BETWEEN:

THE CITY OF COLD LAKE

OF THE FIRST PART

- and -

____

OF THE SECOND PART

MEMORANDUM OF AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS
ARTICLE 2 PLAN OF SUBDIVISION
ARTICLE 3 PLANS
ARTICLE 4 MUNICIPAL RESERVE DEDICATION
ARTICLE 5 LOT GRADING AND SITE DRAINAGE CONSTRUCTION STANDARDS
ARTICLE 6 CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS
ARTICLE 7 INSTALLATION OF FRANCHISE UTILITIES
ARTICLE 8 CONTRACTS FOR INSTALLATION OF MUNICIPAL IMPROVEMENTS
ARTICLE 9 COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS
ARTICLE 10 ACCEPTANCE OF MUNICIPAL IMPROVEMENTS: TRANSFER OF MUNICIPAL IMPROVEMENTS TO THE CITY
ARTICLE 11 MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER
ARTICLE 12 USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF THE WORK
ARTICLE 13 UTILITY EASEMENTS
ARTICLE 14 MUNICIPAL SERVICES
ARTICLE 15 SIGNAGE
ARTICLE 16 COMMON FENCING
ARTICLE 17 MAINTENANCE OF BOULEVARDS AND OTHER PUBLIC AREAS
ARTICLE 18 OVERSIZING AND SHARING OF SERVICING COSTS
ARTICLE 19 LEVIES, FEES AND OTHER CHARGES
ARTICLE 20 INTEREST ON MONIES OWED TO THE CITY
ARTICLE 21 AMOUNTS PAYABLE UNDER THIS AGREEMENT
ARTICLE 22 DEFAULT BY THE DEVELOPER
ARTICLE 23 ARBITRATION
ARTICLE 24 INDEMNITY AND SECURITY
ARTICLE 25 DELIVERY OF DOCUMENTS TO THE CITY
ARTICLE 26 COMPLIANCE WITH LAW
ARTICLE 27 SEVERABILITY
ARTICLE 28 LAW OF ALBERTA APPLICABLE
ARTICLE 29 FURTHER ASSURANCES
ARTICLE 30 WAIVER
ARTICLE 31 ADDITIONAL PROVISIONS
ARTICLE 32 CAVEATS

DRAFT

ARTICLE 33 NON-ASSIGNABILITY OF AGREEMENT

ARTICLE 34 TIME OF THE ESSENCE

ARTICLE 35 LEGAL AND ENGINEERING COSTS

ARTICLE 36 GRANTS

ARTICLE 37 FORCE MAJEURE

ARTICLE 38 INTERPRETATION

ARTICLE 39 NOTICES

ARTICLE 40 EXECUTION OF AGREEMENT

LIST OF SCHEDULES

DRAFT

MEMORANDUM OF AGREEMENT made effective this _____ day of ______________, 20___.

BETWEEN:

THE CITY OF COLD LAKE
A municipal corporation incorporated
pursuant to the laws of the Province of Alberta
(hereinafter called the "City")

OF THE FIRST PART

- and -

____
A body corporate duly authorized to
carry on business in the Province of Alberta
(hereinafter called the "Developer")

OF THE SECOND PART

AND WHEREAS the MGA, R.S.A. 2000, c. M-26, as amended authorizes a municipality to provide means whereby plans and related matters may be prepared and adopted to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement to the extent that is necessary for the overall greater public interest;

AND WHEREAS the MGA, R.S.A. 2000, c. M-26 as amended, further authorizes municipalities to require agreements with respect to subdivision and development of land;

WHEREAS the Developer is, or is entitled to become, the Registered Owner of part or all of those lands situated in the City as described in Schedule "A" (the "Development Area") attached to this Agreement;

AND WHEREAS the Developer proposes to subdivide or develop all or a portion of the Lands (hereinafter referred to as the "Development Area") attached as Schedule "A" to this Agreement;

AND WHEREAS the Developer has applied for and received conditional approval of a subdivision application in the case of subdivision of the Development Area and which approval is attached hereto as Schedule "B" to this Agreement;

AND WHEREAS in connection with any subdivision or development application, the Developer will be obligated to design the infrastructure required to service that portion of the Development Area forming the subject of the application and such other lands as the as the Manager, Planning and Development determines appropriate;

AND WHEREAS the City 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;

DRAFT

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

AND WHEREAS upon satisfactory completion of the construction and installation of the Municipal Improvements and the final acceptance of them by the City, the Municipal Improvements which are on or under Public Property shall become the property of the City;

AND WHEREAS the City and the Developer have agreed that the said construction and installation of the Municipal Improvements and all matters and things incidental thereto and all 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 mutual terms, conditions and covenants to be observed and performed by each of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement the following terms shall have the meanings assigned:

1.1 **"As-Built Drawings"** means those drawings or records showing the actual location, length, size, capacity, material, gradient and year of construction of the Municipal Improvements and Franchise Utilities constructed within the Development Area;

1.2 **"City"** means the City of Cold Lake, and the City shall be represented by the City's Chief Administrative Officer or as otherwise designated by the City.

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

1.4 **"Common Fencing"** means fencing of a form and design approved by the City which is common to the Development Area and is to be constructed on the locations set out in Schedule "H";

1.5 **"Construction Completion Certificate"** means a Certificate issued by the City certifying the completion of the Municipal Improvements, or portion thereof, once the Municipal Improvements have been constructed and installed by the Developer to the satisfaction of the City in accordance with this Agreement;

1.6 **"Construction Debris"** means any building materials, mud, concrete spillage, dust, dirt, garbage or any other materials that are unsightly or cause an annoyance to property owners within or adjacent to the Development Area;

1.7 **“Council”** means the duly elected Council of the City;

1.8 **“Design Standards”** shall mean the procedures, standards and specifications which are specified and set forth in the City’s Municipal Engineering Servicing Standards and Standard Construction Specifications which are established and revised from time to time by the City’s engineer, namely that version in place at the time of Commencement of Construction for the Development Area, and provided that the City and the Developer may, by written agreement only, vary or change any of the procedures, standards or specifications set forth in the Design Standards;

1.9 **“Developer’s Consultants”** means the accredited consulting professionals retained by the Developer and shall include, but not be limited, to professional engineers, architects, landscape architects, land use planners and land surveyors.

1.10 **“Development Area”** shall mean that portion of the lands legally described in Schedule "A" and which are outlined in heavy black or bold, or otherwise delineated, on the map attached hereto as Schedule "A" to this Agreement.

1.11 **“Essential Services”** means:

(a) those Municipal Improvements described in clauses (a), (b), (c), (d), (e), (g) and (j) of Schedule “E”; and

(b) Franchise Utilities;

1.12 **“Final Acceptance Certificate”** means a written acceptance issued by the City for the Municipal Improvements or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Maintenance Period;

1.13 **“Franchise Utilities”** means natural gas, electrical power, telephone, cable television and any other communication services authorized to occupy the City’s easements or rights-of-way;

1.14 **“Landscaping”** includes the modification or enhancement of a site by the preservation of natural features and the enhancement of public property within the Development Area, including, but not limited to: grading, turf, trees, shrubs, fencing, walkways, multiways, storm water management facilities, driveways and other site features as designed by a registered Landscape Architect, and as approved by the City in the Plans;

1.16 **“Lot Grading Certificate”** means the written confirmation issued by the City stating that the finished grade of a developed lot conforms with site drainage plans approved by the City;

1.17 **“Maintenance Period”** means a period of two (2) years for all Municipal Improvements including Landscaping;

1.18 “**Notice to Proceed**" means the written confirmation/permission issued by the City that the

DRAFT

Developer may proceed with development of the Development Area;

1.19 **“Oversizing Costs”** means the incremental cost of construction incurred by the Developer that is directly attributable to increasing the capacity of a Municipal Improvement to benefit the future development of lands outside the Development Area together with a fifteen (15%) percent engineering costs;

1.20 **“Parties”** shall mean the City and the Developer, as described above;

1.21 **“Plan of Subdivision”** or **“Plans of Subdivision”** means the subdivision or subdivisions which subdivide the Development Area into separate lots for further development;

1.22 **“Plans”** means drawings and specifications prepared by the Developer’s Consultant or on behalf of the Developer covering the design, construction location and installation of all Municipal Improvements, Franchise Utilities and Landscaping and shall include a construction management plan which shall delineate to the City’s satisfaction, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of Municipal Improvements;

1.23 **“Prime Rate”** means the prime lending rate established from time to time by the financial institution with which the City conducts its banking business;

1.24 **“Public Property”** means all properties, easements and rights-of-way within and adjacent to the Development Area which are or are to be owned or administered by the City following the registration of a Plan of Subdivision for the Development Area;

1.25 **“Show Home”** means an uninhabited residential dwelling unit constructed for the purposes of displaying the housing product to be offered for sale within the Development Area.

1.26 “**Substantial Completion Certificate**" means a Certificate issued by the City, certifying the completion of the below-ground improvements, or portion thereof, once the Municipal Improvements have been constructed and installed by the Developer to the satisfaction of the City in accordance with this Agreement;

ARTICLE 2 PLAN OF SUBDIVISION

2.1. The City agrees that, subject to the other requirements of this Agreement, the Developer may proceed with the development of the Development Area prior to registering a Plan of Subdivision for the Development Area.

2.2. Except where a Plan of Subdivision is not contemplated as part of the development of the Development Area:

(a) if the Developer has not obtained subdivision approval for the Development Area by the time of the execution of this Agreement, the Developer shall at its sole cost and expense cause a Plan of Subdivision for the Development Area to be prepared and approved by all necessary approving authorities and in accordance with the law in that respect, and provided that it is a strict requirement of this Agreement, that any Plan of Subdivision must first have received approval in writing of the City;

(b) the Developer covenants and agrees that it shall register in the Land Titles Office for the North Alberta Land Registration District a Plan of Subdivision for the Development Area within TWELVE (12) months of the date of this Agreement (unless otherwise agreed to in writing);

(c) if the Developer does not register a Plan of Subdivision within the time prescribed in Paragraph (b), the City shall be entitled to terminate this Agreement;

(d) the termination of this Agreement in whole or in part as provided in Paragraph (c) shall be effective upon the City serving written notice of termination on the Developer; and

(e) if the City terminates this Agreement in whole or in part pursuant to the provisions of this section, it is understood and agreed that any financial obligations of the Developer to the City shall survive and the City shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect. Financial burdens directly or indirectly caused from the development upon the Developer or the City shall be borne entirely by the Developer upon termination of this Agreement.

2.3. The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approval which may be imposed by the City's Subdivision Authority or the City's Subdivision and Development Appeal Board if the decision of the Subdivision Authority is appealed.

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

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

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

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

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

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

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 City, including, without restriction, confirmation that the registered owner is the Developer; and

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

i) issued a Notice to Proceed.

2.5. In the event that the Plan of Subdivision for the Development Area has been registered by the Developer, and the Developer fails to proceed with the construction and installation of the Municipal

DRAFT

Improvements for the Development Area within the time limits herein specified, the Developer shall, upon receiving written notice from the City to do so, immediately proceed to take all steps necessary to cancel the registration of the Plan of Subdivision and further, the Developer, in all events, shall have obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the City providing written notice to the Developer as herein provided.

2.6. The Developer covenants and agrees that in the event that the Plan of Subdivision for the Development Area is not registered within the time limits prescribed herein, or in the event that the Plan of Subdivision for the Development Area is cancelled as contemplated in this Article, or in the event that the Developer does not Commence Construction within the Development Area within the time limits prescribed herein, then the City shall be at liberty, in the City'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.

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

2.8. The power of attorney conferred upon the City by the Developer in Paragraph 2.7 may be exercised by the City:

a) 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 City providing written notice to the Developer pursuant to Paragraph 2.5 or;

b) 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 City providing written notice to the Developer pursuant to Paragraph 2.5.

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

ARTICLE 3 PLANS

3.1. At any time when plans are required by this Agreement they shall be submitted in triplicate, each in a format acceptable to the City:

(a) one (1) printed copy on paper;

(b) one (1) digital copy in AutoCAD; and

(c) one (1) digital copy as a .pdf.

3.2. The Developer shall submit Plans to the City for approval not less than 45 days prior to commencing construction and installation of the Municipal Improvements, Franchise Utilities and Landscaping. The Plans shall give all necessary details of the Municipal Improvements and Franchise Utilities to be constructed by the Developer, including any necessary specifications to be attached thereto.

3.3. Unless otherwise authorized by the City in writing, the Developer shall not commence any construction within the Development Area until all necessary Federal, Provincial or Municipal approvals are in place and the City has approved the Plans and issued a Notice to Proceed.

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

3.5. The Plans for the construction and installation of the Municipal Improvements for the Development Area shall be designed by the Developer's Consultants, and shall conform strictly to the Design Standards.

3.6. In regards to Landscaping, the Developer covenants and agrees that the Plans for Landscaping for Public Properties shall comply with the Design Standards and shall include all Landscaping required by the City including, but not limited to the generality of the foregoing, Landscaping of all roadways, utility rights-of-ways and public walkways, construction of berms, construction of uniform fencing, installation of recreational equipment and facilities and Landscaping of other Public Properties. The Developer agrees that it shall submit the Plans for Landscaping on Public Properties, to be completed by a qualified landscape architect, for the City's approval in conjunction with the balance of the Plans referred to in section 3.2 above.

3.7. If the City does not approve whatever Plans submitted to the City by the Developer, the Developer shall be entitled to refer any matter in dispute to arbitration accordance with the provisions of Article 22.

3.8. The Developer covenants and agrees that the Plans shall include a construction timetable for the construction and installation of all the Municipal Improvements, Franchise Utilities and Landscaping within and adjacent to the Development Area and the Developer shall, upon approval of the Plans by the City, comply with all time limits and complete all the Developer's work within the dates specified in the construction timetable. The Developer may amend the timetable from time to time with the approval of the City, such approval not to be unreasonably withheld.

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

3.10. It is understood and agreed that the City's approval of the Plans for the Municipal Improvements,

DRAFT

Franchise Utilities and Landscaping 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, Franchise Utility or Landscaping 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, Franchise Utilities and Landscaping shall be subject to review and revision, from time to time, by the City in accordance with the Design Standards and in accordance with generally accepted engineering and construction practices.

3.11. The Developer agrees that in the event that any Plans are approved for the Development Agreement and the Design Standards are amended by the City one year prior to the issuance of a Notice to Proceed of the Municipal Improvements, Franchise Utilities and Landscaping, then the Developer shall be required, prior to commencing construction, to amend the Plans to the satisfaction of the City so that the Plans conform with the new Design Standards.

3.12. The Developer acknowledges and agrees that the City's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the City 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.

3.13. Prior to commencing any work, the Developer shall develop, implement and maintain until Final Acceptance Certificate, a Quality Management System. The Quality Management System shall address all stages of the Development, specifically the design, construction and operation and maintenance until Final Acceptance Certificate.

The Quality Management System shall be consistent with the requirements of ISO 9001. The Developer shall make all Quality Management System records available to the City for inspection and review. The Developer shall provide the City with a copy of any and all quality records when requested.

3.14. The acceptance of drawings and/or supporting documents given by the City or its representatives does not relieve the Developer of his responsibility to ensure that all work pursuant to this Agreement done or to be done by the Developer is in accordance with current practice and is technically acceptable, nor does it relieve him of the obligation to remedy subsequently discovered omissions and/or discrepancies.

3.15. If during the progress of the work, the Developer intends to depart from the approved plans, the Developer shall submit new detailed plans to the City showing the proposed changes and receive written acceptance prior to any work being commenced on the changes.

DRAFT

3.16. All plans submitted for approval by the City shall be processed as expeditiously as possible and in any event shall be returned to the Developer within thirty (14) days; or, not returned within this time period, shall be deemed to be rejected.

3.17. The Developer shall provide or obtain the consent of the copyright holder of all plans in digital format, as the case may be, for the City to use the information contained therein for:

(a) internal City use, including but not limited to emergency services; and

(b) licensing the use by third parties, including but not limited to third party utility companies and emergency services who require such information to service the Development Area.

ARTICLE 4 MUNICIPAL RESERVE (MR) DEDICATION

4.1. The developer is responsible to ensure that the provisions for Municipal Reserve (MR) under the Municipal Government Act have been executed. The developer, at the time of subdivision, shall provide 10% MR dedication for the Development Area to the City through either/or a combination thereof:

(a) the dedication of land;
(b) cash in lieu;

(c) land deferral arrangement; or

(d) a land transfer arrangement.

4.2. Deferred reserve caveat shall occur concurrently with subdivision registration upon residual portion of property.

ARTICLE 5 LOT GRADING AND SITE DRAINAGE CONSTRUCTION STANDARDS

5.1 The Developer covenants that the preparation of the drainage Plans, the construction and installation of all storm water management systems both within private lands and Public Property, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction), all necessary approvals from Alberta Environment and other affected approving authorities, and the maintenance of all storm water management systems during the Maintenance Period shall be undertaken and conducted in accordance with accepted engineering and construction practices and in accordance with the Design Standards.

5.2 The Developer shall prepare a surface drainage Plan for the entire Development Area, to be approved by the City, which shall include grades and drainage patterns for the entire Development Area. The Developer shall obtain and provide to the City all necessary approvals, permits and licenses from Alberta Environment prior to proceeding with any construction within or adjacent to the Development Area.

DRAFT

5.3 The Developer covenants that all proposed purchasers and optionees of any of the lots within the Development Area shall be fully advised of the requirements of the City relating to the management and disposal of storm water within lots in the Development Area, as outlined below.

5.4 It is agreed between the City and the Developer that all of the storm water management standards and requirements of the City pursuant to this Agreement shall be and hereby constitute covenants running with the lands in the Development Area and are binding upon the Developer and any subsequent owners of any lots within the Development Area.

5.5 The Developer further covenants and agrees to ensure that all lots that have fill areas are compacted as per Design Standards and the Developer shall ensure that the City shall be provided with certified test results to ensure compliance with this Article and further, will provide to the City a plan which fulfills the requirements of the Design Standards.

5.6 The Developer covenants and agrees that prior to the issuance of any Construction Completion Certificate for any of the Municipal Improvements and Franchise Utilities to be constructed and installed within the Development Area, that the Developer shall undertake and complete to the satisfaction of the City such grading work as may be necessary to ensure that all lots within the Development Area have positive drainage and that there will not be any excessive ponding of water within any of the lots within the Development Area.

5.7 It is further agreed and hereby declared by the Parties that all herein specified standards, requirements and any unfulfilled obligations due and owing to the City by the Developer constitute covenants running with the land and binding upon any subsequent owners or leaseholders of all or any portion of the Development Area.

5.8 The Developer shall provide a copy of the approved surface drainage plan for each lot to its proposed purchaser or others acquiring an ownership interest in that lot within the Development Area. The Developer further agrees to require, as a condition of the purchase of any lot within the Development Area, that the purchaser provide in trust to the Developer a refundable lot grading deposit of not less than $1,000.00. The Developer agrees that the lot grading deposit shall not be refunded to a purchaser until the Developer has received a copy of a Lot Grading Certificate for the applicable lot.

5.9 The Developer covenants and agrees that any sale or transfer agreement for any or all lots within the Development Area entered into by the Developer shall include the following provisions related to the drainage standards:

(a) The finished elevations at all corners of the lot and the ground next to the building shall conform to an approved Surface Drainage Plan. Any changes must be approved, in writing, by the City;

(b) Home builders will be required to supply a Lot Grading Certificate prepared by an Alberta Land Surveyor, showing compliance with finished grade requirements, and prior to occupancy. A grade plan shall be submitted to the City before the City will permit development on the lot;

(c) Positive drainage must be established away from the building to the gutter or drainage channels as designed;

DRAFT

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

(e) Backfill of trench and building excavations, including materials used, will be as per the geotechnical report for the Development Area and ensure that when subsequent natural settlement is complete, that final grades will be acceptable with no adverse impact to adjacent structures. The City may inspect backfill prior to issuance of a Construction Completion Certificate or the Certificate may be issued after provision of appropriate security if weather conditions preclude adequate consolidation and inspection prior to occupancy.

(f) The Developer shall notify the City prior to backfilling at which time the City may conduct an inspection. The Engineer-stamped construction plans will be referenced at this inspection and a stop order issued if the site does not comply (MGA, 2000, s.645).

(g) Site improvements shall not alter or disrupt the drainage pattern as established in the Surface Drainage Plan;

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

(i) The standards specified herein will apply to construction within the building sites and are to supplement the Alberta Building Code and the City's Land Use Bylaw, and applicable policies.

ARTICLE 6 CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

6.1. No construction or development of any kind, including for servicing this subdivision, shall take place in or around the Development Area without application having been made to the City, and obtaining written Notice to Proceed as attached hereto in Schedule "D". This Agreement does not constitute a Development Permit or any other permit or agreement of the City.

6.2. If the Developer begins work on the development prior to the issuance of a Notice to Proceed the City shall place a stop work order on the development and the Developer shall be charged a penalty of 10% of the estimated construction costs as determined under Section 23.3 of this Agreement. In addition to this penalty, the Developer shall be fully responsible for any and all costs associated with any work that in the City Engineer's opinion is required to remediate, correct or make safe the area.

6.3. Where the Developer proposes the construction of a subdivision is undertaken in phases, the Developer shall make application for Notice to Proceed for every subsequent phase within TWELVE MONTHS of the date of issuance of a Construction Completion Certificate for the previous phase.

6.4. Where the Developer proposes the construction of a subdivision undertaken in phases, the Developer shall, within a period of EIGHTEEN MONTHS from the date of issuance of the Notice to

DRAFT

Proceed for the current phase, construct and install the local improvements and utilities required by the Engineered Plans and this agreement, throughout the Development Area at its own cost and expense, in a good and workmanlike manner, in strict conformance with the plans and proper and accepted engineering practices, and in accordance with this Agreement and any requirements of law applicable to the work.

6.5. The Developer shall retain the services of a Professional Engineer, licensed to practice in the Province of Alberta (hereinafter referred to as the "Consulting Engineer"). This engineering consultant shall be responsible for all engineering and construction pertaining to the terms of this Agreement.

6.6. Except as otherwise specified in the construction timetable approved under Paragraph 3.8, the Developer shall, at the Developer's own cost and expense:

(a) Commence Construction and installation of the Municipal Improvements, including Landscaping, within TWELVE (12) months of endorsement of this Development Agreement;

(b) complete the construction and installation of the Municipal Improvements, including Landscaping except for boulevards on separate sidewalks, within TWENTY FOUR (24) months of endorsement of this Development Agreement;

(c) complete the construction and installation of Landscaping for boulevards on separate sidewalks within THIRTY-SIX (36) months of endorsement of the Development Agreement.

6.7. The Developer warrants to the City that all of the Municipal Improvements within the Development Area shall be constructed and installed at the Developer's own cost and expense, and in a good and manner, in strict conformance with the approved Plans and generally 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.

6.8. The Developer covenants and agrees that it shall within Thirty (30) days of being directed by the City to do so, and in any event, prior to the public having access within the Development Area, complete the installation of all traffic control signs, street identification signs, development identification signs, directional signs, and any temporary signage.

6.9. If there has been no Commencement of Construction of the Municipal Improvements by the Developer within the time limits specified in Paragraph 5.6 then the City shall be entitled at its sole option to terminate this Agreement, and further, the Developer agrees:

a) that the termination of this Agreement in whole or in part shall be effective upon the City serving written notice of termination on the Developer;

b) that in the event that this Agreement is terminated in whole or in part, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the City; and

c) that such termination shall be without prejudice to any and all other obligations then due, outstanding and owed by the Developer to the City in relation to the Development Area or their development

(including, without restriction, the security provisions contained within this Agreement), which shall remain in full force and effect until satisfied in full.

6.10. In the event that it is necessary or reasonable, in the opinion of the City, to construct or install any temporary or emergency access during the construction and installation of the Municipal Improvements, the Developer shall construct and install any such temporary or emergency access in accordance to specifications, and in such locations, as determined by the City, acting reasonably, and the Developer shall grant to the City an easement, in a form acceptable to the City, across the required land for the period for which the access is required. Any such access shall be constructed to an all-weather standard.

6.11. The Developer shall not activate the water supply boundary valves to the new water supply system. The Developer shall provide at least 48 hours' notice, requesting the City Engineer to activate the water supply boundary values in order to charge the new water supply system. The City will activate the new water system upon the request of the Developer after a Substantial Completion Certificate or Construction Completion Certificate for the water system has been issued by the City. The Developer is fully responsible to ensure that the system has been disinfected, flushed, and tested prior to requesting a Construction Completion Certificate.

6.12. Relocation and/or Addition to Utilities

(a) The Developer shall be responsible to construct and pay all costs arising from:

(i) the relocation of any existing utilities or improvements necessitated by construction pursuant to this agreement;

(ii) the relocation of any utilities constructed pursuant to this Agreement where such relocation is necessitated or arises from a conflict with any other utility construction, house or building or driveway constructed by or cause to be constructed by or reviewed for Development Control by the Developer; and,

(iii) changes in utility service or improvements which are due to a change in use or density where the Developer has proposed or agreed to such changes in use or density.

6.13. Land Use Classification Sign

(a) The Developer shall be responsible for keeping the public informed of all land use classifications, truck routes, arterial roads, the location of school sites and when specified by the School Board, the School Building sites, reserve parcels, ornamental parks and other amenities in the subdivision and said information shall be shown in brochures and billboards and other advertising where maps are used in connection with promotion and sale of lots in the subdivision. The Developer shall erect a billboard/land use classification sign in accordance with the Cold Lake Municipal Engineering Servicing Standards and Standard Construction Specifications, as approved by the Subdivision and Development Approval Authority in the subdivision showing the above-mentioned amenities prior to issuance of development or building permits by the City, and shall maintain the said sign until the approval of the last Final Acceptance Certificate.

DRAFT

6.14. Traffic Control

(a) The Developer, until the paved roads and walkways Construction Completion Certificate is issued, shall install and maintain all traffic control signs that may be required to control traffic on the streets within and along the boundaries of the Development Area. In addition, the Developer, until the Development Area has received Final Acceptance Certificate by the City, shall make arrangements satisfactory to the City, for the installation and maintenance of traffic control signs, which in the City Engineer's opinion are required, during the maintenance period.

6.15. At all times during the construction and installation of the Municipal Improvements and during all work by the Developer or its agents related thereto, the City shall have free and immediate access to all records of, or available to, the Developer and the Developer's Consultant relating to the performance of the work, including, but without limiting the generality of the foregoing, all design, inspection, material testing and As-Built records.

6.16. The City may at any time during the construction and installation of the Municipal Improvements and during performance of the work by the Developer or its agents related thereto:

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

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

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

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

e) order the Developer, within a reasonable time to use such additional labour, machinery and equipment, at the Developer's sole cost, as the City deems reasonably necessary to ensure the proper performance of the work;

f) order that the performance of the work or part thereof be stopped until the said orders are obeyed; and

g) order the testing of any materials to be incorporated in the work and the testing of any Municipal Improvements.

6.17. And the Developer at its own cost and expense, shall comply with the said orders and requirements of the City, 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 Article 22 hereof; PROVIDED that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the City pursuant to Paragraph (e), (f), or (g) above; AND PROVIDED FURTHER that the affected work, except as otherwise agreed by the City in writing, shall stop until such arbitration has taken place.

DRAFT

6.18. Notwithstanding anything expressed or implied in the preceding Paragraphs in this Article, it is agreed between the Developer and the City:

(a) that the City shall have no obligation or duty to exercise any of the City's powers of inspection nor any obligation or duty to discover or advise the Developer of any deficiencies in construction or workmanship during the course of the construction and installation of the Municipal Improvements;

(b) that the Developer shall during the course of the construction and installation of the Municipal Improvements provide and maintain adequate inspection services, supervised by a professional engineer; and

(c) that nothing set forth in the preceding Paragraphs in this Article shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in this Agreement, and without restricting the generality of the foregoing, the Developer shall fulfill all responsibilities in respect to the design, construction, installation, testing and maintenance of the Municipal Improvements as required by the terms of this Agreement.

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

6.20. The Developer shall take effective measures to reasonably control Construction Debris in and around the Development Area. In the event that the City considers that any cleanup or removal of Construction Debris is required, the Developer shall, within forty-eight (48) hours of receiving notice from the City, take all necessary action, as determined by the City, failing which the City may take such action and charge back all costs and expenses to the Developer. The Developer's obligations under this Paragraph shall continue until seventy-five (75%) percent of the homes in the Development Area have been completed to the stage where they are ready for occupancy, or the Final Acceptance Certificate for all Municipal Improvements has been granted, whichever date occurs latest.

6.21. Upon completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Municipal Improvements, the appropriate Developer's Consultant shall submit to the City a statement under his professional seal certifying that:

a) the Developer's Consultant has provided adequate periodic inspection services during the course of the work; and

b) the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; and in accordance with generally accepted engineering and construction practices; and in accordance with the Design Standards.

6.22. The Developer acknowledges and agrees to immediately repair or replace any unsatisfactory work of a major nature, or such work which poses a danger to public health or safety, as determined by the City in its sole discretion. Work of a minor nature which does not pose a danger to public health or safety may be repaired or replaced by the Developer at any time prior to the Developer's request for the Construction Completion Certificate for the Municipal Improvements.

DRAFT

6.23. Notwithstanding anything to the contrary contained in this Agreement, the Developer covenants and agrees, such covenant being of the essence of this Agreement, that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the City that:

a) Water service is operational (for fire protection) prior to the issuance of Building Permits or Development Permits for buildings on lots; and

b) All Essential Services have been installed and rendered operative in any part of the Development Area where any buildings or facilities are to be occupied, except as otherwise permitted in writing by the City.

6.24. The City may, in its sole and absolute discretion, issue development and/or building permits or building occupancy, in respect to the development upon lots or parcels contained in the Development Area prior to the completion of the Essential Services upon receiving written assurances from the Developer that the Essential Services will be completed within SIXTY (60) days, but this shall in no way oblige the City to issue permits or approve occupancy earlier than provided in the regulations and bylaws of the City. It is further agreed that the City may issue development permits for Show Homes at any time prior to the completion of the Essential Services provided that the Developer has entered into a Show Home Agreement with the City.

6.25. Except for grading, pressure testing, disinfecting and flushing of water mains, the Developer and/or his/her Contractor(s) shall not use fire hydrant(s) connected to a closed zone distribution system (i.e. no reservoir on the system) to obtain water for construction purposes unless written permission has first been secured and received from the City.

6.26. The Developer shall endeavour to ensure that the unauthorized use of fire hydrants by all persons engaged in the construction or maintenance of the subdivision and development does not occur.

6.27. When water is withdrawn from a designated hydrant in accordance with approval from the City, the Developer must use (or ensure that its Contractor uses) a hydrant connection unit (back flow meter assembly (BMA), meter assembly (MA), back flow assembly (BA) or approved air gap.

ARTICLE 7 INSTALLATION OF FRANCHISE UTILITIES

7.1. The Developer shall, at no cost to the City whatsoever, arrange for and ensure the installation, to the City's satisfaction, of the Franchise Utilities to the Development Area and within the streets adjoining the lots to be created in the Development Area. The Developers shall indemnify and save harmless the City from and against all losses, costs, suits or demands of any nature (including all legal costs and disbursements on a solicitor and client basis) which may arise by reason of the performance or non-performance of such installation of such services.

7.2. The Franchise Utilities within the Development Area shall be installed, in accordance with the Plans, within the roadways, utility lots or easement areas adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners

DRAFT

within the Development Area to connect to such services upon paying the normal connection fees charged by the utility company or franchise holder.

7.3. Any and all third party utilities are to be designed, installed and operated in a manner consistent with all existing agreements between the City of Cold Lake and the utility company. Any payments by the Utility Company shall be made to the City of Cold Lake.

ARTICLE 8 CONTRACTS FOR INSTALLATION OF MUNICIPAL IMPROVEMENTS

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

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

a) the third party shall indemnify and save harmless the City 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 employees, agents or employees;

b) the third party shall provide reasonable proof of financial responsibility;

c) the third party shall comply with the provisions of the *Workers Compensation Act* for the Province of Alberta;

d) the third party will allow the City access to the works for the purpose of inspection;

e) 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 works by the City;

f) the third party shall coordinate with the City work forces and others to facilitate the installation of Municipal Improvements and Franchise Utilities and shall protect such works from damage; and

g) the third party will carry adequate public liability insurance of an amount and coverage satisfactory to the City to protect the third party and the City from any claims, actions or demands arising from the pursuance or purported pursuance of the works being performed by such third party; and

h) at the option of the City, the Developer will ensure that the third party shall carry a Labour and Materials Payment Bond in the amount of FIFTY (50%) percent of the contract price.

ARTICLE 9 COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS

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

9.2. The provisions of this Agreement shall be additional to and not in substitution for any law, whether Federal, Provincial or Municipal, prescribing requirements relating to construction standards and the granting of development, building and occupancy permits.

ARTICLE 10 ACCEPTANCE OF MUNICIPAL IMPROVEMENTS: TRANSFER OF MUNICIPAL IMPROVEMENTS TO THE CITY

10.1. For purposes of this Article, the City 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 construction practices;

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

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

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; and

g) the Developer has provided the City with any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements.

10.2. When the Developer claims that the Municipal Improvements, or any of them, have been constructed and installed in accordance with the requirements of this Agreement, then the Developer shall give notice in writing of such claim of completion to the City.

10.3. Within FORTY-FIVE (45) days of such claim of completion, the City 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.

DRAFT

10.4. Notwithstanding Paragraphs 9.2 and 9.9, the City may give notice to the Developer of the City's inability to conduct an inspection within the said FORTY-FIVE (45) days due to adverse site or weather conditions or any other condition beyond its control, and in such event the time limit for such an inspection shall be extended until FORTY-FIVE (45) days following the elimination of such conditions.

10.5. It is understood and agreed between the Developer and the City that the notices required under Article shall be given only between the City and the Developer or the Developer's Consultant and in no event shall either the City or the Developer or the Developer's Consultant give such notices through any contractor or sub-trade that may be engaged by the Developer in the construction of the Municipal Improvements.

10.6. In the event that any inspection contemplated in Paragraphs 9.3 or 9.4 reveals any deficiencies in relation to the particular Municipal Improvements or portion thereof, ordinary wear and tear excepted, the City may refuse to issue a Construction Completion Certificate for such Municipal Improvements, or portion thereof, and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements. Upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and the issuance of a Construction Completion Certificate.

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

10.8. Not more than SIXTY (60) days and not less than FORTY-FIVE (45) days prior to the expiration of the Maintenance Period for any Municipal Improvements, or portion thereof, the Developer shall give notice to the City of expiration of the Maintenance Period for the particular Municipal Improvements, or portion thereof, and the Developer shall request the issuance of a Final Acceptance Certificate in respect to the particular Municipal Improvements, or portion thereof. The Developer's notice shall be accompanied by a list of any deficiencies.

10.9. Within FORTY-FIVE (45) days of the receipt by the City of a request for a Final Acceptance Certificate, the City shall undertake an inspection of the Municipal Improvements, or portion thereof, and the City shall within the said FORTY-FIVE (45) days advise the Developer in writing of any deficiencies in relation to the particular Municipal Improvements, or portion thereof, ordinary wear and tear excepted, (i.e. any deficiencies referred to by the Developer and any additional deficiencies); provided, that the provisions of Paragraph 9.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.

10.10. In the event that any inspection contemplated in Paragraph 9.9 reveals any deficiencies in

DRAFT

relation to the particular Municipal Improvements, or portion thereof, ordinary wear and tear excepted, the City may refuse to issue the Final Acceptance Certificate of the Municipal Improvements, or portion thereof, and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements. Upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that a further inspection and issuance of a Final Acceptance Certificate.

10.11. In the event that any inspection contemplated in Paragraph 9.9 reveals that there are no deficiencies in relation to the Municipal Improvements, or portion thereof, the City shall issue in writing its Final Acceptance Certificate for the Municipal Improvements, or portion thereof.

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

10.13. Upon the issuance of a Final Acceptance Certificate by the City for the Municipal Improvements, or any portion of the Municipal Improvements as provided herein, the Developer hereby acknowledges that all right, title and interest in all Municipal Improvements located on or under Public Properties including easement areas and rights-of-way, but excluding Franchise Utilities, vests in the City without any cost or expense to the City, and the Municipal Improvements shall become the property of the City.

10.14. Notwithstanding anything to the contrary contained in this Agreement, the Developer acknowledges and agrees that the Maintenance Period for the Municipal Improvements shall not expire before the issuance of a Final Acceptance Certificate in respect to the Municipal Improvements by the City to the Developer. 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, or portion thereof, the arbitrator shall, in accordance with the terms of this Agreement, determine the date upon which any such Final Acceptance Certificate is to be effective.

10.15. Following the issuance of a Construction Completion Certificate for the Municipal Improvements, the City 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 the Franchise Utility Companies. The Developer agrees to be responsible for the maintenance and repair of all Landscaping until the issuance of a Final Acceptance Certificate for the Landscaping.

10.16. The City and the Developer agree that, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements, or any of them, the Developer shall be responsible to repair or replace the Municipal Improvements, or any of them, where there are any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in any of the Municipal Improvements, which are causally connected to the performance or non-performance of the obligations of the Developer under this Agreement and were not discovered prior to the issuance of the Final Acceptance Certificate. This obligation shall extend for a period of FIVE (5) years following the date of issuance of the Final Acceptance Certificate. In the event of a dispute regarding this provision, and in addition to Article 21 on arbitration, the parties may mutually agree to resolve any dispute under

DRAFT

this provision by means of mutually hiring an independent engineering firm to determine causation of the hidden or latent defects in any Municipal Improvements installed and constructed pursuant to this Agreement.

ARTICLE 11 MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

11.1. The Maintenance Period in respect to any of the Municipal Improvements shall commence with the City's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair (ordinary wear and tear excepted). The Developer during the Maintenance Period shall, subject to Paragraph 9.15, repair or replace the whole or any portion of the Municipal Improvements where such repair or replacement is required, as determined by the City, acting reasonably, unless the repair or replacement is a result of the neglect by the City, its servants, agents or contractors in the use and operation thereof. Notwithstanding the above, there is no Maintenance Period for Common Fencing on private lands and it is acknowledged that maintenance of such Common Fencing on private lands shall be the responsibility of the landowner of the lot on which such Common Fencing has been constructed.

11.2. The Developer acknowledges and agrees that prior to the issuance of a Final Acceptance Certificate for any Landscaping, or portion thereof, the City shall be entitled to require the Developer to replace any trees, shrubs or grass which may have died or failed to achieve proper growth, as determined by the City in its sole discretion. Further, the City shall be entitled to require the replacement or repair of any other Landscaping such as berming, rip-rap, noise attenuation fencing or Common Fencing which is not in accordance with the Plans as a result of any cause other than neglect by the City, its servants, agents or contractors in the use and operation thereof.

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

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

11.5. The City and the Developer agree that during the Maintenance Period that the City shall perform the normal maintenance requirements of the City respecting the cleaning and flushing of sanitary sewers; PROVIDED, that the City’s costs and expenses of the final cleaning and the removal of obstructions, immediately prior to the issuance of the Final Acceptance Certificate, shall be paid by the Developer to the City before the Final Acceptance Certificate is issued.

11.6. Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, but not be limited to, failure of or damage to the underground Municipal Improvements 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,

DRAFT

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

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

ARTICLE 12 USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF THE WORK

12.1. The City hereby grants to the Developer the right, permission and power to use, break-up, dig, trench, or excavate in the public highways, streets, roads, lanes, boulevards, parks and similar Public Properties under the control of the City, within or adjacent to the Development Area, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Municipal Improvements or Franchise Utilities forming part of the work of the Developer, as may be necessary for the purpose of this Agreement, provided that:

a) not less than TEN (10) days prior to the date that the Developer intends to enter upon any Public Properties, except in the case of emergency repair work, the Developer shall provide to the City detailed written proposals, for approval by the City, for the work to be done within any such property, including:

i) a specific work schedule and procedures proposed to be followed;

ii) detailed engineering drawings of all connections to existing municipal services;

iii) provisions to be implemented for temporary access and services;

iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption; and

v) a form and schedule of notification and public relation strategy to be utilized.

b) no such work shall be commenced prior to the Developer obtaining the written consent of the City to enter upon such Public Properties; and the City shall not unreasonably delay or withhold such written consent;

c) that the work within Public Property by the Developer and its agents, contractors or subcontractors

DRAFT

shall be subject to the inspection rights of the City as set forth in this Agreement and all directions and requirements of the City shall be obeyed;

d) the Developer shall do as little damage as possible in the performance of such work, and will cause as little obstruction to such Public Properties as possible;

e) upon completion of such work the Developer shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such work, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs, for a period of ONE (1) year thereafter, ordinary wear and tear excepted;

f) that the restoration of Public Property by the Developer shall be part of the Municipal Improvements to be constructed and installed by the Developer and the Developer shall be required to obtain Construction Completion Certificates and Final Acceptance Certificates for the restoration work; and

g) the Developer shall indemnify and save harmless the City 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.

12.2 When the grades of Public Properties are altered by the Developer, the Developer shall provide to the City for approval Plans indicating the drainage and contouring and the proposed grades of the boulevards and other Public Properties that will be graded during construction. The Developer shall at its sole expense grade and loam in conformity with the Design Standards for those areas of the boulevards and other Public Properties which are not left in their natural state , and thereafter shall seed to grass boulevards and Public Properties to the satisfaction of the City's engineer. The Construction Completion Certificate for Landscaping shall not be issued by the City until such time as such work is completed to the satisfaction of the City's Engineer.

ARTICLE 13 UTILITY EASEMENTS

13.1. The Plans, as approved by the City, shall designate road allowances, public utility lots, easements or rights-of-way of widths adequate to the needs of the City and utility companies, for the construction and installation of Municipal Improvements and Franchise Utilities to and through the Development Area, and for storm drainage systems, and shall be of a width and in such locations as required by the City.

13.2. The road allowances, public utility lots, easements and utility rights-of-way shall be granted and registered to the City (without further compensation payable to the Developer), upon the earlier of:

a) submission for registration of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision;

b) as a condition of the City's issuance of an applicable development permit, in the event that a Plan of Subdivision is not contemplated as part of the development of the Development Area;

and in any event prior to Commencement of Construction.

DRAFT

13.3. Where Subdivision is contemplated as part of the development of the Development Area, the Developer shall within ONE (1) month of registration of the Plan of Subdivision, and prior to the sale of any lots within the Development Area, provide to the City proof of the registration of all road allowances, public utility lots, easements and utility rights-of-way required by the City.

13.4. The Developer agrees that the road allowances, easements and utility rights-of-way shall be in a form acceptable to the City and shall be a first charge against all properties within the Development Area, excepting other easements and utility rights-of-way, and further agrees to obtain and register postponements of all liens, charges and encumbrances in favor of the easements.

13.5. Such road allowances, easements or utility rights-of-way shall provide the City the right to assign all or any part of the rights granted to operators of the respective Franchise Utilities or to grant permits or licenses to install, repair and replace gas, power, telephone, cable, communication lines and drainage systems.

13.6. The Developer covenants that it shall register or cause to be registered against the Development Area or other lands controlled by the Developer, in a form acceptable to the City, 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.

ARTICLE 14 MUNICIPAL SERVICES

14.1. As lots are developed in parts of the Development Area, the City will provide thereto, as required and subject to the terms of this Agreement, all municipal services which are normally supplied to other similar parts of the City to the same standards and costs, subject to such limitations that may be imposed by reason of the progress of the Developer's work, the availability of such services, the number of lots requiring services, and the configuration of the lots requiring services.

14.2. Prior to the issuance of the Final Acceptance Certificate for all surface Municipal Improvements in the Development Area, the Developer shall at all times after any premises are occupied and used within the Development Area, provide and ensure continuous access to such occupied premises from both the front street and, where applicable, the rear lane for garbage removal and police, fire and other emergency services.

14.3. The Developer, prior to issuance of the appropriate Construction Completion Certificate, covenants and agrees to be responsible for and pay all tolls, rates and fees applicable to street lighting or decorative lighting within the Development Area and to be responsible for and to pay for all street cleaning, snow removal and street sweeping within the Development Area upon the following terms and conditions:

a) the Developer shall within THIRTY (30) days of being invoiced by the City, pay to the City any costs incurred by the City for outside forces in connection with street lighting or decorative lighting, street cleaning, snow removal or street sweeping; and

DRAFT

b) where City work forces and equipment are used to provide any such services, the costs to be charged back to the Developer shall be calculated at the existing hourly rates for equipment and labour and the cost of employee benefits then utilized by the City plus an additional FIFTEEN (15%) per cent of all such costs to cover the administrative costs incurred by the City.

14.4 The Developer acknowledges and agrees that if any portion of the Development Area is subdivided by way of condominium plan rather than Conventional Subdivision Plan, the City is not obligated to provide its regular services within that portion of the Development Area. Without limiting the generality of the foregoing, the City will not be obligated to provide services (including provision of public utilities, garbage removal or maintenance or internal access roads) to any portion of lands that is within the boundaries of the Condominium plan.

ARTICLE 15 SIGNAGE

15.1 Notwithstanding anything else contained in this Agreement, in the case of Plan of Subdivision, the Developer shall maintain subdivision information signage and provide subdivision information maps, including the latest amendments in effect at the time of Commencement of Construction for any particular stage, and without limiting the generality of the foregoing:

a) the Developer shall erect subdivision information signs within the Development Area at locations approved by the City identifying zoning, proposed future land uses and other features, such as multi-way alignments;

b) the Developer shall provide subdivision information maps identifying zoning, proposed future land uses and other such features to prospective home purchasers within Show Homes and sales outlets which are in or adjacent to the Development Area;

c) the Developer shall submit the design, colour codes, legends and locations of the subdivision information signs and maps for approval by the City prior to preparation and installation of the signs and maps. Review and approval of the signs and maps and their format and location will be part of the Plan approval process; and

d) the Developer shall install the approved signage prior to the issuance of development permits, provided that the City, in its sole discretion, may issue development permits for Show Homes prior to sign installation.

ARTICLE 16 COMMON FENCING

16.1. The Developer shall, at its own expense, as part of the development of the Development Area, construct Common Fencing of the type hereinafter referred to where required by the City, including public utility lots and walkways. The Plans shall include a description of the location of fences, and the design and construction.

16.2. All Common Fencing to be constructed by the Developer pursuant to the requirements hereof shall be of uniform design and the design and construction thereof shall be subject to the approval of the City in its sole and absolute discretion.

16.3. Any Common Fencing as contemplated herein which is wholly located upon Public Properties and does not abut upon other properties shall be maintained by the Developer during the Maintenance Period as provided in this Agreement.

16.4. Any Common Fencing which is intended to separate Public Properties from other abutting lands shall be constructed as required according to the Design Standards and shall not be constructed on the boundary line between the Public Properties and the other lands.

16.5. Any Common Fencing which is not wholly located upon Public Properties shall be maintained by the Developer until the expiration of the Maintenance Period for such Common Fencing and thereafter shall be maintained by the owners of the properties upon which the Common Fencing is located. In order to ensure the maintenance obligations of such owners, the Developer shall, prior to selling or transferring any such properties, register against the properties a restrictive covenant, in the form attached as Schedule "H", which imposes such maintenance obligations upon the future owners of those properties.

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

ARTICLE 17 MAINTENANCE OF BOULEVARDS AND OTHER PUBLIC AREAS

17.1. The Developer shall be responsible, at its sole expense, to maintain, in accordance with the approved landscape Plan and Design Standards, the Developer's lands and all Public Properties within the Development Area which have been seeded to grass. Without restricting the generality of the foregoing, the Developer shall be responsible for mowing grass and eliminating weeds, refuse, litter and undesirable vegetation.

17.2. Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under Paragraph 16.1, in respect only to such lot, shall cease.

17.3. The Developer covenants and agrees that it shall, at the Developer's own cost and expense, be responsible for the cleanup and removal of all Construction Debris, foreign material and dirt from all Public Properties, including roadways, within and adjacent to the Development Area, subject to the following conditions:

a) prior to Commencement of Construction of the Municipal Improvements, the Developer shall provide a Construction Debris management plan for the Development Area to the City for approval, and the Developer shall be responsible for adhering to and for ensuring that all builders within the Development Area adhere to the approved Construction Debris management plan;

b) it shall be the responsibility of the Developer to monitor the condition of Public Properties and the Development Area in general and take immediate action as necessary to comply with the provisions of

DRAFT

this Article;
c) in the event that the City considers that any cleanup or removal of Construction Debris, foreign material or dirt is required, the Developer shall, within FORTY EIGHT (48) hours of receiving notice from the City, take all necessary action as determined by the City, failing which, the City may take action and charge back all costs and expenses to the Developer; and

d) in respect to a residential subdivision, the Developer's obligations under this Article shall cease and terminate in respect to the Development Area when the City issues a Construction Completion Certificate to the Developer .

17.4. The City shall assume the normal maintenance of all Public Properties after the expiration of the Maintenance Period and issuance of the Final Acceptance Certificate.

ARTICLE 18 OVERSIZING AND SHARING OF SERVICING COSTS

18.1. The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Municipal Improvements which have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the City. Unless otherwise specifically provided within Schedule “J” attached to this Agreement, the Developer’s proportionate share of existing or currently contemplated Oversizing Costs and costs for extending Municipal Improvements be calculated and paid upon the earlier of:

(a) submission for registration of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision;

(b) as a condition of the City’s issuance of an applicable development permit, in the event that a Plan of Subdivision is not contemplated as part of the development of the Development Area;

(c) and in any event prior to Commencement of Construction.

Any deferral of payment of Oversizing Costs and costs for extending Municipal Improvements by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the City and the Developer as contained within Schedule “J” and Schedule “E” attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for payment, and/or registration and reliance upon the charge contained within Paragraph 20.2 of this Agreement). If a Plan of Subdivision is contemplated, and at the time of registration of the Plan of Subdivision the City has not calculated or imposed Oversizing Costs and costs for extending Municipal Improvements, and subsequently the City imposes such charges, nothing in this Agreement precludes the City from collecting the Developer’s proportionate share of Oversizing Costs and costs for extending Municipal Improvements at the development permit stage.

18.2. In the event that the Developer’s proportionate share of existing or currently contemplated Oversizing Costs is capable of being determined as of the date of this Agreement, the Developer’s proportionate share for such existing or currently contemplated Oversizing Costs shall be as shown within Schedule “J” attached to this Agreement and costs for extending Municipal Improvements shall be shown within Schedule “J” attached to this Agreement. Otherwise, the method of calculating the Developer's proportionate share of such Municipal Improvements constructed by other parties shall be

DRAFT

determined solely by the City in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the City, in accordance with any agreements which the City 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 City taking into account the expended useful life span of the oversized/shared Municipal Improvement.

18.3. Nothing in this Agreement shall preclude the City from levying in a lawful manner any special frontage assessment or uniform unit rate assessment or special local benefit assessment for the construction, expansion or extension of Municipal Improvements, other than such Municipal Improvements or portions of such Municipal Improvements, which are covered by the provisions of this Article 17.

18.4. 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 City's requirements for oversizing and extending Municipal Improvements shall be evidenced within the additional provisions contained within Schedule "F" attached to this agreement, within the Design Standards, or otherwise required to be shown within the Developer's Plans at the time of the City's review and approval.

18.5. Such Oversizing Costs and costs for extending Municipal Improvements contemplated in Paragraph 17.4 shall be shared costs and the City and the Developer acknowledge that the Developer shall be entitled to recover such shared Oversizing Costs and costs for extending Municipal Improvements in accordance with this Agreement. The method of calculating the proportionate shares of such shared Oversizing Costs and costs for extending Municipal Improvements shall be determined solely by the City in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the City, in accordance with any agreements which the City 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 City taking into account the expended useful life span of the oversized/shared Municipal Improvements.

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

18.7. The Developer shall, so soon as reasonably possible and in any event prior to issuance of the Final Acceptance Certificates, provide the City 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 City, and upon the City approving

DRAFT

the said details, the same shall govern for the purpose of determining the amount of shared Oversizing Costs and costs for extending Municipal Improvements to be paid by such benefiting owners pursuant to Paragraph 17.6.

18.8. The City 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 City is advised of any such development, the City 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 City, the Developer shall notify the City in writing of any claims it has in writing under this Agreement for recovery of shared Oversizing Costs and costs for extending Municipal Improvements with detailed calculations setting out the amount claimed by the Developer. Until such notice has been delivered by the Developer to the City, the City shall not be required to request from the owners of adjacent lands the payment to the Developer of the shared Oversizing Costs and costs for extending Municipal Improvements attributable to the lands intended to be developed. Upon receipt of any such notice from the Developer to the City, the City will take the steps contemplated by this Agreement to facilitate the recovery by the Developer of the applicable shared Oversizing Costs and costs for extending Municipal Improvements.

18.9. The City agrees that in calculating any shared Oversizing Costs payable to the Developer, the City shall include interest, calculated from the date of Construction Completion of all of the Municipal Improvements, compounded annually, at the Prime Rate plus TWO (2%) percent; PROVIDED, that interest shall cease to accrue THREE (3) years from the date of the issuance of Final Acceptance Certificates for all of the Municipal Improvements, after which the recovery of the Oversizing Costs and costs for extending Municipal Improvements shall remain fixed.

18.10. For purposes of calculating interest payable under Article 17.9, 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.

18.11. 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 and other reasons (including, without restriction, the simple lack of further and other development in general), there shall always exist the potential for adjacent or other lands never becoming benefited by some or all oversized/shared Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the City cannot and will not guarantee eventual recovery of proportionate shares of Oversizing Costs and costs for extending Municipal Improvements.

ARTICLE 19 LEVIES, FEES AND OTHER CHARGES

19.1. The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and storm drainage facilities which will be utilized to provide municipal

DRAFT

services to the Development Area. Accordingly, the Developer covenants and agrees to pay to the City any off-site levies if and when established by the City, unless otherwise specifically provided within Schedule "I" attached to this Agreement, and such off-site levies (or other subdivision or development charges) are payable by the Developer to the City on the following terms:

(a) FIFTY (50%) percent of the off-site levies calculated on the basis of the area of the Development Area to be paid by the Developer to the City upon the execution of this Development Agreement;

(b) the remaining FIFTY (50%) percent of the off-site levies may be deferred by the Developer until a Final Acceptance Certificate has been issued by the City.

19.2. In the event the Developer is in default of any obligation of this Agreement, as per and in accordance with Article 21 of the Agreement, or upon commencement of any proceedings to wind up the affairs of the Developer, declaration of bankruptcy by Developer, appointment of a receiver, or commencement of proceedings under *Company Creditors Arrangement Act,* payment of the deferred portion of the off-site levies is immediately and automatically due and payable to the City in accordance with and pursuant to the provisions of the *Municipal Government Act* and the City's Off-site Levy Bylaw. In such case, the respective levy shall become due and payable to the City.

19.4. The Developer acknowledges that the City will incur administrative costs and expenses with respect to preparing and administering this Agreement, reviewing the construction specifications and drawings, inspecting constructed Municipal Improvements, reviewing video camera testing and updating the City's digital As-Built Drawings. Inasmuch as these costs are properly part of the cost of constructing the Municipal Improvements and therefore should be borne by the Developer, the Developer agrees to pay upon execution of this Agreement an administration fee of $5,000.00.

19.5. The Developer agrees to pay the City in accordance with the Planning Services Fee Schedule bylaw for the inspection(s) for the Substantial Construction Certificate and or the Construction Completion Certificate.

19.3. In addition to the sums specified in Paragraphs 18.1 and 18.2, the Developer acknowledges that the City will charge a per unit contribution for each residential unit constructed in the Development Area to be used by the City to construct regional, district and neighbourhood recreational facilities in accordance with City of Cold Lake Recreation Contribution Policy, as amended from time to time. The Developer shall provide written notification to all proposed purchasers or others acquiring an ownership interest in any lot within the Development Area of the requirement to pay the recreational facility contribution upon issuance of a development or building permit.

ARTICLE 20 INTEREST ON MONIES OWED TO THE CITY

20.1. Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the City shall bear interest compounded 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

DRAFT

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.

20.2. For purposes of calculating interest under this Article, 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.

ARTICLE 21 AMOUNTS PAYABLE UNDER THIS AGREEMENT

21.1. The Developer acknowledges and agrees that the City 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 City 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 City to enter into this Agreement;

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

c) the Developer agrees that the City 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 permitted assigns any and all rights, defences, 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 City 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 permitted assigns hereby releases and forever discharges the City 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 City in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the City pursuant to this Agreement.

21.2. The City and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the City pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the Development Area described in Schedule “A” of this Agreement, the Developer does hereby mortgage, charge and encumber the said lands as security for payment or performance of the Developer’s obligations within this Agreement, and further, that the City 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 Development Area described in Schedule “A” of this Agreement.

ARTICLE 22 DEFAULT BY THE DEVELOPER

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

DRAFT

within the said period of THIRTY (30) days.

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

22.3. The Developer agrees that in the event that the City 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.

22.4. Notwithstanding anything to the contrary herein, in the event that the City, in its sole 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 City considers to be an emergency, the City shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done at the Developer's costs and expense, provided that upon completion of said emergency work, the City shall give notice in writing to the Developer if the City 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 Article 22 hereof.

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

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

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

ARTICLE 23 ARBITRATION

23.1. 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 notice to the other of such dispute or difference and refer such dispute or difference to arbitration in accordance with the provisions of this Article.

DRAFT

23.2. Arbitration hereunder shall be by a reference to an independent person, to be selected jointly by the City and the Developer, and his decision shall be final and binding. In the event that the City and the Developer shall fail to agree on an arbitrator within FORTY-EIGHT (48) hours of either party giving notice to the other party of a dispute or difference pursuant to Article 22.1, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

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

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

ARTICLE 24 INDEMNITY AND SECURITY

24.1. The Developer shall indemnify and save harmless the City from any and all losses, costs, 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.

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

(a) the City shall be an additional insured in all public liability policies;

(b) all policies shall provide that an event of default on the part of the Developer, its servants or agents, shall not be an event of default on the part of the City;

(c) none of the policies shall be cancelled unless Thirty (30) days prior written notice of cancellation is first given to the City;

(d) copies of all policies of insurance shall be provided to the City upon execution of this Agreement; and

(e) the insurance policies shall have the minimum limits of coverage of not less than FIVE MILLION DOLLARS ($5,000,000.00) per occurrence for such period as the Developer has any rights or obligations hereunder with respect to the Development Area, and a comprehensive liability policy, including extended coverage and malicious damage endorsement, as per industry standard, insuring the full value of the work undertaken by the Developer pursuant to this Agreement.

24.3. In order to ensure to the City full compliance by the Developer with the terms, covenants and conditions of this Agreement, the Developer hereby covenants and agrees that it shall deliver and deposit with the City, security in the form hereinafter prescribed and that the following provisions shall apply to determining the amount of the security and the time or times at which the security shall be deposited with the City:

DRAFT

(a) the security shall be deposited by the Developer with the City concurrent with the issue of the Notice to Proceed and prior to the commencement of construction for each phase of development;

(b) the security in respect of the Development Area, shall be in the amount calculated and attached as Schedule “K” to this Agreement, based on the estimated value of the Municipal Improvements to be constructed, to secure the performance of the Developer’s obligations pursuant to this Agreement;

(c) If Notice to Proceed is not issued within SIX MONTHS of the date of this agreement, the developer will be required to submit new construction estimates to the City at the date of the Notice to Proceed is requested, to reflect the estimated costs of the landscaping and local improvements at the that time. The securities required to be provided by the Developer shall be based upon those estimates, as approved by the City, rather than the amounts stated in Paragraph 23.3(b).

(d) for purposes of this Section, the estimated cost for the Municipal Improvements shall be determined as follows:

(i) if known at the time that this Agreement is made, as set out in Schedule “K” of this Agreement;

(ii) if unknown at the time that this Agreement is made, where actual tendered costs are available the tendered costs shall be used;

(iii) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the Municipality for approval together with all applicable background documentation, and if approved by the Municipality, such cost estimates shall be used; and

(iv) where actual tendered costs are not available, and the Developer and the Developer's Consultant has not provided estimates for the Municipality to approve, the Municipality may establish estimated costs in its sole discretion for the purposes of establishing the required security.

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

24.5. The security referred to above shall consist of:

(a) an “Irrevocable Letter of Credit” issued by a “Chartered Bank” or the “Treasury Branch”, or such other security as may be approved by the solicitors for the City; or

(b) a cash security deposit account;

or combination thereof, in the amount of the security required from time to time as described above; PROVIDED, that all security shall be in terms and form to be approved by the City's solicitors. Provided further that the Developer covenants and agrees that upon the occurrence of a default on the part of the Developer under this Agreement, the City may, at its option and without limiting any of its other remedies, accelerate and require payment in full of the security amount that would otherwise be

required for a cash security deposit account, and such obligation shall be secured by the mortgage charge and/or encumbrance.

24.6. The said security shall in terms and form to be approved by the City that shall contain the following terms and provisions:

(a) Letters of Credit shall not have an expiry date;

(b) a statement that the said irrevocable letter of credit is issued in favour of the City in consideration of the City entering into this Agreement with the named customer of the issuing bank;

(c) an acknowledgment by the issuing bank that it has full knowledge of the terms, covenants and conditions of this Agreement;

(d) an acknowledgment by the issuing bank that it has full knowledge that the issuing of the said Irrevocable Letter of Credit was and is a condition precedent to the execution of this Agreement by the City; and,

(e) an acknowledgment by the issuing bank that the City shall be entitled to draw on the said Irrevocable Letter of Credit in accordance with the provisions of this Agreement, and an undertaking by the issuing bank to promptly honour and pay draws made by the City.

24.7. Upon endorsement of the Construction Completion Certificate (Schedule “M”), the Developer may make application to have the security amount reduced by an amount equal to the ratio of the work completed to the original cost of the work, expressed as a percentage. This percentage will not be reduced to less than 10% of the original estimate through the two (2) year maintenance period for underground Local Improvements and two (2) years for surface Local Improvements.

24.8. The amount of security to be provided by the Developer to the City may be reduced, in the sole and absolute discretion of the City. In any event, upon expiration of the Maintenance Period and after issuance of the Final Acceptance Certificate of all the Municipal Improvements the City shall release the security of the Developer.

24.9. Upon endorsement of the Landscaping Completion Certificate for the Development Area, the Developer may make application to have the security amount reduced by an amount equal to the ratio of the work completed to the original cost of the work, expressed as a percentage. This percentage will not be reduced to less than 20% of the original estimate through the two (2) growing season maintenance period for landscaping.

24.10. In the event that the City has negotiated, called upon, or otherwise received proceeds from, the security to be deposited by the Developer for any reason contemplated within this Agreement, then the City shall be entitled to hold and apply any such funds as a security deposit in lieu of the original security.

24.11. In the event that the City has negotiated, called upon the security to be deposited by the Developer with the City, the City may, at its option and discretion, use any funds thereby obtained in

DRAFT

any manner the City deems fit to discharge the obligations of the Developer pursuant to this Agreement.

ARTICLE 25 DELIVERY OF DOCUMENTS TO THE CITY

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

25.2. Forthwith upon the completion of the construction and installation of the Municipal Improvements and the issuance of a Construction Completion Certificate for the Municipal Improvements by the City, and not later than SIX (6) months following issuance of the Construction Completion Certificate, the Developer shall deliver to the City all inspection and testing records and As-Built Drawings and records, as herein required (and as specified in the Design Standards), in a form and to standards specified by the City. Such As-Built Drawings shall include detailed information on the underground and surface Municipal Improvements constructed for the Development Area, which includes, but is not limited to, such information as length of asphalt, length and size of pipes, fire hydrants, length of sidewalks and multi-way trails, etc.

25.3. Notwithstanding anything other provision of this Agreement, the Final Acceptance Certificate shall not be issued until six (6) months have elapsed subsequent to the date of the receipt of the documents required herein, unless otherwise agreed to by the City and provided that the Final Acceptance Certificate shall not be issued prior to the expiration of the Maintenance Period.

25.4 All plans and information required to the City to be amended or revised shall be corrected by the Developer and be re-submitted to the City. If the Developer fails to submit "as-built" plans within the specified time frame, the City, at its discretion, may arrange for the drawings to be completed with the costs borne by the Developer. The City has the right to recover these costs from the development securities and other means.

ARTICLE 26 COMPLIANCE WITH LAW

26.1. 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.

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

26.3. Where anything provided for herein cannot lawfully be done without the approval or permission of

any authority, person or board, the rights or obligations to do it shall not come into force until such approval or permission is obtained, provided that the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval or permission.

26.4. The Developer acknowledges that the proposed work requires notification of development be provided to Alberta Environment and acceptance of the proposed design by Alberta Environment. The Developer or their Consulting Engineer will provide required notification and written acknowledgement from Alberta Environment of such notification to the City and obtain all required licences and approvals prior to the commencement of any construction.

26.5. The Developer and the City covenant and agree to comply with all the legislation dealing with environmental issues, including but not limited to the Environmental Protection and Enhancement Act (Alberta) and its regulations or successor legislation. The liabilities and obligations of the Developer and the City hereunder with respect to environmental matters shall survive the termination of this Agreement and will continue to be enforceable against the parties.

26.6. For the purposes of the Occupational Health & Safety Act, the Developer is the Prime Contractor for all work pursuant to this Agreement.

ARTICLE 27 SEVERABILITY

27.1. The parties agree that in the event of one or more of the provisions of this Agreement being subsequently declared invalid, unenforceable or contrary to law by a court or other binding authority then the same shall be severed and the remainder of this Agreement shall be full force and effect.

ARTICLE 28 LAW OF ALBERTA APPLICABLE

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

ARTICLE 29 FURTHER ASSURANCES

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

ARTICLE 30 WAIVER

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

DRAFT

ARTICLE 31 ADDITIONAL PROVISIONS

31.1. The Parties covenants and agrees that in addition to the provisions contained in the text of this Agreement, the Parties shall be bound by the additional provisions found in Schedule “F” of this Agreement to the same extent as if the provisions of Schedule “F” were contained in the text of this Agreement.

ARTICLE 32 CAVEATS

32.1. The Developer acknowledges and agrees that upon execution of this Agreement that the City shall be at liberty, pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26 as amended, to file at the Land Titles Office for the North Alberta Land Registration District a caveat against the Development Area and against the undeveloped portion of the Lands described in Schedule “A” for purposes of protecting the City's interests and rights pursuant to this Agreement. Such caveat shall be discharged at the City’s discretion and expense, and will occur at one of the following, whichever occurs later:

a) acknowledgement of the last Final Acceptance Certificate as contemplated herein; or

b) the direction of the City following approval of the as-built drawings.

ARTICLE 33 NON-ASSIGNABILITY OF AGREEMENT

33.1. The Developer shall not assign this Agreement without the express written approval of the City. Such approval shall be subject to Paragraph 33.2 and may be withheld by the City in its sole discretion. This Agreement shall enure to the benefit of, and shall remain binding upon the Developer (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.

33.2. It is understood between the City and the Developer that any assignment of this Agreement to which the City consents shall not be permitted unless and until:

a) the proposed assignee enters into a further agreement with the City 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 City all insurance and security as required by the terms of this Agreement.

33.3 This Agreement shall consist of this document including all attached and initialled schedules. It is agreed that there are no representations, warranties, collateral agreements, or conditions affecting this said Agreement except as incorporated herein.

33.4 Verbal amendments to this Agreement shall not be provided by or accepted by either party.

ARTICLE 34 TIME OF THE ESSENCE

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

ARTICLE 35 LEGAL AND ENGINEERING COSTS

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

ARTICLE 36 GRANTS

36.1 Providing that the Developer is not in default of any of the provisions of this Agreement or any condition of subdivision approval:

(a) the City shall, at the request of the Developer, deliver to Alberta Environmental Protection any confirmations or undertakings reasonably required (and in respect of which the City can attest) in order for the Developer to obtain any necessary permits and licenses from Alberta Environmental Protection; and

(b) the City may apply for grant money for construction of the Municipal Improvements. However, it is expressly understood and agreed that:

(i) the City has made no representations to the Developer whatsoever, regarding the availability of any grant monies or the qualification of the Municipal Improvements for any grant monies;

(ii) the City shall not be liable to the Developer, nor shall the Developer's liability hereunder be affected if any grant monies are not received by the City; and

(iii) although the City will work with the Developer to obtain grants for the Municipal Improvements, the City need not apply for such grants if they will negatively impact grants for other City related projects.

ARTICLE 37 FORCE MAJEURE

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

DRAFT

any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

ARTICLE 38 INTERPRETATION

38.1. The headings in this Agreement are for convenience only and not intended to affect the interpretation of this Agreement.

38.2. Words imparting the singular number only shall include the plural and vice versa. A reference to any gender includes reference to all other genders. Words imparting persons shall include corporations.

ARTICLE 39 NOTICES

39.1. Any notice, demand or request to be given pursuant to this Agreement shall be made in writing and sent by registered mail or by personal delivery to the address stated below.

To the City:

The City of Cold Lake
5513 48 Avenue
Cold Lake, AB T9M 1A1

Attention: Manager, Planning and Development

To the Developer:

(Address)

Attention: ____________________

Provided, however, that such address may be changed upon TEN (10) days notice. Further, if a notice is sent by registered mail, it is deemed to have been received at the expiry of SEVEN (7) business days following the date of mailing, or if by personal delivery, at the time the notice was delivered. In the event that a notice is to be served at a time when there is an actual or anticipated interpretation of mail service affecting the delivery of such mail, any notice permitted or required to be given shall be made by personal delivery.

DRAFT

ARTICLE 40 EXECUTION OF AGREEMENT

40.1. 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.

40.2 Except where legislation is enacted by the Legislative Assembly of the Province of Alberta specifically negating this Agreement or any provision, this Agreement will continue in full force and effect in accordance with its terms until the development of the land has been completed.

40.3 The Developer covenants, undertakes and agrees that the conditions, terms and provisions of the Agreement shall be deemed to be:

(a) covenants running with the development;

(b) conditions authorizing the development and subdivision of the Development Area ; and shall be binding upon the Developer and its successors-in-title. Prior to and after the execution of Developer's agreement for the Subdivision Area, the Developer shall extract the same covenants as are herein contained from any person to whom it may in any way convey such subdivision area or any undivided interest, other than lots, so that the said covenants shall run with such subdivision area, and the terms, conditions and provisos of this Agreement shall be enforceable by the City in the same manner and to the same extent as any other restrictive covenant filed by way of caveat pursuant to the provisions of the Act. No such conveyance of such subdivision area or any undivided interest therein shall operate so as to release the Developer from its obligations and covenants herein. The City may file a caveat to protect its interest herein, provided, always, that the covenants shall cease and determine when all conditions contained herein have been satisfied.

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

CITY OF COLD LAKE

____

Manager of Planning Date

______________________________________ (corporate seal)

DEVELOPER

____

Date

______________________________________ (corporate seal)

DRAFT

LIST OF SCHEDULES

Schedule “A” - Development Area

Schedule “B” - Subdivision Approval Conditions

Schedule “C” - Municipal Reserve Dedication (New)

Schedule “D” - Notice to Proceed

Schedule “E” - Municipal Improvements (From LEDUC Agreement)

Schedule “F” - Alterations/Additional Provisions

Schedule “G” - Design Standards (From LEDUC Agreement)

Schedule “H” - Restrictive Covenant – Common Fencing

Schedule “I” - Off-Site Levies
Part 1 – Defined Off-Site Levy Rate & Calculation
Part 2 – Defined Off-Site Levy Rate for Stormwater Management & Calculation

Schedule “J” - Oversizing
Part 1 – Endeavour to Assist
Part 2 – Late-Comer Fees

Schedule “K” - Security

Schedule “L” - Substantial Completion Certificate

Schedule “M” - Construction Completion Certificate

Schedule “N” - Landscaping Completion Certificate

Schedule “O” - Final Acceptance Certificate

Schedule “P” - Subdivision and Development Process Checklist

DRAFT

SCHEDULE “A” - DEVELOPMENT AREA

DRAFT

SCHEDULE "B" - SUBDIVISION APPROVAL CONDITIONS

DRAFT

SCHEDULE "C" – MUNICIPAL RESERVE DEDICATION

The Developer and City acknowledge that in respect of the total subdivision area, previous subdivision phases have included a total MR dedication of ____ hectares towards the 10% MR dedication requirement.

The Developer and the City acknowledges that the developer is required to provide an additional ____ hectares for MR dedication.

The Developer and the City acknowledges that the outstanding _____ hectares MR dedication has been deferred to the balance of the undeveloped portion of the Development Area.

DRAFT

SCHEDULE "D" – NOTICE TO PROCEED

Project: **Subdivision File:** **Date:**

Notice to Proceed

DEVELOPMENT ADDRESS:

LEGAL DESCRIPTION: **PLAN:** **BLOCK:** **LOT(S):**

DEVELOPER:

The Department of Planning and Development is satisfied with the following conditions of the Development Agreement between the Developer / Land Owner and the City of Cold Lake:

- Engineering Design and Construction Drawings for all local improvements approved by the City Engineer and the Department of Public Works and Infrastructure Services;
- Delivery of Proof of $5,000,000.00 comprehensive liability insurance.
- Delivery of required Security to the City of Cold Lake.

The City of Cold Lake hereby provides notice to the Developer / Land Owner to proceed with the orderly servicing of the Developing Lands in accordance with the terms and conditions set forth within the Development Agreement and subject to the following conditions:

Failure to meet the specified conditions to proceed will result in the issuance of a Stop Work Order.

DRAFT

Schedule “E” MUNICIPAL IMPROVEMENTS

Subject to confirmation from the City with respect to either the current existence of any of the following satisfactory to the City, or confirmation that the City 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, service lines, man holes, mains, lift stations and appurtenances;
(b) All drainage systems, including storm sewers, storm sewer connections, pumping stations, 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, man holes and associated works, all as and where required by the City;
(c) All water pumps and lines, including all fittings, valves, and hydrants and looping as required by the City, in order to safeguard and ensure the continuous and safe supply of water in the Development Area;
(d) All concrete curbs and gutters, sidewalks and sub-grade, base gravel and base asphalt and all surface asphalt;
(e) All lighting systems for streets, walkways, parking areas and Public Properties as and where required by the City;
(f) Such electrical conduit as may be required by the City 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 City;
(h) Subject to subsection (i) below, all walkway systems and Landscaping on both private property and public property which are to be constructed and installed to the satisfaction of the City, and in accordance with the approved landscaping plans;
(i) All walkway systems and Landscaping on boulevards adjacent to separate sidewalks which are to be constructed and installed to the satisfaction of the City, and in accordance with the approved landscaping plans;
(j) Such construction or development of roads, including lanes, as may be required by the City; and shall include, but in no manner be limited to, a second or temporary access for construction, emergency and vehicular traffic from the Development Area;
(k) The restoration of all Public Properties to the City’s satisfaction which are disturbed or damaged in the course of the Developer’s work;
(l) All open space site amenities and playgrounds, including landscaping and playground equipment, on public lands which are to be constructed and installed to the satisfaction of the City, and in accordance with the approved landscaping plans;
(m) The relocation, to the City’s satisfaction, of all existing utilities and Municipal Improvements as required by the City as a result of the installation and construction of the Franchise Utilities and Municipal Improvements pursuant to this Agreement;
(n) The establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the City throughout and adjacent to the Development Area;
(o) Public information signs, of a size and location to be approved by the City, 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 City in order to provide proper and complete and up to date information to proposed purchasers and residents within the Development Area;
(p) Major entrance features shall be located either on an added dedication to the required road right-of-way or on private property. The required dedication shall be defined at the time the Plan of Subdivision for the development is submitted for approval. Any major entrance feature located on private property

DRAFT

shall require the registration of an easement to provide for maintenance access to the feature. The easement shall be to the satisfaction of the City;
(q) Such Common Fencing, such as noise attenuation or screening, of either permanent or temporary, and of a standard and design satisfactory to the City, all of which is to be constructed and located to the satisfaction of the City; and
(r) 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 City; and
(s) any other infrastructure as determined by the City from time to time.

DRAFT

SCHEDULE "F" – ALTERATIONS/ADDITIONAL PROVISIONS

No alterations of the City of Cold Lake Municipal Engineering Servicing Standards and Standards Construction Specifications are granted.

DRAFT

SCHEDULE “G” - DESIGN STANDARDS

DRAFT

SCHEDULE "H" - RESTRICTIVE COVENANT – COMMON FENCING

Attachment "A" – Location of Common Fencing

DRAFT

SCHEDULE "I" - OFF-SITE LEVIES

Part 1 - Defined Offsite Levy Rate & Calculation

1. Inasmuch as the development of the Development Area may make it necessary for the City to provide:
   a) new or expanded facilities for the storage, transmission, treatment or supplying of water, or;
   b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage, or;
   c) new or expanded storm sewer drainage facilities, or;
   d) new or expanded roads required for or impacted by a subdivision or development, or;
   e) any land required for or in conjunction with any facilities described above;

2. With respect to the payment of the off-site levies stated herein, the City has the right to register a caveat under the Land Titles Act in respect of this Agreement against the Certificate of Title for the Development Area .

3. As of the date of this Agreement, Off-Site Levies are required for Residential Development subdivisions at a calculated rate of **$XX,XXX** per hectare.

Defined Offsite Levy Rates

20__ Offsite Levy Rates

Description	**Current Off-Site Levy**
Water Distribution	$XX,XXX/Hectare
Sanitary Sewer	$ XX,XXX/Hectare
Storm Sewer	$ XX,XXX/Hectare
Roadway Network	$XX,XXX/Hectare
Total	**$XX,XXX/Hectare**

Development Offsite Levy Calculation

Site Area (ha)	x	**$XX,XXX**	=	Required Off-Site Levies
	x	**$XX,XXX**	=	**$XXX,XXX.XX**

Amount of Off-Site Levies required under this Agreement = $XXX,XXX.XX

DRAFT

Part 2 - Defined Offsite Levy Rate for Stormwater Management& Calculation

1. In addition to the prescribed Off-Site Levy, a Storm Water Management Pond Off-site Levy of $XX,XXX/Hectare is applied to all developing areas where no storm water management pond is to be built as that facility or responsibility has been deferred to adjacent lands.

2. With respect to the payment of the off-site levies stated herein, the City has the right to register a caveat under the Land Titles Act in respect of this Agreement against the Certificate of Title for the Development Area . The City will withdraw and discharge the caveat referred to herein upon receipt of payments referred to herein.

3. Off-Site Levies are required for Residential Development subdivisions at a calculated rate of **$XX,XXX** per hectare.

Development Offsite Levy Rate for Storm Water Management Calculation

Site Area (ha)	x	**$XX,XXX**	=	Required Off-Site Levies
	x	**$XX,XXX**	=	**$XX,XXX.XX**

Amount of Off-Site Levies Storm Water Management required under this Agreement = $XX,XXX.XX

DRAFT

SCHEDULE “J” – OVERSIZING

Part 1: Endeavour to Assist

Part 2: Late Comer Fees

DRAFT

SCHEDULE "K" – SECURITY

1. For purposes of calculating the security required to be deposited by the Developer pursuant to Article 23 of the City of Leduc Standard Development 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 (15%) and Contingency (10%) $
Underground Subtotal $

Surface Improvements:

Earthworks and Berming $
Mono Sidewalk, Curb and Gutter $
Granular Base $
Asphalt $
Separate Sidewalk $
Signage $
Engineering (15%) and Contingency (10%) $
Above Ground Subtotal $

Landscaping Improvements:

Turf and Trees for Public Open Spaces
(including Municipal Reserve, PUL's,
Walkways, Arterial Roads, Collector Roads
Storm Retention Ponds) $
Turf and Trees for Boulevards Adjacent to
Separate Sidewalks $
Site Amenities for Public Open Spaces and
Playground Equipment $
Common Fencing $
Landscaping Subtotal $

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 $

DRAFT

2. The Parties hereby represent, warrant, covenant and agree that all of the costs for the construction and installation of the Municipal Improvements for the Development Area, as set out above, are estimates, and as such shall in no way limit or restrict the Developer's responsibility under the Development Agreement, nor in any way whatsoever establish or otherwise suggest a maximum amount of the Developer's obligations under the Development Agreement.

3. Where estimates are not available as at the date of the Development Agreement, the Developer shall provide such estimates as contemplated within Article 23 of the Agreement, and the amount of the security shall be established by the City at that time.

4. In the event that any of the actual or tendered costs for the construction and installation of the Municipal Improvements for the Development Area are higher or lower than as estimated above, the security to be provided by the Developer shall be adjusted in accordance with Article 23 of the Development Agreement so as to be based upon those actual or tendered costs.

DRAFT

SCHEDULE "L" - SUBSTANTIAL COMPLETION CERTIFICATE (*NEW*)

CITY OF COLD LAKE
SUBSTANTIAL COMPLETION CERTIFICATE

PROJECT: ____

CONTRACTOR: ____

DEVELOPER: ____

This is to certify that construction of the said underground development has been completed and inspected as of ____________________________ . The conditions of acceptance are as follows:

____

____

____

____

____

____

ACCEPTED BY:

CONSULTING ENGINEERING FIRM

Per: ___________________________________ **Date:** ___________________________

CONTRACTOR

Per: ____________________________________ **Date:** __________________________

DEVELOPER

Per:_____________________________________ **Date:** __________________________

CITY OF COLD LAKE

Per: ____________________________________ **Date:**___________________________

DRAFT

SCHEDULE "M" - CONSTRUCTION COMPLETION CERTIFICATE (*In current COCL Agreement*)

CITY OF COLD LAKE
CONSTRUCTION COMPLETION CERTIFICATE

PROJECT: ____

CONTRACTOR: ____

DEVELOPER: ____

This is to certify that construction of the said development has been completed and inspected as of __________________________ and that the warranty period (two years for roads and utilities) for the correction of faulty materials and/or workmanship shall commence. The conditions of acceptance are as follows:

____

____

____

____

____

____

ACCEPTED BY:

CONSULTING ENGINEERING FIRM

Per: _________________________________ **Date:** __________________________

CONTRACTOR

Per: _________________________________ **Date:** __________________________

DEVELOPER

Per:__________________________________ **Date:** __________________________

CITY OF COLD LAKE

Per: _________________________________ **Date:**__________________________

DRAFT

SCHEDULE "N" - LANDSCAPING COMPLETION CERTIFICATE (*NEW*)

CITY OF COLD LAKE
LANDSCAPING COMPLETION CERTIFICATE

PROJECT: ____

CONTRACTOR: ____

DEVELOPER: ____

This is to certify that landscaping of the said development has been completed and inspected as of ____________________________. The conditions of acceptance are as follows:

____

____

____

____

____

____

ACCEPTED BY:

CONTRACTOR

Per: ____________________________________ **Date:** ___________________________

DEVELOPER

Per:_____________________________________ **Date:** __________________________

CITY OF COLD LAKE

Per: ____________________________________ **Date:**___________________________

CITY OF COLD LAKE

Per: ____________________________________ **Date:**___________________________

DRAFT

SCHEDULE "O" – FINAL ACCEPTANCE CERTIFICATE (*In current COCL Agreement*)

CITY OF COLD LAKE
FINAL ACCEPTANCE CERTIFICATE

PROJECT: ____

CONTRACTOR: ____

DEVELOPER: ____

This is to certify that construction of the said development has been completed and inspected as of ____________________________ . The conditions of acceptance are as follows:

____

____

____

____

____

____

Article II. Submission of As-Built Record Plans to the City within 30 days

ACCEPTED BY:

CONSULTING ENGINEERING FIRM

Per: ___________________________________ **Date:** ____________________________

CONTRACTOR

Per: ____________________________________ **Date:** ___________________________

DEVELOPER

Per:_____________________________________ **Date:** __________________________

CITY OF COLD LAKE

Per: ____________________________________ **Date:**___________________________

DRAFT

SCHEDULE "P" - SUBDIVISION/DEVELOPMENT PROCESS & CHECKLIST
(*From LEDUC Agreement)*

DRAFT

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

A. Process 1 – Information

1. Inspection/Review Fees – prior to commencing any inspections or review of the Developer's Plans or other information, the Developer shall deliver to the City the required inspection and/or review fees (**Reference Paragraph 18.2**).

2. Plans – the Developer shall submit to the City all Plans requested or otherwise required by the City to show the Municipal Improvements to be constructed and installed by the Developer, which shall be prepared in accordance with the terms of this Agreement (**Reference Articles 3, 4, 11, 14 and 15**).

3. Additional Information – the Developer shall assemble and submit to the City such additional information or documentation as may be required by the City to review and assess the Developer's Plans, or otherwise carry out the provisions of this Agreement including, without restriction, the Developer's construction timetable (**Reference Articles 3, 4, 6, 7, 8, 12 ,14 and 15**).

B. Process 2 – Approvals

1. Alberta Infrastructure and Transportation – where applicable, must be received and confirmed in writing.

2. Alberta Environment – where applicable, must be received and confirmed in writing.

3. Plan Approval – subject always to the receipt of the foregoing, the City may approve final Plans prepared and submitted by the Developer or the Developer's Consultant.

4. Federal licenses, certifications or approvals – where applicable, must be received and confirmed in writing.

Subject to the balance of the provisions of this Agreement, upon approval of all applicable Plans by the City, the Developer may proceed with Plan of Subdivision endorsement and/or Commencement of Construction as contemplated within this Schedule and this Agreement.

C. Process 3 – Endorsement/Registration and Commencement of Construction

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

- ☐ **Rezoning –** receipt/confirmation of rezoning, if applicable (**Reference Paragraph 2.4(a)**);
- ☐ **LUB Amendments –** receipt/confirmation of amendments to Land Use Bylaw, if applicable (**Reference Paragraph 2.4(b)**);

☐ **Statutory Plans/Amendments –** receipt/confirmation of passage of any statutory plans or amendments, if applicable (**Reference Paragraph 2.4(c)**);

☐ **Provincial Approvals –** receipt/confirmation of approvals of:

☐ Alberta Infrastructure and Transportation;

☐Alberta Environment; and

☐ any other Provincial Department, as applicable; (**Reference Paragraph 2.4(d)**);

☐ **Conditions** – receipt/confirmation of satisfaction of all conditions contained within the applicable subdivision approval or development permit (**Reference Paragraph 2.4(f)**);

☐ **Plan Approval –** receipt of final approved Plans (**Reference Paragraph 2.4(e)**);

☐ **Registered owner –** confirmation that the registered owner of the Development Area is the Developer (**Reference Paragraph 2.4(g)**);

☐ **Construction Timetable –** receipt/confirmation of Developer's construction timetable, if applicable (**Reference Paragraph 3.7**);

☐ **Franchise Utilities –** confirmation of commitments to install electrical power, natural gas, and telephone services within and to the Development Area including, without restriction, confirmation of payment of costs of utility providers (**Reference Article 6**):

☐ Electrical Power;

☐ Natural Gas; and

☐ Telephone.

☐ **Utility Easements/Instruments –** receipt/confirmation of all utility easements and other instruments (**Reference Article 12**), comprised of:

☐ Receipt of executed instruments; and

☐ Receipt of either:

(a) confirmation of registration of all registerable instruments at the Land Titles Office; or

(b) confirmation of registration requirement upon or within Plan of Subdivision endorsement, or written solicitor's undertaking to complete registration concurrent with Plan of Subdivision;

in priority to any and all financial encumbrances whatsoever;

☐ **Oversizing/Shared Costs –** payment of oversizing/shared costs contribution (**Reference Article 17 and Schedule "J"**);

☐ **Oversized Municipal Improvements –** confirmation of oversizing to be constructed by Developer (**Reference Article 17 and Schedule "J"**);

☐ **Off-Site Levies –** payment of Off-Site Levies (**Reference Article 18 and Schedule "I"**), or receipt of separate security for any deferred payment of Off-Site Levies;

☐ **Inspection/Review/Approval Fees –** payment of all Inspection/Review/Approval Fees not collected prior to review and approval of Plans (**Reference Article 18 and Schedule "H"**);

☐ **Insurance –** receipt/confirmation of all required insurance coverage, additional insured notations, riders, and additional terms (**Reference Article 23**);

DRAFT

☐ **Security –** receipt/confirmation of all required security (**Reference Article 23**); and

☐ **Caveat –** receipt of either:

(a) confirmation of registration of Caveat Re: Development Agreement at the Land Titles Office; or

(b) confirmation of registration requirement upon or within Plan of Subdivision endorsement, or written solicitor's undertaking to complete registration concurrent with Plan of Subdivision;
in priority to any and all financial encumbrances whatsoever.

2. Public Property – prior to the Commencement of Construction of any Municipal Improvements or other improvements upon or within or upon any Public Properties by the Developer, the Developer shall provide and/or the City shall confirm the items referenced within **Article 11**.

D. Process 4 – Inspections & Certificates

1. Pre- Substantial Completion Certificate Checklist **–** prior to acceptance by the City of the underground Municipal Improvements and prior to issuance of Substantial Completion Certificates, the Developer shall provide and/or the City shall confirm the following:

☐ **Operational water –** confirm that water service is operational (for fire protection) prior to issuance of building permits or development permits for buildings on lots (**Reference Paragragh 5.13);**

☐ **Essential Services** – confirm that underground Essential Services have been installed and rendered operative in any part of the Development Area, except as otherwise permitted in writing by the City (**Reference Paragraph 5.13);**

☐ **Satisfactory test results –** receipt/confirmation of all required test results, including: t.v. camera video inspection of all storm and sanitary sewer lines;

☐ **Backfill –** inspect backfill where required by the City prior to issuance of a Substantial Completion Certificate or receive/confirm appropriate security if weather conditions preclude adequate consolidation and inspection prior to occupancy .

2. Developer Notice – receipt/confirmation of Developer written claim that the Municipal Improvements for the Development Area have been constructed and installed in accordance with the requirements of this Agreement (**Reference Paragraph 9.2)**.

3. City Notice **–** within Forty-Five (45) days of receipt of Developer Notice, Municipal notice to the Developer in writing of: acceptance (by the issuance of a Construction Completion Certificate), rejection of the Municipal Improvements, or inability to inspect (**Reference Paragraphs 9.3 and 9.4)**.

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

☐ **Consultant's statement –** receipt of Developer's Consultant statement under seal confirming: adequate periodic inspection services and completion of work in a good and workmanlike manner and in accordance with the Plans, accepted engineering and

DRAFT

construction practices, and the Design Standards (**Reference Paragraph 5.11**);

☐ **Satisfactory test results –** receipt of all required test results, including: t.v. camera video inspection of all storm and sanitary sewer lines installed and constructed by the Developer;

☐ **Backfill –** inspect backfill prior to issuance of an Initial Acceptance Certificate or receive/confirm appropriate security if weather conditions preclude adequate consolidation and inspection prior to occupancy. (**Reference Paragraph 4.9(e)**);

☐ **Registration –** receipt/confirmation that all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the City (**Reference Paragraph 9.1(d))**;

☐ **Public Properties** – confirm that all Public Properties which have been disturbed or damaged have been fully restored by the Developer (**Reference Paragraph 9.1(e))**;

☐ **Suitability –** confirm that the Municipal Improvement is suitable for the purpose intended (**Reference Paragraph 9.1(f)**);

☐ **Manuals –** receipt/confirmation of any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements (**Reference Paragraph 9.1(g)).**

5. Construction Completion Certificate and Maintenance Period – upon the issuance of a Construction Completion Certificate, the City assumes normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvements excluding Landscaping, fencing and facilities owned by private utility companies (**Reference Paragraph 9.15)** and the Maintenance Period shall commence (**Reference Paragraph 10.1).**

6. Developer Notice – receipt/confirmation of Developer written notice, not more than Sixty (60) days nor less than Forty-Five (45) days prior to expiration of any Maintenance Period, of expiration of the Maintenance Period and request of Final Acceptance of Municipal Improvements. The Developer's notice shall be accompanied by a list of any deficiencies **(Reference Paragraph 9.8).**

7. City Notice or Final Acceptance Certificate **–** within FORTY FIVE (45) days of receipt of Developer Notice, Municipal notice to the Developer in writing of: deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements, or inability to inspect (**Reference Paragraphs 9.9 and 9.4**). The City will issue the Final Acceptance Certificate (**Reference Paragraphs 9.11 and 10.6)**, if:

☐ **Inspection -** no deficiencies exist upon inspection (**Reference Paragraph 9.11);**

☐ **Payment of Final Clean Costs –** the Developer has paid the City's costs and expenses of the final cleaning and the removal of obstructions immediately prior to the issuance of the Final Acceptance Certificate (**Reference Paragraph 10.5)**; and

☐ **Notice of oversizing costs –** the Developer has provided the City 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 City (**Reference Paragraph 17.7).**

E. Process 5 – Cost Recoveries & Deferred Contributions

2. Oversizing Cost Recovery and Deferred Contribution **–** if oversizing costs have been deferred by

agreement until completion of the works or some other agreed upon event, then upon completion or the event occurring, the City may demand and the Developer shall pay its proportionate share of the costs that the Developer agreed to pay on a deferred basis, plus interest (**Reference Paragraphs 17.1 and 19.1)**; alternatively, these costs may be collected at the development permit stage (**Reference Paragraph 17.1)**.

3. Endeavour to Assist - the City shall make it a term of any Development Agreement between the City and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and shall require payment of the same by such owners as a condition of the use of the Municipal Improvements or as a condition of the approval of any development applications (**Reference Paragraph 17.6**).

4. Municipal Notice of Benefiting Development **–** in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the City is advised of any such development, the City will use best efforts to notify the Developer in writing of the intended development (**Reference Paragraph 17.8).**

5. Developer Notice of Claim – upon receipt of notice of intended development being sent by the City, the Developer shall notify the City 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, plus interest (**Reference Paragraphs 17.8 and 17.9).**

F. Process 6 – Final Release of Security

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

☐ **Respecting Construction Completion for Municipal Improvements –** receipt/confirmation of a Construction Completion Certificate or Final Acceptance Certificate, provided that prior to the issuance of Final Acceptance Certificates for all of the Municipal Improvements, the City shall retain and release security in accordance with City policy (**Reference Paragraph 23.8)**;

☐ **Deferred Cost Recovery –** security taken for deferred cost recovery (e.g. for oversizing, levies, or fees) shall not be released until all of those costs have been paid (plus interest) by the Developer in accordance with the agreement for deferral (**Reference Paragraphs 17.1, 18.1, and Schedule "H")**

☐ **Charge Against Land –** the charge, mortgage, and encumbrance registered against the Developer's Lands will not be discharged until all of the Developer's obligations under this Agreement, including all deferred obligations or payments, have been completed **(Reference Paragraph 20.2).**