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SUBDIVISION SERVICING AGREEMENT

EFFECTIVE THE ____ day of _____, 20__.

BETWEEN:

THE TOWN OF OKOTOKS

A municipal corporation in the Province of Alberta

(the “Town”)

-and-

DEVELOPER

A body corporate carrying on business in the Province of Alberta

(the “Developer”)

RECITALS

- A. The Developer is or is entitled to become the registered owner of the Subdivision Area;
- B. The Subdivision Authority has approved the Developer’s application to subdivide the Subdivision Area according to the Plan of Subdivision subject to the conditions set out in the Subdivision Approval;
- C. The *Municipal Government Act* allows the Subdivision Authority to require, as a condition of subdivision approval, an applicant to enter into an agreement to construct, install, or pay for the construction and installation of certain utilities and infrastructure, to pay off-site levies, and to give security to ensure that the terms of that agreement are carried out;
- D. The Town has passed a bylaw establishing off-site levies;
- E. One of the conditions of the Subdivision Approval is that the Developer enter into an agreement to:
 - 1. construct or pay for the construction of Local Improvements which benefit the Subdivision Area;
 - 2. pay for the cost of improvements paid for in whole or in part by the Town or other developers which benefit, in whole or in part, the Subdivision Area; and
 - 3. construct or pay for the construction of Local Improvements which, in addition to the Subdivision Area, may benefit other areas, in which case the Town may endeavor to assist the Developer to recover a fair portion of the cost of such excess capacity from other developers in the future;
- F. The Town and the Developer wish to provide for the orderly and mutually beneficial servicing of the Subdivision Area; and

- G. The Town has established General Design & Construction Specifications for the purpose of establishing construction procedures and standards for infrastructure within the Town,

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree as follows:

PART A: INTRODUCTION

1. INTERPRETATION

1.1. Definitions

In this Agreement, the following terms and grammatical variations thereof shall have the following meanings when capitalized:

- a. **“Agreement”** means this Subdivision Servicing Agreement and the following Schedules:
 - i. Schedule A: Plan of Subdivision;
 - ii. Schedule B: Subdivision Approval;
 - iii. Schedule C: Amendments to General Specifications;
 - iv. Schedule D: List of Plans and all Plans referenced therein;
 - v. Schedule E: Construction Route;
 - vi. Schedule F: Pageantry Features;
 - vii. Schedule G: Registration Documents;
 - viii. Schedule H: Notice and Emergency Contacts;
 - ix. Schedule I: Construction Completion Certificates;
 - x. Schedule J: Maintenance Periods;
 - xi. Schedule K: Final Acceptance Certificates;
 - xii. Schedule L: Fees and Costs;
 - xiii. Schedule M: Benefitted Lands;
 - xiv. Schedule N: Other Endeavours to Assist;
 - xv. Schedule O: Performance Security; and
 - xvi. Schedule P: Letter of Credit.
- b. **“Benefitted Lands”** means the lands outside the Subdivision Area which will benefit from the Boundary and Oversize Improvements, as described in Schedule M: Benefitted Lands.
- c. **“Boundary and Oversize Improvements”** means those Local Improvements or portions thereof which, in addition to serving the Subdivision Area, serve or provide a benefit to the Benefitted Lands because they are on the boundaries of the Subdivision Area, have excess capacity, or both.

- d. **“Commence Construction”** or **“Commencement of Construction”** means the commencement of construction of the Local Improvements, and includes any stockpiling or excavation, but does not include work related to the preparation or clearance of the Subdivision Area including removal of buildings, fixtures or chattels, the removal of debris, or the placing of machinery or equipment.
- e. **“Complete Construction”** or **“Completion of Construction”** means, with respect to a Local Improvement, that:
 - i. the Local Improvement is free of all liens, charges or encumbrances arising through the Developer;
 - ii. the Local Improvement is constructed pursuant to this Agreement;
 - iii. all easements and rights of way in respect of the Local Improvement have been registered pursuant to this Agreement and have been duly transferred to the Town or utility company as applicable;
 - iv. all landscaping associated with the Local Improvement has been completed; and
 - v. all Public Places used in respect of constructing the Local Improvement have been restored pursuant to this Agreement.
- f. **“Construction Completion Certificate”** or **“CCC”** means a certificate issued by the Town confirming Completion of Construction of a Local Improvement.
- g. **“Construction Period”** means the period of time from Commencement of Construction until the last FAC is issued in respect of the Local Improvements.
- h. **“Construction Routes”** means the routes established by the Municipal Engineer for the purpose of reducing hazards and nuisances caused by construction traffic, as set out in Schedule E: Construction Route.
- i. **“Developer’s Emergency Contact”** means the emergency contact person for the Developer in accordance with Schedule H: Notice and Emergency Contacts.
- j. **“Developer’s Landscape Architect”** means the landscape architect or firm of landscape architect with membership in good standing with the Alberta Association of Landscape Architects, employed or retained by the Developer to provide landscaping advice and services to the Developer in relation to this Agreement.
- k. **“Engineering Drawings”** means the engineering drawings for the Local Improvements as accepted by the Town.
- l. **“Final Acceptance Certificate”** or **“FAC”** means a certificate issued by the Town following the Maintenance Period confirming acceptance of a Local Improvement.

- m. **“General Specifications”** means the General Design & Construction Specifications published by the Town as of the date of execution of this Agreement, amended in accordance with Schedule C: Amendments to General Specifications.
- n. **“Growing Season”** means the period of time from May 1 to September 30 in one calendar year.
- o. **“Landscape Plans”** means the plans for landscaping within the Subdivision Area as accepted by the Town.
- p. **“Local Improvements”** means the roadways, Public Utilities and other works required to serve the Subdivision Area.
- q. **“Maintenance Period”** means, in respect of a Local Improvement listed in Schedule J: Maintenance Periods, the period of time after the issuance of the CCC as set out in that schedule.
- r. **“Municipal Engineer”** means the professional engineer or firm of professional engineers, registered in the Province of Alberta and which is a member in good standing of APEGA, employed or retained by the Town to provide engineering advice and services to the Town in relation to this Agreement.
- s. **“Municipal Government Act”** means the *Municipal Government Act*, RSA 2000, c. M-26.
- t. **“Off-Site Levy”** means an off-site levy imposed by the Town by bylaw to pay for all or part of the capital cost of certain roads and facilities and the land required in connection with those facilities and includes the “common” and “site specific” off-site levies as set out in such bylaw.
- u. **“Optional Subdivision Amenities”** means amenities installed, constructed or placed within the Public Places within the Subdivision Area by the Developer other than those required pursuant to this Agreement.
- v. **“Pageantry Features”** means temporary signs, flags and flagpoles, banners and banner poles or other decorative elements intended to attract potential purchasers to the Subdivision Area.
- w. **“Performance Security”** means the security provided by the Developer to the Town to secure diligent performance of the Developer’s obligations pursuant to this Agreement.
- x. **“Plans”** means the Engineering Drawings and Landscape Plans, as listed in Schedule D: List of Plans, as revised or amended in accordance with this Agreement.
- y. **“Plan of Subdivision”** means the Plan of Subdivision in respect of the Subdivision Area approved by the Subdivision Authority as attached as Schedule A: Plan of Subdivision to this Agreement.

- z. **“Public Place”** means all areas owned by the Town or within the Town’s direction, control and management, and includes without limitation:
 - i. all municipal reserves, school reserves, municipal and school reserves and environmental reserves within the Subdivision Area created by registration of the Plan of Subdivision and those outside of the Subdivision Area; and
 - ii. all roadways within and outside the Subdivision Area.
- aa. **“Public Utility”** means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:
 - i. water or steam;
 - ii. sewage disposal;
 - iii. public transportation operated by or on behalf of the Town;
 - iv. irrigation;
 - v. drainage;
 - vi. fuel;
 - vii. electric power;
 - viii. heat;
 - ix. waste management;

and includes the thing that is provided for public consumption, benefit, convenience or use.
- bb. **“Registration Documents”** means the documents set out in Schedule G: Registration Documents and any other easements, rights of way, caveats or restrictive covenants required for the Local Improvements or required in accordance with this Agreement.
- cc. **“Subdivision Approval”** means the approval of the Plan of Subdivision by the Subdivision Authority as set out in Schedule B: Subdivision Approval to this Agreement.
- dd. **“Subdivision Area”** means the area within the Plan of Subdivision as described in Schedule A: Plan of Subdivision to this Agreement.
- ee. **“Subdivision Authority”** means the subdivision authority for the Town or the Town of Okotoks Subdivision and Development Appeal Board, as applicable.
- ff. **“Term”** means the term of this Agreement, which shall commence upon execution and shall end on the date the last FAC is issued in respect of the Local Improvements.
- gg. **“Transportation and Utility Costs”** means the amounts specified in Schedule L: Fees and Costs for the Developer’s contribution to the Town’s expenses for:
 - i. upgrading existing roads and developing new roads to give access to the Subdivision Area;

- ii. upgrading existing pedestrian walkways and developing new pedestrian walkways to serve the Subdivision Area and connect the Subdivision Area to adjacent subdivisions;
- iii. upgrading existing public utilities and developing new public utilities to serve the Subdivision Area; and
- iv. upgrading existing parking, loading and unloading facilities and developing new parking, loading and unloading facilities,

in accordance with the *Municipal Government Act*, and such amounts shall be fees payable pursuant to this Agreement.

- hh. **“Town’s Landscape Inspector”** means the Town employee appointed to inspect landscaping pursuant to this Agreement.
- ii. **“Town’s Solicitor”** means the lawyer or firm of lawyers engaged by the Town from time to time to provide legal services to the Town in respect of this Agreement.
- jj. **“Winter”** means the period of time from November 1 of a calendar year to April 30 of the following calendar year.

1.2. Other Definitions

Words not defined in this Agreement shall be defined in accordance with, in descending order of priority:

- a. Part 17 of the *Municipal Government Act*;
- b. the *Municipal Government Act* other than Part 17;
- c. the Town’s Land Use Bylaw; or
- d. Webster’s Third New International Dictionary.

1.3. Forms of Words

Where the singular or masculine form of a word is used in this Agreement, it shall include the plural, feminine or neutral form of that word as the context so requires.

1.4. References to Statutes

Any references to any statutes or bylaws in this Agreement shall mean those statutes as amended or replaced from time to time and any amendments thereto, and shall include any regulations enacted under those statutes.

1.5. Headings

The headings in this Agreement are for convenience only and shall not affect its interpretation.

1.6. Conflicting Provisions

- a. In the event of any conflict between the Plans and the General Specifications, the General Specifications shall prevail.

- b. In the event of a conflict between the Subdivision Approval and any other part of this Agreement, the Subdivision Approval shall prevail.
- c. In the event of a conflict between the General Specifications and this document, this document shall prevail.

PART B: CONSTRUCTION OF LOCAL IMPROVEMENTS

2. DEVELOPER'S CONSULTING ENGINEER

2.1. Engagement of Developer's Consulting Engineer

- a. Throughout the Term, the Developer shall engage the Developer's Consulting Engineer to provide all engineering services related to the design, construction, completion and maintenance of the Local Improvements.
- b. The Developer shall notify the Town of the name, firm (if applicable) and contact information of the engineer engaged as the Developer's Consulting Engineer, and shall forthwith notify the Town of any changes to this information during the Term.

2.2. Conduct

The Developer shall ensure that the Developer's Consulting Engineer's conduct when providing services in relation to this Agreement is in accordance with the General Specifications.

3. PLANS

3.1. Plans

The Developer shall ensure that the Plans are in accordance with the General Specifications.

3.2. Landscaping Plans

Without limiting the generality of the above paragraph, the Developer shall ensure that the Plans include Landscape Plans in accordance with the General Specifications.

3.3. Amendments to Plans

The Developer shall not amend the Plans except as follows:

- a. the Developer may amend the Plans with the written authorization of the Town provided that such revisions are to the reasonable satisfaction of the Municipal Engineer; and
- b. the Developer shall amend the Plans if, in the opinion of the Municipal Engineer, the Local Improvements would not be suitable for the intended purpose if they are built, constructed or installed in accordance with the Plans.

3.4. Costs of Amending Plans

The Developer shall be responsible for the costs of amending the Plans, including any costs of relocating Local Improvements resulting from such amendments.

3.5. Submission of Amended Plans

In the event that any Plans are revised in accordance with this section, the Developer shall submit the revised Plans prior to Commencing Construction or, if construction has already commenced, prior to proceeding with construction, to the satisfaction of the Municipal Engineer and in the following formats:

- a. two (2) hard copies of the revised Plans; and
- b. digital versions of the revised Plans in accordance with the General Specifications, submitted via e-mail or on an otherwise blank CD/DVD or USB.

4. CONSTRUCTION OF LOCAL IMPROVEMENTS

4.1. Construction According to Plans

The Developer shall construct the Local Improvements in strict conformance with the Plans.

4.2. Additional Public Utilities

Notwithstanding the above paragraph, the Developer shall arrange, at the Developer's cost, for the construction and installation of the following Local Improvements to serve the Subdivision Area:

- a. street lighting and underground and overhead electrical systems in accordance with the General Specifications; and
- b. a natural gas distribution system in accordance with the General Specifications.

4.3. Time for Construction

- a. The Developer shall Commence Construction of the Local Improvements within twelve (12) months of the execution of this Agreement.
- b. The Developer shall Complete Construction of the Local Improvements within twenty-four (24) months of execution of this Agreement.

4.4. Relocation of Public Utilities and Improvements

The Developer shall be responsible for relocating, and shall pay all costs arising from relocating any existing Public Utilities or other improvements located on, over or under the Subdivision Area.

4.5. Ancillary Equipment and Works

The Developer's obligation to construct Local Improvements shall include the obligation to construct any equipment or works ancillary to those Local Improvements, as such

equipment or works are identified in the Plans, and shall include without limitation landscaping of roads, pathways and sidewalks.

4.6. Sale of Lots Prior to Completion of Construction

If the Developer registers the Plan of Subdivision prior to Completing Construction of all Local Improvements, the Developer shall not sell or transfer any lot within the Subdivision Area without the authorization of the Town and the Town may register a caveat against the lots within the Subdivision Area to this effect. Upon registration, the Developer shall forthwith reimburse the Town for the cost of registering such caveat, and this cost shall be a cost payable pursuant to this Agreement.

4.7. Duty to Complete Construction

Once the Developer Commences Construction of a Local Improvement, the Developer shall *bona fide* work in a diligent, timely and workmanlike manner until Completion of Construction.

5. DEVELOPER'S CONSTRUCTION OBLIGATIONS

5.1. General Design & Construction Specifications

The Developer shall ensure that all construction carried out pursuant to this Agreement is in accordance with the requirements of the General Specifications and any plans or authorizations thereunder.

5.2. Water during Construction Period

From the Commencement of Construction until a FAC is issued for the potable water system for the Subdivision Area, the Developer shall:

- a. ensure that any occupied premises within the Subdivision Area are serviced with an uninterrupted supply of potable water with adequate volume given the purpose for which the premises are occupied; and
- b. ensure that a fully operating fire hydrant is not more than one hundred fifty (150) metres from any occupied premises within the Subdivision Area.

5.3. Safe Roadway Access

From the Commencement of Construction until a FAC is issued for the road system for the Subdivision Area, the Developer shall:

- a. ensure that any occupied premises within the Subdivision Area are reasonably accessible by a roadway of an appropriate standard given the nature of the premises;
- b. ensure that any occupied premises within the Subdivision Area are reasonably accessible by a pedestrian sidewalk;
- c. ensure that any occupied premises within the Subdivision Area are adequately marked to permit their identification by emergency response personnel;

- d. ensure that any occupied premises within the Subdivision Area are accessible by emergency response vehicles; and
- e. ensure that all traffic control is in accordance with the General Specifications.

5.4. Topsoil Stockpiling

- a. After Commencing Construction, the Developer may stockpile topsoil in the Subdivision Area which is originating from or is to be used within the Subdivision Area provided that the topsoil is stockpiled in accordance with the General Specifications.
- b. In the event that the Developer stockpiles topsoil in any Public Place within the Subdivision Area, including any reserve parcels or road allowances, the Developer shall remove the stockpile or stockpiles upon six (6) months' notice by the Town. The Town shall not issue such notice unless:
 - i. thirty percent (30%) of lots within 1.2 kilometers of the relevant parcel as measured between the closest property lines are occupied and the Town has received a written request from the occupant or occupants or any of them to have the stockpile removed; or
 - ii. the Town requires the parcel for a municipal purpose.
- c. Upon removal of any or all topsoil stockpiles from the Subdivision Area, the Developer shall remediate the land which was used for stockpiling to the reasonable satisfaction of the Town and in accordance with the General Specifications.

5.5. Abatement of Nuisances

- a. Throughout the Term of this Agreement, the Developer shall ensure that dust, dirt, weeds and refuse:
 - i. are controlled in accordance with the General Specifications; and
 - ii. do not emanate from the Subdivision Area or become a nuisance to other properties in the vicinity of the Subdivision Area.
- b. If the Town determines, in the Town's sole discretion, that the Developer is not complying with the preceding paragraph, the Town may notify the Developer to take remedial action by contacting the Developer's Emergency Contact by telephone.
- c. If the Developer fails to comply with a notification from the Town to the Town's satisfaction within one (1) day of the Town issuing such notice in accordance with the preceding paragraph, or if in the Town's sole discretion immediate action is required, the Town may take whatever remedial action the Town deems necessary or desirable at the Developer's sole cost and expense, and such amount shall be a cost payable pursuant to this Agreement.

5.6. Sanitary Facilities

Throughout the Construction Period and at any time workers are present in the Subdivision Area prior to Commencement of Construction, the Developer shall ensure that temporary sanitary facilities conforming to all applicable statutes and regulations are provided for workers within the Subdivision Area.

5.7. Solid Waste

- a. The Developer shall collect and dispose of all municipal solid waste originating from the Subdivision Area throughout the Term.
- b. Notwithstanding the above sub-paragraph (a), upon a CCC being issued for roads within the Subdivision Area, the Town shall collect and dispose of municipal solid waste originating from occupied residential premises within the Subdivision Area in the same manner and to the same standard as it does in similar areas within the Town's boundaries.

5.8. Construction Traffic

- a. The Developer shall, to the extent reasonably possible, ensure that construction traffic is confined to the Construction Route.
- b. The Developer shall post signs identifying the Construction Route if, in the opinion of the Town, it is necessary or desirable to do.

5.9. Inspections by the Developer

The Developer shall ensure that the Developer's Consulting Engineer inspects the Local Improvements throughout the Construction Period in accordance with the General Specifications.

5.10. Inspections by the Town

- a. Throughout the Construction Period, the Developer shall allow the Town free and immediate access to the Subdivision Area for the purpose of inspection and taking samples of materials.
- b. Throughout the Construction Period, the Developer shall allow the Town free and immediate access to all records of the Developer or available to the Developer relating to the design, inspection, material testing and records of construction and installation of all Local Improvements.
- c. The Town shall be under no duty or obligation to conduct inspections in accordance with this section. In the event that the Town conducts any inspections in accordance with this section, such inspections shall be solely for the Town's benefit, and shall not affect the Developer's obligations in respect of the design and construction of the Local Improvements or any indemnities, representations or warranties issued by the Developer pursuant to this Agreement.

5.11. Testing by the Developer

- a. Throughout the Construction Period, the Developer shall conduct testing related to the Local Improvements in accordance with the General Specifications and as may be reasonably required by the Municipal Engineer.
- b. The Developer shall provide to the Town the results of the testing required in accordance with this section along with a report outlining the same by the Developer's Engineer to the Town to the satisfaction of the Municipal Engineer.
- c. The Town shall be under no duty or obligation to require testing in accordance with this section. In the event that the Town does require any testing in accordance with this section, such testing shall be solely for the Town's benefit, and shall not affect the Developer's obligations in respect of the design and construction of the Local Improvements or any indemnities, representations or warranties issued by the Developer pursuant to this Agreement.

5.12. Town's Approval of Construction

The Town may, at any time during the Construction Period, reject any design, material or work not in compliance with the Plans or the General Specifications, and may order any or all of:

- a. the re-execution or replacement of the design, material or work;
- b. the Developer to bring, at the Developer's sole cost and expense, additional labour, machinery or equipment as the Municipal Engineer may deem necessary to ensure the proper performance of the work and to enforce good construction practices;
- c. the Developer to take any other steps, at the Developer's sole cost and expense, as the Municipal Engineer may deem necessary to ensure the proper performance of the work and to enforce good construction practices; and
- d. a discontinuance of the work until the issue is remedied,

and the Developer shall forthwith comply with the directions of the Town.

5.13. Connections to Municipally Owned or Operated Local Improvements

The Developer shall not connect any Local Improvements to any municipally owned, operated or managed Local Improvement except with the approval of the Municipal Engineer.

5.14. Land Use Classification Signs

- a. Prior to Commencing Construction, the Developer shall erect a land use classification sign at a location and in a format to the satisfaction of the Town. The Developer shall maintain this sign until the end of the Term, unless

authorized to remove the sign earlier by the Town in the Town's sole discretion.

- b. To the extent that such information is reasonably available to the Developer, the Developer shall throughout the Term make the following information available to prospective purchasers and the general public:
 - i. the land use classifications in the Subdivision Area and adjacent parcels;
 - ii. the locations of roads including arterial roads and truck routes within or adjacent to the Subdivision Area;
 - iii. the locations of community mail boxes, noise exposure forecast zones, school sites (and when school construction is anticipated) and other neighbourhood features and amenities; and
 - iv. any relevant statutory plans or other development plans affecting the Subdivision Area which have been approved by the Town, along with a statement that such plans can change from time to time.

5.15. Survey Control Stations

The Developer shall, at no expense to the Town, install all monuments to mark the Subdivision Area in accordance with the *Surveys Act*, R.S.A. 2000, c. S-26 and replace all such monuments which have been previously placed in the Subdivision Area which are disturbed by the Developer or the Developer's agents, employees or contractors to the satisfaction of the Town.

5.16. Hydrants

Until the Town issues a FAC for the roads pursuant to this Agreement, the Developer shall adjust all hydrants, hydrant and main valve boxes and all service boxes to the established grades as they are developed and shall maintain the valves and appurtenances of all hydrants in the Subdivision Area in operating condition.

5.17. Street Lighting

- a. When, in the opinion of the Town, levels of development in the Subdivision Area are sufficient that street lighting is required to meet the Town's usual standards, the Town shall issue notice to the Developer to turn on the street lights.
- b. If the Developer turns on the street lights prior to notice in accordance with the preceding paragraph, the Developer shall pay for all electricity costs incurred for such street lighting until such notice is issued by the Town, and this cost shall be an amount payable pursuant to this Agreement.

5.18. Pageantry Features

- a. The Developer may install Pageantry Features in accordance with Schedule F: Pageantry Features. The Developer shall not install any additional Pageantry Features without the prior written authorization of the Town.
- b. The Developer shall be responsible for the maintenance of all Pageantry Features throughout the time period that such Pageantry Features are installed.
- c. Prior to the end of the Term, or on such earlier date as is specified in Schedule F: Pageantry Features or the written approval of the Town, the Developer shall remove the Pageantry Features.
- d. If the Town determines, in the Town's sole discretion, that:
 - i. the Pageantry Features are in a state of disrepair which detracts from the aesthetics or safety of the surrounding area; or
 - ii. the Pageantry Features are creating a safety issue for motorists or pedestrians,the Town may notify the Developer to remove, repair or modify the Pageantry Features by contacting the Developer's Emergency Contact by telephone.
- e. If the Developer fails to comply with a notification from the Town to the Town's satisfaction within one (1) day of the Town issuing such notice in the preceding sub-paragraph (e), or if in the Town's sole discretion immediate action is required, the Town may take whatever remedial action the Town deems necessary or desirable at the Developer's sole cost and expense, and such amount shall be a cost payable pursuant to this Agreement.
- f. As soon as reasonably possible upon removal of the Pageantry Features, the Developer shall restore the area where the Pageantry Features to the state of repair equivalent to that prior to installation to the satisfaction of the Town, including the replacement of landscaping.
- g. If any Pageantry Features are installed in any Public Places, such installation shall be in accordance with the requirements of this Agreement for work carried out in Public Places in addition to the requirements of this section.

6. CONSTRUCTION IN PUBLIC PLACES

6.1. Requirement for Authorization

If the work to be carried out by the Developer requires the use, occupation or construction on any Public Place, the Developer shall obtain the approval of the Town prior to commencing such work.

6.2. Conditions of Authorization

In addition to the terms and conditions contained in this Agreement, any work carried out by the Developer in any Public Place shall be subject to the following:

- a. prior to commencing any work, the Developer's Engineer and the Town shall jointly inspect such Public Place and record its state and condition in writing, photographs or both;
- b. the Developer shall obtain authorization from any other person which may hold an interest in the Public Place prior to commencing work, including without limitation any provincial authorities and private parties;
- c. the Developer shall do as little damage as possible to the Public Place in performing the work, and shall minimize the disruption of the public's use of the Public Place; and
- d. upon completion of the work the Developer shall restore the Public Place to the condition and state of repair equivalent to that determined during the inspection which took place prior to commencing work to the satisfaction of the Town, including the replacement of landscaping.

6.3. Optional Subdivision Amenities

- a. The Developer shall not construct, install or place any Optional Subdivision Amenities in a Public Place except with the authorization of the Town and in accordance with any terms and conditions the Town may impose in the Town's sole discretion.

7. REGISTRATION DOCUMENTS

7.1. Providing Registration Documents

The Developer shall provide the Registration Documents to the satisfaction of the Town's Solicitor and, without limiting the generality of the foregoing, shall authorize the Town to:

- a. assign any or all of its rights to the operator of the respective Local Improvements; and
- b. install, maintain, repair and replace all parts of the Local Improvements.

7.2. Registration of Registration Documents

The Developer shall register the Registration Documents, at the Developer's sole cost and expense, to the satisfaction of the Town's Solicitor.

7.3. Land Outside the Developer's Ownership

If the Developer does not own lands over which the Registration Documents are required to be registered, the Developer shall obtain the necessary consent and

authorization to register the Registration Documents from the owner of such lands at the Developer's sole cost and expense.

8. EMERGENCIES

8.1. Emergency Contact

The Developer shall ensure that the Developer's Emergency Contact is reachable by the Town 24 hours per day, 7 days per week, throughout the Term.

8.2. Emergencies

If, in the sole opinion of the Town, the construction or work carried out pursuant to this Agreement creates or is likely to create an emergency situation including without limitation a release contrary to environmental legislation or danger to persons or property, in addition to and without limiting any other remedies available to municipalities in respect of emergencies within their boundaries, the Town may enter the Subdivision Area and take any steps the Town considers necessary to prevent, respond to or mitigate the effects of the emergency situation, in which event:

- a. all steps taken by the Town shall be at the Developer's expense, and the Developer shall forthwith reimburse the Town for such expenses upon the Town presenting the Developer with an invoice and such supporting materials as may reasonably be requested by the Developer, and such cost shall be an amount payable pursuant to this Agreement;
- b. the Town shall notify the Developer of the general nature of the emergency situation and the steps being taken as soon as reasonably practical by telephone to the Developer's Emergency Contact; and
- c. the Town shall notify the Developer of the particulars of the emergency situation and the steps taken as soon as reasonably practical.

9. CONSTRUCTION COMPLETION CERTIFICATES

9.1. Application for Construction Completion Certificate

Upon Completion of Construction of any Local Improvement listed in Schedule J: Maintenance Periods, the Developer shall apply for a CCC for that Local Improvement. This application shall be made in accordance with the General Specifications.

9.2. Construction Completion Certificate Inspection

The Town shall inspect the Local Improvement within ninety (90) days of receipt of a CCC application.

9.3. Satisfactory Inspection

A Local Improvement shall be satisfactory for the purposes of this section if the Town determines:

- a. there are no apparent defects or deficiencies in the Local Improvement;
- b. Construction is Complete in respect of the Local Improvement; and
- c. all plans and supporting documents are to the satisfaction of the Town.

9.4. Issuance of Construction Completion Certificate for Satisfactory Inspection

If upon inspection the Town determines that a Local Improvement is satisfactory, the Town shall sign and issue the CCC and shall note on the CCC the projected earliest Maintenance Period expiry date.

9.5. Unsatisfactory Inspection

If upon inspection the Town determines that a Local Improvement is not satisfactory, the Town shall, in the Town's sole discretion:

- a. return the CCC application unsigned with a list of defects and deficiencies, in which case the Developer shall remedy such defects and deficiencies and reapply for a CCC as soon as reasonably possible; or
- b. sign and issue the CCC and note on the CCC the projected earliest Maintenance Period expiry date, and provide a list of defects and deficiencies which the Developer shall remedy prior to the end of the Maintenance Period.

9.6. Delayed Inspection

If, in the opinion of the Town, it is not practical or possible to inspect a Local Improvement within ninety (90) days of receipt of the application for a CCC because:

- a. vegetation associated with the landscaping of the Local Improvement is not in full leaf; or
- b. during Winter, weather or other conditions prevent the inspection

the Town shall notify the Developer of the delay and shall carry out the inspection as soon as it is reasonably practical or possible to do so. If, when the inspection is conducted for the first time following the delay the Local Improvement is satisfactory, the CCC shall be dated and the projected earliest Maintenance Period expiry date shall be calculated as if the CCC was issued the day of the application.

9.7. Inspection is for the Benefit of the Town

Any inspection carried out by the Town in accordance with this section shall be solely for the Town's benefit, and shall not affect the Developer's obligations in respect of the design and construction of the Local Improvements or any indemnities, representations or warranties issued by the Developer pursuant to this Agreement.

10. MAINTENANCE PERIODS

10.1. Integration and Operation of Local Improvements

Upon issuance of a CCC for a Local Improvement, the Town shall operate and maintain the Local Improvement in the same manner and to the same standard as it operates similar improvements within its boundaries. If applicable, the Town shall integrate the Local Improvement into its infrastructure system, and shall operate and maintain it in the same manner and to the same standard as it operates the balance of the relevant infrastructure system.

10.2. Clearing Roads, Pathways and Sidewalks

Notwithstanding the above paragraph, the Developer shall clear snow and ice on roads, pathways and sidewalks within the Subdivision Area during the Maintenance Period, and shall do so to the same standard as the Town would for similar roads, pathways and sidewalks.

10.3. Developer's Obligation to Repair and Replace

During the Maintenance Period and until the Final Acceptance Certificate is issued, the Developer shall repair, restore and replace in a good, timely and workmanlike manner any Local Improvement which is found to be damaged, defective, not suitable for the intended purpose, or otherwise does not meet the standard of the Developer's warranty, unless such Local Improvement has been damaged solely as a result of ordinary wear and tear or negligence on the part of the Town.

10.4. Removal of Line Obstructions

The Developer shall promptly reimburse the Town for any costs incurred by the Town during the maintenance period for removing obstructions in the sanitary sewer lines caused by gravel, rocks or silt which, in the opinion of the Municipal Engineer, is not deposited by sewage.

11. FINAL ACCEPTANCE CERTIFICATES

11.1. Application for Final Acceptance Certificate

At the end of the Maintenance Period for any Local Improvement listed in Schedule J: Maintenance Periods, the Developer shall apply for a FAC for that Local Improvement. This application shall be made in accordance with the General Specifications, and shall include:

- a. four (4) copies of the FAC in the form set out in Schedule K: Final Acceptance Certificates, signed and stamped by the Developer's Consulting Engineer or the Developer's Landscape Architect, as applicable;
- b. a declaration by the Developer's Consulting Engineer or the Developer's Landscape Architect, as applicable, of the total cost of the Local Improvement;
- c. as-built drawings in accordance with the General Specifications; and

- d. all relevant supporting documents in accordance with the General Specifications.

11.2. Final Acceptance Certificate Inspection

The Town shall inspect the Local Improvement within sixty (60) days of receipt of a FAC application.

11.3. Continuation of Maintenance Period Obligations

The Developer's obligations in respect of a Local Improvement during the Maintenance Period pursuant to this Agreement shall continue until a FAC is issued for that Local Improvement, regardless of any delay in issuing the FAC.

11.4. Satisfactory Inspection

A Local Improvement shall be satisfactory for the purposes of this section if the Town determines:

- a. there are no apparent defects or deficiencies in the Local Improvement excepting reasonable wear and tear;
- b. Construction is Complete in respect of the Local Improvement; and
- c. all plans and supporting documents are to the satisfaction of the Town.

11.5. Issuance of Final Acceptance Certificate for Satisfactory Inspection

If upon inspection the Town determines that a Local Improvement is satisfactory, the Town shall sign and issue the FAC in respect of that Local Improvement.

11.6. Unsatisfactory Inspection

If upon inspection the Town determines that the Local Improvement is not satisfactory, the Town shall return the FAC application unsigned with a list of defects and deficiencies, in which case the Developer shall remedy such defects and deficiencies and reapply for the FAC as soon as reasonably possible.

11.7. Delayed Inspection

If, in the opinion of the Town, it is not practical or possible to inspect a Local Improvement within ninety (90) days of receipt of the application for a FAC because:

- a. vegetation associated with the landscaping of the Local Improvement is not in full leaf; or
- b. during Winter, weather or other conditions prevent the inspection,

the Town shall notify the Developer of the delay and shall carry out the inspection as soon as it is reasonably practical or possible to do so.

11.8. Inspection is for the Benefit of the Town

Any inspection carried out by the Town in accordance with this section shall be solely for the Town's benefit, and shall not affect the Developer's obligations in respect of the

design and construction of the Local Improvements or any indemnities, representations or warranties issued by the Developer pursuant to this Agreement.

11.9. Transfer of Ownership and Responsibility

Upon the Town issuing a FAC in respect of a Local Improvement, that Local Improvement shall become the property and operational responsibility or within the direction, control and management of the Town, as applicable. Any representations or warranties made by the Developer to the Town in respect of the Local Improvement shall continue and may be relied upon by the Town after issuance of the FAC.

11.10. Issuance of Final Acceptance Certificate

Notwithstanding anything else in this Agreement, the Town shall be under no obligation to issue any FAC to the Developer if any amount payable pursuant to this Agreement by the Developer to the Town is outstanding.

12. DEVELOPER'S WARRANTY

12.1. Developer's Warranty

The Developer warrants to the Town that all Local Improvements and the materials from which they are constructed:

- a. are and shall be properly installed and constructed in a good and workmanlike manner;
- b. comply and shall comply with the Plans and the General Specifications;
- c. are and shall be free of defects, including latent and patent defects in design, workmanship and materials;
- d. meet and shall meet all relevant statutory and regulatory requirements; and
- e. are and shall be fit and suitable for the purpose intended.

PART C: FEES AND LEVIES

13. OFF-SITE LEVIES

13.1. Off-Site Levies

The Developer shall pay to the Town all Off-Site Levies payable in respect of the Subdivision Area as set out in Schedule L to this Agreement.

13.2. Payment of Off-Site Levies

- a. The Developer shall pay the Off-Site Levies to the Town as follows:
 - i. one hundred percent (100%) of all site-specific Off-Site Levies upon execution of this Agreement;

- ii. ten percent (10%) of all common Off-Site Levies upon execution of this Agreement;
 - iii. fifty percent (50%) of all outstanding common Off-Site Levies on or before the first anniversary of execution of this Agreement;
 - iv. all remaining common Off-Site Levies on or before the second anniversary of execution of this Agreement.
- b. Notwithstanding sub-paragraph (a) above, the Developer shall pay all unpaid Off-Site Levies attributable to commercial and industrial lots within the Subdivision Area as follows:
- i. the Developer shall pay fifty percent (50%) of all Off-Site Levies on or before the first anniversary of execution of this Agreement;
 - ii. the Developer shall pay all remaining Off-Site Levies on or before the second anniversary of execution of this Agreement; and
 - iii. notwithstanding (i) and (ii) above, the Developer shall pay all Off-Site Levies attributable to a lot prior to issuance of a development permit for that lot pursuant to the Town's Land Use Bylaw.
- c. Notwithstanding sub-paragraph (a) above, the Developer shall pay all unpaid Off-Site Levies attributable to residential lots within the Subdivision Area, excepting residential lots to be developed as single detached, duplex or studio suite dwellings in a land use district where that use is listed as a permitted use in the Town's Land Use Bylaw, as follows:
- i. the Developer shall pay fifty percent (50%) of all Off-Site Levies on or before the first anniversary of execution of this Agreement;
 - ii. the Developer shall pay all remaining Off-Site Levies on or before the second anniversary of execution of this Agreement; and
 - iii. notwithstanding (i) and (ii) above, the Developer shall pay all Off-Site Levies attributable to a lot prior to issuance of a development permit for that lot pursuant to the Town's Land Use Bylaw.

14. OTHER FEES

14.1. Payment for Transportation Network, Utility Infrastructure and Services

The Developer shall pay to the Town the Transportation and Utility Costs as set out in Schedule L: Fees and Costs.

14.2. Property Services Fee

Within thirty (30) days of the Town providing the Developer with an invoice, provided such invoice is provided during the first calendar year in which the Plan of Subdivision is registered, the Developer shall pay to the Town, a property service fee calculated as the product of:

- a. the property tax rate or rates applicable to the parcels within the Subdivision Area as established by the Town from time to time pursuant to the *Municipal Government Act*, and
 - b. the market value of the applicable parcels,
- prorated for that portion of the first calendar year in which the Subdivision Plan is registered.

14.3. Professional Fees

The Developer shall reimburse the Town, within thirty (30) days of the Town providing the Developer with a copy of any relevant invoice, for the cost of all third party consulting, accounting, legal, engineering and planning work incurred by the Town in the negotiation, preparation, execution, implementation, supervision or administration of this Agreement and any Registration Documents or other documents arising as a result of this Agreement.

15. CALCULATION AND PAYMENT OF FEES

15.1. Payment of Fees

Unless otherwise agreed by the Town in writing or otherwise specified in this Agreement, all amounts payable pursuant to this Agreement are due and payable upon execution of this Agreement. The Developer shall pay, in respect of any fees due pursuant to this Agreement, interest on the outstanding amount at a rate of eighteen percent (18%) per annum until the date paid, before or after judgment.

15.2. Calculation of Areas

If any amounts payable pursuant to this Agreement are calculated on the basis of the area of a parcel or parcels, upon the registration of the Plan of Subdivision the sums payable shall be adjusted to reflect the actual area as indicated in the Plan of Subdivision as registered.

15.3. Taxes

The Off-site Levies, fees and other costs provided for in this Agreement do not include taxes payable pursuant to the *Excise Tax Act* (Canada). If any taxes are payable in accordance with that statute, such taxes shall be the responsibility of the Developer.

16. TOWN CONTRIBUTION TO COSTS

16.1. Town Contributions

The Town shall compensate the Developer for those Local Improvements or portions thereof as set out in Schedule L to this Agreement. The Town shall remit this payment to the Developer upon issuance of the CCC in respect of the Local Improvement.

PART D: ENDEAVOURS TO ASSIST

17. ENDEAVOUR TO ASSIST

17.1. Endeavour to Assist

If the Local Improvements the Developer is required to construct pursuant to this Agreement are Boundary and Oversize Improvements, the Developer may be entitled to recover a portion of the costs of the Boundary and Oversize Improvements from the Benefitting Lands upon the Town issuing a development permit or subdivision approval in respect of those Benefitting Lands. The Town shall endeavour to assist the Developer in recovering these funds by requiring the other developer to remit payment as a condition of the development permit or subdivision approval.

17.2. Endeavour to Assist Time Limit

The Developer's right to recover a portion of the costs of the Boundary and Oversize Improvements from the Benefitting Lands shall terminate on the tenth (10th) anniversary of the date of execution of this Agreement, after which the Town shall have no obligation to assist the Developer nor shall the Developer be entitled to claim recovery of costs from the Town or any other entity for the cost of Boundary and Oversize Improvements.

17.3. Calculation of Endeavour to Assist

- a. The endeavour to assist shall only apply to Local Improvements identified as Boundary and Oversize Improvements prior to the Developer applying for CCCs in respect of those Local Improvements and accepted as Boundary and Oversize Improvements by the Municipal Engineer.
- b. If the Plans are revised to identify Local Improvements as Boundary and Oversize Improvements subsequent to the execution of this Agreement but prior to the Developer applying for a CCC, the Endeavour to Assist shall not apply to any development permit or subdivision approval issued by the Town in the intervening period in respect of the Benefitted Lands.
- c. If a Local Improvement includes a Boundary and Oversize Improvement, concurrent with the application for a CCC the Developer shall provide to the Town to the satisfaction of the Municipal Engineer:
 - i. an accounting of the costs incurred by the Developer to construct the Boundary and Oversize Improvement prepared in accordance with Generally Accepted Accounting Principles as established by the Canadian Institute of Chartered Accountants; and
 - ii. such invoices, proof of payment and other evidence as the Municipal Engineer may require,failing which the endeavour to assist shall not apply to that Local Improvement.

- d. Upon receipt of the accounting materials, invoices, proof of payment and other materials required by the Municipal Engineer in respect of a Boundary and Oversize Improvement, the Municipal Engineer shall determine what portion, if any, of the costs will be eligible for recovery, and how the costs will be allocated amongst the Benefitted Lands.
- e. The maximum recovery for a Boundary and Oversize Improvement from the Benefitted Lands shall be the lesser of:
 - i. the portion of the cost of the Boundary and Oversize Improvement allocated to the Benefitted Lands or the relevant portion thereof plus interest payable at the prime rate for the Town's bank from the date of issuance of the CCC to the date of payment; or
 - ii. the Benefitted Lands' proportionate share of the cost at current market rates for the recoverable portion of the cost of construction of the Boundary and Oversize Improvement.
- f. The Town may require the Developer to negotiate with the applicant for a development permit or subdivision approval in respect of the Benefitted Lands to determine the amount payable by that applicant to the Developer pursuant to this Agreement. In the event the Developer and the applicant are unable to determine the amount payable, the Municipal Engineer may determine the amount payable.

17.4. Other Endeavours to Assist

The Developer shall reimburse other developers for the proportionate cost of other improvements which benefit the Subdivision Area as set out in Schedule N: Other Endeavours to Assist to this Agreement. The Developer shall, concurrent with the execution of this Agreement:

- a. pay the sums directly to the other developer or arrange for such payment, and provide a letter from that other developer to the Town stating that all endeavour to assist claims by that developer in respect of the Subdivision Area have been paid in full or otherwise satisfied; or
- b. notify the Town that the Developer disputes the amount claimed by the other developer, in which case:
 - i. the Developer shall remit to the Town the full amount being claimed by the other developer concurrent with the execution of this Agreement;
 - ii. the Municipal Engineer shall determine the amount payable by the Developer to the other developer; and
 - iii. in the intervening period, the Town may release the undisputed portion of the endeavour to assist to the other developer.

PART E: PERFORMANCE SECURITY

18. PERFORMANCE SECURITY

18.1. Provision of Performance Security

- a. Before Commencing Construction, the Developer shall provide to the Town Performance Security for not less than the amount specified in Schedule O: Performance Security.
- b. If the Developer registers the Plan of Subdivision prior to Completing Construction of all Local Improvements required pursuant to this Agreement, the Developer shall provide to the Town additional Performance Security for not less than:
 - i. the total cost to Complete Construction of the Local Improvements as determined by the Municipal Engineer; and
 - ii. the total fees, Off-Site Levies and other amounts payable pursuant to this Agreement by the Developer at the time of registration of the Plan of Subdivision.
- c. The Town shall hold the Performance Security as security for the Developer's diligent performance of the whole of the Developer's obligations pursuant to this Agreement including without limitation payment of any amounts payable pursuant to this Agreement by the Developer.
- d. Interest shall not accrue in favour of the Developer on any Performance Security held by the Town, and in no circumstances shall the Developer be entitled to interest on the Performance Security.

18.2. Requirements for Letter of Credit

The Developer shall provide Performance Security in the form of a certified cheque, bank draft, or letter of credit. If the Performance Security is provided in the form of a letter of credit, such letter of credit shall be:

- a. issued by a bank listed in Schedule 1 to the *Bank Act* (Canada);
- b. conform to the "Uniform Customs and Practice for Documentary Credits" published by the International Chamber of Commerce as amended and replaced from time to time;
- c. in the format set out in Schedule P: Letter of Credit to this Agreement; and
- d. unconditional, irrevocable, and payable at sight to the Town.

18.3. Term of Letter of Credit

If the Developer provides Performance Security in the form of a letter of credit:

- a. the letter of credit provided by the Developer in accordance with this section shall be issued for a minimum term of one (1) year, and shall renew

automatically from year to year unless the issuing bank gives, at least thirty (30) days prior to expiry, notice of its intention not to renew the letter of credit upon expiry;

- b. without limiting the requirements of sub-paragraph (a) above, the Developer shall immediately notify the Town upon the issuing bank giving notice of its intention not to renew the letter of credit upon expiry; and
- c. if the issuing bank gives notice of its intention not to renew the letter of credit upon expiry, the Town may demand payment under such letter of credit and retain the funds as Performance Security.

18.4. Return of Performance Security

The Town shall return the Performance Security to the Developer when:

- a. FACs are issued for all Local Improvements in accordance with this Agreement;
- b. the Developer has paid to the Town all amounts payable pursuant to this Agreement; and
- c. the Registration Documents have been registered; and
- d. the Developer has completed all other obligations in accordance with this Agreement.

18.5. Replacement of Performance Security

The Developer may at any time replace a letter of credit held by the Town as Performance Security with cash funds to be held as Performance Security or with another letter of credit provided that letter of credit meets the requirements of this Agreement.

18.6. Reduction of Performance Security

If the Town has issued CCCs for all Local Improvements in accordance with this Agreement, the Town may but shall not be required to reduce the Performance Security it is holding to the greater of:

- a. the aggregate of any amounts payable by the Developer pursuant to this Agreement plus twenty-five thousand dollars (\$25,000.00);
- b. the aggregate of any amounts payable by the Developer pursuant to this Agreement plus three thousand dollars (\$3,000.00) per lot for any lots within the Subdivision Area for which the Town has not issued an occupancy permit or a development permit; or
- c. such other amount as the Town may determine in its sole and unfettered discretion.

18.7. Additional Security

The Developer hereby mortgages, pledges, liens, encumbers and charges the Subdivision Area to the Town to secure to the Town any or all of:

- a. payment of all amounts payable by the Developer to the Town pursuant to this Agreement;
- b. the construction of the Local Improvements required to be constructed by the Developer pursuant to this Agreement; and
- c. the completion of the Developer's obligations pursuant to this Agreement.

PART F: DEFAULTS, INSURANCE AND INDEMNITY, AND GENERAL

19. DEFAULT BY DEVELOPER

19.1. Developer's Defaults

If the Developer

- a. becomes insolvent, bankrupt, or has a receiver appointed;
- b. takes advantage of any general legislation for the benefit of debtors;
- c. fails to pay any amount payable to the Town pursuant to this Agreement when such amount is due and payable;
- d. breaches any term of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice from the Town of such breach,

the Developer is in default of this Agreement.

19.2. Town's Remedies for Developer's Default

If the Developer is in default of this Agreement, the Town may, but shall not be obligated, to do any or all of the following:

- a. remedy the Developer's default at the Developer's cost, which cost shall be payable by the Developer within ten (10) days of receiving an invoice from the Town;
- b. realize on the Performance Security;
- c. require the Developer to provide additional Performance Security in such amount as the Town determines in its sole discretion;
- d. take any remedy available to it in accordance with this Agreement; or
- e. take any other remedy available to it in law or equity.

19.3. Option to Purchase

- a. The Developer hereby grants to the Town an option to purchase all of the Developer's rights, title and interest in the Local Improvements and all related easements and rights of way for the sum of ten dollars (\$10.00) and the assumption of the Developer's obligation to warrant the Local Improvements for the benefit of the Town.
- b. This option to purchase may be exercised at any time within ten (10) years from the date of execution of this Agreement, provided the Developer is in default of this Agreement. The Town may exercise this option by issuing notice to the Developer of its intention to do so along with the sum of ten dollars (\$10.00). Upon receipt of such notice, the Developer shall forthwith transfer its interests to the Town free and clear of all liens, charges and encumbrances.

19.4. Other Remedies Available to the Town

The remedies available to the Town in this Agreement are cumulative, and nothing in this Agreement shall be interpreted as taking away or reducing any remedy available to the Town in law or in equity as against the Developer, including without limitation the authority to add any amounts owing by the Developer to the Town to a tax roll.

20. INSURANCE AND INDEMNITY

20.1. Insurance

The Developer shall obtain insurance from a company legally entitled to provide insurance in Alberta prior to Commencement of Construction and shall maintain such insurance in full force until the Term ends. The Developer's insurance shall include:

- a. comprehensive general liability coverage including:
 - i. coverage for bodily injury (including death) and property damage for not less than five million dollars (\$5,000,000.00) per occurrence;
 - ii. a cross-liability clause;
 - iii. a clause naming the Town as an additional insured;
 - iv. a provision that the Town shall be given thirty (30) days' written notice prior to cancellation or material change of the policy;
 - v. products and completed operations coverage;
 - vi. a broad form of contractual liability clause;
 - vii. a non-owned automobile liability extension;
 - viii. an operation of attached machinery clause; and
 - ix. that an event of default on the part of the Developer shall not be an event of default as against the Town.

- b. automobile and third party liability coverage (owner's form) for bodily injury (including death) and property damage for any vehicles to be used in the performance of this Agreement;
- c. any other insurance policies as may be required by the Town Solicitor, acting reasonably, given the scope and nature of work to be undertaken pursuant to this Agreement;
- d. workers' compensation coverage as required by the *Workers' Compensation Act*, R.S.A. 2000, c. W-15; and
- e. any other insurance policies that a prudent developer, acting reasonably, would obtain, given the scope and nature of the work to be undertaken pursuant to this Agreement.

20.2. Contractors' Insurance

The Developer shall require any third parties carrying out the Developer's work pursuant to this Agreement to obtain insurance policies as described in the above paragraph.

20.3. Changes to Insurance

The Developer shall immediately advise the Town should any insurance policies required by this Agreement lapse, terminate or materially change.

20.4. Proof of Insurance

Prior to Commencement of Construction and thereafter at least once per calendar year and at any time upon request by the Town throughout the Term, the Developer shall provide the Town with proof of insurance coverage as required by this Agreement to the satisfaction of the Town's Solicitor.

20.5. Town Obtaining Insurance

If the Developer fails to obtain insurance as required by this section or fails to demonstrate insurance as required by this section, the Town may, but shall not be obligated to purchase insurance on behalf of the Developer and at the Developer's expense, in which case the cost of doing so shall be an amount payable pursuant to this Agreement and shall be payable by the Developer immediately upon presentation of the invoice by the Town.

20.6. Insurance Policies and Indemnities

The Developer's obligation to obtain insurance shall in no way limit the liability of the Developer under this Agreement.

20.7. Indemnity

- a. The Developer shall indemnify and hold harmless the Town and the Town's officials, officers, employees, representatives, volunteers or agents against any and all claims, demands, actions, causes of action, suits, and costs for

any injury or loss arising as a result of the performance or non-performance of this Agreement, including costs on a solicitor and own client basis.

- b. Without limiting the generality of the above, the Developer agrees that the Subdivision Area and any area where the Developer is carrying out work pursuant to this Agreement shall be an area within the Developer's care, custody and control, and the Developer shall indemnify and hold harmless the Town and the Town's officials, officers, employees, representatives, volunteers or agents against any and all claims, demands, actions, causes of action, suits, and costs for any injury or loss which may result from the Developer's construction of any Local Improvement, including costs on a solicitor and own client basis.

21. INTEREST IN LAND

21.1. Covenant Running with Land

The Developer covenants, undertakes and agrees that the conditions, terms and provisions of this Agreement shall be deemed to be covenants running with the land contained in the Subdivision Area and shall be binding upon the Developer and its successors in title.

21.2. Caveat

The Town shall be entitled to register this Agreement against title to the lands contained in the Subdivision Area.

22. GENERAL

22.1. Developer's Representations

The Developer represents to the Town that it is a subsisting corporation under the laws of Alberta, legally entitled to carry on business in the Province of Alberta, and that it has carried out all necessary corporate actions to enter into and complete its obligations under this Agreement.

22.2. Developer's Employees and Contractors

The Developer shall ensure that any employees, contractors or agents of the Developer carrying out any of the Developer's obligations pursuant to this Agreement do so in accordance with the terms of this Agreement, and the Developer shall be responsible for any breaches of this requirement as if the breaches were by the Developer.

22.3. Prime Contractor

In respect of all work carried out pursuant to this Agreement, including all work within the Subdivision Area and within any Public Place, the Developer shall be the prime

contractor for the purposes of the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2.

22.4. Interest

The Developer shall pay interest to the Town on all amounts payable pursuant to this Agreement plus interest at the rate of eighteen percent (18%) per annum from the date such sums become due until such sums are paid, whether before or after judgment. If the Developer fails to pay such interest, the Town may collect such interest from the Performance Security upon ten (10) days' notice to the Developer in addition to any other remedies available to the Town.

22.5. Waiver

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

22.6. Further Documents

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

22.7. Force Majeure

Neither party shall be deemed in default of any obligation under this Agreement for non-performance due to a force majeure event beyond that party's control including strikes, lockouts, fire, tempest, or acts of God or the Queen's enemies, and all time periods under this Agreement shall be extended by the period of delay caused by such force majeure event. In no event shall delay caused by lack of finances be deemed to be a force majeure event.

22.8. Assignment

The Developer shall not assign this Agreement unless:

- a. the Town is satisfied that the proposed assignee has complied or can comply with the terms of this Agreement; and
- b. the Town consents to such assignment in writing, which consent may not be unreasonably withheld.

22.9. Time

Time is of the essence in this Agreement.

22.10. Compliance with Laws and Approvals

- a. Nothing in this Agreement shall be interpreted as relieving the Developer from any obligations or the need to obtain any permits, permits or authorizations under any bylaws, statutes or regulations.
- b. In the event that the Local Improvements require any changes to any approvals held by the Town from Alberta Environment or any other applicable

environmental approving body, the Developer shall prepare any applications necessary to apply for such approvals to the satisfaction of the Town and shall provide such applications for submission by the Town.

- c. The Developer shall carry out all work required by this Agreement in accordance with all applicable statutes, regulations and appropriate standards.

22.11. Enurement

This Agreement shall be binding upon and enure to the benefit of the respective parties and their successors, successors in title and assigns.

22.12. Choice of Forum

The validity and interpretation of this Agreement shall be governed by the laws of the Province of Alberta and the Developer irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

22.13. More than One Developer

In the event that the Developer consists of more than one legal entity, this Agreement shall bind all entities comprising the Developer jointly and severally.

22.14. Severability

If any term, covenant or condition of this Agreement or application thereof to any thing or circumstance is deemed invalid or unenforceable, the remainder of this Agreement shall not be affected and each other term, covenant and condition shall remain valid and in force.

22.15. Notice

- a. Any notice to be given by either party, unless otherwise expressly stated in this Agreement, shall be in writing.
- b. Notices may be provided by personal delivery, e-mail or facsimile addressed to the parties at the addresses specified in Schedule H: Notice and Emergency Contacts to this Agreement, or such other address as either party may from time to time advise the other in writing.
- c. Notices shall be deemed to have been received the next business day after delivery.

22.16. Entire Agreement

This Agreement is the entire agreement between the Town and the Developer in respect of the matters referred to herein, and all other agreements, representations or negotiations in respect of such matters, whether verbal or in writing, are null and void.

22.17. Amendments

Any amendments to this Agreement shall be in writing and signed by both parties.

22.18. Survival of Terms

The indemnities, representations and warranties, and all other terms which by their nature are intended to survive the expiry or termination of this Agreement, shall survive the expiry the expiry or termination of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives as of the date first above written.

Developer

(Corporate Seal)

The Town of Okotoks

(Corporate Seal)

Per: _____

Per: _____

Mayor

Printed Name: _____

Per: _____

Per: _____

Municipal Secretary

Printed Name: _____

Reviewed by Town of Okotoks:

Reviewed by Town Solicitor:

Steve Hanhart
Print Name
Community Planner
Title

Caron & Partners LLP
Firm

Signature

Jennifer D. Sykes
Print Name

Wendy Cardiff
Print Name
Development Planner
Title

Town Solicitor Signature

Signature

SCHEDULE A: PLAN OF SUBDIVISION

SCHEDULE B: SUBDIVISION APPROVAL

SCHEDULE C: AMENDMENTS TO GENERAL SPECIFICATIONS

[Insert or "Nil"]

SCHEDULE D: LIST OF PLANS

Drawing No. Description

SCHEDULE E: CONSTRUCTION ROUTE

[Insert or "Nil"]

SCHEDULE F: PAGEENTRY FEATURES

[Insert or "Nil"]

SCHEDULE G: REGISTRATION DOCUMENTS

[Insert or "Nil"]

SCHEDULE H: NOTICE AND EMERGENCY CONTACTS

Town of Okotoks

Box 20
5 Elizabeth Street
Okotoks, AB T1S 1K1
Attn: Municipal Manager
Fax: 403 938 7387
E-mail: municipalmanager@okotoks.ca

Developer

Address:
Attn:
Fax:
E-mail:
Emergency Contact:

SCHEDULE I: CONSTRUCTION COMPLETION CERTIFICATES

CONSTRUCTION COMPLETION CERTIFICATE - GENERAL

Subdivision: _____
Name of Subdivision *Phase*

Developer: _____

Local Improvement: _____
Contractor

Boundary of Area: See attached map

Developer's Consulting Engineer: _____
Name *Firm*

Agreement: Subdivision Servicing Agreement
Date

Engineer's Certificate:

I certify that:

1. I am engaged as the Developer's Consulting Engineer or an employee of the firm engaged as the Developer's Consulting Engineer, and I am empowered by the Developer to honour, comply with and perform all of the Developer's Consulting Engineer's obligations and to provide all field services in accordance with the Agreement;
2. The Local Improvement noted the attached plan has been constructed, installed and inspected in accordance with the Agreement and with the Town of Okotoks' specifications and approved designs.
3. All defects and deficiencies in the Local Improvement noted in the attached plan have been reported to the Developer and the Town of Okotoks and have been remedied by the Developer.
4. The Local Improvement noted in the attached plan meets all requirements for acceptance.

Stamp (signed and dated)

_____, P. Eng.

Approved

Rejected

Town Representative: _____
Date

Reasons for Rejection: _____

I hereby certify that the items listed as causes for rejection have now been corrected

Stamp (signed and dated)

_____, P. Eng.

Corrections Approved: _____
Town Representative *Date*

Projected earliest maintenance period expiry date: _____

CONSTRUCTION COMPLETION CERTIFICATE - LANDSCAPING

Subdivision: _____
Name of Subdivision *Phase*

Developer: _____
 Local Improvement (Check all that apply):
 Turf Pathways
 Irrigation Playground
 Benches/Signs/Fences Other (specify) _____)
 Trees and Shrubs
 Natural Areas

Contractor

Boundary of Area: See attached map

Landscape Architect: _____
Name *Firm*

Agreement: Subdivision Servicing Agreement _____
Date

Landscape Architect's Certificate:

I certify that:

1. I am engaged as the Developer's Landscape Architect or an employee of the firm engaged as the Developer's Landscape Architect, and I am empowered by the Developer to honour, comply with and perform all of the Developer's Landscape Architect's obligations and to provide all field services in accordance with the Agreement;
2. The Local Improvement noted the attached plan has been constructed, installed and inspected in accordance with the Agreement and with the Town of Okotoks' specifications and approved designs.
3. All defects and deficiencies in the Local Improvement noted in the attached plan have been reported to the Developer and the Town of Okotoks and have been remedied by the Developer.
4. The Local Improvement noted in the attached plan meets all requirements for acceptance.

Signature

Print Name *Date*

Approved Rejected

Town Representative: _____
Date

Reasons for Rejection: _____

I hereby certify that the items listed as causes for rejection have now been corrected

Signature

Print Name *Date*

Corrections Approved: _____
Town Representative *Date*

Projected earliest maintenance period expiry date _____

SCHEDULE J: MAINTENANCE PERIODS

LOCAL IMPROVEMENT

MAINTENANCE PERIOD

sanitary sewers	two Winters
storm sewers	two Winters
water mains & hydrants	two Winters
sewer & water connections (those portions of water, sanitary sewer and storm sewer systems which protrude to or above the surface of the ground including but not limited to sewer manholes, manhole frames and covers, water main and hydrant valve operating mechanisms, cathodic protection on test points and catch basin leads)	two Winters and not less than thirty (30) days following issuance by the Town of occupancy permits for buildings located on eighty percent (80%) of the lots in the Subdivision Area
pumping stations and pressure control facilities	twelve (12) months
storm ponds and facilities	thirty-six (36) months
overland drainage facilities	twelve (12) months
sidewalks, curbs, gutters and catch basins	two Winters
paved roads, lanes and walkways (except top lift)	two Winters
top lift for paved roads, lanes and walkways	twenty-four (24) months
graveled lanes	twelve (12) months
traffic lights	twenty-four (24) months
sound attenuation fencing	twenty-four (24) months
turf	two (2) Growing Seasons
trees, shrubs and natural areas	two (2) Growing Seasons
irrigation systems	the longer of: a. one (1) Growing Season after issuance of a Construction Completion Certificate for the irrigation system; or b. until issuance of a Final Acceptance Certificate for turf
playground equipment	twelve (12) months
benches, signs, fences and other amenities on public places	twelve (12) months

SCHEDULE K: FINAL ACCEPTANCE CERTIFICATES

FINAL ACCEPTANCE CERTIFICATE - GENERAL

Subdivision: _____
Name of Subdivision *Phase*

Developer: _____

Local Improvement: _____
Contractor

Boundary of Area: See attached map

Developer's Consulting Engineer: _____
Name *Firm*

Agreement: Subdivision Servicing Agreement _____
Date

Engineer's Certificate:

I certify that:

1. I am engaged as the Developer's Consulting Engineer or an employee of the firm engaged as the Developer's Consulting Engineer, and I am empowered by the Developer to honour, comply with and perform all of the Developer's Consulting Engineer's obligations and to provide all field services in accordance with the Agreement;
2. The Local Improvement noted the attached plan has been constructed, installed and inspected in accordance with the Agreement and with the Town of Okotoks' specifications and approved designs.
3. All defects and deficiencies in the Local Improvement noted in the attached plan have been reported to the Developer and the Town of Okotoks and have been remedied by the Developer.
4. The Local Improvement noted in the attached plan meets all requirements for acceptance.

Stamp (signed and dated)

_____, P. Eng.

Approved

Rejected

Town Representative: _____
Date

Reasons for Rejection: _____

I hereby certify that the items listed as causes for rejection have now been corrected

Stamp (signed and dated)

_____, P. Eng.

Corrections Approved: _____
Town Representative *Date*

FINAL ACCEPTANCE CERTIFICATE - LANDSCAPING

Subdivision: _____
Name of Subdivision *Phase*

Developer: _____
 Local Improvement (Check all that apply):
 Turf Pathways
 Irrigation Playground
 Benches/Signs/Fences Other (specify) _____)
 Trees and Shrubs
 Natural Areas

Contractor

Boundary of Area: See attached map

Landscape Architect: _____
Name *Firm*

Agreement: Servicing and Construction Agreement _____
Date

Landscape Architect's Certificate:

I certify that:

5. I am engaged as the Developer's Landscape Architect or an employee of the firm engaged as the Developer's Landscape Architect, and I am empowered by the Developer to honour, comply with and perform all of the Developer's Landscape Architect's obligations and to provide all field services in accordance with the Agreement;
6. The Local Improvement noted the attached plan has been constructed, installed and inspected in accordance with the Agreement and with the Town of Okotoks' specifications and approved designs.
7. All defects and deficiencies in the Local Improvement noted in the attached plan have been reported to the Developer and the Town of Okotoks and have been remedied by the Developer.
8. The Local Improvement noted in the attached plan meets all requirements for acceptance.

Signature

Print Name *Date*

Approved Rejected

Town Representative: _____
Date

Reasons for Rejection: _____

I hereby certify that the items listed as causes for rejection have now been corrected

Signature

Print Name *Date*

Corrections Approved: _____
Town Representative *Date*

SCHEDULE L: FEES AND COSTS

PART A: OFF-SITE LEVIES

Category	Fee per Acre	Subdivision		Due On Execution
		Area (acres)	Total	
Transportation System	\$ -		0 \$ -	-
Sewer System	\$ -		0 \$ -	-
Water System	\$ -		0 \$ -	-
Site-Specific	\$ -		0 \$ -	-
Total	\$ -		0 \$ -	-

PART B: TRANSPORTATION AND UTILITY COSTS

[Insert or "Nil"]

PART C: TOWN CONTRIBUTIONS

[Insert or "Nil"]

SCHEDULE M: BENEFITTED LANDS

[Insert or "Nil"]

SCHEDULE N: OTHER ENDEAVOURS TO ASSIST

[Insert or "Nil"]

SCHEDULE O: PERFORMANCE SECURITY

Description	Amount
Unpaid Off-Site Levies	\$ -
MR, SR, MSR and PUL Lots	
Per Lot: \$ 3,000.00	
Lots: 0	\$ -
Commercial and Industrial Lots	
Less than 1 acre*	
Per Lot: \$ 3,000.00	
Lots: 0	\$ -
Greater than 1 acre*	
Per Acre: \$ 5,000.00	
Acres: 0	\$ -
Public Service Lots	
Per Lot: \$ 3,000.00	
Lots: 0	\$ -
Residential Lots	
No DP Requirement**	
Per Lot: \$ 3,000.00	
Lots: 0	\$ -
All other residential lots	
Less than 1 acre*	
Per Lot: \$ 3,000.00	
Lots: 0	\$ -
Greater than 1 acre*	
Per Acre: \$ 5,000.00	
Acres: 0	\$ -
Sub-Total (Minimum \$150,000.00)	\$ -
Minimum Performance Security	\$ 150,000.00
(Discretionary Reduction)	\$ -
Municipal Engineer's estimate of additional cost of off-site improvements or major utility facilities to serve Subdivision Area	\$ -
Total Performance Security Required	\$ 150,000.00

*Measure to 1/100th of an acre.

**Lot is to be developed as a single detached, duplex or studio suite dwelling and that use is listed as a permitted use in the Town's Land Use Bylaw for the applicable land use district.

SCHEDULE P: LETTER OF CREDIT

[Date]

The Town of Okotoks
PO Box 20
5 Elizabeth Street
Okotoks, Alberta T1S 1K1
Attention:

Dear Sirs:

Re: Standby Letter of Credit No. _____.

We hereby authorize you to draw on the [issuing bank's name] (the "bank"), [city, province], for the account of [developer's name] (the "customer") up to an aggregate amount of \$[amount].

Pursuant to the request of the customer, we the bank, hereby establish and give The Town of Okotoks (the "municipality") an Irrevocable Letter of Credit in favour of the municipality in the above amount which may be drawn on by the municipality at any time and from time to time, upon written demand for payment made upon us by the municipality, which demand we shall honour without enquiring whether the municipality has the right as between the municipality and the customer to make such demand, and without recognizing any claim of the customer, or objection by the customer to payment by us.

This Letter of Credit we understand relates to an Agreement between the customer and the municipality referred to as the Subdivision Servicing Agreement [Subdivision].

The amount of this Letter of Credit may be reduced from time to time as advised by notice in writing to us from time to time by the municipality.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to any such expiration date, we notify the municipality in writing by registered mail, that we elect not to consider this Letter of Credit to be renewable for any additional period.

We engage with the municipality that all drawings presented under, or in compliance with, the terms of this credit will be duly honoured on delivery of documents as specified, if presented at the counters of the bank, on or before (expiry date), or any automatically extended date as hereinbefore set forth.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits" (2007) International Chamber of Commerce (Publication No. 600) effective July 1, 2007.

Countersigned

Authorized Signature