VILLAGE OF LINDEN

Development Agreement - Subdivision Approval

VILLAGE OF LINDEN

AND

[INSERT NAME OF DEVELOPER]

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

VILLAGE OF LINDEN
(hereinafter referred to as "the Municipality")

OF THE FIRST PART

- and -

[INSERT NAME OF DEVELOPER]
(hereinafter referred to as "the Developer")

OF THE SECOND PART

WHEREAS:

A. The Developer is, or is entitled to become, the registered owner of all or a portion of the lands described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands").

B. Pursuant to Subdivision Approval No. _____, the Developer proposes to subdivide all or a portion of the Lands (hereinafter referred to as "the Development Area") as shown on the map attached as Schedule "B" to this Agreement. As a condition of the Subdivision Approval, the Developer is required to enter into a development agreement with the Municipality pursuant to Section 655 of the *Municipal Government Act.*

C. The Municipality and the Developer are agreeable to the Developer completing or contributing to the Municipal Improvements required throughout and adjacent to the Development Area, in accordance with the provisions of this Agreement, with the Developer, solely, bearing the costs of the Municipal Improvements.

D. The Municipality and the Developer have agreed to enter into this Agreement to ensure adequate and timely provision of required services to the Development Area.

E. Upon satisfactory completion of the construction and installation of the Municipal Improvements by the Developer and the final acceptance of them by the Municipality, the Municipal Improvements which are on or under Public Property shall become the property of the Municipality.

F. The Municipality and the Developer have agreed that the said construction and installation of the Municipal Improvements and all matters and things incidental thereto and all other matters or things relating to the development of the Development Area, shall be subject to the terms, conditions and covenants hereinafter set forth.

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

1. **INTERPRETATION** - for the purposes of this Agreement, words defined with the recitals to this Agreement shall have the meaning ascribed therein and the following words shall have the meaning ascribed below:

1.1 "Construction Completion Certificate" shall mean a certificate issued by the Municipality, certifying the completion of all or a portion of the Municipal Improvements.

1.2 "Design Standards" shall mean the procedures, standards and specifications which have been adopted by the Municipality and such other engineering design and construction standards which may be established and revised from time to time by the Municipality's engineer, or as revised by the Municipality's Council from time to time, and namely that version in place at the time of commencement of construction for the Development Area, provided that the Municipality and the Developer may, by written agreement only, vary or change any of the procedures, standards or specifications set forth in the Design Standards..

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

1.4 "Essential Services" shall mean:

(a) those Municipal Improvements described in Sections (a), (b), (c), (d), (e), (f), (g), (i) and (k) of Schedule "C" of this Agreement; and

(b) natural gas, electrical power and telephone services.

1.5 "Final Acceptance Certificate" shall mean a written acceptance issued by the Municipality for the Municipal Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.

1.6 "Guarantee Period" except where otherwise stated within this Agreement, shall mean a period of TWO (2) years for all Municipal Improvements, including landscaping, but, in any event, the Guarantee Period shall not expire before the issuance of a Final Acceptance Certificate.

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

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

1.9 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location and installation of all Municipal Improvements.

1.10 "Prime Rate" shall mean the prime lending rate established from time to time at the nearest branch of ATB Financial.

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

2. PLAN OF SUBDIVISION

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

2.2 The Developer covenants and agrees that it shall register in the Land Titles Office a Plan of Subdivision for the Development Area within Twelve (12) months of the date of this Agreement. Pursuant to Section 657(6) of the *Municipal Government Act*, the Developer may apply to the Municipal Council, or its delegate, for one extension of the subdivision approval, in which case if an extension is granted the Developer shall register in the Land Titles Office a Plan of Subdivision for the Development Area within the said extension period of the subdivision approval.

2.3 In the event that the Developer does not register the Plan of Subdivision within the time period set out in Section 2.2 of this Agreement, the Municipality shall be entitled to terminate this Agreement, and the Developer shall not register any Plan of Subdivision for any portion of the Development Area until a further written Agreement is entered into between the Developer and the Municipality.

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

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

(a) rezoned the Development Area to a district that the Municipality deems appropriate;

(b) passed amendments to the Municipality's Land Use Bylaw relating to the regulations applicable to the development within the Development Area that the Municipality deems appropriate;

(c) passed any new statutory plans or amendments to any existing statutory plans that the Municipality deems appropriate;

(d) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Improvements, or the Plans;

(e) approved of all Plans respecting the construction and installation of all Municipal Improvements;

(f) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permit;

(g) confirmed that registered ownership of the lands comprising the Development Area is satisfactory to the Municipality, including, without restriction, confirmation that the registered owner is the Developer; and

(h) received all items required to be delivered to the Municipality pursuant to the terms of this Agreement including, without restriction, those items outlined within the subdivision and development process and checklist contained within Schedule "H" attached to this Agreement.

2.6 In the event that a 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 Municipality to do so, immediately proceed to take all steps necessary to cancel the registration of the said Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the said Plan of Subdivision within Three (3) months of the Municipality providing written notice to the Developer as herein provided.

2.7 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 a Plan of Subdivision for 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 Municipality shall be at liberty, in the Municipality'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.

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

2.9 The power of attorney conferred upon the Municipality by the Developer in Section 2.6 of this Agreement may be exercised by the Municipality 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 Municipality providing written notice to the Developer pursuant to Section 2.6 of this Agreement, or may be exercised in the event that the Developer has not obtained the cancellation of the registration of the Plan of Subdivision within Three (3) months of the Municipality providing written notice to the Developer pursuant to Section 2.5 of this Agreement.

2.10 The Municipality in its discretion may extend the time limits specified in Section 2.9, but the Municipality and the Developer agree that no act or omission on the part of the Municipality, intentional or unintentional, shall constitute a waiver of the Municipality's right to exercise the power of attorney conferred upon the Municipality by the Developer pursuant to Sections 2.7 and 2.8 of this Agreement.

3. PLANS

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

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

3.3 If the Municipality does not approve whatever Plans have been submitted by the Developer, the Developer shall be entitled to refer any dispute with regard to the Plans to the Municipality's Council. The decision of the Municipality's Council shall be final and binding.

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

3.5 It is understood and agreed that the Municipality's approval of the Plans for the 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 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 shall be subject to review and revision, from time to time, by the Municipality in accordance with the Design Standards and in accordance with accepted engineering and construction practices.

3.6 The Developer shall not commence construction or commence installation of the Municipal Improvements, or any portion, until such time as the Municipality has issued written approval of the Plans.

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

(a) whether the Plans are suitable for the intended purpose;

(b) whether the Plans comply with any required federal, provincial or municipal legislation or regulation;

(c) whether the Plans comply with the Design Standards; and

(d) whether the Plans are in accordance with standard acceptable engineering practices.

4. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

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

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

4.3 In the event that the Developer has not commenced construction of the Municipal Improvements within the time limits required above, then the Municipality shall be entitled to terminate this Agreement and the Developer shall not be entitled to commence construction of the Municipal Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the Municipality.

4.4 In the event that it is necessary or reasonable, in the opinion of the Municipality, to construct or install any temporary or emergency access during the construction and installation of the Municipal Improvements, the Developer shall construct and install temporary or emergency accesses satisfactory to the Municipality and the Developer hereby grants to the Municipality an easement across the required land for the period for which the temporary access is required.

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

(a) The Municipality shall have free and immediate access to all records of or available to the Developer and the Developer's engineer or consultant relating to the performance of the work, including, but without limiting the generality of the foregoing, all design, inspection, material testing and "as constructed" records.

(b) The Municipality may:

(i) exercise such inspection of the performance of the work as the Municipality may deem necessary and advisable to ensure to the Municipality the full and proper compliance by the Developer with the Developer's undertakings to the Municipality, and to ensure the proper performance of the work;

(ii) reject any design, material or work which is not in accordance with the Design Standards or accepted engineering and construction practices;

(iii) order that any unsatisfactory work be re-executed at the Developer's cost;

(iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material, at the Developer's cost;

(v) order the Developer within a reasonable time to bring on the job and use additional labour, machinery and equipment, at the Developer's cost, as the Municipality deems reasonably necessary to the proper performance of the work;

(vi) order that the performance of the work or part thereof be stopped until the said orders can be obeyed;

(vii) order the testing of any materials to be incorporated in the work and the testing of any Municipal Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the Municipality unless the Developer takes issue with any such order or requirement, in which case the Developer shall request, in writing, that such issue be arbitrated in accordance with the provisions of Section 14 hereof; PROVIDED, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the Municipality pursuant to Sections (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, except as otherwise agreed by the Municipality in writing, shall stop until such arbitration has taken place.

4.6 The Municipality shall have no obligation or duty to exercise any of the Municipality's powers of inspection nor any obligation or duty to discover or advise the Developer of any deficiencies in construction or workmanship during the course of the construction and installation of the Municipal Improvements.

4.7 The Developer shall during the course of the construction and installation of the Municipal Improvements provide and maintain adequate inspection services, supervised by a professional engineer.

4.8 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements, and during the Guarantee Period for the Municipal Improvements, that the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under this Agreement and that the

failure of the Developer to pay any such contractors or other parties shall constitute a breach of this Agreement by the Developer unless there is a bona fide dispute between the Developer and the contractor or other party.

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

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

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

4.12 The Developer covenants and agrees as follows:

(a) that it shall plan and complete the development of the Development Area so as to ensure to the Municipality that the Essential Services will have been installed and rendered operative in any part of the Development Area before any buildings or facilities are occupied in any such part of the Development Area;

(b) to undertake and complete to the satisfaction of the Municipality such work as may be necessary to ensure that the Development Area has positive drainage away from any building to the gutter, ditch or drainage channels and that there will be no unacceptable ponding of water within any of the lots within the Development Area;

(c) the Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation, to the Municipality's satisfaction, of electric power, natural gas, internet and telephone service to the Development Area and within the streets adjoining the Development or the lots to be created in the Development Area (excepting the normal hook-up costs charged to the customer);

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

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

5. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS

5.1 Notwithstanding anything contained in this Section, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the Municipality for the performance by the Developer of all the Developer's obligations as set forth in this Agreement; AND FURTHER the Developer acknowledges, understands and agrees that the Municipality shall not be obligated in any circumstances whatsoever to commence or prosecute any claim, demand, action or remedy whatsoever against any person with whom the Developer may contract for the performance of the Developer's obligations.

5.2 The Developer covenants and agrees that any contract entered into between the Developer and a Third Party in respect to the performance of all or any of the Developer's obligations as set out in this Agreement to construct and maintain the Municipal Improvements, or any of them, shall provide:

(a) that the Third Party shall indemnify and save harmless the Municipality and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the Third Party or arising in any way from the negligence of the Third Party's servants, agents or employees;

(b) that the Third Party shall provide reasonable proof of financial responsibility;

(c) that the Third Party shall comply with the provisions of the Workers Compensation Act for the Province of Alberta;

(d) that the Third Party will allow the Municipality access to the work for the purpose of inspection;

(e) that the works to be performed by the Third Party shall not be deemed to be duly and adequately completed under the contract except upon the issuance of a Construction Completion Certificate for the same by the Municipality;

(f) the Third Party shall coordinate with the Municipality work forces and others to facilitate the installation of utilities and shall protect such utilities from damage; and

(g) that the Third Party will carry adequate public liability insurance of an amount and coverage satisfactory to the Municipality to protect the Third Party and the Municipality from any claims, actions or demands arising from the pursuance or purported pursuance of the work being performed by such Third Party.

6. ACCEPTANCE OF IMPROVEMENTS; TRANSFER OF MUNICIPAL IMPROVEMENTS TO MUNICIPALITY

6.1 The Municipality and the Developer agree that no Municipal Improvement shall be considered complete unless and until:

(a) the Municipal Improvement has been fully constructed and installed in accordance with the approved Plans;

(b) the Municipal Improvement has been constructed and installed in accordance with the Design Standards and accepted engineering and constructed practices;

(c) all testing has been completed and the results approved by the Municipality;

(d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the Municipality;

(e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;

(f) the Municipal Improvement is suitable for the purpose intended;

(g) the Developer has provided the Municipality with any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements; and

(h) the Developer has provided the Municipality with the actual costs and sufficient supporting documentation of all Municipal Improvements located on, in or under Public Properties (including utility rights-of-way and easements) in order that the Municipality is able to meet its accounting and reporting requirements for the acquisition of tangible capital assets. Sufficiency of supporting documentation and costs information shall be determined by the Municipality and its auditors.

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

6.3 Within SIXTY (60) days of receipt of such claim of completion, the Municipality shall undertake an inspection of the Municipal Improvements. If the inspection shows that the Municipal Improvements are complete to the Municipality's satisfaction, the Municipality will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements so completed with a list of any deficiencies.

6.4 Notwithstanding the preceding paragraph, the Municipality may give notice to the Developer of the Municipality'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.

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

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

6.7 In the event that an inspection for a Construction Completion Certifiicate reveals that there are no deficiencies in relation to the Municipal Improvements, the Municipality shall issue in writing its Completion Construction Certificate for the Municipal Improvements.

6.8 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 any portion the Developer shall give notice to the Municipality of expiration of the Guarantee Period for the Municipal Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Municipal Improvements. The Developer's notice shall be accompanied by a list of any deficiencies.

6.9 Within SIXTY (60) days of the receipt by the Municipality of a request for a Final Acceptance Certificate, the Municipality shall undertake an inspection of the Municipal Improvements and the Municipality shall within the said SIXTY (60) days advise the Developer in writing of any defects or deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the above provisions respecting extension to inspection deadlines shall also apply to any request for the issuance of a Final Acceptance Certificate.

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

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

6.12 In the event that any inspection for a Final Acceptance Certificate reveals that there are no deficiencies in relation to the Municipal Improvements, the Municipality shall issue in writing its Final Acceptance Certificate for the Municipal Improvements.

6.13 It is understood and agreed between the Developer and the Municipality that the notices required under this Section 6 shall be given only between the Municipality and the Developer and in no event shall either the Municipality or the Developer give such notices through any contractor or sub-trade which may be engaged by the Developer in the construction of the Municipal Improvements.

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

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

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

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

7. MAINTENANCE OF IMPROVEMENTS BY DEVELOPER

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

7.2 If, during the Guarantee Period, any defects become apparent in any of the Municipal Improvements installed or constructed under this Agreement, the Municipality may require the Developer to repair or replace the Municipal Improvements. In such case, the Developer shall, within thirty (30) days of receiving notice from the Municipality, cause such repairs and/or replacements to be done. In the event that the Developer fails to take steps to repair or replace the whole or portion of the Municipal Improvement the Municipality may effect the repair or replacement, at the Developer’s cost and expense. The Developer covenants that it shall fully comply with the Design Standards and accepted engineering and construction practices, in undertaking and completing the repair or replacement of any of the Municipal Improvements pursuant to the requirements of this Section.

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

7.4 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, and to control of dust, noise or any other annoyance originating within or adjacent to the Development Area, until issuance of the Final Acceptance Certificate for the Municipal Improvements. It shall be the responsibility of the Developer to monitor the condition of the Development Area and take immediate action as necessary to comply with the provisions of this Section. In the event that the Municipality considers that any cleanup or removal of construction debris, foreign material or dirt or dust control is required, the Developer shall, within Forty-eight (48) hours of receiving notice from the Municipality, take all necessary action as determined by the Municipality, failing which, the Municipality may take action and charge back all costs and expenses to the Developer.

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

7.6 Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, but not be limited to, failure of or damage to the underground Municipal Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, grading, gravelling, 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, repairing and replacing any sidewalks, curbs and gutters, and any crack filling of roadways until the Municipality has issued the Final Construction Certificate for all aspects of roadway improvements.

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

7.8 The Municipality shall assume the normal maintenance of all 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.

8. UTILITY EASEMENTS AND OTHER INSTRUMENTS

8.1 Prior to the earlier of the endorsement of the Plan of Subdivision for the Development Area or the commencement of construction and installation of the Municipal Improvements within or adjacent to the Development Area, the Developer shall grant (without further compensation payable to the Developer) to the Municipality or other service provider such road allowances, public utility lots, easements, rights-of-way, restrictive covenants or other instruments, as may be applicable, adequate for the construction and installation of Municipal Improvements and services, natural gas, power, and telephone service. The Developer shall provide proof of the registration satisfactory to the Municipality prior to any development upon or subdivision of the Development Area.

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

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

(a) to assign all or any parts of the rights thereby granted to operators of the respective utilities; or

(b) to grant permits or licenses to install, repair and replace gas, power and telephone lines, and all drainage systems.

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

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

(a) the right, license, liberty, privilege and easement across, over, under, on and through all of the Lands, described within Schedule "A" of this Agreement, for the purposes of laying down, installing, constructing, operating, inspecting, maintaining, repairing, replacing, altering, removing and reconstructing from time to time sanitary sewer, storm sewer, drainage, water, gas, electrical, telephone, telecommunications, and cable television lines, services or distribution systems, and temporary roadways, together with any and all appurtenances incidental or necessary in relation to the above, together with the right of ingress and egress over the Lands with vehicles, supplies and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights and privileges granted within this Agreement; and

(b) the dedication of all roads shown within the subdivision approval for the Lands, as amended by this Agreement or the Plans subsequently approved by the Municipality, which dedications may be registered at any time by the Municipality by road plan in accordance with Section 62 of the Municipal Government Act (Alberta).

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

9. OVERSIZING AND SHARING OF SERVICING COSTS

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

Any deferral of payment of oversizing costs by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the Municipality and the Developer as contained within Schedule “D” and/or “F” attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for payment, and/or registration and reliance upon the charge contained within Section 15.7 of this Agreement). If at the time of registration of the Plan of Subdivision the Municipality has not calculated or imposed oversizing costs, and subsequently the Municipality imposes such charges, nothing in this Agreement precludes the Municipality from collecting the Developer’s proportionate share of oversizing costs at the development permit stage.

9.2 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 such existing or currently contemplated oversizing shall be as shown within Schedule "D" and/or "F" attached to this Agreement. Otherwise, the method of calculating the Developer's proportionate share of such improvements constructed by other parties shall be determined solely by the Municipality and in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the Municipality and in accordance with any agreements which the Municipality has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of such improvements and where deemed appropriate by the Municipality taking into account the expected useful life span of the oversized/shared improvements.

9.3 Nothing in this Agreement shall preclude the Municipality 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 improvements, other than such improvements or portions of such improvements, which are covered by the provisions of this Section 9.

9.4 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 adjacent to the Development Area and other benefiting areas, and shall design, construct and install the Municipal Improvements so that such future developments can utilize or benefit from such oversizing or extensions. The Municipality's requirements for oversizing shall be evidenced within the additional provisions contained within Schedule "D" attached to this Agreement, within the Design Standards, or otherwise required to be shown within the Developer's Plans at the time of the Municipality's review and approval.

9.5 The costs of the oversizing or extensions contemplated in Section 9.4 shall be shared costs and the Municipality and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with this Agreement. The method of calculating the proportionate shares of such shared costs shall be determined solely by the Municipality in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the Municipality, in accordance with any agreements which the Municipality has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of such Municipal Improvements, and where deemed appropriate by the Municipality taking into account the expended useful life span of the oversized/shared Municipal Improvements.

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

9.7 The Developer shall, so soon as reasonably possible and in any event prior to the issuance of the Final Acceptance Certificates, provide the Municipality with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land adjacent to the Development Area and in other benefiting areas for approval by the Municipality, and upon the Municipality 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 9.6.

9.8 The Municipality agrees that in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the Municipality is advised of any such development, the Municipality will endeavour to notify the Developer in writing of the intended development. The Developer agrees that upon notice of such intended development being sent by the Municipality, the Developer shall notify the Municipality 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 Municipality, the Municipality shall not be required to request from the owners of adjacent lands the payment to the Developer of the shared costs attributable to the lands intended to be developed. Upon receipt of any such notice from the Developer to the Municipality, the Municipality will take the steps contemplated by this Agreement to facilitate the recovery by the Developer of the

applicable shared costs.

9.9 The Municipality agrees that in calculating any shared costs payable to the Developer, the Municipality shall include interest, calculated from the date of the issuance of Construction Completion Certificates for 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.

9.10 For purposes of calculating interest payable under Section 9.9, 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.

9.11 Notwithstanding anything to the contrary within this Agreement, the Developer shall only be entitled to recover any payment of shared costs within TEN (10) years from the date of this Agreement and the Developer shall make no demands against the Municipality of any other developer for payment thereafter. In addition and in that regard, the Parties acknowledge and agree that there exists the potential for significant passage of time between the development of the Development Area and the development of other properties, as well as the corresponding potential for change in development and servicing needs in the near and long term (including, without restriction, alternative servicing based upon proper planning and servicing principles, some oversized Municipal Improvements becoming obsolete or require replacement or renewal prior to payment of all potential proportionate shares by other developers). For these reasons (including, without restriction and limitation, the simple lack of further and other development in general), there shall always exist the potential for adjacent or other lands never becoming benefited by some or all oversized Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the Municipality cannot and will not guarantee eventual recovery of proportionate shares of oversizing costs.

10. FEES

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

11. INTEREST ON MONIES OWED TO MUNICIPALITY

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

11.2 In the event that the Municipality, pursuant to this Agreement, is holding any monies, for the purposes of security, belonging to the Developer, the Municipality shall invest such monies and upon the Municipality returning such monies, the Developer shall be entitled to both the principal amount and interest thereon at the Prime Rate less Two (2%) percent (less any amounts lawfully owing from the Developer to the Municipality).

11.3 For purposes of calculating interest under Sections 11.1 and 11.2, the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.

12. AMOUNTS PAYABLE UNDER THIS AGREEMENT

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

(a) the Developer acknowledges and agrees that the Agreement by the Developer to pay the said sums is an inducement offered by the Developer to the Municipality to enter into this Agreement;

(b) the Developer acknowledges that the Municipality has agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the Municipality the sums specified in this Agreement;

(c) the Developer agrees that the Municipality is fully entitled in law to recover from the Developer the sums specified in this Agreement;

(d) the Developer hereby waives for itself and its successors and assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the Municipality in respect to the Developer's refusal to pay the sums specified in this Agreement; and

(e) the Developer for itself and its successors and assigns hereby releases and forever discharges the Municipality from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the Municipality in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Municipality pursuant to this Agreement.

13. DEFAULT BY THE DEVELOPER

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

13.2 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 14 hereof. If the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of Section 13.1, have a period of Thirty (30) days from the receipt of the arbitration ruling within which to rectify such default.

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

13.4 In the event that the Developer has failed to rectify such default within the period of Thirty (30) days from the receipt of the notice of Default provided by the Municipality pursuant to Section 13.1 and no arbitration been requested by the Developer or from confirmation of the default by the Arbitrator pursuant to Section 13.2, the Municipality may, but shall not be obligated to, undertake any work it considers necessary in order to remedy such default and any costs or liability incurred by the Municipality in respect thereof shall be at the Developer’s sole cost and expense. The Developer shall pay such costs to the Municipality within Thirty (30) days of receiving demand for payment from the Municipality.

13.5 Notwithstanding anything to the contrary herein, in the event that the Municipality, in its discretion, considers it necessary to undertake any immediate work in connection with the construction, installation or repair of the Municipal Improvements in a situation which the Municipality considers to be an emergency, the Municipality shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done; PROVIDED, that upon completion of said emergency work, the Municipality shall give notice in writing to the Developer if the Municipality claims that such repair work was made necessary by reason of a default on the part of the Developer in the observance or performance of the terms, covenants and conditions of this Agreement, and if the Developer denies the claimed default, it shall within Ten (10) days request a reference to arbitration pursuant to the provisions of Section 14 hereof.

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

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

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

14. ARBITRATION

14.1 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.

14.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Municipality and the Developer, and his decision shall be final and binding. In the event that the Municipality and the Developer shall fail to agree on an arbitrator within Forty-eight (48) hours of either party giving to the other party notice of a dispute or difference pursuant to Section 14.1 hereof, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

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

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

15. INDEMNITY, INSURANCE AND SECURITY

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

15.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance in the amount of $2,000,000.00 per occurrence, which insurance shall name the Municipality as an additional insured (as its interest may appear, including with respect to any and all operations by the Developer or its contractors upon or affecting property owned by, or under the care, control and management of, the Municipality) and require that the Municipality shall receive Thirty (30) days notice of change or cancellation.

15.3 Upon execution of this Agreement, the Developer shall deliver and deposit with the Municipality security in the form of an irrevocable letter of credit provided by a chartered bank or the Alberta Treasury Branch in an amount equal to One Hundred (100%) Percent of the estimated costs of constructing and installing all of the Municipal Improvements and the letter of credit shall be in terms and form acceptable to the Municipality and the Municipality's solicitor. The estimated cost for the Municipal Improvements are as set out in Schedule “E” of this Agreement, based on actual tenders or cost estimates provided by the Developer’s engineer or consultant and approved by the Municipality.

15.4 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 Municipality SIXTY (60) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of ONE (1) year; or

(b) a right on the part of the Municipality to draw upon the full amount of the irrevocable letter of credit, or any portion thereof, in the event that the Municipality has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least SIXTY (60) days prior to the expiry of the security.

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

(a) any irrevocable letter of credit, or cash security deposit (where an irrevocable letter of credit has been called upon) or other security required or otherwise provided by the Developer to the Municipality pursuant to this Agreement is hereby assigned and pledged to the Municipality as security for the performance of the Developer's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);

(b) the Developer acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and

(c) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the Municipality, the obligation of the Municipality or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including, without restriction, any cash deposit) is subject to the Municipality's right to deduct or set off any amount which may be due by the Developer to the Municipality or the amount of any claim by the Municipality against the Developer under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Developer is in breach or default of any provision of this Agreement or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the Municipality may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the Municipality in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Developer under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.

15.6 In the event that the irrevocable letter of credit shall expire prior to the date for release of the security under this Agreement, and the Developer has failed to provide a replacement letter of credit or evidence of renewal satisfactory to the Municipality not less than Thirty (30) days prior to that expiration date, the Municipality may draw upon all or any portion of the security and hold or apply the proceeds in the same manner as a cash security deposit.

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

15.8 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 prescribed by this Agreement), maintain in full force and effect all security and liability insurance prescribed herein.

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

to comply with the construction timetable approved under Section 3.1, or if the Developer has been issued a notice of default under Section 13.

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

(a) Fifteen (15%) percent of the estimated costs of the Municipal Improvements which were the subject of the Construction Completion Certificate; and

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

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

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

(b) a default by the Developer has been rectified by the Municipality in accordance with the provisions of this Agreement and the Developer has failed to pay the costs and expenses of such rectification within Thirty (30) days after receipt from the Municipality of an account therefore;

(c) emergency repair work has been done to Municipal Improvements by the Municipality in accordance with the provisions of this Agreement and the Developer fails to pay the costs and expenses of such repair work within Thirty (30) days after receipt from the Municipality of an account therefore;

(d) the Developer by any act or omission is in default of any term, condition or covenant of this Agreement; or

(e) the security to be provided by the Developer to the Municipality pursuant to this Agreement is due to expire within a period of Thirty (30) days and the Developer has not deposited with the Municipality a renewal or replacement of such security in terms and form acceptable to the Municipality's solicitors;

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

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

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

16. DELIVERY OF DOCUMENTS TO MUNICIPALITY

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

17. COMPLIANCE WITH LAW

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

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

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

18. GENERAL

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

18.2 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.

18.3 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.

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

Village of Linden	**[Insert name of Developer]**
PO Box 213	_____
Linden, AB T0M 1J0	_____
Phone: (403 546-3888	Phone: _____
Fax: (403) 546-2112	Fax: _____
Attention: Chief Administrative Officer	Attention: _____

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

18.6 The Developer acknowledges and agrees that the Municipality shall be at liberty, to file at the Land Titles Office a caveat against the Development Area and against the undeveloped portion of the Lands for purposes of protecting the Municipality's interests and rights pursuant to this Agreement. The Municipality shall discharge the caveat regarding this Agreement upon the issuance of all Final Acceptance Certificates and the satisfaction of any and all obligations of the Developer under this Agreement. All costs relating to the registration and discharge of the caveat by the Municipality shall be payable by the Developer.

18.7 Notwithstanding anything contained within this Agreement, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the Municipality for the performance by the Developer of all the Developer's obligations as set forth in this Agreement; AND FURTHER the Developer acknowledges, understands and agrees that the Municipality shall not be obligated in any circumstances whatsoever to commence or prosecute any claim, demand, action or remedy whatsoever against any person with whom the Developer may contract for the performance of the Developer's obligations.

18.8 This Agreement shall not be assignable by the Developer without the express written approval of the Municipality. Such approval shall be subject to Section 18.9 and may be withheld by the Municipality in its discretion. This Agreement shall enure to the benefit of, and shall remain binding upon (jointly and severally, where multiple parties comprising the Developer), the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of all individual parties and their respective estates, and shall enure to the benefit of, and shall remain binding upon, all successors and assigns (if and when assignment permitted herein) of all corporate parties.

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

(a) the proposed assignee enters into a further agreement with the Municipality whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Developer as set forth in this Agreement; and

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

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

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

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

19. EXECUTION OF AGREEMENT

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

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

VILLAGE OF LINDEN

Per: _____ (c/s)
Reeve

Per: _____
Chief Administrative Officer

[DRAFT NOTE: Choose applicable Developer signature line, and delete signature lines that are not needed]

[Option 1: Use if Developer is a corporation with a corporate seal]

[INSERT NAME OF DEVELOPER]

Per: _____ (c/s)

Per: _____

[Option 2: Use if Developer is a corporation with no corporate seal]

[INSERT NAME OF DEVELOPER]

_____
Witness

Per: _____

_____
Witness

Per: _____

[Option 3: Use if Developer is and individual]

[INSERT NAME OF DEVELOPER]

_____
Witness

Per: _____

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

I, _____ of the _____ of _____ , in the province of Alberta, make oath and say that:

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

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

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

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

_____
A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

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

1. That I am an officer, director or agent of _____ named in the within or annexed instrument.

2. That I am authorized by _____ to execute the instrument without affixing a corporate seal.

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

_____
A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

AFFIDAVIT OF EXECUTION

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

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

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

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

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

_____
A COMMISSIONER FOR OATHS IN AND FOR ALBERTA

SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS

[DRAFT NOTE: Insert full legal description of the lands owned by the Developer that are to be subdivided]

SCHEDULE "B" - THE DEVELOPMENT AREA

[DRAFT NOTE: Insert plan, map or diagram illustrating the proposed subdivision and new parcels to be created]

SCHEDULE "C" – MUNICIPAL IMPROVEMENTS

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

(a) all sanitary sewer systems including holding tanks, service lines, manholes, mains and appurtenances;

(b) all drainage systems, including storm sewers, storm sewer connections, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds, catch basins, catch basin leads, manholes and associated works, all as and where required by the Municipality;

(c) all water wells, pumps and lines, including all fittings, valves, and hydrants and looping as required by the Municipality, in order to safeguard and ensure the continuous and safe supply of water in the Development Area;

(d) all concrete curb and gutter, subgrade, base gravel and base asphalt, sidewalks and sub-grade, base and asphaltic pavement; and all surface asphalt;

(e) all lighting systems for streets, walkways, parking areas and Public Properties as and where required by the Municipality;

(f) such electrical conduit as may be required by the Municipality for the installation of traffic control signals and traffic control devices;

(g) all traffic signs, street signs, development identification signs, zoning signs, and directional signs, berming and noise attenuation devices all as and where required by the Municipality; and

(h) all walkway systems and Landscaping on both private property and Public Property which are to be constructed and installed to the satisfaction of the Municipality, and in accordance with the Plans for Landscaping to be submitted for the approval of the Municipality; and

(i) such construction or development of streets and lanes as may be required by the Municipality; including, but in no manner limited to, a second or temporary access for vehicular traffic from the Development Area;

(j) the restoration of all Public Properties to the Municipality's satisfaction which are disturbed or damaged in the course of the Developer's work;

(k) the relocation, to the Municipality's satisfaction, of all existing utilities and Municipal Improvements as required by the Municipality as a result of the installation and construction of other utilities and Municipal Improvements pursuant to this Agreement;

(l) the establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the Municipality throughout and adjacent to the Development Area;

(m) public information signs, of a size and location to be approved by the Municipality, and to contain such public information regarding the completion of services and the completion of the construction of other facilities as may be required by the Municipality in order to provide proper and complete and up to date information to proposed purchasers and residents within the Development Area;

(n) such uniform fencing, (noise attenuation, or screen) either permanent or temporary, of a standard and of a design satisfactory to the Municipality, all of which is to be constructed and located to the satisfaction of the Municipality; and

(o) all utilities including electricity, natural gas, 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 Municipality.

SCHEDULE "D" - ADDITIONAL PROVISIONS

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

[DRAFT NOTE: Insert any additional site specific infrastructure requirements per engineering or planning recommendations or government agency circulations].

SCHEDULE "E" - SECURITY

[DRAFT NOTE: Construction and installation costs for the required Municipal Improvements must be inserted below. This list may be tailored, in each case, to reflect the specific Municipal Improvements that are and are not required for the specific subdivision in question.]

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

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

2. In the event that any of the costs for the construction and installation of the 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 Municipal Improvements, THEN, the estimated costs set out above shall be adjusted in accordance with the security provisions of this Agreement.

SCHEDULE "F" – FEES AND OVERSIZE COSTS

A. Approval & Inspection Fees

1. Fees and Calculation – the approval and inspection fees currently due and payable by the Developer pursuant to Section 10 of this Agreement are as follows:

[DRAFT NOTE: Insert current fees, if any, or leave blank as Section 9 will apply]

2. Payment – the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 10 of this Agreement.

B. Oversize Contribution

1. The Developer shall pay the following as contributions pursuant to Section 651 of the MGA:

[**DRAFT NOTE: If the Developer is to be required to pay a contribution towards oversize improvements previously constructed by another developer, the amount payable should be detailed here. If no oversize contribution is to be paid, "N/A" may be inserted.]**

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

SCHEDULE "G" - INAPPLICABLE PROVISIONS

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

[DRAFT NOTE: If particular provisions of the Agreement are not to apply in a particular case, the provisions in question should be identified here]