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Guarantee Period for the Municipal Improvements the Developer or Developer's Consultant Engineer shall give notice to the Town of expiration of the **Guarantee Period** for the Municipal Improvements and the Developer or Developer's Consultant Engineer shall request a **Final Acceptance Certificate** in respect to the Municipal Improvements. The Developer's notice shall be accompanied with a list of any deficiencies. If the Developer fails to request a Final Acceptance Certificate within the above period of time, the Guarantee Period will be extended until a Final Acceptance Certificate has been issued.

- 10.8 Notwithstanding Subsection 10.7, the Developer agrees that he will not make application for **Final Acceptance Certificates** on sidewalks, curbs and gutters or paved roads and lanes until the Developer has received **Final Acceptance Certificates** for the underground utilities in those areas where underground utilities and surface improvements are within the same right-of-way. The Developer further agrees that he will not make application for **Final Acceptance Certificates** on sidewalks, curbs and gutters or paved roads until he has been granted acceptance or an extension to complete on all Landscaping of boulevards, buffers, municipal reserves, public utility lots, fencing and other Public Properties.
- 10.9 Within SIXTY (60) days of the receipt by the Town of a request for a Final Acceptance Certificate, the Town shall undertake an inspection of the Municipal Improvements and the Town shall within the said SIXTY (60) days advise the Developer and the Developer's Consultant Engineer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements; **PROVIDED**, that the provisions of Subsection 10.4 shall also apply to any request for the issuance of a **Final Acceptance Certificate**.
- 10.10 In the event that any inspection contemplated in Subsection 10.9 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement the Town may refuse to issue the **Final Acceptance Certificate** of the Municipal Improvements and require the Developer and the Developers Consultant Engineer 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**.
- 10.11 In the event that any inspection contemplated in Subsection 10.9 reveals that there are no deficiencies in relation to the Municipal Improvements, the Town shall issue in writing its **Final Acceptance Certificate** for the Municipal Improvements within **THIRTY (30)** days.
- 10.12 Upon the issuance of a **Final Acceptance Certificate** by the Town for the Municipal Improvements, or any portion of the Municipal Improvements herein, 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 Town without any cost or expense to the Town therefore, and the Municipal Improvements shall become the property of the Town.
- 10.13 Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the **Guarantee Period** for the Municipal Improvements shall not expire before the issuance of a **Final Acceptance Certificate** for the Municipal Improvements by the Town 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 Municipal 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.
- 10.14 Following the issuance of a **Construction Completion Certificate** for the Municipal Improvements, the Developer agrees that it shall assume the normal operation (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.

- 10.15 The Town 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 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 Section 22 on Arbitration, the Developer and the Town may mutually agree to resolve any dispute under this provision by means of mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Improvements installed and constructed pursuant to this Agreement.
- 10.16 The Town and the Developer agree that in respect to each phase of the Development Area that the Developer may apply for separate **Construction Completion Certificates and Final Acceptance Certificates**, and the Town may issue separate **Construction Completion Certificates and Final Acceptance Certificates**, for underground Municipal Improvements, and above ground Municipal Improvements including Landscaping.
- 10.17 After the issuance of the **Construction Completion Certificate**, the Developer shall be responsible for any and all repairs and replacements to any utilities or improvements which may, in the Town's sole opinion become necessary, excepting normal wear and tear, up until the issuance of the **Final Acceptance Certificate**.
- 10.18 In addition to the default provisions provided by this Agreement, in the event that the Developer fails to apply for Completion Construction Certificates or Final Acceptance Certificate and provide the necessary as-built drawings and other related documents within the said timeframe, the Town may, at its sole discretion, dig up and/or inspect the Municipal Improvements, at the Developer's sole cost and expense, and issue any necessary Completion Construction Certificates, Final Acceptance Certificates or notices regarding deficiencies as if the Developer itself had applied for Completion Construction Certificates or Final Acceptance Certificates in accordance with the procedures provided in this Section 10 of this Agreement. The Developer shall within thirty (30) days of presentation of an account pay to the Town all costs incurred by the Town in digging up and/or inspecting the Municipal Improvements in order to inspect and process the issuance of the said Completion Construction Certificates and/or Final Acceptance Certificates.

11. MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

- 11.1 The Guarantee Period in respect to any of the Municipal Improvements shall commence with the acceptance of the Construction Completion Certificate, by the Town, for any such

Municipal Improvements in good condition and repair (ordinary wear and tear excepted), and the Developer shall subject to Subsection 10.15 repair or replace the whole or any portion thereof during such Guarantee Period as set out in Schedule "C", Design Standards and Procedures attached to this Agreement, where such repair or replacement is required, as determined by the Town, as a result of any cause other than the neglect by the Town, its servants, agents or contractors in the use and operation thereof.

- 11.2 The Developer acknowledges and agrees that prior to the issuance of a Final Acceptance Certificate for any Landscaping work, or portion thereof, the Town shall be entitled to require the Developer to replace any trees, shrubs or grass which may have died or failed to achieve proper growth, as determined by the Town in its discretion; AND FURTHER, the Town shall be entitled to require the replacement or repair of any other Landscaping works such as berming, landscaped area irrigation lines or valves, rip-rap, noise attenuation fencing or screen fencing which is not in accordance with the Engineering Plans or Landscape Drawings as a result of any cause other than neglect by the Town, its servants, agents or contractors in the use and operation thereof.
- 11.3 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.
- 11.4 The Developer agrees that in the event of any emergency arising during the Guarantee Period, the Town being the sole judge of what constitutes an emergency, then the Town shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate by the Town and all costs and expenses incurred by the Town in that regard shall be paid by the Developer to the Town upon demand.
- 11.5 The Town and the Developer agree that during the Guarantee Period that the Developer shall perform the normal maintenance requirements of the Town. The final cleaning and removal of obstructions and debris shall be performed by the Developer, at the Developer's cost, prior to the Final Acceptance Certificate, and the issuance of Final Acceptance Certificates. In addition to whatever other testing requirements may be imposed upon the Developer by the Town, the Developer shall undertake TV camera video inspection of all storm and sanitary sewer lines, and submit the data, as per the Town's standards, with the application for Final Acceptance Certificates.
- 11.6 Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, but not be limited to, failure of or damage to the underground Municipal Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, grading, gravelling and oiling, removal of debris and mud, repairs or replacement of road and lane surfaces, sidewalks, curbs, and gutters, catch basins and leads, road surfaces constructed by the Developer or its contractor, adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines and valves and valve operating mechanisms; repairs, replacements and adjustments to sewer mains, sewer services, manholes, manhole frames and covers, but shall not include ordinary wear and tear. The Developer covenants that during the

Guarantee Period that the Developer shall be responsible, at the Developer's own cost and expense, for adjusting and maintaining all hydrants, valve boxes (for both hydrants and mains) manholes and catch basins and appurtenances thereto and any crack filling of roadways until the Town has issued the Final Acceptance Certificate for all aspects of roadway improvements.

- 11.7 The Developer covenants and agrees that in the event that the Town is of the opinion that any repair or replacement required during the Guarantee Period is of a major nature, the Town shall be entitled, in its discretion, to require a further full Guarantee Period for the particular Municipal Improvement, or portion thereof, and such further Guarantee Period shall commence upon the Town issuing a Construction Completion Certificate for the repair or replacement work.
- 11.8 Notwithstanding the above, the Developer shall be required to repair and replace any sidewalks, curbs and gutters when located adjacent to an undeveloped lot within the Development Area requiring building, driveway or landscape construction that occurs after the issuance of the Final Acceptance Certificate for the Municipal Improvements for the Development Area and the end of the Guarantee Period pursuant to this Section.

12. UTILITY EASEMENTS AND OTHER INSTRUMENTS

- 12.1 The Engineering Plans, as approved by the Town, shall designate road allowances, public utility lots, easements or rights-of-way of widths adequate to the needs of the Town 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 Town.
- 12.2 Upon registration of a Plan of Subdivision, and prior to the sale of any lots within the Development Area covered by the Plan of Subdivision, the Developer shall grant to the Town such road allowances, public utility lots, easements or utility rights-of-way for such purposes and shall register or cause to be registered such road allowances, public utility lots, easements or utility rights-of-way contemporaneously with the registration of the Plan of Subdivision.
- 12.3 The Developer shall within ONE (1) month of registration of the Plan of Subdivision, and prior to the sale of any lots within the Subdivision Area, provide the Town with three (3) registered copies of the Subdivision Plan and registered plans of all utility rights-of-way and easement agreements.
- 12.4 Notwithstanding 12.2, and in order to provide power, gas and communication services to the Subdivision Area, registration of utility right of way plans and easement agreements may be registered prior to the Plan of Subdivision provided such easements have been shown on the Engineering Plans and the Town has accepted the right of way assignments.
- 12.5 The Developer agrees that the road allowances, easements and utility rights-of-way shall be in a form acceptable to the Town 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.

- 12.6 Such easements or utility rights-of-way shall provide that the Town 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 and power lines, and all drainage systems.
- 12.7 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 Town, 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.
- 12.8 The Developer hereby grants, conveys, transfers and sets over to and unto the Town, 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 and Development Area, 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 and the Development Area 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 and the Development Area, as amended by this Agreement or the Plans subsequently approved by the Town, which dedications may be registered at any time by the Town by road plan in accordance with Section 62 of the Municipal Government Act RSA 2000. The Developer agrees to a price of ten dollars (\$10.00) for the land to be dedicated as Road Right of Way under Section 62 of the Municipal Government Act RSA 2000.
 - (c) The grant of the right of way provided above is and shall be for as long as is necessary for the Town 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.

13. MUNICIPAL SERVICES

- 13.1 As lots are developed in parts of the Subdivision Area, the Town will provide thereto, as required, subject to the terms of this Agreement, all municipal services which are normally supplied to all other similar parts of the Town and to the same standards and costs, subject to such limitations that may be imposed by reason of the progress of the Developer's work, the availability of such services or the configuration of the lots requiring services.
- 13.2 The Developer shall, at all times after any premises within the Development Area are occupied and used, provide and ensure continuous roadway access to such occupied premises.
- 13.3 The Developer acknowledges and agrees that if any portion of the Development Area is subdivided by way of condominium plan rather than conventional subdivision plan, the Town is not obliged to provide its regular services within that portion of the Development Area. Without limiting the generality of the foregoing, the Town will not be obliged to provide services (including provision of public utilities, garbage removal or maintenance of internal access roads) to any portion of lands that is within the boundaries of the condominium plan.

14. FENCING

- 14.1 The Developer shall, at its own expense, as part of the development of the Development Area, construct fences in accordance with the Schedule "C", Design Standards, where required by the Town, including public utility lots and walkways, as shown on the Engineering Plans or Landscape Drawings. All fences to be constructed by the Developer pursuant to the requirements hereof shall be of uniform design and construction thereof shall be subject to the approval of the Town in its sole and absolute discretion.
- 14.2 Any fencing as contemplated herein which is wholly located upon Public Properties and does not abut upon other properties, shall be maintained by the Developer during the Guarantee Period as provided in this Agreement.
- 14.3 Any fencing which is intended to separate private properties from other lands or Public Properties shall be constructed wholly upon the private properties.
- 14.4 Any uniform fencing which is on private properties shall be maintained by the Developer until the expiration of the Guarantee Period for such uniform fencing and thereafter shall be maintained by the owners of the properties upon which the uniform fencing is located, and further, in order to ensure the maintenance obligations of such owners, the Developer shall, prior to selling or transferring any such properties, register against such properties a restrictive covenant, in a form acceptable to the Town, which shall impose such maintenance obligations upon the future owners of such properties.
- 14.5 The Developer agrees that in addition to the requirements for any permanent fencing within the Subdivision Area, that the Developer shall, at the Developer's own cost and expense, construct and maintain temporary fencing of a type and standard acceptable to the Town around all municipal reserves that have been seeded and any environmental reserves or any stockpile of soil or excavation area.

15. MAINTENANCE OF THE DEVELOPMENT AREA

- 15.1 The Developer shall be responsible, at the Developer's expense, save as hereinafter specifically limited, to maintain the Development Area and all Public Properties within the Development Area in such condition as may be reasonably required by the Town, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.
- 15.2 The Developer shall provide or ensure that his contractors and sub-trades provide on site sanitary services for persons employed on the construction site and refuse containers for garbage containment and disposal.
- 15.3 The Developer shall provide or ensure that his contractors and sub-trades provide refuse bins for the containment and removal of refuse, litter and unused or scrap construction material.
- 15.4 Notwithstanding subsection 15.6, the Developer shall be responsible to provide positive drainage on all rough graded and undeveloped lots within the Development Area, and in the event positive drainage cannot be achieved, shall, after every rain, ensure that any trap lows within the Development Area are properly disposed of in accordance with the Town's Design Standards.
- 15.5 The Developer shall ensure that his contractors and sub-trades will commence work on the site in accordance with the Town's Noise Bylaw.
- 15.6 Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under this Section in respect only to such lot, shall cease and determine.
- 15.7 The Developer covenants and agrees that it shall, at the Developer's own cost and expense, be responsible for the cleanup and removal of all construction debris, foreign material and dirt from the Development Area subject to the following conditions:
- (a) it shall be the responsibility of the Developer to monitor the condition of Public Properties and take immediate action as necessary to comply with the provisions of this section;
 - (b) in the event that the Town considers that any cleanup or removal of construction debris, foreign material or dirt is required, the Developer shall, within FORTY-EIGHT (48) hours of receiving written notice from the Town, take all necessary action as determined by the Town, failing which, the Town may take action and charge back all costs and expenses to the Developer and should the Developer default in reimbursement of the Town costs, the Town may take action and charge back all costs and expenses to the Developer; and
 - (c) in respect to a residential subdivision, the Developer's obligations under this section shall cease when housing construction has been completed on NINETY-FIVE (95%) percent of the lots within the Subdivision Area.

- 15.8 The Town shall assume the normal maintenance of all other Public Properties which have been seeded to grass, such as parks, buffer strips, and the like, after satisfactory germination and establishment of grass sown by the Developer on such Public Properties, and after the granting of the Final Acceptance Certificates.
- 15.9 The Developer shall ensure that erosion and sedimentation control will be provided throughout the Guarantee Period, and shall be adhered to according to the City of Calgary Standards, until such time as Final Acceptance Certificates have been accepted.

16. SHARING OF SERVICING COSTS CONSTRUCTED BY OTHER PARTIES

- 16.1 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 the Town or parties other than the Developer in areas adjacent to the Development Area and in other areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the Town.
- 16.2 The method of calculating the Developer's proportionate share of such Municipal Improvements constructed by the Town or other parties shall be determined solely by the Town in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the Town and in accordance with any agreements which the Town has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of such Municipal Improvements.
- 16.3 Nothing in this Agreement shall preclude the Town from levying in a lawful manner any special frontage assessment or uniform unit rate assessment or special local benefit assessment for the construction, expansion or extension of Municipal Improvements, other than such Municipal Improvements or portions of such Municipal Improvements, which are covered by the provisions of Section 16.
- 16.4 For purposes of Subsection 16.2 the Town agrees that it shall use actual costs when determining the Developer's proportionate share of the Municipal Improvements constructed by the Town or other parties; PROVIDED, that in the event that actual costs have not been finalized, the Town shall prepare an estimate of the Developer's proportionate share of the costs based upon information obtained from the party that is, or will be, constructing the said Municipal Improvements.
- 16.5 In the event that the Developer's proportionate share of the costs of any Municipal Improvement constructed by the Town or other parties, based upon actual costs, has been determined at the time of the execution of this Agreement, the Developer shall upon the execution of this Agreement pay the Developer's proportionate share of the said costs to the Town.
- 16.6 In the event that the actual costs for any Municipal Improvement which has been or will be constructed by the Town or other parties has not been finalized at the time of Plan of Subdivision endorsement, the Developer shall provide security in the form of an irrevocable

letter of credit issued by a chartered bank or the Alberta Treasury Branch to the Town equal to ONE HUNDRED (100%) percent of the Developer's proportionate share of the said costs as estimated by the Town.

- 16.7 The Developer covenants and agrees that the Developer shall not receive approval of Construction Completion Certificates within the Development Area, nor endorse any Plan of Subdivision for the Subdivision Area, unless and until the Developer has paid the Developer's proportionate share of the costs of Municipal Improvements constructed by the Town or other parties, or has deposited security for the payment of the said costs, as provided herein.
- 16.8 The Developer agrees that when the costs for Municipal Improvements constructed by the Town or other parties have been finalized, the Developer shall within THIRTY (30) days of being invoiced pay the Developer's proportionate share of the said costs to the Town or other party which constructed the said Municipal Improvements and, in the event of payment to a party other than the Town, the Developer shall provide proof of payment to the Town.
- 16.9 The Town and the Developer agree that once the costs for Municipal Improvements constructed by the Town or other parties have been finalized, and the Developer has paid the Developer's proportionate share of the said costs, then the Town shall, subject to Section 23 reduce or release the security required under this Section.
- 16.10 The Town and the Developer agree that the Municipal Improvements which, at present, have been or are proposed to be constructed by the Town or other parties and which will be of benefits to lands within the Development Area are set forth in **Schedule "F"** of this Agreement.

17. COST RECOVERIES BY DEVELOPER

- 17.1 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 developments on land adjacent to the Development Area, and shall design, construct and install the Municipal Improvements so that such future developments can utilize or benefit from such oversizing or extensions.
- 17.2 The costs of the oversizing or extensions of Municipal Improvements as contemplated herein shall be shared costs and the Town and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with this Agreement.
- 17.3 The Town shall not be responsible for payment of any portion of the shared costs, except as may be specifically provided elsewhere in this Agreement, but the Town shall use reasonable efforts to give such assistance to the Developer as it can legally give in the recovery of shared costs by making it a term of any development agreement between the Town 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 subdivision or development applications.

- 17.4 The Developer shall, so soon as reasonably possible, provide the Town with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate development on land adjacent to the Development Area for approval by the Town, and upon the Town approving the said details, the same shall govern for the purpose of determining the amount of shared costs to be paid by benefiting owners to the Developer. Oversizing shall be calculated according to the current City of Calgary Master Developers Agreement Unit Rate Schedule at the time of construction. Items not identified, as supplied by the Developer, shall be determined by the Town.
- 17.5 The Town agrees that in the event any land adjacent to the Development Area, which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the Town is advised of any such development, the Town will endeavor to notify the Developer in writing of the intended development. The Developer agrees that upon notice of such intended development being sent by the Town, the Developer shall notify the Town in writing of any claims it has in writing under this Agreement for recovery of shared costs with detailed calculations setting out the amount claimed by the Developer. Until such notice has been delivered by the Developer to the Town, the Town shall not be required to request from the owners of adjacent lands the payment to the Developer of the shared costs attributable to the lands intended to be developed. Upon receipt of any such notice from the Developer to the Town, the Town will take the steps contemplated by this Agreement to facilitate the recovery by the Developer of the applicable shared costs.
- 17.6 The Town agrees that in calculating any shared costs payable to the Developer, the Town shall include interest, calculated from the date of Final Acceptance Certificate of all of the Municipal Improvements, compounded annually, at the Prime Rate plus ONE (1%) per cent; PROVIDED, that interest shall cease to accrue TWO (2) years from the date of the issuance of Final Acceptance Certificates for all of the Municipal Improvements.
- 17.7 For purposes of calculating interest payable under Subsection 17.6, the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.
- 17.8 The Town and the Developer agree that any right of the Developer to recover shared costs for oversized or extended Municipal Improvements from owners of benefiting lands shall only apply to lands in respect of which a subdivision application or development permit application is made, and which would result in such lands utilizing the oversized or extended Municipal Improvements, within **TWENTY (20) years** of the date of the issuance of the Construction Completion Certificate for the Municipal Improvement. Between twelve (12) months and six (6) months prior to the expiration of the said TWENTY (20) years, the Developer may request a onetime extension of up to an additional FIVE (5) years for the recovery of shared costs noted above. After the expiration of the said TWENTY (20) years, if no additional period is requested or at the expiration of the additional FIVE (5) year period when granted, the Developer shall have no right to recover any further shared costs and shall make no demands against the Town or any other developer for payment thereafter. In addition and in that regard, the Town and the Developer acknowledge and agree that there exists the potential for significant passage of time between the development of the Development Area and

the development of other properties, as well as the corresponding potential for change in development and servicing needs in the near and long term (including, without restriction, alternative servicing based upon proper planning and servicing principles, some oversized Municipal Improvements becoming obsolete or require replacement or renewal prior to payment of all potential proportionate shares by other developers). For these and other reasons (including, without restriction, the simple lack of further and other development in general), there shall always exist the potential for adjacent or other lands never becoming benefited by some or all oversized Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the Town cannot and will not guarantee eventual recovery of proportionate shares of oversizing costs.

- 17.9 The Town and the Developer agree that the Municipal Improvements which are to be extended or oversized, and which are eligible for the recovery of shared costs by the Developer, are identified in **Schedule "G"** of this Agreement.
- 17.10 Notwithstanding anything to the contrary contained herein, in the event that the Town estimates, in its sole discretion, that the costs and expenses of constructing new or alternate Municipal Improvements (or any of them) are less than the amounts payable to the Developer as shared costs (including interest charges) by owners of any benefiting lands, THEN the Developer shall be entitled to recover from the owner of any such benefiting lands only that owner's proportionate share of the estimated costs and expenses of constructing the new or alternate Municipal Improvements (or any of them).

18. LEVIES AND FEES

- 18.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and storm drainage facilities which will be utilized to provide municipal services to the Development Area, and accordingly, the Developer covenants and agrees to pay to the Town off-site levies as established by the Town, as may be amended from time to time.
- 18.2 The Developer covenants and agrees that the off-site levies established by the Offsite Levy Bylaw of the Town and payable by the Developer to the Town are the amounts specified in **Schedule "H"** of this Agreement and that arrangement for payment of the off-site levies shall be made upon the execution of this Agreement and as per the agreed upon terms as set out in **Schedule "H"**.
- 18.3 Offsite levies are adjusted yearly, and rates will be determined at the time of endorsement of this Agreement. In the event of a Plan of Subdivision cancellation or an extension to the subdivision approval period or the offsite levies have not yet been paid to the Town in relation to the Subdivision Area, the off-site levy shall be recalculated in accordance with the rate in effect at the time a new subdivision approval or a time extension is granted or when the offsite levies are actually paid to the Town. In any event, the payment of the offsite levies shall be deferred no longer than at endorsement of the subdivision approval.

- 18.4 The Developer agrees that the Subdivision Area will benefit from storm drainage to the Western Irrigation District Canals, the Developer covenants and agrees to pay the Town Storm Capital levies as established by the Town.
- 18.5 The Developer covenants and agrees that the Storm Capital levies currently established by the Town, which includes the Western Irrigation District's discharge fee, and payable by the Developer to the Town are the amounts specified in **Schedule "H"** of this Agreement and that Storm Capital levies are to be paid at the time of Plan of Subdivision endorsement and shall be paid in accordance with the terms as set out in **Schedule "H"**.
- 18.6 The Storm Capital levies are adjusted yearly, and rates will be determined at the time of endorsement of this Agreement. In the event of a Plan of Subdivision cancellation or an extension to the subdivision approval period or the Storm Capital levies have not yet been paid to the Town in relation to the Subdivision Area, the Storm Capital levy shall be recalculated in accordance with the rate in effect at the time a new subdivision approval or a time extension is granted or when the Storm Capital levies are actually paid to the Town. In any event, the payment of the Storm Capital levies shall be deferred no longer than at endorsement of the subdivision approval.
- 18.7 Inasmuch as the Town will incur costs and expenses in the review of the Engineering Plans and Landscaping Drawings for the Municipal Improvements and costs and expenses for the testing and inspection of the Municipal Improvements, and inasmuch as such 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 Developer agrees:
- (a) upon the execution of this Agreement, to pay to the Town, \$1,000.00 for the preparation of this Development Agreement;
 - (b) to pay all subdivision and rights-of-way plan and related document preparation and registration fees;
 - (c) to pay all costs associated with the reviews of Engineering Plans and Landscape Drawings, or reviews of changes to the Engineering Plans or Landscape Drawings by the Town Administration or the Town's Engineering Consultants, which costs are due and payable within 30 days of invoice;
 - (d) to pay all inspection fees conducted by the Town Administration or the Town's Consultant Engineer within 30 days of the date of invoice; and
 - (e) to pay all legal and engineering fees, expenses and disbursements incurred by the Town in the negotiation for, in the preparation of, in the execution of, throughout the performance of and all collateral services required to complete this Agreement, and in the enforcement of the Agreement and to ensure the performance hereof within 30 days of the date of invoice.

19. INTEREST ON MONIES OWED TO TOWN

- 19.1 Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the Town 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%) per cent and such interest rate shall be adjusted from time to time in accordance with any change to the Prime Rate.
- 19.2 In the event that the Town, pursuant to this Agreement, is holding any monies, for the purposes of security, belonging to the Developer, the Town shall invest such monies and upon the Town returning such monies, the Developer shall be entitled to both the principal amount and interest thereon at the Prime Rate less TWO (2%) percent (less any amounts lawfully owing from the Developer to the Town).
- 19.3 For purposes of calculating interest under Subsections 19.1 and 19.2, the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.

20. AMOUNTS PAYABLE UNDER THIS AGREEMENT

- 20.1 The Developer acknowledges and agrees that the Town 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 Town 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 Town to enter into this Agreement;
 - (b) The Developer acknowledges that the Town has agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the Town the sums specified in this Agreement;
 - (c) The Developer agrees that the Town 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 Town in respect to the Developer's refusal to pay the sums specified in this Agreement;
 - (e) The Developer for itself and its successors and assigns hereby releases and forever discharges the Town 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 Town in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Town pursuant to this Agreement.

20.2 The Town and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the Town pursuant to the provisions of this Agreement, whether by way of a liquidated or un-liquidated claim, and howsoever arising, shall be a charge and encumbrance against the Subdivision Lands as legally described in Schedule "A" of this Agreement, the Developer 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 Town 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 Subdivision Lands as legally described in Schedule "A" of this Agreement.

21. DEFAULT BY THE DEVELOPER

21.1 In the event that the Town claims that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the Town 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.

21.2 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 22 hereof. If the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of paragraph 21.1, have a period of **THIRTY (30)** days from the receipt of the arbitration ruling within which to rectify such default.

21.3 The Developer agrees that in the event that the Town 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.

21.4 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 Town pursuant to Section 21.1 and no arbitration been requested by the Developer or from confirmation of the default by the Arbitrator pursuant to Section 21.2, the Town 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 Town in respect thereof shall be at the Developer's sole cost and expense. The Developer shall pay such costs to the Town within Thirty (30) days of receiving demand for payment from the Town.

21.5 Notwithstanding anything to the contrary herein, in the event that the Town, in its discretion, considers it necessary to undertake any immediate work in connection with the construction, installation or repair of the Municipal Improvements in a situation which the Town considers to be an emergency, the Town 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 Town shall give notice in writing to the Developer if the Town 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 22 hereof.

- 21.6 The Developer agrees that the Town shall, for purposes of undertaking any work, 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 Town shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such right of access.
- 21.7 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 Town and the Developer.
- 21.8 The Town and the Developer agree that any rights and remedies available to the Town whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the Town shall be entitled to enforce any right or remedy in any manner the Town deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the Town.
- 21.9 Notwithstanding anything contained within this Agreement, the Town and the Developer covenant and agree that a failure to observe or perform any terms, covenant or conditions of this Agreement shall constitute a default. Further, without restricting the foregoing, each and every one of the following events shall constitute a default:
- (a) if the Developer makes an assignment of its assets for the benefit of its creditors, or makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;
 - (b) if a petition in bankruptcy is filed and presented against the Developer or if a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Developer;
 - (c) if the Developer abandons the Work for a period exceeding three (3) months;
 - (d) if the Developer fails to comply with all applicable laws, by-laws or statutory regulations in force from time to time;
 - (e) if the Developer ceases or threatens to cease to carry on its business;
 - (f) if the Developer assigns this Agreement without the prior written consent of the Town, or in the alternative if the Developer experiences a change in control including, but not limited to any assignment of the ownership or all or a portion of its share capital, in any manner without the prior written consent of the Town, which consent in each case may be arbitrarily withheld;
 - (g) in the event that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, and the Developer fails to rectify the said default within Thirty (30) days of the Town providing notice in writing of such claimed default and requiring the Developer to rectify same.

- 21.10 Without limiting in any way the rights and remedies available to the Town pursuant to this Agreement, statute, or otherwise, upon a failure by the Developer to rectify a default, the Town shall have the option, but not any obligation, to:
- (a) perform the Developer's obligations in default without further notice and at the Developer's sole cost and expense (the Developer shall reimburse the Town for all such costs incurred by the Town immediately upon demand);
 - (b) with or without performing the Developer's obligations in default, draw upon, cash, or otherwise enforce and seek proceed of, any and all security provided by the Developer to the Town for the purposes of securing the performance of the Developer's obligations under this Agreement;
 - (c) set off any and all sums, costs, damages, or claims owed by the Developer to the Town pursuant to this Agreement until either amount has been set off in full.
- 21.11 The Town and the Developer agree that any rights and remedies available to the Town and the Developer whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the Town and the Developer shall be entitled to enforce any right or remedy in any manner the Town or the Developer deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the Town or the Developer.

22. ARBITRATION

- 22.1 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.
- 22.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Town and the Developer, and his decision shall be final and binding. In the event that the Town 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 Subsection 22.1 hereof, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.
- 22.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the Town or the Developer, or proportionately by both the Town and the Developer, depending upon their respective fault as found by the arbitrator.
- 22.4 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 Town, the Committee of the Whole or the Council of the Town or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the Town, the Committee of the Whole or the Council of the Town. In any such instance the discretion, decision, opinion or determination of the Town, the Committee of the

Whole or the Council of the Town, as the case may be, shall be final and binding upon the Developer.

23. INSURANCE, INDEMNITY AND SECURITY

- 23.1 The Developer shall indemnify and save harmless the Town and its officers, employees, agents and contractors from any and all losses, costs, damages, actions, causes of action, suits, claims and demands (including all legal costs and disbursements on a solicitor and client basis) resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.
- 23.2 The Developer shall submit a statement from the Worker's Compensation Board within 30 days of the signing of this Agreement and within 30 days of the anniversary of the signing of this Agreement while it is current certifying that all assessments due by the Developer have been paid.
- 23.3 The Developer covenants and agrees that it shall carry comprehensive liability insurance and that the following provisions shall apply to such insurance:
- (a) the Town shall be a named insured in all public liability policies;
 - (b) all policies shall provide that an event of default on the part of the Developer, its servants or agents, shall not be an event of default on the part of the Town;
 - (c) all policies shall contain a cross liability article;
 - (d) none of the policies shall be cancelled unless **THIRTY (30)** days prior written notice of cancellation is first given to the Town;
 - (e) copies of all policies of insurance shall immediately be provided to the Town upon written request by the Town;
 - (f) the insurance policies shall have the following minimum limits of coverage:
 - (i) Public Liability or Property Damage
 - Bodily Injury – each person TWO MILLION (\$2,000,000.00) DOLLARS; each accident FOUR MILLION (\$4,000,000.00) DOLLARS
 - Property Damage (aggregate) each accident FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS;
 - (ii) Automobile Public Liability and Third Party Property Damage
 - Owned and Non-Owned Vehicles – Bodily Injury - each person TWO MILLION (\$2,000,000.00) DOLLARS; each accident FOUR MILLION (\$4,000,000.00) DOLLARS

- Property Damage, each accident FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

- 23.4 In order to ensure to the Town full compliance by the Developer with the terms, covenants and conditions of this Agreement, the Developer hereby covenants and agrees that it shall deliver and deposit with the Town, in respect to the Development Area, security in the form hereinafter prescribed.
- 23.5 In addition to Sections 16 and 18, and Subsection 23.3 the Developer shall deposit with the Town the following security:
- (1) prior to Commencement of Construction of Municipal Improvements, where the Municipal Improvement is to be connected to the Town's existing Municipal Improvement, and without requesting endorsement of the Plan of Subdivision, an amount of \$50,000;
 - (2) upon request of endorsement of the Plan of Subdivision an amount equal to 100% of the estimated cost of the Municipal Improvements for which a Construction Completion Certificate has not been issued.

The security to be deposited with the Town shall be an irrevocable letter of credit issued by a chartered bank or Alberta Treasury Branch and in terms and form to be approved by the Town's solicitor. The estimated cost to complete the uncompleted Municipal Improvements shall be as set out in Schedule "I" and which letter of credit shall:

- (a) Contain a statement that the said Irrevocable Letter of Credit is issued in favour of the Town in consideration of the Town entering into this Agreement with the named customer of the issuing bank and as security to the Town under this Agreement; and
 - (b) An acknowledgment by the issuing bank that the Town shall be entitled to draw on the said Irrevocable Letter of Credit in accordance with the provisions of this Agreement by demanding same and without further condition or further requirement, and an undertaking by the issuing bank to promptly honor and pay draws made by the Town without the issuing bank making any inquiries as to the entitlement of the Town to make any such draws; and
 - (c) Any Irrevocable Letter of Credit provided as security by the Developer shall contain a covenant by the issuer that if the issuer has not received a release from the Town **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.
- 23.6 The estimated cost of Municipal Improvements shall be based
- (a) if known at the time that this Agreement is made, as set out in Schedule "I" of this Agreement;

- (b) if unknown at the time that this Agreement is made, where actual tendered costs are available, the tendered costs shall be used;
 - (c) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the Town for approval, and if approved by the Town, such cost estimates shall be used;
 - (d) where actual tenders costs are not available, and the Developer's Consultant has not provided cost estimates for the Town to approve, the Town may establish estimated costs in its sole discretion for the purposes of establishing the required security.
- 23.7 The said Security and insurance as above referred to shall be maintained by the Developer in full force and effect during the currency of this Agreement (including the Guarantee Period for the Municipal Improvements prescribed by this Agreement)
- 23.8 Any Security or insurance herein required to be deposited by the Developer may, at the discretion of the Town Manager, be required to be increased or decreased upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the Town that the Security or the insurance deposited is excessive or insufficient in relation to the costs or protection to the Town, for which Security or insurance has been provided. Without limiting the generality of the foregoing, the Town may require an increase in security if the Developer has failed to comply with the construction timetable approved under Subsection 3.4, or if the Developer has been issued a notice of default under Section 21.
- 23.9 The amount of security and insurance to be provided by the Developer to the Town may, in the sole and absolute discretion of the Town, 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 Town shall not be less than:
- (a) Fifteen (10%) 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.
- 23.10 The Letter of Credit shall be released upon issuance of Final Acceptance Certificates.
- 23.11 In the event that the Town 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 Town 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 Town of an account therefore;
- (c) emergency repair work has been done to Municipal Improvements by the Town 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 Town of an account therefore;
- (d) the Developer by any act or omission is in default of any term, condition or covenant of this Agreement;
- (e) the security to be provided by the Developer to the Town pursuant to this Agreement is due to expire within a period of **SIXTY (60)** days and the Developer has not deposited with the Town a renewal or replacement of such security in terms and form acceptable to the Town;

the Town may invoke the provisions of this Section, and make demands as payee and beneficiary under the Irrevocable Letter of Credit provided by the Developer to the Town pursuant to the requirements of this Agreement.

- 23.12 In the event that the Town has negotiated or called upon the security to be deposited by the Developer with the Town in circumstances where the said security was due to expire within the said **SIXTY (60)** day period, then the Town shall be entitled to hold any funds thereby obtained in lieu of the security which has been negotiated or called upon.
- 23.13 In the event that the Town has negotiated or called upon the security to be deposited by the Developer with the Town, the Town may, at its option and discretion, use any funds thereby obtained in any manner the Town deems fit to discharge the obligations of the Developer pursuant to this Agreement.
- 23.14 Notwithstanding any of the provisions herein, in the event of the failure of the Developer to perform any of its obligations hereunder, the Town may, at its option and in addition to any other remedy that it may have available at law, in equity, or otherwise, perform such obligation either by employing contractors to do so or otherwise. All costs incurred by the Town in performing any of the Developer's obligations hereunder shall be recoverable from the Developer on demand, may be recovered under the Letter of Credit and as additional and collateral security shall constitute a charge against the lands of the Subdivision Area pursuant to Subsection 20.2.

24. DELIVERY OF DOCUMENTS TO TOWN

- 24.1 Prior to the issuance of a Construction Completion Certificate for Municipal Improvements, the Developer shall deliver to the Town all documentation, as set out in this Agreement and **Schedule "C."**
- 24.2 **FORTHWITH** upon the completion of the construction and installation of the Municipal Improvements for a particular stage and an application being made for the issuance of a Construction Completion Certificate, the Developer shall submit with the application, all "as built" Plans and profile record drawings, as herein required, in a form and to standards specified by the Town which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the town, and inspections, testing and invert information to the Town. In addition, upon the completion of the construction and installation of the Municipal Improvements for a particular stage and an application being made for the issuance of a Construction Completion Certificate, the Developer shall submit with the application the actual construction costs for all Municipal Improvements which shall become the property of the Town in accordance with this Agreement, identified as the contributed assets, in a format acceptable to the Town, as set out in Schedule "K".
- 24.3 The Final Acceptance Certificate shall not be issued until **SIX (6)** months have elapsed subsequent to the date of the submission of the records; **AND PROVIDED**, that the Final Acceptance Certificate shall not be issued prior to the expiration of the Guarantee Period.

25. COMPLIANCE WITH LAW

- 25.1 The Developer shall at all times comply with all Federal, Provincial and Municipal legislation, regulations, bylaws and resolutions relating to the development of the Development Area by the Developer.
- 25.2 This Agreement does not constitute approval of any subdivision and is not a development permit, building permit, nor other permit granted by the Town, and it is understood and agreed that the Developer shall obtain all approvals and permits which may be required by the Town or by any other governmental authority.
- 25.3 Where anything provided for herein cannot lawfully be done without the approval or permission of any authority, person or board, the rights or obligations to do it do not come into force until such approval or permission is obtained; **PROVIDED**, that the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval or permission.
- 25.4 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.

26. LAW OF ALBERTA APPLICABLE

- 26.1 The validity and interpretation of this Agreement and of each clause and part hereof shall be governed by the laws of the Province of Alberta.

27. FURTHER ASSURANCES

- 27.1 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.

28. WAIVER

- 28.1 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.

29. ADDITIONAL PROVISIONS AND SPECIAL CONDITIONS

- 29.1 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 Schedules "A" through "L" of this Agreement as if the provisions of Schedules were contained in the text of this Agreement.

30. CAVEATS

- 30.1 The Developer acknowledges and agrees that the Town shall be at liberty, pursuant to the *Municipal Government Act*, Revised Statutes of Alberta 2000, as amended, upon the execution of this Agreement, to file at the Land Titles Office for the South Alberta Land Registration District a caveat against the Subdivision Area and against the undeveloped portion of the lands held in title by the Developer for purposes of protecting the Town's interests and rights pursuant to this Agreement.

31. NON-ASSIGNABILITY OF AGREEMENT

- 31.1 This Agreement shall not be assignable by the Developer without the express written approval of the Town. Such approval shall be subject to Subsection 31.2 and may be withheld by the Town in its discretion. This Agreement shall enure to the benefit of, and shall remain binding upon (joint 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.
- 31.2 It is understood between the Town and the Developer that no assignment of this Agreement by the Developer shall be permitted by the Town unless and until:
- (a) The proposed assignee enters into a further agreement with the Town whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Developer as set forth in this Agreement;

- (b) The proposed assignee has deposited with the Town all insurance and security as required by the terms of this Agreement.

32. TIME OF THE ESSENCE

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

33. NOTICES

- 33.1 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 STRATHMORE
680 Westchester Road
Strathmore, AB T1P 1J1

ATTENTION: CAO

AND

PROVIDED, HOWEVER, that such addresses may be changed upon **TEN (10)** days notice; AND PROVIDED, FURTHER, that if in the event that notice is to be served at a time when there is an actual or anticipated interruption of mail service affecting the delivery of such mail, the notice shall not be mailed but shall be delivered by hand.

34. FORCE MAJEURE

- 34.1 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.

35. EXECUTION OF AGREEMENT

35.1 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, this _____day of _____AD 200_____.

TOWN OF STRATHMORE

DEVELOPER

CAO

SCHEDULE "A"
LEGAL DESCRIPTION
DEVELOPMENT AREAS (red)
SUBDIVISION AND LANDS (green)

SCHEDULE "B"
SUBDIVISION APPROVAL AND CONDITIONS

SCHEDULE "C"
TOWN OF STRATHMORE
DESIGN STANDARDS AND PROCEDURES

SCHEDULE "D"
ADDITIONAL PROVISIONS

**SCHEDULE "E"
ACCESS AGREEMENT**

SCHEDULE "F"
THIRD PARTY COST ALLOCATION

SCHEDULE "G"
OVERSIZE CALCULATIONS AND ASSIGNMENTS TO BENEFITING LAND

SCHEDULE "H"
OFFSITE LEVY CALCULATION AND PAYMENT SCHEDULE

SCHEDULE "I"
COST OF MUNICIPAL IMPROVEMENTS

SCHEDULE "J"
DEVELOPER'S CONSULTANTS AND ADDRESSES

SCHEDULE "K"
CONTRIBUTED ASSETS

SCHEDULE "L"
VARIATIONS AND CHANGES FROM DESIGN STANDARDS