

MEMORANDUM OF AGREEMENT made this ____ day of _____, 20__.

WHEATLAND COUNTY

a municipal corporation pursuant to the provisions of the *Municipal Government Act*, R.S.A.
2000 Chapter M-26,

(hereinafter referred to as the "**County**")

OF THE FIRST PART

- and -

(Developer).

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 owner of those lands described in Schedule "A" attached to this Agreement;

AND WHEREAS the Developer proposes to develop a portion of the said lands (hereinafter referred to as the "**Development Area**") as shown on the Plan attached as Schedule "B" to this Agreement;

AND WHEREAS subdivision approval of the Lands was granted on **(date)**, subject to the condition that the Developer enter into a Development Agreement with the County;

AND WHEREAS the County and the Developer are agreeable to the development of the Development Area by the Developer and in accordance with the provisions of this Agreement;

AND WHEREAS the County and the Developer have agreed to enter into an Agreement to provide infrastructure and facilities required within and outside of the Development Area;

AND WHEREAS the County and the Developer agree that the Developer shall construct and install the Municipal Improvements and Developer Improvements required throughout and outside of 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 County, the Municipal Improvements as specified in the approved Plans shall become the property of the County;

AND WHEREAS upon satisfactory completion of the construction and installation of the Developer Improvements, the said Developer Improvements as specified in the approved Plans shall remain the property of the Developer;

AND WHEREAS the County and the Developer have agreed that the said construction and installation of the Municipal Improvements, the Developer 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 County agrees with the Developer and the Developer agrees with the County as follows:

1. INTERPRETATION

1.1 "**Construction Completion Certificate**" means a Certificate issued by the County, as contemplated in Section 10, certifying the completion of the Municipal Improvements or the Developer Improvements, or a portion thereof, once the Municipal Improvements or the Developer Improvements, as the case may be, have been constructed and installed by the Developer to the satisfaction of the County in accordance with the Agreement.

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

1.3 "**County**" means the municipal corporation of Wheatland County and the County shall be represented by its Chief Administrative Officer or his/her designate.

1.4 "**Developer's Engineer**" means the professional engineer retained by the Developer who is a member in good standing of the Association of Professional Engineers, Geologists and Geophysicists of Alberta to design, supervise, inspect, monitor and certify all work to be carried out under this Agreement by the Developer.

1.5 "**Developer Improvements**" means all of the installations, infrastructure and improvements to be constructed and installed within and outside the boundaries of the Development Area, as referenced in Schedule "C", which are specified in the approved Plans to be owned, operated and maintained by the Developer or a third party utility service provider, all as referenced in and in accordance with the Plans and the Subdivision Approval.

1.6 "**Development Area**" means that portion of the lands legally described in Schedule "A" and which are delineated and outlined in red on the map attached hereto as Schedule "B" to this Agreement.

1.7 **"Essential Services"** means:

- (a) those improvements described in clauses (a), (b), (c), (d), (e), (g), (i) and (k) of Schedule "C" of this Agreement;
- (b) internal roads and parking facilities with gravel base and asphalt surface; and
- (b) natural gas, electrical power, and telephone services.

1.8 **"Final Acceptance Certificate"** means a written acceptance, as contemplated in Part 10, issued by the County for the Municipal Improvements or the Developer 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"** with respect to the Municipal Improvements or the Developer Improvements, subject to Sections 10, 11, 19 and 20 of this Agreement, means a period of TWO (2) years for all Municipal Improvements and all Developer Improvements, including Landscaping;

1.10 **"Landscaping"** includes the modification or enhancement of the Development Area;

- (a) by means of the growing or 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); or
- (c) by means of the alteration of any grades or elevations of the surface of the site which is not done solely for purposes of drainage control,

as detailed in the approved Landscaping Plan referenced in Condition No. 25 of the Subdivision Approval.

1.11 **"Lands"** means those lands legally described in Schedule "A" to this Agreement;

1.12 **"Land Use Bylaw"** means the County's current Land Use Bylaw, as amended or replaced from time to time.

1.13 **"Municipal Improvements"** means and includes, within and outside of the Development Area, those Improvements, as identified in Schedule "C" to this Agreement, which are specified in the approved Plans to be owned and maintained by the County, as referenced in and in accordance with the Subdivision Approval and the approved Plans.

1.14 **"Plans"** means the plans and specifications prepared by the Developer's Engineer and approved by the County covering the design, construction, location and installation of all Developer Improvements and Municipal Improvements, in accordance with and as referenced in the Subdivision Approval, including the following:

- a) the approved Traffic Impact Assessment,
- b) the approved Municipal Servicing Study/Report,
- c) the Landscaping Plan referenced in Condition No. 25 of the Subdivision Approval,
- d) the Almor Testing Services Ltd. Report "Shallow Subsoil and Groundwater Conditions";
- e) the Construction Management Plan referenced in Condition No. 26 of the Subdivision Approval;
- f) the approved Temporary Evaporation Pond Assessment;
- g) the Detailed Stormwater Management Plan referenced in Condition No. 15 of the Subdivision Approval; and
- h) the Biophysical Impact Assessment referenced in Condition No. 20 of the Subdivision Approval.

1.15 **"Plan of Subdivision"** means the approved plan of subdivision referenced in the Subdivision Approval which subdivides the Development Area into separate lots for further development and/or sale.

1.16 **"Prime Rate"** means the prime lending rate established from time to time at the nearest branch of **[insert name of County's financial institution]**.

1.17 **"Public Property"** or **"Public Properties"** means all properties within or outside of the Development Area which are or will be owned or administered by the County, including utility rights-of-way or easements, following the registration of the Plan of Subdivision for the Development Area, and including other properties within or outside of the Development Area owned or administered by any school authority.

1.18 **"Servicing Standards"** means the designs, procedures, standards and specifications established by the County in its Public Works Policies respecting the design, construction and installation of Developer Improvements and Municipal Improvements, being the version in place at the time of approval of the Plans of each of the Developer Improvements and Municipal Improvements. Where the Public Works Policies do not reference certain infrastructure, the Servicing Standards shall be the City of Calgary's design and construction specifications. The County and the Developer may, by written agreement only, vary or change any of the procedures, standards or specifications set forth in the Servicing Standards.

1.19 **"Subdivision Approval"** means approval as attached as Schedule "H" to this Agreement.

2. PLAN OF SUBDIVISION

2.1 The Developer covenants and agrees that it shall comply fully with all conditions of the Subdivision Approval. In the event of any conflict between this Development Agreement and the Subdivision Approval, the provisions of the Subdivision Approval shall take precedence to the extent of the conflict.

2.2 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 Development Area within Twelve (12) months of the date of this Agreement, and further, the Developer agrees:

- (a) that in the event that the Developer does not register the Plan of Subdivision within twelve (12) months, then the County shall be entitled to terminate this Agreement;
- (b) that the termination of this Agreement in whole or in part as contemplated in Clause (a), then the Developer shall not be entitled to register Plans of Subdivision for any portion of the Development Area unless and until a further written Agreement is entered into between the Developer and the County;
- (c) that in the event that the County 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 County shall survive and the County shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect.

2.3 The Developer covenants and agrees that in the event that a Plan of Subdivision for the Development Area is not registered within the time limits prescribed herein, or in the event that the Plan of Subdivision the Development Area is cancelled as contemplated in this Section, or in the event that the Developer does not commence the development of the Development Area within the time limits prescribed herein, THEN the County shall be at liberty, in the County's sole discretion, to re-district the lands within the Development Area back to the land use district in place prior to the Development Area being districted for development purposes.

2.4 In the event that the Plan of Subdivision for the Development Area has been registered by the Developer, and the Developer fails to proceed with the construction and installation of the Municipal Improvements for the Development Area within the time limits herein specified, the Developer shall, upon receiving written notice from the County to do so, immediately proceed to take all steps necessary to cancel the registration of the Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer as herein provided.

2.5 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the County as its attorney in fact and in law for the purposes of making all necessary or desirable (in the County's discretion or opinion) applications, executing necessary or advisable (in the County's discretion or opinion) documents, and taking all further necessary or advisable (in the County's discretion or opinion) steps or actions in order to obtain the cancellation of the registration of the Plan of Subdivision in accordance with the preceding Section of this Agreement.

2.6 The power of attorney conferred upon the County by the Developer in Section 2.5 of this Agreement may be exercised by the County 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 County providing written notice to the Developer pursuant to Section 2.4 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 County providing written notice to the Developer pursuant to Section 2.4 of this Agreement.

2.7 The County in its discretion may extend the time limits specified in Section 2.6, but the County and the Developer agree that no act or omission on the part of the County, intentional or unintentional, shall constitute a waiver of the County's right to exercise the power of attorney conferred upon the County by the Developer pursuant to Sections 2.5 and 2.6 of this Agreement.

3. PLANS

3.1 Prior to commencing construction and installation of the Municipal Improvements or the Developer Improvements within or outside of the Development Area, the Developer shall submit all Plans which have not yet been approved to the County for approval and the Plans shall give all necessary details of the Municipal Improvements and the Developer Improvements to be constructed by the Developer, including any necessary specifications to be attached thereto.

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

3.3 The Plans for the construction and installation of the Municipal Improvements or the Developer Improvements for the Development Area shall conform strictly to the Servicing Standards in existence at the time that the Plans are submitted to the County for approval.

3.4 In the event that the Plans required to be submitted by the Developer to the County pursuant to this Agreement are unacceptable to the County, the Plans shall be amended or corrected by or on behalf of the Developer and resubmitted to the County.

3.5 The County reserves the right to submit the Plans to an independent engineering firm, as selected by the County, for review and approval of the proposed design. The costs for this independent review and approval of the Plans shall be borne by the Developer.

3.6 The Developer covenants and agrees that the Plans shall include a Construction Management Plan for the construction and installation of all of the Municipal Improvements and the Developer Improvements within and outside of the Development Area and the Developer shall, upon approval of the Plans by the County, comply with all time limits and complete all of the Developer's work within the dates specified in the Construction Management Plan.

3.7 The Developer covenants and agrees that the Plans for Landscaping for Public Properties shall comply with Wheatland County standards.

3.8 Subject to the terms of this Agreement, it is understood and agreed between the County and the Developer that the Developer shall be entitled to construct the Municipal Improvements and the Developer Improvements in accordance with the Plans once such Plans have been approved by the County.

3.9 It is understood and agreed that the County's approval of the Plans for the Developer Improvements and Municipal Improvements shall be in principle only and, in the case of unforeseen conditions which may adversely affect development, or in the case where a Municipal Improvements or a Developer Improvement to be built in accordance with the Plans would not be suitable for the purposes intended, the detailed design specifications for any of the Municipal Improvements and the Developer Improvements shall be subject to review and revision, from time to time, by the County in accordance with the Servicing Standards and in accordance with accepted engineering and construction practices.

3.10 The Developer shall not commence construction and installation of the Municipal Improvements or Developer Improvements, or any portion, until such time as the County has issued written approval of the Plans and the Developer has posted all required security in accordance with Part 22 of this Agreement.

3.11 The Developer acknowledges and agrees that the County's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the County or its engineer respecting the content of the Plans, including, without restricting the generality of the foregoing, whether the Plans are suitable for the intended purpose or whether the Plans comply with any required federal, provincial or municipal legislation, regulations, codes, guidelines, Servicing Standards or engineering practices nor does it relieve the Developer of the responsibility and obligation to remedy subsequently discovered defects, omissions and/or discrepancies.

3.12 The Developer shall, upon application for the Construction Completion Certificate, deliver to the County all inspection and testing records and "as built" Plans and records, in a form and to standards specified by the County which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the County.

4. DRAINAGE STANDARDS

4.1 The Developer covenants that the preparation of the drainage plans as part of the Plans, the construction and installation of all storm water management systems both within private lands and Public Property, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction), all necessary approvals from Alberta Environment and Parks and other affected approving authorities, 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 Servicing Standards.

4.2 The Developer covenants that all proposed purchasers and optionees of any of the lots within the Development Area shall be fully advised of the requirements of the County relating to

the management and disposal of storm water within the lots in the Development Area, as outlined below.

4.3 It is agreed between the County and the Developer that all of the storm water management standards and requirements of the County 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.

4.4 The Developer further covenants and agrees to ensure that all lots that have till areas in excess of ONE-HALF (0.5) meter shall be engineer filled to density specified by a qualified geotechnical consultant, and the Developer shall ensure that the County shall be provided with certified test results to ensure compliance with this clause and further, will provide to the County a plan of all such lots that have till areas in excess of the said ONE-HALF (0.5) meter.

4.5 The Developer covenants and agrees that prior to the Construction Completion Certificate for any of the Municipal Improvements or the Developer Improvements to be constructed and installed within the Development Area, that the Developer shall undertake and complete to the satisfaction of the County 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 ponding of water within any of the lots within the Area.

4.6 It is further agreed between the parties hereto that all herein specified standards, requirements and any unfulfilled obligations due and owing to the County by the Developer, are hereby declared and agreed by the parties hereto to be and constitute covenants running with the Lands and binding upon any subsequent owners of any lots within the Development Area.

4.7 With respect to grading within the Development Area, the standards specified herein will apply to construction within the building sites and are to supplement the *Alberta Building Code* and the County's Land Use Bylaw, and applicable policies. Home builders will be required to supply a grading compliance certificate prepared by an Alberta Land Surveyor, showing compliance with finished grade requirements, prior to occupancy.

4.8 The finished elevations at all corners of the lot and the ground next to the building shall conform to an approved surface drainage plan. Any changes must be approved, in writing, by the County.

4.9 Positive drainage must be established away from the building to the gutter or drainage channels as designed.

4.10 Weeping tiles and other foundation drains must meet *Alberta Building Code* requirements. Disposal of weeping tile and other foundation drainage shall be subject to County approval. Disposal into the sanitary sewerage system is prohibited. In all cases, this will require the provision of a sump pump discharging into a storm sewer system designed to accommodate the anticipated weeping tile flow or, where storm system connections are not available, into swales alongside and between lots, ultimately discharging into the cutter.

4.11 Native material may be used for backfill of trench and building excavations respecting the Municipal Improvements and the Developer Improvements. In accordance with good construction practice, all trench and foundation backfill must be adequately consolidated at the time of construction by moisture conditionings and or mechanical compaction to ensure that when subsequent natural settlement is complete, that final grades will be acceptable with no adverse impact to adjacent structures. The Construction Completion Certificate may be issued after provision of appropriate security if weather conditions preclude adequate consolidation and inspection prior to occupancy. The Developer is required to provide certification from a qualified geotechnical engineer that the work has been backfilled in accordance with Servicing Standards. Standards are to be in accordance with those recommended by a qualified geotechnical engineer, considering die site-specific soil types and proposed usage over the backfilled material.

4.12 Municipal or Developer Improvements shall not alter or disrupt the drainage pattern as established in the approved surface drainage plan.

4.13 Landscaping and structures, such as solid fences, retaining walls and permanent or temporary buildings, which may disrupt surface drainage shall not be permitted.

5. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS AND DEVELOPER IMPROVEMENTS

5.1 Except as otherwise specified in the approved Construction Management Plan referenced in Section 3.6, the Developer shall commence construction and installation of the Municipal Improvements and the Developer Improvements within twelve (12) months of endorsement of this Development Agreement and shall complete the construction and installation of the Municipal Improvements and the Developer Improvements for the Development Area, at the Developer's own cost and expense, within twenty four (24) months of the endorsement of this Development Agreement.

5.2 The Developer warrants to the County that all of the Municipal Improvements and Developer Improvements shall be constructed and installed in a good and workmanlike manner, in strict conformance with the Plans, in accordance with proper and accepted engineering and construction practices, in accordance with the terms of this Agreement, in accordance with the Servicing Standards, and in accordance with the requirements of all Federal, Provincial and municipal laws, legislation, regulations, codes, policies and guidelines applicable to the work.

5.3 In the event that the Developer has not commenced or completed construction of the Municipal Improvements and the Developer Improvements within the time limits specified in Section 5.1, then the County shall be entitled to terminate this Agreement upon providing the Developer with not less than thirty (30) days written notice and further, the Developer agrees:

- (a) that the termination of this Agreement in whole or in part shall be effective thirty (30) days after the County serves written notice of termination on the Developer; and
- (b) that in the event that this Agreement is terminated in whole or in part, then the Developer shall not be entitled to commence, install or complete construction of the Municipal

Improvements or the Developer Improvements for the Development Area unless and until, at the County's option, a further written agreement is entered into between the Developer and the County.

5.4 The Developer shall construct and install any necessary secondary emergency access in accordance with the Subdivision Approval.

5.5 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, street identification signs, development identification signs and any temporary signage in accordance with the Plans and to the reasonable satisfaction of the County.

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

- (a) The County shall have free and immediate access to all records of or available to the Developer and the Developer's Engineer 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 County may:
 - (i) exercise such inspection of the performance of the work as the County may deem necessary and advisable to ensure to the County the full and proper compliance by the Developer with the Developer's undertakings to the County, and to ensure the proper performance of the work;
 - (ii) reject any design, material or work which is not in accordance with the Servicing 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 County 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 or Developer Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the County 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 21 hereof; PROVIDED, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the County pursuant to clauses (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, except as otherwise agreed by the County in writing, shall stop until such arbitration has taken place.

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

- (a) that the County have no obligation or duty to exercise any of the County'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 or the Developer Improvements;
- (b) that the Developer shall during the course of the construction and installation of the Municipal Improvements and the Developer Improvements, provide and maintain adequate inspection services, supervised by a professional engineer; and
- (c) that nothing set forth in the preceding Section shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in this Agreement, and without restricting the generality of the foregoing, the Developer shall fulfill all responsibilities in respect to the design, construction, installation and maintenance of the Municipal Improvements and the Developer Improvements as required by the terms of this Agreement.

5.8 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements and the Developer Improvements and during the Guarantee Period for the Municipal Improvements and the Developer Improvements that the Developer 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.

5.9 The Developer's Engineer shall be deemed to be an agent of the Developer for the purposes of this Agreement and the Developer's Engineer shall ensure that all materials supplied and all work performed conforms in all respects to the requirements of the Servicing Standards and this Agreement. Without limiting the generality of the foregoing, the Developer's Engineer shall be deemed the agent of the Developer for the purpose of:

- a) Preparing, submitting and certifying gross construction costs, Construction Completion Certificates and Final Acceptance Certificates,
- b) Ensuring the correction of all defects and deficiencies,
- c) Carrying out inspections under this Agreement,

- d) Preparing, reviewing, certifying and submitting the Plans, specifications and schedules which the Developer is required to provide under this Agreement, and
- e) Receiving communications from the County, both orally and in writing, in relation to this Agreement.

The Developer shall vest adequate authority in the Developer's Engineer such that in the absence of the Developer, the Developer's Engineer can deal expediently and autonomously with emergency situations, as determined by the County.

5.10 The Developer shall not permit the Lands to constitute a nuisance or unsightly premises during construction of the Municipal Improvements or Developer Improvements. The Developer shall take effective measures to reasonably control drainage, dust, dirt and weeds in and around the Lands during construction of the Municipal Improvements and Developer Improvements including, without limiting the generality of the foregoing, on any loam stockpile site so that dust, dirt or weeds originating therein shall not be conveyed therefrom by any means whatsoever nor cause annoyance or become a nuisance to property owners and others within or outside of the Lands. The Developer is solely responsible for ensuring appropriate drainage, dust, dirt and weed control on the Lands during construction of the Municipal Improvements. In the event that the County deems that there is drainage, dust, dirt or weed problems or that the Lands otherwise constitute a nuisance or unsightly premises, the County shall attempt to notify the Developer of the problem by contacting the Developer or the Developer's Engineer. If the County is not able to contact the Developer or the Developer's Engineer or if the Developer or the Developer's Engineer shall fail to take effective measures to remedy the problem after being notified, then the County may take such steps as are reasonably necessary to eliminate the 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 County. If the Developer fails to pay the costs of the remedial measures taken by the County within thirty (30) days of receipt of the County's invoice relating to same, the County shall be entitled to draw upon the Security posted pursuant to the terms of this Agreement in accordance with Part 22 for the purpose of recovering its costs.

5.11 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Municipal Improvements and Developer Improvements, the Developer's Engineer shall submit to the County a statement under his/her professional seal certifying that the Developer's Engineer has provided adequate periodic inspection services during the course of the work and that the Developer's Engineer is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans, in accordance with the Servicing Standards, and in accordance with the requirements of all Federal, Provincial and municipal laws, legislation, regulations, codes, policies and guidelines applicable to the work.

5.12 In addition to whatever other requirements may be imposed upon the Developer by the County, the Developer shall undertake t.v. camera video inspection of all storm and sanitary sewer lines and shall provide the video and corresponding report prior to the issuance of the Construction Completion Certificate of such lines by the County.

5.13 It is understood and agreed between the County and the Developer that during the course of constructing the Municipal Improvements and the Developer Improvements, the re-execution or replacement of unsatisfactory work which is of a minor nature (as determined by the County 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 respective Municipal Improvements or Developer Improvements in question.

5.14 The Developer covenants and agrees as follows:

- (a) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the County that the Essential Services will have received Construction Completion Certificates before any application is made for a Building Permit;
- (b) unless the County determines otherwise and upon such conditions as the County deems appropriate, the County shall not issue Building Permits for the Development Area until such time as Construction Completion Certificates have been issued for the Essential Services;
- (c) where Construction Completion Certificates have not been issued for the Essential Services, the Developer shall cause any party who applies to the County for a Building Permit to execute an acknowledgement and release, in a form satisfactory to the County, acknowledging that the Essential Services have not been completed prior to the issuance of the Building Permit and releasing and indemnifying the County from any and all liability arising therefrom. The executed form of acknowledgement, release and indemnity shall be provided to the County at the same time that the application for a Building Permit is submitted to the County;
- (d) to undertake and complete to the satisfaction of the County such work as may be necessary to ensure that all lots within the Development Area have positive drainage away from all buildings to the gutter or drainage channels and that there will be no unacceptable pooling of water within any of the lots within the area; and
- (e) the Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation, to the County's satisfaction, of electric power, natural gas, and telephone services to the Development Area and within the streets adjoining the Development or the lots to be created in the Development Area.

5.15 The Developer shall take effective measures to reasonably control garbage and debris in and around the Development Area, including, and without limiting the generality of the foregoing, any building and landscaping so that garbage and debris originating therein shall not cause annoyance or become a nuisance to property owners and others within or outside of the Development Area. The Developer shall at its own expense provide dumpsters or such other containers suitable for the collection and containment of garbage and debris within the Development Area.

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

6.1 The County hereby grants to the Developer the right, permission and power to use, break-up, dig, trench, or excavate in the public highways, streets, roads, lanes, boulevards, parks and similar Public Places under the control of the County, within or outside of 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 thirty (30) 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 County detailed written proposals, for approval by the County, 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 drawings of all connections to existing municipal services;
 - (iii) provisions to be implemented or temporary access and services;
 - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption;
 - (v) form and schedule of notification and public relation strategy to be utilized.
- (b) No such work shall be commenced prior to the Developer obtaining the written consent of the County to enter upon such Public Properties; and the County shall not unreasonably delay or withhold such 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 County as set forth in this Agreement and all directions and requirements of the County 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; and
- (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.

6.2 The Developer shall do all things reasonable and necessary to protect members of the public from personal injury, death and property loss which may be caused or contributed to by any act or omission of the Developer, its employees, contractors, engineers, or agents or in any way connected with the performance or maintenance of the work. All work shall be carried out in accordance with all applicable Federal, Provincial and municipal laws, legislation, regulations, codes, policies and guidelines applicable to the work.

6.3 Without limiting the generality of Section 6.2 or the Developer's responsibility to ensure the safety of the public, the Developer shall immediately comply with the directions of the County if the County instructs the Developer to:

- a) take any action which, in the opinion of the County (acting reasonably) is necessary or desirable to protect any member of the public from personal injury, death or property loss or the risk thereof arising from or in conjunction with the work; or
- b) cease to perform any portion of the construction of the work in any way which, in the opinion of the County (acting reasonably) may cause or increase the risk to the public and to perform the work in a manner which in the opinion of the County (acting reasonably) may remove or mitigate the risk to the public; or
- c) close off public access to any area which cannot be made sufficiently safe in the opinion of the County (acting reasonably) and to provide alternate safe access to the public.

6.4 Where the Developer fails or refuses to comply with the directions of the County in accordance with Section 6.3, the County may carry out such instructions at the sole cost of the Developer and the Developer shall be responsible to reimburse the County for the incurred costs within thirty (30) days of the County issuing an invoice.

6.5 The Developer shall indemnify and save harmless the County, its elected officials, employees, representatives, officers, agents, and volunteers from and against any and all causes of action, losses including but not limited to economic loss, 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 any act or omission relating to the performance or intended performance of work by the Developer pursuant to this Agreement including but not limited to materials utilized in the performance of the work.

6.6 The Developer shall provide to the County for approval as part of the Plan, four (4) sets of plans indicating the drainage and contouring, and the proposed grades of the Public Properties that will be graded during construction. The Developer shall at its sole expense grade and loam to a depth of one hundred (100) millimeters, in conformity with the Servicing Standards for those areas

of the boulevards and other Public Properties which are not left in their natural state, and thereafter shall seed to grass boulevards and Public Properties to the satisfaction of the County's engineer. The Construction Completion Certificate for Landscaping shall not be issued by the County until such time as such work is completed to the satisfaction of the County's engineer.

7. INSTALLATION OF OTHER UTILITIES

7.1 The Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation, to the County's satisfaction, of electric power and natural gas to the Development Area and within the streets adjoining the lots to be created in the Development Area.

7.2 The said electric power and natural gas within the Development Area shall be installed within the roadways, utility lots or easement areas, in accordance with the Plans, outside of 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 shall be responsible for making arrangements for the provision of telephone services to lots within the Development area upon such lot being occupied and the Developer shall be solely responsible for all cost, and expenses relating to the installation of such telephone services excepting the normal hook-up costs charged to the customer.

8. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS AND THE DEVELOPER IMPROVEMENTS

8.1 Notwithstanding anything contained in this Section, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the County 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 County shall not be obligated in any circumstance 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 and the Developer Improvements, or any of them, shall provide:

- (a) That the Third Party shall indemnify and save harmless the County 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 County access to the work for the purpose of inspection;
- (e) That the work 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 County;
- (f) The Third Party shall coordinate with the County 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 County to protect the Third Party and the County from any claims, actions or demands arising from the pursuance or purported pursuance of the work being performed by such Third Party.
- (h) That, at the option of the County, the Developer will ensure that the Third Party shall carry a Labour and Materials Payment Bond in the amount of fifty percent (50%) of the contract price.

9. COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS

9.1 The Developer shall, at all times during the construction and installation of the Municipal Improvements and the Developer Improvements comply fully with all terms, conditions, provisions, covenants and details as may be set out in the Plans, as approved by the County, and such terms and conditions as may otherwise be required pursuant to this Agreement or be agreed upon in writing between the County 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:
TRANSFER OF MUNICIPAL IMPROVEMENTS TO COUNTY**

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

- (a) the Municipal Improvement or the Developer Improvement has been fully constructed and installed in accordance with the approved Plans;
- (b) the Municipal Improvement or the Developer Improvement has been constructed and installed in accordance with the Servicing Standards and accepted engineering and constructed practices;
- (c) all testing has been completed and the results approved by the County;

- (d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the County;
- (e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;
- (f) the Municipal Improvement or the Developer Improvement is suitable for the purpose intended; and
- (g) the Developer has provided the County with any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements.

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

10.3 Within SIXTY (60) days of receipt of such claim of completion, the County will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements or the Developer Improvements, as the case may be, so completed.

10.4 Notwithstanding the preceding Section, the County may give notice to the Developer of the County's inability to conduct an inspection within the said SIXTY (60) days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until SIXTY (60) days following the elimination of such adverse site or weather conditions.

10.5 It is understood and agreed between the Developer and the County that the notices required under Sections 10.2 and 10.3 shall be given only between the County and the Developer and in no event shall either the County 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 or the Developer Improvements.

10.6 In the event that any inspection contemplated in Section 10.3 or 10.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement or Developer Improvement, the County may refuse to issue a Construction Completion Certificate for the Municipal Improvement or Developer Improvement and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements or Developer Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and issuance of a Construction Completion Certificate.

10.7 It is understood and agreed between the Developer and the County that the County shall be at liberty in its sole discretion to issue a written conditional Construction Completion Certificate for the Municipal Improvements or the Developer Improvements such Certificate shall be

conditional upon the completion of minor deficiencies by the Developer within a time specified by the County; PROVIDED, that the commencement of the Guarantee Period in relation to any such deficiency, if rectified within THIRTY (30) days (or such other time frame stipulated on the Construction Completion Certificate), shall be back-dated to the date of the said conditional Construction Completion Certificate; AND PROVIDED FURTHER, that the Guarantee Period in relation to any such deficiency, if not rectified within the said THIRTY (30) days (or such other time frame stipulated on the Construction Completion Certificate), shall not commence until such time as such deficiency has been rectified by the Developer and received acceptance of the County in accordance with this Agreement.

10.8 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Guarantee Period for the Municipal Improvements or the Developer Improvements, or any portion thereof, the Developer shall give notice to the County of expiration of the Guarantee Period for the Municipal Improvements or the Developer Improvements, as the case may be, and the Developer shall request a Final Acceptance in respect to the Municipal Improvements or the Developer Improvements. The Developer's notice shall be accompanied by a list of any deficiencies.

10.9 Within SIXTY (60) days of the receipt by the County of a request for a Final Acceptance, the County shall undertake an inspection of the Municipal Improvements or the Developer Improvements, as the case may be, and the County shall within the said SIXTY (60) days advise the Developer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements and the Developer Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the provisions of Section 10.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.

10.10 In the event that there are any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement or Developer Improvement the County may refuse to issue the Final Acceptance of the Municipal Improvements or the Developer Improvements and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements or the Developer 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 Section 10.9 reveals that there are no deficiencies in relation to the Municipal Improvements or the Developer Improvements, as the case may be, the County shall issue in writing its Final Acceptance Certificate for the Municipal Improvements or the Developer Improvements, respectively.

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

10.13 Upon the issuance of a Construction Completion Certificate by the County in respect of:

- (a) the Municipal Improvements, or any portion thereof, the Developer hereby acknowledges and agrees that all right, title and interest in the completed Municipal Improvements or portions thereof (excluding facilities owned by private utility companies) as specified in the Plans as being County owned infrastructure, vests in the County without any cost or expense to the County therefore, and the Municipal Improvements shall become the property of the County;
- (b) the Developer Improvements, or any port on thereof, the Developer hereby acknowledges and agrees that all right, title and interest in all Developer Improvements remains the property of the Developer and, upon registration of the Plan of Subdivision referred to within Section 2.2 of this Agreement, shall remain under the care, control and management of the Developer and shall not in any manner be or become the property or responsibility of the County.

10.14 Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the Guarantee Period for the Municipal Improvements and the Developer Improvements shall not expire before the issuance of a Final Acceptance Certificate for the Municipal Improvements and the Developer Improvements, respectively, by the County 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 a Municipal Improvement or a Developer 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.

10.15 Following the issuance of a Construction Completion Certificate for:

- (a) the Municipal Improvements, the County agrees that it shall assume the normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvement; excluding Landscaping, fencing and facilities owned by private utility companies.
- (b) the Developer Improvements, the Developer agrees that it shall retain the normal, routine operation and maintenance (including repairs or matters arising from inadequate or deficient design or construction) of the Developer Improvements.

10.16 The County and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements or the Developer Improvements, that the Developer shall be responsible, for a period of FIVE years following the issuance of a Final Acceptance Certificate for the Municipal Improvements or the Developer Improvements respectively, to repair or replace any of the Municipal Improvement, or the Developer Improvements where there are any hidden or latent defect, (which were reasonably not detected by inspection; or tests actually undertaken) in any of the Municipal Improvements or Developer Improvements which were not discovered prior to the issuance of the Final Acceptance Certificate.

10.17 It is understood and agreed that the County may in its discretion issue up to three (3) separate Construction Completion Certificates for the Municipal Improvements and Developer Improvements namely:

- (a) those underground Municipal Improvements referred to in Clauses (a), (b) and (c) of Schedule "C" of this Agreement, and the Developer Improvements referred to in Clauses (d) through (i) and (m) through (o), inclusive, of Section 1.17 of this Agreement;
- (b) those surface Municipal Improvements referred to in Clauses (d), (e), (f) (g), (i), (j), (k), (l), (m) and (o) of Schedule "C" of this Agreement;
- (c) those surface Developer Improvements referred to in Clauses (j) through (l) of Section 1.17 of this Agreement; and
- (d) those Landscaping and fencing Municipal Improvements referred to in Clauses (h) and (n) of Schedule "C" of this Agreement.

11. MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

11.1 The Guarantee Period in respect to any of the Municipal Improvements and the Developer Improvements shall commence with the County's written Construction Completion Certificate for any such Municipal Improvements or the Developer Improvements in good condition and repair (ordinary wear and tear excepted), and the Developer shall subject to Section 10.16 repair or replace the whole or any portion thereof during such Guarantee Period where such repair or replacement is required, as determined by the County, as a result of any cause other than the neglect by the County, 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, the County 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 County in its discretion; AND FURTHER, the County shall be entitled to require the replacement or repair of any other landscaping works such as berming, rip-rap, noise attenuation fencing or screen fencing which is not in accordance with the Plans as a result of any cause other than neglect by the County, its servants, agents or contractors in the use and operation thereof.

11.3 The Developer covenants that it shall fully comply with the Servicing Standards and accept engineering and construction practices in undertaking and completing the repair or replacement of any of the Municipal Improvements or the Developer 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 County being the sole judge of what constitutes an emergency, then the County shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements or the Developer Improvements deemed necessary or appropriate by the County and all costs and expenses incurred by the County in that regard shall be paid by the Developer to the County upon demand.

11.5 The County and the Developer agrees that during the Guarantee Period that the County shall perform the normal maintenance requirements of the County respecting the cleaning and

flushing of sanitary sewers forming part of the Municipal Improvements; PROVIDED, that the County's costs and expenses of the final cleaning and the removal of obstructions, immediately prior to the issuance of the Final Acceptance Certificate, shall be paid by the Developer to the County before the Final Acceptance Certificate is issued.

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 and the Developer Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, grading, gravelling, 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 sealing of roadways until the County has issued the Construction Completion Certificate for all aspects of roadway improvements.

11.7 The Developer covenants and agrees that in the event that the County is of the opinion that any repair or replacement required during the Guarantee Period is of a major nature, the County shall be entitled, in its discretion, to require a further full Guarantee Period for the particular Municipal Improvement or Developer Improvement, or portion thereof, and such further Guarantee Period shall commence upon the County issuing a Construction Completion Certificate for the repair or replacement work.

12. UTILITY EASEMENTS AND OTHER INSTRUMENTS

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

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 County public utility lots, easements or utility rights-of-way for such purposes and shall register or cause to be registered such public utility lots, easements or utility rights-of-way contemporaneously with the registration of the Plan of Subdivision.

12.3 The Developer shall within NINETY (90) days of the registration of the Plan of Subdivision, and prior to the sale of any lots within the Development Area, provided to the County proof of the registration of all public utility lots, easements and utility rights-of-way required by the County.

12.4 The Developer agrees that the easements and utility rights-of-way shall be in a form acceptable to the County 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.

12.5 Such easements or utility rights-of-way shall provide that the County shall have the right either:

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

12.6 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 County, restrictive covenants and other instruments which are required by any subdivision approval for the Development Area or otherwise required under the term of this Agreement.

13. MUNICIPAL SERVICES

13.1 As lots are developed in parts of the Development Area, the County 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 County and to the same standards and costs. However the provision of these municipal service (and the level of services provided) shall be, subject to such limitations that may be imposed by reason of the progress of the Developer's work, the availability of such services, the number of lots requiring services, and the configuration of the lots requiring services.

13.2 Notwithstanding Section 13.1 above, the Developer acknowledges and agrees that if required by the Subdivision Approval, the Developer shall establish a Home Owners' Association in accordance with the *Societies Act*, R.S.A. 2000 Chapter S-14 and the Home Owners' Association shall be responsible for solid waste disposal, recycling services, open space and park maintenance, pathway and community Landscaping maintenance.

13.3 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.

14. FENCING

14.1 The Developer shall, at its own expense, as part of the development of the Development Area, construct fences of the type hereinafter referred to where required by the approved Landscaping Plan, including public utility lots and walkways, as shown in yellow on Schedule "B" of this Agreement.

14.2 All fences to be constructed by the Developer pursuant to the requirements hereof shall be of uniform design and the design and construction thereof shall be subject to the approval of the County.

14.3 Any uniform 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.

14.4 Any uniform fencing which is intended to separate Public Properties from other lands shall be constructed wholly upon such other lands and shall not be constructed on the boundary line between the Public Properties and the other lands.

14.5 Any uniform fencing which is not wholly located upon Public 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 County, which shall impose such maintenance obligations upon the future owners of such properties.

14.6 The Developer covenants that in addition to the requirements of any permanent fencing, within the Development Area, that the Developer shall prior to the issuance of a Construction Completion Certificate for the above ground Municipal Improvements, at the Developer's own cost and expense, construct and maintain temporary fencing of a type and to a standard acceptable to the County around all municipal and environmental reserve parcels within the Development Area.

15. MAINTENANCE OF PUBLIC PROPERTIES

15.1 The Developer shall be responsible, at the Developer's sole cost and expense, save as hereinafter specifically limited, to maintain the Developer's Lands and all Public Properties within the Development Area in such condition as may be reasonably required by the County, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.

15.2 Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under Section 15.1, in respect only to such lot, shall cease.

15.3 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 all Public Properties, including roadways, within and outside of 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; and

(b) in the event that the County 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 notice from the County, take all necessary action as determined by the County, failing which, the County may take action and charge back all costs and expenses to the Developer.

15.4 The County 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 upon issuance of the Construction Completion Certificate.

16. OVERSIZING AND SHARING OF SERVICING COSTS

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 parties other than the Developer in areas outside of the Development Area and other benefiting 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 County. Unless otherwise specifically provided within Schedule "E" attached to this Agreement, the Developer's proportionate share of existing or currently contemplated oversizing shall be calculated and paid at the time of execution of this Agreement and, in any event, prior to Commencement of Construction. Any deferral of payment of oversizing costs by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the County and the Developer as contained within Schedule "E" attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for payment contained within Section 19.2 of this Agreement). If a Plan of Subdivision is contemplated, and at the time of registration of the Plan of Subdivision the County has not calculated or imposed oversizing costs, and subsequently the County imposes such charges, nothing in this Agreement precludes the County from collecting the Developer's proportionate share or oversizing costs at the development permit state.

16.2 In the event that the Developer's proportionate share of existing or currently contemplated oversizing is capable of being determined as of the date of this Agreement, the Developer's proportionate share for existing or currently contemplated oversizing shall be as shown within Schedule "E" attached to this Agreement. Otherwise the method of calculating the Developer's proportionate share of such Municipal Improvements constructed by other parties shall be determined solely by the County in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the County and in accordance with any agreements which the County 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 County 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 this Section 16.

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

16.5 The costs of the oversizing or extensions contemplated in Section 16.4 shall be shared costs and the County and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with this Agreement and Schedule "D".

16.6 The County shall not be responsible for payment of any portion of the shared costs, except as may be specifically provided elsewhere in this Agreement, or except in respect to lands owned or acquired by the County, but the County 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 County and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and by requiring payment of the same by such owners as a condition of the use of the Municipal Improvements or as a condition of the approval of any development applications.

16.7 The Developer shall, so soon as reasonably possible, provide the County with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land outside of the Development Area and in other benefiting areas for approval by the County, and upon the County approving the said details, the same shall govern for the purpose of determining the amount of shared costs to be paid by such benefiting owners pursuant to Section 16.6.

16.8 The County agrees that in the event any land outside of the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the County is advised of any such development, the County 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 County, the Developer shall notify the County 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 County, the County shall not be required to request from the owners of adjacent lands the payment of 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 County, the County will take the steps contemplated by this agreement to facilitate the recovery by the Developer of the applicable shared costs.

16.9 The County agrees that in calculating any shared costs payable to the Developer, the County shall include interest calculated from the date of Construction Completion of all of the Municipal Improvements, compounded annually, at the Prime Rate plus TWO (2%) per cent;

PROVIDED, that interest shall cease to accrue FIVE (5) years from the date of the issuance of Construction Completion Certificates for all of the Municipal Improvements.

16.10 For purposes of calculating interest payable under Section 16.9, 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.

16.11 Due to the potential for significant passage of time between the development of the Development Area and the development of other properties, and 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 reasons, as well as the lack of further and other development in general, there shall always exist the potential for adjacent or other lands never becoming benefited by some oversized Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the County cannot and will not guarantee eventual recovery of proportionate shares of oversizing costs.

16.12 The decision of the County shall be final and binding on all parties relative to cost recovery under this Agreement.

17. LEVIES AND FEES

17.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and storm drainage facilities that will be utilized to provide municipal services to the Development Area, and accordingly, the Developer covenants and agrees to pay to the County off-site levies as established by the County and further described in Schedule "F".

17.2 The Developer covenants and agrees that the off-site levies payable by the Developer to the County will be calculated according to the rate applicable at the time of Subdivision Approval and will be payable by the Developer at the time of execution of this Agreement.

17.3 If, at the time of registration of the Plan of Subdivision, the County has not imposed off site levies or other subdivision or development charges, and subsequently the County imposes such levies or charges, nothing in this Agreement precludes the County from collecting off site levies at the development permit stage.

17.4 The Developer covenants and agrees that the off-site levies currently established by the County and payable by the Developer to the County are the amounts specified in Schedule "F" if this Agreement.

17.5 The Developer acknowledges that in the event that at the time of execution of this Agreement the County does not impose off-site levies (or other subdivision or development changes), the County may in the future impose such levies or charges accordance with a bylaw of

general application which shall establish the various levies or charges applicable to similar developments within the County.

17.6 Inasmuch as the County will incur costs and expenses in the checking of the Plans for the Municipal Developer Improvements and costs and for the testing and inspection of the Municipal and Developer Improvements, and inasmuch as such costs and expenses are properly part of the cost; of constructing and installing the Municipal Improvements and Developer Improvements should properly be borne by the Developer, the County and the Developer agree that the Developer shall, upon the execution of this Agreement, pay to the County, subject to adjustment as provided herein, approval and inspection fees as set forth in Schedule "F".

17.7 The Developer acknowledges that the amount of the approval and inspection fees specified in Schedule "F" are subject to adjustment by the County and the Developer and the County further covenant and agree that the following provisions shall apply:

- (a) that in the event that at the time of the payment of the approval and inspection fees for the Development Area the County has not as yet established the approval and inspection fees for the applicable calendar year, the Developer shall pay to the County an amount equal to the approval and inspection fees calculated on the basis specified in Schedule "F";
- (b) within THIRTY (30) days of the new approval and inspection fees being established by the County for the applicable calendar year, the amount of the payment shall be adjusted upwards or downwards and the difference shall be paid by the Developer to the County, or paid by the County to the Developer, as the case may be.

18. INTEREST ON MONIES OWED TO COUNTY

18.1 Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the County 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.

18.2 For purposes of calculating interest under Section 18.1, 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.

19. AMOUNTS PAYABLE UNDER THIS AGREEMENT

19.1 The Developer acknowledges and agrees that the County and the Developer are properly and legally entitled to make provision in the Agreement, for the purposes specified herein, for the payment by the Developer to the County 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 County to enter into this Agreement;
- (b) The Developer acknowledges that the County has agreed to enter into the Agreement on the representation and agreement by the Developer to pay to the County the sums specified in this Agreement;
- (c) The Developer hereby that the County 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 of kind whatsoever, which the Developer has, or hereafter may have, against the County in respect to the Developer's refusal to pay the sums specified in this Agreement; and
- (e) The Developer for itself and its successors and assigns hereby releases and forever discharges the County 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 County in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the County pursuant to this Agreement.

20. DEFAULT BY THE DEVELOPER

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

20.2 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 21 hereof. If the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of Section 20.1, have a period of THIRTY (30) days from the receipt of the arbitration ruling within which to rectify such default.

20.3 The Developer agrees that in the event that the County 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.

20.4 Notwithstanding anything to the contrary herein, in the event that the County, 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 County considers to be an emergency, the County 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 County shall give notice in writing to the Developer if the County 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 21 hereof.

20.5 The Developer agrees that the County shall, for purposes of undertaking any emergency 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 County shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such rights of access.

20.6 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 County and the Developer.

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

21. ARBITRATION

21.1 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.

21.2 Arbitration hereunder shall be by reference to an independent person to be selected jointly by the County and the Developer, and his/her decision shall be final and binding. In the event that the County and the Developer shall fail to agree on an arbitrator within FORTY-EIGHT (48) hours of either party giving to the other party notice of a dispute or difference pursuant to Section 21.1 hereof, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

21.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the County or the Developer, or proportionately by both the County and the Developer, depending upon the parties' respective fault as found by the arbitrator.

21.4 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 County, the Committee of the Whole or the Council of the County or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the County, the Committee of the Whole or the Council of the County. In any such instance the discretion, decision, opinion or determination of the County, the Committee of the Whole or the Council of the County, as the case may be, shall be final and binding upon the Developer.

22. INDEMNITY AND SECURITY

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

22.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance and that the following provisions shall apply to such insurance:

- (a) the County shall be an additional 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 County;
- (c) none of the policies shall be cancelled unless THIRTY (30) days prior written notice of cancellation is first given to the County;
- (d) copies of all policies of insurance shall immediately be provided to the County upon written request by the County;
- (e) the insurance policies shall have the following minimum limits of coverage:
 - (i) Public Liability or Property. Damage - Bodily Injury - each person FIVE MILLION (\$5,000,000.00) DOLLARS, each accident TEN MILLION (\$10,000,000.00) DOLLARS - Property Damage (aggregate) each accident ONE MILLION (\$1,000,000.00) DOLLARS;
 - (ii) Automobile Public Liability and Third Party Property Damage - Owned and Non-Owned Vehicles — Bodily Injury - each person FIVE MILLION (\$5,000,000.00) DOLLARS; each accident TEN MILLION (\$10,000,000.00) DOLLARS - Property Damage, each accident ONE MILLION (\$1,000,000.00) DOLLARS.

22.3 In order to ensure to the County 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 County, security in the form hereinafter prescribed and that the following provisions shall apply to determining the amount of the security, and the time or times at which the security shall be deposited with the County:

- (a) with the exception of security to be posted in accordance with Section 22.4, the security shall be deposited by the Developer with the County upon the earlier of:
 - (i) submission of the Plans to the County for approval; or
 - (ii) submission of the Plan(s) of Subdivision to the County for approval; and

in any event, all security shall be deposited with the County prior to the Commencement of Construction in the Development Area;

- (b) the security shall be an amount equal to the sum of the following amounts:
 - (i) in accordance with the Subdivision Approval: ONE HUNDRED TWENTY FIVE (125%) percent of the estimated costs of constructing and installing all **off-site** infrastructure and improvements of the Subdivision Approval and the Development Agreement, inclusive of both Developer Improvements and Municipal Improvements, including but not limited to construction of a potable water distribution system, wastewater collection system, stormwater management system, roads, sidewalks, Landscaping, fencing, lighting and signage, together with all related easements, rights of way and restrictive covenants being registered as required by the County; and
 - (ii) in accordance with the Subdivision Approval: ONE HUNDRED TWENTY FIVE (125%) percent of the estimated costs of constructing and installing all **on-site** infrastructure and improvements of the Subdivision Approval and the Development Agreement, inclusive of both Developer Improvements and Municipal Improvements, including but not limited to construction of a potable water distribution system, wastewater collection system, stormwater management system, roads, sidewalks, Landscaping, fencing, lighting and signage, together with all related easements, rights of way and restrictive covenants being registered as required by the County; and
 - (iii) in accordance with the Subdivision Approval, ONE HUNDRED TWENTY FIVE (125%) percent of the estimated cost of site reclamation and remediation as referenced in the approved Construction Management Plan and Section 5.10 of this Development Agreement; and
 - (iv) such other amounts as are required elsewhere under the provisions of this Agreement; and
- (c) for purposes of this Section 22.3, the estimated cost for the off-site infrastructure and improvements shall be determined as follows:
 - (i) where actual tendered costs are available, the tendered costs shall be used;
 - (ii) where actual tendered costs are not available, the Developer's Engineer shall prepare cost estimates which shall be submitted to the County for approval, and if approved by the County, such cost estimates shall be used.

22.4 In accordance with the Subdivision Approval, the Developer acknowledges and agrees that prior to endorsement of the Plan of Subdivision, the following conditions must be satisfied:

- (a) all on-site infrastructure and improvements required by the conditions of Subdivision Approval and the Development Agreement, inclusive of both Developer Improvements and Municipal Improvements, including but not limited to construction of a potable water distribution system, wastewater collection system, stormwater management system, roads, sidewalks, landscaping, fencing, lighting and signage, together with all related easements, rights of way and restrictive covenants being registered as required by the County, must be completed with Construction Completion Certificates issued by the County in accordance with Part 10 of this Agreement (collectively the "**Completed On-Site Infrastructure**");
- (b) the Developer shall post TWENTY FIVE PERCENT (25%) of the actual cost of construction of the Completed On-Site Infrastructure as security in the form of cash or irrevocable letter of credit, in a form reasonably satisfactory to the County's solicitors, which security will be held and may be utilized by the County during the Guarantee Period in accordance with the provisions of this Development Agreement; and
- (c) All other conditions of the Subdivision Approval have been satisfied in accordance with Section 657 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26.

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

22.6 All security referred to above shall consist of;

- (a) An Irrevocable Letter of Credit issues by a Chartered Bank or the Treasury Branch, or such other security as may be approved by the solicitors for the County; or
- (b) A cash security deposit account;

or combination thereof, in the amount of the security required from time to time as described above; PROVIDED, that all security shall be in terms and form to be approved by the County's solicitors.

22.7 Any Irrevocable Letter of Credit provided as security by the Developer shall contain terms that provide for either:

- (a) a covenant by the issuer that if the issuer has not received a release from the County SIXTY (60) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of ONE (1) year; or
- (b) a right on the part of the County to draw upon the full amount of the Irrevocable Letter of Credit, or any portion thereof, in the event that the County has not received a replacement

letter, or confirmation of an extension or renewal of the existing letter, at least THIRTY (30) days prior to the expiry of the security.

22.8 Any security or insurance herein required to be deposited by the Developer may be required to be increased or decreased by the County upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the County in its discretion that the security or insurance deposited is excessive or insufficient in relation to the costs or protection to the County, for which security or insurance has been provided. Without limiting the generality of the foregoing the County may require an increase in security if the Developer (during the current or prior Stages) failed to comply with the Construction Timetable, or if the Developer has been issued a notice of default under Section 20.

22.9 The amount of security and insurance to be provided by the Developer to the County may, in the sole and absolute discretion of the County, 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 the Developer 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 or the Developer Improvements, the security maintained by the County shall not be less than:

- (a) TWENTY FIVE (25%) percent of the estimated costs of the Municipal Improvements and Developer 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 and Developer Improvements yet to be completed, being all those portions of the Municipal Improvements and Developer Improvements for which no Construction Completion Certificate has been issued.

22.10 In the event that the County 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 County 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 County of an account therefore;
- (c) emergency repair work has been done to Municipal Improvements or the Developer Improvements by the County 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 County 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 County pursuant to this Agreement is due to expire within a period of SIXTY (60) days and the Developer has not deposited with the County a renewal or replacement of such security in terms and form acceptable to the County's solicitors;

the County 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 County pursuant to the requirements of this Agreement.

22.11 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County in circumstances where the said security was due to expire within the said SIXTY (60) day period, then the County shall be entitled to hold any funds thereby obtained in lieu of the security which has been negotiated or called upon.

22.12 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County, the County may, at its option and discretion, use any funds thereby obtained in any manner the County deems fit to discharge the obligations of the Developer pursuant to this Agreement.

23. DELIVERY OF DOCUMENTS TO COUNTY

23.1 Prior to the issuance of a Construction Completion Certificate for the above ground Municipal Improvements or the Developer Improvements, the Developer shall, in addition to the requirements specified elsewhere in this Section, deliver to the County all other documentation and information relating to the development of the Development Area which the County considers, in its discretion, necessary or desirable for the delivery of municipal services to the Development Area and the Developer agrees that not less than thirty (30) days prior to its application for a Construction Completion Certificate for the above ground Municipal Improvements or Developer Improvements that the Developer shall request from the County a list of all documents and information required by the County.

23.2 The Developer shall, within SIX (6) months following issuance of the Construction Completion Certificate, deliver to the County all inspection and testing records and "as built" Plans and records, in a form and to standards specified by the County which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the County.

23.3 The Final Acceptance Certificate shall not be issued until EIGHTEEN (18) months have elapsed subsequent to the date of the submission of the records and the as built drawings, nor shall the Final Acceptance Certificate be issued prior to the expiration of the Guarantee Period.

24. COMPLIANCE WITH LAW

24.1 The Developer shall at all times comply with all Federal, Provincial and Municipal legislation, regulations, bylaws, policies, codes and guidelines relating to the development of the Development Area and construction of the Municipal Improvements and Developer Improvements by the Developer.

24.2 This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the County, and it is understood and agreed that the Developer shall obtain all approvals and permits which may be required by the County or any governmental authority.

24.3 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.

24.4 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.

25. GENERAL

25.1 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.

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

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

25.4 Whether or not so stipulated herein, all notices, communication, requests and statements (the "Notice") required or permitted hereunder shall be in writing. Notice shall be served by one of the following means:

- (a) personally, by delivering it to the party on whom it is to be served at the address set out herein, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid and addressed as specified in subsection (c) below; or
- (b) by telecopier or by any other electronic method by which a written message may be sent, printed and directed to the party on whom it is to be served at that address set out herein. Notice so served shall be deemed received on the earlier of:
 - (i) upon transmission with answer back confirmation if received within the normal working hours of the business day; or

- (ii) at the commencement of the next ensuing business day following transmission with answer back confirmation thereof; or
- (c) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received THREE (3) days after the date it is postmarked. In the event of postal interruption, no notice sent by means of the postal system during or within seven (7) days prior to the commencement of such postal interruption or seven (7) days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

Except as herein otherwise provided, notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date received when served by hand or courier, or THREE (3) days after the same has been mailed in a prepaid envelope by single registered mail to:

The County: **Wheatland County**
Highway 1, RR 1
Strathmore, AB T1P 1J6

Attention: Chief Administrative Officer

Via Fax: (403) 934-4889

E-Mail: Alan.Parkin@wheatlandcounty.ca

The Developer: _____ .

Via Fax: (403) _____

Attention:

The Developer's Engineer: _____

Via Fax: (403) _____

Attention:

PROVIDED, HOWEVER, that such addresses may be changed upon TEN (10) days' notice; if a notice is mailed it is deemed to be received SEVEN (7) days from the date of mailing; 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.

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

25.6 The Developer acknowledges and agrees that the County shall be at liberty pursuant to the *Municipal Government Act*, R.S.A. 2000 Chapter M-26, upon the execution of this Agreement, to file at the Land Titles Office for the South Alberta Land Registration District a caveat against the Development Area and against the undeveloped portion of the land described in Schedule "A" for the purposes of protecting the County's interests and rights pursuant to this Agreement.

25.7 This Agreement shall enure to the benefit of, and shall remain binding upon, the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of the 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.

25.8 This Agreement shall not be assignable by the Developer without the express written approval of the County and notwithstanding the provisions of this section such approval may be withheld by the County in its sole discretion. It is understood between the County and the Developer that no assignment of this Agreement by the Developer shall be permitted by the County unless and until:

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

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

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

26. EXECUTION OF AGREEMENT

26.1 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, of the day and year first above written.

WHEATLAND COUNTY

Per: _____
Reeve

C/S

Per: _____
Municipal Secretary

WESTGATE LANDS INC.

Per: _____

C/S

Per: _____

SCHEDULE "A" – LEGAL DESCRIPTION OF LANDS

[Insert legal description]

SCHEDULE "B" – THE DEVELOPMENT AREA

[Insert diagram of the actual area to be developed]

SCHEDULE "C" –IMPROVEMENTS (MUNICIPAL AND SITE)

1. Municipal Improvements are those Improvements which the approved Plans specify shall be owned, operated and maintained by the County.
2. Developer Improvements are those Improvements which the approved Plans specify shall be owned, operated and maintained by the Developer or a third party utility service provider.
3. Improvements mean and include the following to be constructed within and outside of the Development Area:
 - (a) All sanitary sewer systems including holding tanks, service lines, manholes, mains, connections from the internal sanitary mains to all buildings requiring sanitary sewer service, and appurtenances; and
 - (b) All storm water drainage systems, including storm sewers, storm sewer connections, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds, catch basins, catch basin leads, manholes and associated work, all as and where required by the County; and
 - (c) All water mains, including all fittings, valves, pressure reducing valves, hydrants, looping and related appurtenances as required by the County in order to safeguard and ensure the continuous and safe supply of water in the Development area, water connections from the internal water mains to all buildings requiring water service, all as and where required by the County; and
 - (d) All preliminary lot stripping and grading to permit positive natural drainage, all as and where required by the County; and
 - (e) Surface drainage systems for positive lot drainage, all as and where required by the County; and
 - (f) All concrete curb and gutter, subgrade, base gravel and base asphalt, sidewalks and subgrade, base and asphaltic pavement, and all surface asphalt, all as and where required by the County; and
 - (g) All lighting systems for streets, walkways, parking areas and Public Properties, all as and where required by the County; and
 - (h) Such electrical conduit as may be required by the County for the installation of traffic control signals and traffic control devices; and
 - (i) All traffic signs, street signs, development identification signs, zoning signs, and directional signs, berming and noise attenuation devices, all as and where required by the County; and

- (j) All walkway systems and Landscaping on both private property and Public Property which are to be constructed and installed to the satisfaction of the County, and in accordance with the Landscaping Plan to be submitted for the approval of the County; and
- (k) Such construction or development of streets and lanes as may be required by the County; including, but in no manner limited to, a second temporary or emergency access for vehicular traffic from the Development Area; and
- (l) The restoration of all Public Properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work; and
- (m) The relocation, to the County's satisfaction, of all existing utilities and Municipal Improvements as required by the County as a result of the installation and construction of other utilities and Municipal Improvements pursuant to this Agreement; and
- (n) The establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the County throughout and outside of the Development Area; and
- (o) Public information signs, of a size and location to be approved by the County, and to contain such public information regarding the completion of services and the completion of the construction of other facilities as may be required by the County in order to provide proper and complete and up to date information to proposed purchasers and residents within the Development Area; and
- (p) Such uniform fencing, (noise attenuation, or screen) either permanent or temporary, of a standard and of a design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County; and
- (q) All utilities including electricity, natural gas, cable television and telephone. Such utilities to be provided in a location and a standard to be approved by the appropriate utility company and the County; and
- (r) Oversize of Municipal Improvements to accommodate future development on lands outside of the Development Area,

all in accordance with and as referenced in the approved Plans and Subdivision Approval.

SCHEDULE "D" – ADDITIONAL PROVISIONS

A. In addition to the terms, covenants and conditions contained within this Agreement, the Development shall be responsible for the satisfaction of the following additional conditions [in accordance with terms of Subdivision Approval]:

B. The Municipal Improvements which are to be extended or oversized by the Developer and which are eligible for the recovery of shared costs are as follows:

| Description of Municipal Improvement | Actual or Estimated Cost | Amount Eligible for Recovery (Maximum) |
|---|---------------------------------|---|
|---|---------------------------------|---|

The properties which benefit from the Municipal Improvements which are to be extended or oversized by the Developer are shown on the attached map which forms part of this Schedule.

SCHEDULE "E" – OVERSIZE COSTS, LEVIES AND FEES.

1. The Developer's proportionate share of existing and currently contemplated servicing and/or oversizing costs pursuant to Section 16 of this Agreement are as follows:

2. The Developer's proportionate share shall be paid as and when required within Section 16 of this Agreement.

SCHEDULE "F" - OFF-SITE LEVIES AND FEES

A. Off-Site Levies

1. Levy and Calculation – the off-site levies currently due and payable by the Developer pursuant to Section 17 of this Agreement are as follows:

Gross Levy/hectare: \$_____ per hectare

Applicable Levy: _____ hectares x \$_____ = \$_____

2. Payment — the Developer shall pay the off-site levies applicable to the Lands contained within the Development Area as and when required within Section 17 of this Agreement.

B. Approval & Inspection Fees

1. Fees and Calculation — the approval and inspection fees currently due and payable by the Developer pursuant to Section 17 of this Agreement are as follows:

\$_____ per lot within the Development Area x ____ lots = \$_____

2. Payment — the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 17 of this Agreement.

C. Additional Charges

SCHEDULE "G" - SECURITY

1. For purposes of calculating, the security required to be deposited by the Developer the cost estimates for the construction and installation of the off-site Municipal Improvements and Developer Improvements are as follows:

Underground Improvements

Water Distribution System \$
Drainage Systems (including Storm Sewer System) \$
Sanitary Sewer System \$
Storm Sewer System \$
Engineering and contingency sanitary sewer \$
Engineering and Contingency water distribution \$
Underground Subtotal\$

Surface Improvements

Internal Access road \$
Sidewalk, Curb and Gutter \$
Granular Base \$
Asphalt \$
Fencing and Landscaping \$
Signage \$
Engineering and Contingency roads \$
Above Ground Subtotal \$
Shallow Bury

Utilities Subtotal \$_____

Total Value of all off-site Municipal

Improvements & Developer Improvements \$

Total Value of Security required for off-site

Municipal Improvements and Developer Improvements \$

Total Value of Other Security Required (Section 22.3(b)) \$

Total Value of Security Required \$

- 2. In the event that any of the costs for the construction and installation of the off-site Developer Improvements and Municipal Improvements for the Development Area, as set out above, are estimates, and in the further event that actual tendered costs become available prior to the Developer commencing the construction and installation of the off-site Municipal Improvements and Developer Improvements, THEN, the estimated costs set out above shall be adjusted in accordance with the security provisions of this Agreement.

B. Approval and Inspection Fees

1. Fees for the Lands shall be due and payable upon execution of this Agreement.

2. Subject to adjustments in accordance with Section , the amount of fees for the Lands are in the amount of \$_____.

SCHEDULE "H"
SUBDIVISION APPROVAL