THIS AGREEMENT made this ___ day of _____, A.D., 20___

BETWEEN:

THE MUNICIPAL CORPORATION OF

THE CITY OF MEDICINE HAT

(hereinafter referred to as the "City")

-and-

_____
(hereinafter referred to as the "Developer")

DEVELOPMENT AGREEMENT

FOR

_____

PREAMBLE

WHEREAS the Developer is the owner or is entitled to become the owner of the Development Area;

AND WHEREAS, subject to execution of this Development Agreement and certain other conditions, the Development Authority has approved a Development Permit for the Development Area;

AND WHEREAS the Developer has obtained approval from the Manager for the Detailed Plans and Specifications for the Utilities and Improvements;

AND WHEREAS the Developer, subject to the approval of the Manager, proposes to install and construct the Utilities and Improvements in the Development Area and other areas;

AND WHEREAS the electric and natural gas distribution systems shall be constructed and installed by the City at no cost to the City upon the Developer entering into separate installation agreements with the City;

NOW THEREFORE THIS AGREEMENT WITNESSETH AND THE PARTIES HERETO AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement, the following words or phrases have the meanings set out below:

(a) "City" shall mean the City of Medicine Hat;

(b) "City Installed Utilities and Improvements" shall mean the gas system and electrical system installed in the Development Area and other areas by the City pursuant to installation agreements between the City and the Developer;

(c) "Construction Completion Certificate" shall mean a Construction Completion Certificate in the form specified in the Servicing Standards;

(d) "Dedicated Utilities and Improvements" shall mean the Developer Installed Utilities and Improvements to be taken over by the city under the FAC process which are constructed and installed outside the Development Area on lands owned or to be owned by the City and those Developer Installed Utilities and Improvements constructed or installed in utility rights-of-way granted to the City;

(e) "Dedicated Utility or Improvement" shall mean one of the Dedicated Utilities and Improvements.

(f) Developer Installed Utility or Improvement" shall mean one of the Developer Installed Utilities and Improvements.

(g) "Detailed Plans and Specifications" shall mean all plans, profiles and specifications as required by the Servicing Standards for the Utilities and Improvements together with such additional plans, profiles and specifications as required by the Manager;

(h) "Developer Installed Utilities and Improvements" shall mean all Utilities and Improvements shown on the Detailed Plans and Specifications, whether inside the Development Area or in other areas, other than the City Installed Utilities and Improvements.

(i) "Developer's Consulting Engineer" shall mean the professional engineer retained by the Developer;

(j) "Development Area" shall mean the lands described in **Schedule "A"**;

(k) "Final Acceptance Certificate" or "FAC" shall mean a Final Acceptance Certificate in the form specified in the Servicing Standards;

(l) "Listed Utilities and Improvements" shall mean those utilities and improvements listed in **Schedule "F"** for which cost sharing is provided;

(m) "Maintenance" shall mean all maintenance, repairs and replacements to the Dedicated Utilities and Improvements which may become necessary from any cause whatsoever including, but not limited to, defects in materials or workmanship and anything impeding the proper functioning of the utility or improvement, such that the Dedicated Utilities and Improvements are kept fully operational, to the City's satisfaction, at all times;

(n) "Maintenance Period" shall mean the maintenance period set out in Section 1 of the Servicing Standards or such longer period, up to an additional two (2) years, as determined by the Manager if:

i) any Dedicated Utility or Improvement is required to be maintained, repaired or replaced after issuance of the Construction Completion Certificate; or

ii) any Dedicated Utility or Improvement is disturbed during Maintenance of any Utility or Improvement.

(o) "Manager" shall mean the City employee responsible for agreements with developers for the servicing of land, or that employee's delegate;

(p) "Revised Detailed Plans and Specifications" shall mean plans, profiles and specifications showing any changes to the approved Detailed Plans and Specifications that are proposed by the Developer or required by the Manager;

(q) "Servicing Standards" shall mean the Municipal Servicing Standards of the City of Medicine Hat in force on the date of this Agreement;

(r) "Utilities and Improvements" shall mean the utilities, improvements and landscaping shown on the Detailed Plans and Specifications.

2. DEVELOPMENT

2.1 AUTHORIZATION TO DEVELOP

(1) The Developer is hereby authorized, subject to the terms and conditions of this Agreement, to service the Development Area.

(2) The Developer shall at its cost, for the purpose of servicing the Development Area, diligently commence and carry through to completion the installation of all Developer Installed Utilities and Improvements strictly in accordance with the provisions of this Agreement.

(3) The Developer shall enter into installation agreements with the City for the City Installed Utilities and Improvements and shall pay to the City all amounts required by such installation agreements.

(4) The Developer shall, at its cost, arrange and pay for the proper installation of telephone and cablevision utilities for the Development Area.

2.2 CONDITIONS TO BE SATISFIED BEFORE COMMENCING

The Developer shall not commence the servicing of the Development Area until the Developer:

(a) Obtains written approval from the Manager. In order to obtain approval, the Developer shall apply in writing to the Manager and shall provide:

i) three (3) copies of all required approvals and supporting information from government and regulatory authorities having jurisdiction over the servicing of the Development Area;

ii) three (3) copies of the installation agreements for the City Installed Utilities and Improvements; and

iii) any other relevant information required by the Manager.

(b) Without limiting the generality of Paragraph 2.2.1, the Manager may refuse to grant approval in the event the Developer has not provided to the Manager:

i) the Letter of Credit required under this Agreement;

ii) evidence satisfactory to the Manager that the insurance required under this Agreement, including Worker's Compensation Act coverage, is in place at the date of signing

iii) evidence satisfactory to the Manager that all off-site levies have been paid to the City as per the city's offsite levy bylaw..

iv) evidence satisfactory to the Manager that all other amounts payable by the Developer to the City under this Agreement have been paid.

2.3 MATERIALS AND WORKMANSHIP

(1) The Developer shall retain the services of skilled and experienced professional architects, engineers, surveyors, technicians, inspectors and testing laboratories as may reasonably be required in order to design and carry out the work required under this Agreement.

(2) The Developer shall retain the services of skilled and experienced contractors as may reasonably be required in order to carry out the work required under this Agreement.

(3) The Developer agrees that the Developer Installed Utilities and Improvements shall be constructed in a good and workmanlike manner and that all materials used and all work performed by the Developer pursuant to this Agreement shall comply fully with:

i) the provisions of this Agreement including without limitation the special conditions set out in **Schedule "B"**, if any;

ii) the Servicing Standards;

iii) the Detailed Plans and Specifications approved by the Manager;

iv) all reasonable requirements of the Manager.

(4) For purposes of interpretation, the following rules shall apply:

i) The Servicing Standards shall govern over the Detailed Plans and Specifications; and

ii) The terms and conditions set out in this Agreement, including the special conditions contained in **Schedule "B"** shall govern over the Servicing Standards and the Detailed Plans and Specifications.

(5) If any work or materials does not comply fully with the requirements of Paragraph 2.3.3, the Manager may stop any further work and order the repair or the removal and replacement of all unsatisfactory work and materials.

2.4 ACCESS

The Developer shall grant free and uninterrupted access to any and all parts of the Development Area and other areas where work is to be carried out by the Developer pursuant to this Agreement:

(a) To the City, its representatives and employees for the purposes of making inspections and surveys, taking samples of materials being used in the work and constructing and installing the electric and natural gas systems; and

(b) To the representatives and employees of the telephone and cablevision utilities for the purpose of installing communications and television facilities in conjunction with the electric distribution system.

2.5 **TESTS**

The Developer shall, at no expense to the City, carry out:

(a) tests and inspections required by the Servicing Standards; and

(b) such additional tests and inspections as may be required by the Manager.

2.6 **SEQUENCE OF SERVICE INSTALLATION**

The Developer shall install the Developer Installed Utilities and Improvements in the sequence provided for in the Servicing Standards.

3. PLANS

3.1 **CHANGES IN PLANS AND SPECIFICATIONS**

(1) If the Manager determines that the Detailed Plans and Specifications approved by the Manager were approved in error, the Manager, in his or her discretion, may require the Detailed Plans and Specifications to be revised. The Developer shall submit at least seven (3) copies of the Revised Detailed Plans and Specifications showing the required changes and obtain the written approval of the Manager. Unless otherwise directed by the Manager, the Developer shall, without recourse against the City, cease work under this Agreement until the Revised Detailed Plans and Specifications are approved by the Manager.

(2) If, during the progress of the work, the Developer proposes changes to the Detailed Plans and Specifications approved by the Manager, the Developer shall submit at least seven (3) copies of the Revised Detailed Plans and Specifications showing the proposed changes and obtain the written approval of the Manager.

3.2 COST OF PLANS AND SPECIFICATIONS

The cost of preparing and supplying all plans, profiles and specifications referred to in this Agreement shall be borne by the Developer.

4. UTILITY RIGHT-OF-WAY

4.1 AGREEMENTS

(1) The Developer shall, at its expense, grant or cause to be granted to and registered at Alberta Land Titles, in favour of the City and the local telephone and cablevision utilities, rights-of-way for all utility rights-of-way shown on the utility right-of-way plans attached as **Schedule "D"** to this Agreement. The Developer shall, at the Developer's own expense, do the following immediately upon registration at Alberta Land Titles of the utility right-of-way plans:

i) The Developer shall prepare and execute such utility right-of-way agreements as are required by the City in the form acceptable to the City; and

ii) The Developer shall cause such Utility Right-of-way Agreements to be registered as a first charge against the lands against which such utility rights-of-way are required subject only to the prior registration of the instruments listed in **Schedule "E"**.

(2) The Utility Right-of-Way Plans attached as **Schedule "D"** have been prepared on the express understanding that all other utility rights-of-way required for the proper or intended functioning of the Utilities and Improvements have been obtained. The Developer agrees that if such other utility rights-of-way have not been obtained as of the date of this Agreement, it shall promptly grant or cause to be granted to the City and the local telephone and cablevision utilities such utility rights-of-way in the same manner and on the same conditions provided for the utility rights-of-way shown on **Schedule "D"** to this Agreement.

5. SECURITY AND INSURANCE COVERAGE

5.1 SECURITY

(1) Immediately upon execution of this Agreement, the Developer shall, at the Developer's sole expense, provide to the City security in the form of a letter of credit or a subdivision bond in accordance with the following terms:.

i) In the case of a letter of credit, it shall be auto renewable, unconditional and irrevocable, from a chartered bank with a branch office in Medicine Hat, Alberta and in a form satisfactory to the City. The amount of the letter of credit shall be One hundred (100%) of the total estimated cost of all the Utilities and improvements as set out in Schedule "C".

ii) In the case of a subdivision bond, it shall be for one hundred percent (100%) of the total estimated cost of all the Utilities and Improvements as set out in Schedule "C" and shall be in a form and from a bonding company satisfactory to the City.

iii) The purpose of the security is to ensure performance of the Developer's obligations under this Agreement. The Developer shall ensure that the security remains in force until the warranty period is complete and all Final Acceptance Certificates have been issued for dedicated Utilities and Improvements or until the final inspection is approved by the Manager for the Developer Installed Utilities and Improvements.

(2) The estimated costs set out in **Schedule "C"** are estimates only and do not necessarily imply approval by the Manager of a particular design or specific materials or methods of construction to be used by the Developer in carrying out the work.

(3) In addition to any other remedy the City may have available, the City may draw upon the letter of credit provided to it by the Developer at any time during which the Developer is in default of the terms and conditions of this Agreement, for the purpose of completing the work to be performed by the Developer pursuant to this Agreement, maintaining such work as the Developer is required to maintain pursuant to this Agreement, collecting payment of any amount which the Developer is obligated to pay to the City pursuant to this Agreement or otherwise fulfilling the Developer's obligations pursuant to this Agreement.

5.2 INSURANCE

Without restricting the generality of Paragraph 6.1 herein, the Developer shall, at its expense, provide and continuously maintain in a form satisfactory to the City, the following types of insurance:

(a) Commercial General Liability Insurance with an insurer licensed in the Province of Alberta for a limit of liability not less than Five Million Dollars ($5,000,000) with respect to bodily injury, death, and property damage applicable to all activities either done or omitted by the Developer in connection with this agreement, and insuring or including but not limited to:

i) Non Owned Automobiles
ii) Products and Completed Operations Liability
iii) Personal Injury
iv) Blanket Written Contractual
v) Cross Liability
vi) Sudden & Accidental Pollution
vii) City of Medicine Hat as an Additional Insured

(b) Owned and/or Leased Automobile (S.P.F. No. 1) insurance (if applicable) with a minimum of Two Million Dollars ($2,000,000) with respect to Section "A" Third Party Liability for each occurrence and there shall be no aggregate limit of insurance.

(c) *"Environmental Impairment Liability insurance at the City's option if required".*

The insurance policy or policies referenced in this article shall contain an undertaking by the Developer's insurers to notify the City in writing at the address set out in this Agreement not less than thirty (30) days prior to any material change, cancellation or termination of the policy or policies.

This protection shall include, but not be limited to the Developer's contingent liability with respect to the activities of anyone, including contractors or sub-contractors, or anything done or omitted to be done, pursuant to this Agreement.

The insurance specified in this article shall be primary, non-contributing with, and not in excess of any other insurance available to the City. The required insurance coverage may only be terminated once all Final Acceptance Certificates have been issued or final inspection has been carried out by the manager under this Agreement.

5.3 WORKER'S COMPENSATION ACT

The Developer shall comply with all requirements of the *Worker's Compensation Act* RSA 2000 Chapter W-15.

6. INDEMNITY CLAUSES

6.1 DEVELOPER TO INDEMNIFY CITY

(1) The Developer shall indemnify, defend and hold harmless the City, its officers, servants, employees, agents, contractors, sub-contractors and elected officials from and against any and all claims, damages, actions, causes of action, suits, judgements, costs (including solicitor and client costs) and expenses whatsoever brought against, suffered, or incurred by them arising out of or attributable to any act or omission of the Developer, its representatives, employees, contractors or sub-contractors pursuant to this Agreement.

(2) Without restricting the generality of Paragraph 7.1.1, the Developer shall take all necessary steps to remove any lien filed against any City property by reason of the work carried out by the Developer pursuant to this agreement.

7. CONSTRUCTION COMPLETION CERTIFICATES

7.1 CONSTRUCTION COMPLETION CERTIFICATES

As each Dedicated Utility or Improvement is completed, the Developer shall submit to the Manager four (4) copies of a proposed Construction Completion Certificate duly signed by the Developer and the Developer's Consulting Engineer for the Dedicated Utility or Improvement together with such information and documents required by the Servicing Standards. The Manager shall make an inspection of the Dedicated Utility or Improvement within one (1) month from the date of receipt of the proposed Construction Completion Certificate. The Manager may extend the one (1) month period by such additional time as is required to carry out a proper inspection and shall give written notice to the Developer of any such extension.

7.2 SIGNING OF CONSTRUCTION COMPLETION CERTIFICATES

If upon completion of an inspection pursuant to Paragraph 7.1, the Manager is satisfied that the Dedicated Utility or Improvement has been completed and information and documents have been submitted, as required under this Agreement, the Manager shall sign and issue the Construction Completion Certificate. If, however, upon carrying out an inspection pursuant to Paragraph 7.1, defects or deficiencies in the Dedicated Utility

or Improvement are discovered, or if information, or documents required by the Servicing Standards have not been submitted or have been submitted in an unsatisfactory form, the proposed Certificate shall be returned to the Developer unsigned with a report of the defects and deficiencies listed thereon or attached thereto. Upon rectification of the listed defects and deficiencies, the Developer shall resubmit the documents required pursuant to Paragraph 7.1 and the provisions of Paragraphs 7.1 and 7.2 shall then apply to the resubmitted documents.

7.3 **CERTIFICATION**

The Developer shall submit to the Manager written certification, signed and sealed by the Developer's Consulting Engineer, certifying that the Developer Installed Utilities and Improvements other than the Dedicated Utilities and Improvements have been constructed in compliance with the Servicing Standards, the Detailed Plans and Specifications, the requirements of the Manager and this Agreement.

7.4 **COMBINED CONSTRUCTION COMPLETION CERTIFICATES**

The Manager may after consulting with the developer direct that a single Construction Completion Certificate be issued for all Dedicated Utilities and Improvements or that a Construction Completion Certificate be issued for two or more specified Dedicated Utilities and Improvements.

7.5 **CONDITIONS OF COMPLETION**

The Developer understands and the parties hereto both agree that the Developer Installed Utilities and Improvements shall only be considered "complete" when the requirements of the Servicing Standards, the Detailed Plans and Specifications, and this Agreement in the discretion of the Manager have been fully satisfied.

7.6 **CITY'S RIGHT TO OPERATE AND CONTROL**

From the date of issuance of the Construction Completion Certificate, the City shall have the right and authority to operate and control the Dedicated Utility or Improvement The operation and control of the Dedicated Utility or Improvement by the City shall not relieve the Developer of its duties and obligations pursuant to this Agreement.

7.7 **CONSTRUCTION OF BUILDINGS**

The Developer shall take all reasonable measures to prevent construction of buildings until all Construction Completion Certificates have been issued and the Manager is satisfied that the City Installed Utilities and Improvements have been completed. The Manager may, at the Manager's discretion, allow construction of buildings to commence prior to issuance of all Construction Completion Certificates and completion of City

Installed Utilities and Improvements provided that only minor deficiencies exist and the Manager is satisfied that all necessary steps are being taken to rectify the deficiencies in a timely manner.

8. MAINTENANCE AND FINAL ACCEPTANCE

8.1 DEVELOPER RESPONSIBLE FOR MAINTENANCE

After the issuance of the Construction Completion Certificate, the Developer shall be responsible for any and all Maintenance to the Dedicated Utility or Improvement which may become necessary from any cause whatsoever, up to the date of issuance of the Final Acceptance Certificate for the Dedicated Utility or Improvement.

8.2 MAINTENANCE TO BE CONTINUOUS

The Developer agrees that Maintenance is a continuous operation, which must be carried on until the date of issuance of the Final Acceptance Certificates for the Dedicated Utilities and Improvements. The Final Acceptance Certificates will not be issued until all Maintenance required in the Manager's final inspection reports has been carried out.

8.3 DEVELOPER TO MAINTAIN, REPAIR OR REPLACE

Without limiting the generality of the foregoing, if, during the construction or prior to issuance of the Final Acceptance Certificate, any defects or deficiencies become apparent in the Dedicated Utility or Improvement and the Manager requires Maintenance to be carried out, the Developer shall within a reasonable time cause such Maintenance to be carried out, failing which or should an emergency exist, the City may carry out the Maintenance and recover the cost thereof from the Developer.

8.4 MAINTENANCE OBLIGATIONS FOR UTILITIES AND IMPROVEMENTS NOT DEDICATED TO THE CITY

In addition to the Developer's obligations to maintain Dedicated Utilities and Improvements, the Developer shall be responsible for any and all maintenance of all other Developer Installed Utilities and Improvements and to indemnify the City regarding any claims related to such maintenance.

8.5 FINAL ACCEPTANCE CERTIFICATE

(1) A Final Acceptance Certificate for a Dedicated Utility or Improvement shall not be issued earlier than the expiry of the Maintenance Period.

(2) Two (2) months prior to the expiration of the Maintenance Period for the Dedicated Utility or Improvement or earlier, depending upon existing or anticipated weather conditions, the Developer and the Developer's Consulting Engineer shall carry out a complete inspection of the Dedicated Utility or Improvement and shall promptly correct any defects or deficiencies noted during the inspection. Upon correcting all defects and deficiencies and submitting as-built drawings, information and other documents required by the Servicing Standards, the Developer shall submit four (4) copies of a proposed Final Acceptance Certificate for the Dedicated Utility or Improvement signed by the Developer and its Consulting Engineer to the Manager.

(3) The Manager shall make an inspection of the Dedicated Utility or Improvement within one (1) month of the receipt of the proposed Final Acceptance Certificate or such longer period as is determined to be required by the Manager to permit a proper inspection, and if as a result of the inspection the Manager is satisfied that the Dedicated Utility or Improvement is in satisfactory condition, that the as-built drawings, information and other documents have been submitted in satisfactory form, and that all other requirements of the Servicing Standards have been satisfied, the Manager shall sign and issue the Final Acceptance Certificate. In the event that defects or deficiencies in the Dedicated Utility or Improvement are observed during the course of the inspection or if the as-built drawings, information and other documents have not been submitted or have been submitted in an unsatisfactory form, or any other requirements of the Servicing Standards have not been satisfied, all copies of the proposed Final Acceptance Certificate shall be returned to the Developer unsigned with a report of the defects and deficiencies listed thereon or attached thereto. Upon rectification of the listed defects and deficiencies, the Developer shall resubmit the documents required pursuant to Paragraph 8.5.2 and Paragraph 8.5.3 shall then apply to the resubmitted documents.

(4) The Manager may after consulting with the developer direct that a single Final Acceptance Certificate be issued for all Dedicated Utilities and Improvements or that a Final Acceptance Certificate be issued for two or more Dedicated Utilities and Improvements.

(5) Issuance of the Final Acceptance Certificate by the Manager ends the Maintenance obligation of the Developer for the Dedicated Utility or Improvement, but shall not relieve the Developer of any other obligations pursuant to this Agreement nor of the obligation for maintenance of all other Developer Installed Utilities and Improvements.

9. FINANCIAL MATTERS

9.1 OFF-SITE LEVIES

Immediately upon execution of this Agreement, the Developer shall pay to the City the off-site levies set out in **Schedule "C"** to this Agreement.

9.2 COST SHARING

(1) Subject to Paragraph 9.2.2, the City shall not be liable to reimburse the Developer for any portion of the costs of constructing and installing Utilities and Improvements which may benefit lands other than the Development Area.

(2) The Developer may be entitled to recover cost sharing for Listed Utilities and Improvements in accordance with the provisions of **Schedule "F"** to this Agreement. Notwithstanding the provisions of **Schedule "F"**, the Developer agrees that the City shall have no obligation to pay any monies to the Developer unless such monies have been recovered by the City from the benefiting landowner or developer.

(3) Immediately upon execution of this Agreement, the Developer shall pay to the City the Developer's contribution for cost sharing of existing utilities and improvements outside the Development Area as set out in **Schedule "G"**.

(4) Without limiting the generality of the indemnity provided in Paragraph 6.1 of this Agreement, the Developer shall indemnify and hold harmless the City against any and all claims, demands, actions, causes of action and suits for reimbursement of monies for the construction and installation by any other developer of utilities and improvements outside the Development Area, to the extent that such utilities and improvements benefit the Development Area.

10. GENERAL MATTERS

10.1 DEVELOPER RESPONSIBILITY

Notwithstanding any approval of the Manager, the Developer has sole responsibility for and remains responsible for the design, construction and maintenance of the Developer Installed Utilities and Improvements in accordance with the provisions of this Agreement.

10.2 DEFAULT BY DEVELOPER

(1) In the event of default by the Developer under this Agreement, where the default continues for a period of ten (10) days after notice in writing specifying the nature of such default has been given by the City to the Developer in accordance with

Paragraph 10.15 or where rectification of the default will reasonably take longer than ten (10) days and rectification has not been commenced, the City shall have the right to terminate this Agreement or to terminate the Developer's right to do work under this Agreement and without limiting any other rights and remedies the City shall, at its sole option, have the right to draw upon the security held by the City, proceed to complete the work to be performed hereunder and recover the cost of completing the work from the Developer.

(2) In the event of an emergency, as determined in the sole discretion of the Manager, the City shall be at liberty to take such reasonable measures as the Manager deems necessary to rectify a default by the Developer without giving prior notice to the Developer. All costs of such measures shall be paid by the Developer to the City. The Manager shall, within forty-eight (48) hours notify the Developer of the measures which have been taken by the City.

(3) The City may draw upon the security held by the City without giving prior notice to the Developer:

i) to collect the costs of emergency measures taken under paragraph 10.2.2, and

ii) if the security is scheduled to expire and the City considers it advisable to draw on the security in order to maintain security for the performance of the Developer's obligations under this Agreement.

10.3 **ACCESS AFTER BUILDINGS OCCUPIED**

The Developer shall at all times, after any buildings within the Development Area are occupied in whole or in part, provide and continuously maintain unrestricted vehicular and pedestrian access to the buildings and all Utilities and Improvements.

10.4 **OBLIGATIONS DURING CONSTRUCTION**

(1) The Developer shall take reasonable measures to control dust and dirt in the Development Area and adjacent areas where work is to be carried out by the Developer pursuant to this Agreement so that dust and dirt originating therein shall not under normal circumstances be conveyed therefrom by any means whatsoever and cause annoyance or become a nuisance to adjoining property owners and others in the vicinity of the Development Area and such adjacent areas; and in the event that the Developer fails to comply with this requirement the City shall be at liberty to take such reasonable measures as the Manager deems necessary to abate any annoyance or nuisance caused to adjoining property owners and others in the vicinity of the Development Area and such adjacent areas caused by such dirt and dust. All reasonable costs of such

measures shall be paid by the Developer to the City. Provided, however, that before any measures are taken by the City in this regard, the Manager shall first attempt to notify the Developer, by telephoning the Developer or its authorized representative, of the dust and dirt problem and if the Manager is not able to contact the Developer or its authorized representative or if upon contacting the Developer or its authorized representative, the Developer fails to take immediate measures to control the dust and dirt from the Development Area and such adjacent areas, then the Manager shall take such reasonable measures and shall, within forty-eight (48) hours notify the Developer or its authorized representative in writing of the measures which have been taken. The Developer shall provide the Manager with the name, address and telephone number of its authorized representative for purposes of notice pursuant hereto.

Without limiting the provision of Paragraph 6.1, in the event the City takes action pursuant to this paragraph, the City shall be entitled to draw upon the security held by the City to pay for any measures taken by the City.

(2) The Developer shall, at no expense to the City, during the servicing of the Development Area, arrange for the disposal of

i) all storm water in and from the Development Area and any other lands where work is to be carried out by the Developer pursuant to this Agreement; and

ii) all storm water which may be cut off from its natural drainage course by the work carried out pursuant to this Agreement;

to the satisfaction of the Manager, and without limiting the generality of Paragraph 6.1, save harmless the City and others from any liabilities, loss or damages which the City or others may sustain as a result of the failure of the Developer to comply with this provision. Without limiting the foregoing, the Developer shall comply with the requirements of the Manager, Alberta Environment and any other authorities having jurisdiction with respect to the disposal of such storm water.

(3) When the water supply within the Development Area, or any portion thereof, has been turned on and is being used for domestic or other purposes, the Developer shall not shut off the water supply to any water mains or fire hydrants.

(4) During construction and Maintenance, the Developer shall be responsible for:

i) providing fencing, access control, security, water, waste water disposal, solid waste disposal and debris control so that all areas in which work is

carried out are maintained in a safe, neat and secure condition at all times;

ii) obtaining such temporary easements as may be required and in a form acceptable to the Manager; and

iii) providing detours for traffic, acceptable to the Manager, if use of existing roadways is disrupted by the construction.

(5) The Developer shall, during the construction and Maintenance of the Developer Installed Utilities and Improvements pursuant to this Agreement, minimize damage to, disturbance of or interference with existing municipal utilities and improvements. Upon completion of such work, the Developer shall restore all damaged or disturbed municipal utilities and improvements to the condition, as nearly as practical, in which they existed prior to the work and to the satisfaction of the Manager.

(6) At all times during construction and Maintenance of the Developer Installed Utilities and Improvements, the Developer shall maintain or provide alternate means of providing services, including access for emergency vehicles and garbage removal, to premises receiving services through existing municipal utilities and improvements that are disrupted by the Developer in carrying out the work under this Agreement.

(7) The Developer shall comply with all federal, provincial and municipal laws at all times during construction and Maintenance of the Developer Installed Utilities and Improvements. Without limiting the generality of the foregoing, the Developer shall ensure that a Prime Contractor, as required by the *Occupational Health and Safety Act*, is designated for all work sites and agrees to be the Prime Contractor in the case of all work carried out on City owned lands.

10.5 **OTHER WORK**

The Developer further acknowledges that the proper or intended functioning of the utilities or improvements to be constructed or installed pursuant to this Agreement may depend upon the construction and installation of utilities or improvements on other lands in the area, whether or not Service Agreements have been entered into with respect to such utilities or improvements ("required additional utilities or improvements"). The General Manager of Planning and Development may refuse to sign or approve a Construction Completion Certificate or Final Acceptance Certificate relating to a utility or improvement until such time as utilities or improvements that are in his opinion required additional utilities or improvements, including reasonable oversizing, have been constructed and installed.

10.6 **INFORMATION TO PUBLIC**

The Developer shall install public information signage regarding the Development Area in accordance with the requirements of the Servicing Standards.

10.7 **TIME FOR COMPLETION**

(1) Except where otherwise provided in this Agreement, the Developer shall complete all work required pursuant to this Agreement within two (2) years of the date of this Agreement.

(2) Upon the request in writing of the Developer, the Manager may, in the Manager's sole discretion, grant an extension of the time set out in Paragraph 10.6.1 for completion of the work required pursuant to this Agreement.

(3) In granting an extension of time pursuant to Paragraph 10.6.2 the Manager, acting reasonably, may impose conditions or requirements, including conditions requiring the Developer to construct, install, add to, alter, repair, maintain or replace Utilities and Improvements which the Developer would not otherwise be required to construct, install, add to, alter, repair, maintain or replace, as the case may be, pursuant to this Agreement.

10.8 **PAYMENTS**

(1) Except where otherwise provided in this Agreement, the Developer agrees to pay any monies owing to the City within thirty (30) days of the date of the invoice therefor from the City to the Developer.

(2) The City shall not be required to connect the electric, natural gas and water systems in the Development Area to the City's distribution systems and to render the systems operational, until such time as the Developer has made full payment to the City of all amounts owing to the City pursuant to this Agreement.

(3) In the event that any monies payable by the Developer to the City are not paid within the time period prescribed in this Paragraph or elsewhere in this Agreement, interest shall be payable on the said monies at the rate of seven percent (7%) per annum from the end of the period prescribed for payment to the date of payment.

10.9 **WAIVER**

A waiver by either party of the strict performance by the other of any term or condition of this Agreement shall be in writing and shall not of itself constitute a waiver of any

subsequent breach of such term or condition or of any other term or condition of this Agreement.

10.10 **TIME**

Time shall be of the essence of this Agreement.

10.11 **AGREEMENT IS NOT A PERMIT**

Notwithstanding Paragraph 2.1, or any other provision of this Agreement, this Agreement shall not be deemed or interpreted to constitute a Development Permit or any other permit whether issued by the City or otherwise. Without limiting the generality of the foregoing, the Developer acknowledges and agrees that it shall be responsible to comply with all conditions imposed upon development permits or subdivision approvals issued for the Development Area, including conditions requiring the Developer to enter into development agreements or service agreements, and the Developer further acknowledges and agrees without limitation, that it shall be responsible to pay for, or construct, all utilities and improvements required by the City with respect to developments in the Development Area.

10.12 **CHARGE AND CAVEAT**

(1) This Agreement is and shall be of the same force and effect and to all intents and purposes as a covenant running with the land and shall extend to, be binding upon, and ensure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

(2) The Developer agrees that all monies payable to the City pursuant to this Agreement, including costs incurred by the City in carrying out the Developer's obligations under this Agreement, shall constitute a registrable charge and encumbrance against the Development Area and the Developer further agrees that the City shall be entitled, with respect to such monies, to all powers and remedies applicable to an encumbrancee by the *Land Titles Act* RSA 2000.

(3) The Developer agrees that the City may register a caveat in respect of this Agreement against the certificates of title to the Development Area. Upon request of the City, the Developer will at its expense obtain such postponements or discharges of prior registered instruments required to ensure that the caveat registered by the City is registered as first charge against the certificates of title to the Development Area subject only to the Utility Right-of-Way Agreements and registered instruments referred to in **Schedule "E"**.

10.13 **AGREEMENT TO BE EFFECTIVE ONLY ON SIGNING BY BOTH PARTIES**

This Agreement shall not be in force or bind any of the parties hereto until executed by all the parties named herein.

10.14 **WHOLE AGREEMENT**

The Developer acknowledges that:

a) the Schedules attached to this Agreement form part of this Agreement and the Developer is obligated to perform any and all obligations contained in the Schedules; and

b) this Agreement, including the Schedules, is the whole agreement between the parties and that there are no representations, warranties, covenants or obligations of any kind other than those expressly set out in this Agreement.

10.15 **INTERPRETATION**

(1) In reading and construing this Agreement the word "Developer" and all words pending thereon or relating thereto shall be read and construed as in the plural instead of the singular number if there be more than one developer named and in such case this Agreement shall be deemed to bind the developers severally as well as jointly,

(2) This Agreement shall be governed by the laws of Alberta and any issue or dispute shall be resolved by a Court of competent jurisdiction in Alberta.

10.16 **NOTICE**

Any notice required to be given under this Agreement may be given by sending it by facsimile transmission or electronic transmission addressed to:

a) In the case of the City:
City of Medicine Hat
Attention: Manager of Development Services
580 First Street SE
Medicine Hat, Alberta
T1A 8E6
Fax No.: (403) 502-8038
Email: pbe@medicinehat.ca

b) In the case of the Developer:

_____
Attention:_____
Fax No.: _____
Email: _____
Such facsimile and electronic addresses may be changed by either party giving notice to the other party.

10.17 **RECORDS AND PERSONAL INFORMATION**

This Agreement and any records or personal information in relation to this Agreement are subject to the *Freedom of Information and Protection of Privacy Act*, RSA 2000 Chapter F-25.

IN WITNESS WHEREOF the Developer and the City have caused to be hereto affixed their respective corporate seals, attested to by their respective proper officials in their behalf as at the day and year first above written.

(The "Developer")

Per: _____

Per: _____

CITY OF MEDICINE HAT

Per: _____

Per: _____

SCHEDULE “A”

Development Area

SCHEDULE “B”

Special Conditions

SCHEDULE “C”

Security and Other Costs Payable by the Developer

SCHEDULE “D”

Utility Right-of-Ways

SCHEDULE "E"

Instruments Registered on Title Permitted Prior to City Utility Right-of-Way

SCHEDULE "F"

COST SHARING

1. It is understood and agreed that the Developer shall construct and install or pay for the construction and installation, at no expense to the City, of the Utilities and Improvements listed in Paragraph 9 of this Schedule and it is agreed that the Utilities and Improvements so listed may benefit lands outside the Development Area, that shall be referred to as "Benefiting Lands".

2. Subject to Paragraphs 4 to 8, the City shall enter into an agreement with an applicant for a development permit or subdivision approval with respect to the Benefiting Lands requiring the applicant to pay to the City the amount set out in this Schedule and hereinafter referred to as the "Cost Sharing Contribution".

3. Subject to Paragraphs 4 to 8, the City shall collect the Cost Sharing Contribution pursuant to an agreement entered into pursuant to Paragraph 2 and shall within thirty (30) days of collection thereof pay the Cost Sharing Contribution to the Developer.

4. a. Paragraphs 2 and 3 shall not apply to:

   i. A development for which a development permit has been issued, or

   ii. A subdivision for which subdivision approval has been granted,

   as of the date of this Agreement.

   b. Paragraphs 2 and 3 shall not apply to

   i. a development with respect to which an application for a development permit, or

   ii. a subdivision with respect to which an application for subdivision approval, is made more than ten (10) years after the date of this Agreement.

   c. For purposes of Paragraph 4(a), subdivision approval shall be deemed to have been granted upon execution of a service agreement in the case of any subdivision, the approval for which is granted on condition that a service agreement be entered into with the City.

   d. The Cost Sharing Contribution may be collected once only in respect of a parcel of land.

5. The City shall be relieved of its duties and obligations pursuant to Paragraphs 2 and 3

   a. if it is not entitled at law or for any other reason beyond its reasonable control to require that an agreement be entered into pursuant to Paragraph 2, or

   b. if the total amount of the Cost Sharing Contribution paid to the Developer pursuant to Paragraph 3 equals or exceeds the amount set out in this Schedule as the Maximum Cost Sharing Contribution.

6. It is understood and agreed that the Cost Sharing Contribution shall not be payable with respect to any lands dedicated pursuant to the *Municipal Government Act* RSA 2000 Chapter M-26, as environmental reserve.

7. It is further understood and agreed that the Cost Sharing Contribution has been calculated by dividing the Estimated Cost of Constructing and Installing each of the Listed Utilities and Improvements set out in this Schedule by the Estimated Total Area of the Benefiting Lands set out in this Schedule and the area of the Development Area. The City makes no representation or warranty as to the actual cost of constructing and installing the Listed Utilities and Improvements or the actual area of the Benefiting Lands and, for greater certainty, it is agreed by the Developer

   a. that the City shall be under no obligation to require that any lands outside the Development Area be serviced by the Listed Utilities and Improvements; and

   b. that the City's responsibility to reimburse the Developer for the cost of constructing and installing the Listed Utilities and Improvements shall be limited to payment of the Cost Sharing Contribution actually collected, notwithstanding:

      i. the actual area of the Benefiting Lands is less than the Estimated Total Area of the Benefiting Lands set out in this Schedule; or

      ii. the actual cost of constructing and installing the Listed Utilities and Improvements exceeds the Estimated Cost of Constructing and Installing the Listed Utilities and Improvements set out in this Schedule.

8. Notwithstanding any other provision of this Agreement, the City shall not be required to collect or pay interest on any Cost Sharing Contribution collected and paid to the Developer pursuant to Paragraph 3, provided always that if the City fails to pay the Cost Sharing Contribution to the Developer within thirty (30) days of collection thereof, the City shall pay interest thereon at the rate of seven (7%) percent per annum calculated

from the thirtieth (30th) day after collection thereof to the date of payment to the Developer.

9. Listed Utilities and Improvements

10. Benefiting Lands

11. Estimated Total Area of Benefiting Lands and the area of the Development Area for each of the Listed Utilities and Improvements

12. Estimated Cost of Constructing and Installing the Listed Utilities and Improvements

13. Cost Sharing Contribution for the Listed Utilities

14. Maximum Cost Sharing Contribution

SCHEDULE “G”

Developer’s Cost Sharing Contribution

SCHEDULE “H”

Approved Plans