

PURCHASE AGREEMENT

THIS AGREEMENT dated _____, 2019.

BETWEEN:

CITY OF MOOSE JAW, a municipal corporation continued under *The Cities Act* (Saskatchewan)

(the "**City**")

AND:

CARPERE MOOSE JAW INDUSTRIAL PARK CORP., a business corporation incorporated pursuant to the federal laws of Canada

(the "**Purchaser**")

WHEREAS the City is the registered and beneficial owner of the Property (as hereinafter defined);

AND WHEREAS the Purchaser wishes to purchase the Property from the City, and the City wishes to sell the Property to the Purchaser, on and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration now paid and delivered by each party to the other (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

PART I INTERPRETATION

1.1 DEFINITIONS

In this Agreement, capitalized terms used but not otherwise defined shall have the following meanings:

- a) "**Adverse Conditions**" means that, in the reasonable opinion of the City or the Purchaser, the results of the concept plan, including but not limited to, the geotechnical report, environmental site assessment, biophysical assessment or heritage screening, all to be prepared by the City, are not satisfactory;
- b) "**Agreement**", "this Agreement", "hereto", "hereof", "herein", "hereunder", "hereby" and similar expressions refer, unless otherwise expressly stated, to this Agreement, including any schedules hereto, as it may be supplemented or amended from time to time.
- c) "**Applicable Laws**" means, in relation to any person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of all federal, provincial, municipal and local governmental bodies (whether administrative, legislative, executive or otherwise) and judgments, orders, awards and decrees of all courts, arbitrators, commissions or bodies exercising similar functions in actions or proceedings in which the person in question is a party or by which it is bound or having application to the transaction or event in question;
- d) "**City Council**" means the Council of the City;

- e) **"Closing"** means the completion and consummation of the purchase and sale transaction provided for in this Agreement on the Closing Date;
- f) **"Closing Date"** means October 31, 2019 or such other date as the Parties may otherwise agree to in writing;
- g) **"Force Majeure Event"** or **"Force Majeure"** means any condition, event or circumstance which is unavoidable or beyond a Party's reasonable control including, without limitation, acts of God, acts of public enemies, terrorism, civil disturbance, riots, blizzards, blockades, hostilities, epidemics, lightning, confiscation, seizure or order by governmental authority, floods, rockslides, landslides, snowslides, washouts, avalanches, storms, earthquake, fire or explosion, strikes, lockouts, walkouts or other industrial disputes of any Party, war, sabotage, insurrection, derailment, labour shortages, electrical power or fuel shortages, or the act or failure to act of a governmental authority;
- h) **"GST"** means goods and services tax under the *Excise Tax Act* (Canada);
- i) **"Property"** means collectively certain lands owned by the City of Moose Jaw comprising an area of approximately 716 acres, all as described in Schedule A attached hereto, and subject to measurement pursuant to Section 2.2;
- j) **"Purchase Price"** has the meaning ascribed thereto in Section 2.2.

1.2 NUMBER

In this Agreement, the singular includes the plural and vice versa.

1.3 DIVISION OF AGREEMENT AND HEADINGS

The division of this Agreement into parts, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the interpretation of this Agreement.

1.4 CURRENCY

In this Agreement, all currency is in Canadian dollars.

1.5 SEVERABILITY

All of the provisions of this Agreement shall be treated as separate and distinct. If any provision hereof is declared invalid, illegal or unenforceable; the other provisions shall nevertheless remain in full force and effect.

1.6 ENTIRE AGREEMENT

This Agreement (including any schedules hereto) constitutes the entire agreement between the Parties relating to the purchase and sale of the Property and replaces and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written of the Parties, including but not limited to the Offer to Purchase between the Parties dated as of March 26, 2019. The Parties each agree that there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification or amendment of this Agreement shall be binding unless agreed to in writing by each of the Parties.

1.7 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein. The Parties agree that court proceedings that

may be brought by either Party against the other Party under or by virtue of this Agreement shall be brought in a court of competent jurisdiction in the Province of Saskatchewan, and each Party hereby irrevocably submits, and covenants and agrees to submit, to the non-exclusive jurisdiction of such court in the event that such Party is named as a party in any such proceeding.

PART 2 PURCHASE AND SALE

2.1 AGREEMENT OF PURCHASE AND SALE

Subject to the terms and conditions of this Agreement, the City agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the City, on the Closing Date, all of the City's right, title and interest in and to the Property for the Purchase Price free and clear of all encumbrances, excepting the permitted encumbrances listed in Schedule B hereto (collectively, the "**Permitted Encumbrances**").

2.2 CALCULATION OF PURCHASE PRICE

The total purchase price payable for the Property (the "**Purchase Price**"), shall be **SEVEN MILLION ONE HUNDRED AND SIXTY THOUSAND (\$7,160,000.00) DOLLARS** calculated based on the sum of **TEN THOUSAND (\$10,000.00) DOLLARS** per acre of the Property and subject to adjustment based on the actual acreage of the Property to be determined prior to the Closing Date, as follows:

- (a) The actual acreage of the Property shall be conclusively calculated and determined for the purpose of this Agreement by a land surveyor, duly qualified to practice in the Province of Saskatchewan who is designated and paid by the City. The calculation of the acreage of the Property by the said land surveyor shall be final and binding upon the Parties unless demonstrably proven that the said land surveyor was in error by an independent architect.

2.3 PAYMENT OF PURCHASE PRICE

The Purchase Price shall be payable by the Purchaser to the City as follows:

- (a) A deposit of ten (10%) percent of the Purchase Price, being the sum of **SEVEN HUNDRED AND SIXTEEN THOUSAND (\$716,000.00) DOLLARS** (the "**Deposit**"), which the Purchaser has already paid to the City's external legal counsel and the City acknowledges receipt thereof. The Deposit shall be held in trust by the City's external legal counsel, with interest, and maintained in trust by the City's external legal counsel until the Closing Date, and upon closing of the transactions contemplated herein on the Closing Date, the Deposit and any interest accrued thereupon shall be released to the City and credited towards the Purchase Price payable by the Purchaser; and
- (b) The balance of the Purchase Price, subject to the Adjustments set out in section 2.4 herein, shall be paid to the City's external legal counsel on the Closing Date by bank draft, certified cheque, wire transfer, or solicitor's trust cheque.

2.4 ADJUSTMENTS

The adjustments to the Purchase Price (the "**Adjustments**") shall be made as of the Closing Date. The City shall be responsible for all expenses for and entitled to all revenues accrued from the Property for that period ending on the day before the Closing Date. From and including the Closing Date, the Purchaser shall be responsible for all expenses for and shall be entitled to all revenues accruing from the

Property. The Adjustments shall include all operating costs, realty taxes, local improvement rates and charges, water and assessment rates, current rents, prepaid monthly parking charges, prepaid rents and interest thereon (if any), security deposits and interest thereon, current expenses and utility deposits. If the final cost or amount of an item which is to be adjusted cannot be determined at the Closing Date, then an initial adjustment for such item shall be made at the Closing Date, such amount to be estimated by the parties hereto acting reasonably as of the Closing Date on the basis of the best evidence available at the Closing Date as to what the final cost or amount of such item will be. In each case when such cost or amount is subsequently finally determined, the City or Purchaser, as the case may be, shall, within 30 days of such determination, provide a complete statement thereof to the other and within 30 days thereafter the parties hereto shall make a final adjustment as of the Closing Date for the item in question.

2.5 CLOSING PROCEDURE

The parties agree that the closing procedure to be followed shall in all respects follow the usual procedure for closing commercial real estate transactions in Saskatchewan, and, in particular:

- (a) all closing documents shall be delivered in trust on such reasonable trust conditions and undertakings as would customarily be imposed in a similar transaction in Saskatchewan, and with sufficient time to permit registration of a transfer of land with respect to Property (the "**Transfer**") on or prior to the Closing Date or forthwith thereafter, and which shall include the following conditions:
 - (i) conditions regarding the manner in which the Transfer and any other documents permitted or required to be registered hereunder, including for certainty any new financing, are to be submitted to the Saskatchewan Land Titles Office for registration; and
 - (ii) it is specifically agreed that nothing will be complete at the Closing until the Transfer and any other documents permitted or required to be registered hereunder respecting the Property, including for certainty any new financing, are registered and fee simple title to the Property has been issued in the name of the Purchaser; provided that, if the Purchaser has obtained a title insurance policy with respect to the Transfer including a letter of reliance from the title insurer for the benefit of legal counsel representing the parties, completion of registration shall not be required as a condition of release of documents and funds hereunder.
- (b) The preparation of the closing documentation and any discharge of encumbrances against title to the Property which are not Permitted Encumbrances, shall be completed by the City at its expense.
- (c) If the Purchase Price or a portion thereof is not releasable to the City on Closing Date due to delay of registrations of documents at land titles or the registry office and provided the City has delivered such documents to the Purchaser with sufficient time to affect registration by the Closing Date, being at least five (5) Business Days before the Closing Date, the Purchaser shall pay interest to the City at the rate of 3% per annum from and including the Closing Date until the date the Purchase Price is received and is unconditionally releasable to the City. Any amount received or releasable after 1 p.m. Central Standard Time shall be deemed to be received the next day. This provision shall not relieve the Purchaser of its obligations under this Agreement nor shall this provision deprive the City of any of its remedies if the Purchaser fails to perform its obligations under this Agreement. In the event that this provision shall become applicable, time shall continue to be of the essence.

2.6 PAYMENT AND REMITTANCE OF GST

Any GST owing in respect of the Purchase Price shall be remitted to the Receiver General of Canada

in accordance with the *Excise Tax Act* (Canada), as follows:

- (a) if the Purchaser is a "registrant" within the meaning of the *Excise Tax Act* (Canada), the Purchaser shall self-assess and remit any GST payable on the Purchase Price to the Receiver General directly; or
- (b) if the Purchaser is not a "registrant" within the meaning of the *Excise Tax Act* (Canada), the Purchaser shall pay any GST owing in respect of the Purchase Price to the City in addition to the Purchase Price on the Closing Date and the City shall remit such GST to the Receiver General.

Each of the Parties hereby indemnifies and holds the other Party harmless from any liability under the *Excise Tax Act* (Canada) arising as a result of a breach of any obligation of either Party under that Act in relation to this Agreement, together with all losses, costs and expenses incurred by the indemnified party resulting from such a breach. This provision shall survive the Closing and the termination of this Agreement.

2.7 DELIVERIES

Within five (5) business days following the date of this Agreement, the City shall deliver to the Purchaser copies of the following:

- (a) all current surveys, easement and right-of-way plans and other plans relating to the Property in the City's possession or control;
- (b) copies of all tests and inspections and reports thereof relating to the Property, if any, including environmental, geotechnical and soil reports in the City's possession or control; and
- (c) all other documents and materials relating to the Property in the City's possession or control, including the City's existing Concept Plan documentation.

Prior to the Condition Date, the City shall use commercially reasonable efforts to obtain and deliver to the Purchaser reliance letters from third party consulting engineers relating to any environmental, geotechnical or soil reports provided to the Purchaser pursuant to this section 2.7, such reliance letters to be in the form customarily provided by such consulting engineers and failure to obtain and deliver such reliance letter(s) shall not be a default under this Agreement.

The Purchaser agrees that the City is providing such documentary information for purposes of notice only and such documentary information does not constitute a warranty or representation of any kind as to the accuracy or completeness of any of the documentary information or the quality or condition (whether environmental or otherwise) of the Property or the suitability or fitness of the Property for any of the Purchaser's purposes or intended uses whatsoever.

2.8 ENVIRONMENTAL REPORTS

As soon as reasonably practical following the execution and delivery of this Agreement, the City shall, at its sole cost and expense, arrange to have a third party engineering firm complete a Phase I and Phase II Environmental Site Assessment of:

- (a) an area equal to 100 metres surrounding the existing wastewater lagoons within the Property (the "**Lagoon Lands**"); and
- (b) an area equal to 100 metres surrounding the refinery lands located at the intersection of Lorne Avenue and Coteau Street and which area forms part of the Property (the "**Refinery Lands**"),

(the Lagoon Lands and the Refinery Lands hereinafter collectively the "**Subject Areas**")

and prepare reports relating to such assessments (collectively, the "**Environmental Reports**"). The City shall provide the Purchaser with a copy of the Environmental Reports and shall arrange to have the third party engineering consultant provide a letter of reliance addressed to the Purchaser confirming that the Purchaser and its consultants are entitled to use and rely on the Environmental Reports and that the Environmental Reports have been prepared in accordance with current industry practices. The City shall use all commercially reasonable efforts to complete the Environmental Reports by no later than September 30, 2019.

With regard to the Subject Areas, the City and the Purchaser shall review the Environmental Reports and enter into good faith negotiations to identify and implement any remediation solutions as may required and as may be mutually satisfactory to both parties, both acting reasonably. In the event that the City and the Purchaser are unable to identify a mutually acceptable remediation strategy for the Subject Areas and any adjacent areas impacted, the Purchaser and the City may, by mutual agreement, elect to remove those portions of the Subject Areas from the Property purchased by the Purchaser from the City pursuant to this Agreement.

The City and the Purchaser each acknowledge and agree that the Closing Date solely as it pertains to the transfer of the Subject Areas (and by necessary implication, the Condition Date) shall be extended as may be required to facilitate the negotiations contemplated by this Section 2.8 for a maximum time of one hundred and eighty (180) days. If the City and the Purchaser cannot reach an agreement within one hundred and eighty (180) days from the delivery of the Environmental Reports relating to: (i) an acceptable remediation strategy; or (ii) the removal of portions of the Subject Areas from the Property purchased by the Purchaser pursuant to this Agreement, then the Subject Areas shall be removed from the Property being acquired by the Purchaser pursuant to this Agreement and the Purchaser shall have no further liability or obligation to purchase Subject Areas.

2.9 DEPOSIT

The Deposit shall be held in trust by the City's external legal counsel. Any interest accrued thereupon shall be for the benefit of the Buyer and credited towards the balance of the Purchase Price payable on the Closing Date. The City and the Buyer irrevocably authorize and direct the City's external legal counsel that the Deposit shall be dealt with as follows:

- (a) if any of the Purchaser's Conditions Precedent are not waived, satisfied, or removed in the manner and within the time provided in this Agreement, then the Deposit together with the accrued interest thereon, shall forthwith be paid to the Purchaser and in such event, this Agreement shall be null and void and of no further force and effect whatsoever;
- (b) if any of the City's Conditions Precedent are not waived, satisfied, or removed in the manner and within the time provided in this Agreement, then the Deposit together with the accrued interest thereon shall forthwith be paid to the Purchaser and in such event, this Agreement shall be null and void and of no further force and effect whatsoever;
- (c) if following the waiver, satisfaction or removal of the Purchaser's Conditions Precedent, the transaction contemplated by this Agreement is not completed as a result of the default of the Purchaser, the City may retain the sum of Two Hundred Thousand (\$200,000.00) Dollars from the Deposit as a genuine pre-estimate of liquidated damages, with the remaining balance of the Deposit together with all accrued interest on the Deposit to be paid to the Purchaser, and in such event, this Agreement shall be null and void and of no further force and effect whatsoever and the City shall have no other remedies against the Purchaser at law or in equity; and

- (d) if following the wavier, satisfaction or removal of the City's Conditions Precedent, the transaction contemplated by this Agreement is not completed as a result of the default of the City, then the Deposit together with the accrued interest thereon shall forthwith be paid to the Purchaser, and, in addition, the Purchaser, in its sole discretion, may make any other claim against the City at law or in equity.

PART 3 ASSESSMENT AND TAXATION OF PROPERTY

3.1 ASSESSMENT AND TAXATION

The Parties hereby acknowledge and agree that the Property is presently exempt from taxation as a municipally owned and occupied property, but that the City may assess and levy taxes on the Property by supplementary assessment and tax notices from and after the Closing Date. Any such assessment and taxation of the Property shall be carried out in accordance with *The Cities Act* (Saskatchewan) and *The Saskatchewan Assessment Management Agency Act* (Saskatchewan) and shall be prorated effective as of the Closing Date for the balance of the applicable taxation year.

PART 4 REPRESENTATIONS AND WARRANTIES

4.1 REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE CITY

The City hereby represents, warrants, and covenants to the Purchaser (which representations, warranties, and covenants shall, unless specifically indicated to the contrary in this Agreement, be deemed to have been made effective both upon the execution of this Agreement and as at the Closing Date) that:

- a) the City has the full right, power and authority to enter into this Agreement and to sell and transfer the Property to the Purchaser;
- b) upon consummation of the purchase, the City shall convey to the Purchaser a good and marketable title to the Property, free and clear of any and all registered liens, mortgages, charges, encumbrances and other registrations, save and except for the Permitted Encumbrances, including, without limitation:
 - i. the conditions and reservations in the original grant of the Property from the Crown or those which may attach by implication pursuant to *The Land Titles Act, 2000* (Saskatchewan); and
 - ii. any liens or claims arising from or in relation to any activities of the Purchaser or its servants, agents, contractors, workers or representatives on the Property prior to the Closing Date;
- (c) this Agreement has been validly executed by the City and constitutes a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and subject to the general principles of equity;
- (d) there shall be no municipal tax arrears or related penalties, local improvement levies, outstanding utility accounts, charges or other monies owing in connection with or imposed on or against the Property;
- (e) the City has not received written notice of, and to the best of its knowledge, there is no pending or threatened action or governmental proceeding relating to expropriation of the Property or any part thereof;

- (f) there is no action, suit, claim, litigation or proceeding pending or, to the knowledge of the City, threatened against the Property or the City before any court, arbitration panel or administrative tribunal or agency which, if decided adversely to the City, might materially affect the ability of the City to perform any of its obligations under this Agreement or that would interfere with the use and enjoyment of the Property, or the Purchaser's right to own, occupy and develop the Property;
- (g) prior to the Closing Date, the City will bring an application forward to City Council to re-zone approximately 64 acres of the Purchaser's development to be used for residential use to the satisfaction of the Purchaser, the location of the lands for residential use to be in the residential areas identified in the City's Official Community Plan;
- (h) other than the Leases (as defined in Section 6.3 hereunder), there are no leases, tenancies, licenses or other rights of occupancy or use for any portion of the Property;
- (i) there are no agreements, options, contracts, or commitments to sell, transfer, or otherwise dispose of the City's right, title and/or interest in the Real Property or which would otherwise restrict the ability of the City to transfer its right, title and/or interest in the Property, including, without limitation, any option to purchase, right of first refusal, or any other right of a similar or comparable nature under any of the Leases;
- (j) the Leases are in good standing, creates good and valid leasehold estates in the Property thereby demised, and are in full force and effect without amendment;
- (k) the City is a municipal corporation, continued under *The Cities Act* (Saskatchewan);
- (l) between the date this Agreement is executed by the City and the Closing Date, the City shall continue to operate and maintain the Property as a prudent owner and in the best interests of a prudent owner;
- (m) between the date this Agreement is executed by the City and the Closing Date, the City will not enter into any agreements extending beyond the Closing Date with respect to the Property without the written consent of the Purchaser;
- (n) the City shall operate and maintain all existing servicing and utility infrastructure providing servicing to the Property in accordance with Applicable Laws;
- (o) the current uses of the Property by the City comply in all respects with Applicable Laws;
- (p) all accounts for material, work and services with respect to the Property (except for current accounts the payment dates of which have not yet passed) have been fully paid and satisfied and no person is entitled to claim a lien under *The Builders' Lien Act* (Saskatchewan); and
- (q) save and except as may have been disclosed to the Purchaser, the City has not entered into any agreement or obligation to construct or provide, or to pay any amount to any person concerning, off-site services, utilities or similar services concerning the Property, now or in the future;
- (r) the City shall not, on the Closing Date, have any indebtedness to any person which might now or hereafter by operation of law or otherwise constitute a lien, charge or encumbrance on all or part of the Property or which could affect the Purchaser's right to own, occupy and obtain revenue from all or part of the Property; and
- (s) to the best of the knowledge of the City, there are no hazardous substances on or in the Property or on any Properties adjacent to the Property and the City has not received notice of any contamination or breach of any environment law or regulation with respect to the

Property.

The representations and warranties contained in this Section shall survive the Closing Date. If any investigations, inspections, tests or enquiries made by or on behalf of the Purchaser disclose that any of the representations or warranties made by the City are untrue or inaccurate and the Purchaser becomes aware of such breach of the City's representations or warranties on or before the Closing Date, the Purchaser shall notify the City in writing of such breach of its representations and warranties as soon as reasonably possible prior to the Closing Date, setting out the nature of such breach in reasonable detail. The City and the Purchaser shall use commercially reasonable efforts to rectify or remedy such breaches prior to the Closing Date or, in the event that such breach cannot be rectified or remedied prior to the Closing Date, the City and the Purchaser shall, in good faith, attempt to negotiate a mutually acceptable resolution to adjust for or otherwise account for the said breach. If, notwithstanding such breach, the Purchaser proceeds to complete the purchase of the Property, then the Purchaser shall thereafter not be entitled to take any action or proceeding against the City in respect of such breach, other than any action or proceeding relating to outstanding work or remediation not yet completed by the City for the Lagoon Lands or the Refinery Lands or portions of the Property impacted thereby, as the case may be, as of the Closing Date which work or remediation shall be carried out and completed by the City notwithstanding that the transactions contemplated herein have completed as of the Closing Date.

The phrase **to the best of the knowledge of the City** means to the best of the knowledge and belief on the date of this Agreement of the City's Director of Planning and Development Services or such other representative as may be designated instead by the City from time to time, such representative to have made reasonable enquiries in respect of the subject matter in question, and does not extend to any other employee or agent of the City. The City's representative shall have no personal liability under this Agreement.

4.2 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the City (which representations and warranties shall, unless specifically indicated to the contrary in this Agreement, be deemed to have been made effective both upon the execution of this Agreement and as at the Closing Date) that:

- a) the Purchaser has the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- b) this Agreement has been validly executed by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser, enforceable against the Purchaser in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and subject to the general principles of equity;
- c) as of the Closing Date, the Purchaser shall not be a "non-resident" of Canada for the purposes of the *Income Tax Act* (Canada); and
- d) the Purchaser has taken all necessary corporate measures to complete the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

The representations and warranties contained in this Section shall survive the Closing Date and shall continue in full force and effect for the City's benefit.

4.3 LIABILITIES AND INDEMNITY

- (a) The Purchaser acknowledges that, except as expressly set forth in this Agreement and the closing documents, there are no agreements, representations, promises, warranties, guarantees or conditions of any kind whatsoever, statutory or otherwise, express or implied, with respect to the Property. On the Closing Date, the Purchaser shall be

deemed to have accepted all aspects and liabilities of the Property including, without limitation, all physical, financial, legal and environmental aspects and liabilities of the Property and the Purchaser shall assume any and all liabilities associated with the Property from and after the Closing Date all without any liability or recourse to the City whatsoever, other than any outstanding work or remediation as may be negotiated and mutually agreed upon by the City and the Purchaser in accordance with Section 2.8 above and which is not yet completed by the City for the Subject Area or portions of the Property impacted thereby, as the case may be, as of the Closing Date, and which work or remediation shall be carried out and completed by the City notwithstanding that the transactions contemplated herein have completed as of the Closing Date.

- (b) The City shall indemnify the Purchaser and save it harmless from any and all liabilities, damages, costs, expenses, causes of action, suits, claims or judgments arising from or out of any contract, agreement or other matter whatsoever with respect to the Property and arising before or after the Closing Date but in existence in or relating to the period of time up to the Closing Date.
- (c) The Purchaser shall indemnify the City and save it harmless from any and all liabilities, damages, costs, expenses, causes of action, suits, claims or judgments arising from or out of any contract or agreement assumed by the Purchaser with respect to the Property and arising after the Closing Date.
- (d) This Section 4.3 shall survive the Closing Date and the termination of this Agreement.

PART 5 CONDITIONS PRECEDENT TO CLOSING

5.1 PURCHASER'S CONDITIONS PRECEDENT

This Agreement is subject to the following conditions precedent (collectively, the **"Purchaser's Conditions Precedent"**) being satisfied or waived in writing by the Purchaser on or before 5:00pm (CST) on or before ten (10) days prior to the Closing Date (the **"Condition Date"**):

- (a) The Purchaser, in its sole discretion, being wholly satisfied with the results of all physical inspections of the Property and the surrounding lands, including, without limitation, the Environmental Reports and the absence of any Adverse Conditions;
- (b) The Purchaser, in its sole discretion, being wholly satisfied and approved for financing for the Purchase Price and the terms and conditions thereof;
- (c) The Purchaser receiving the approval of its directors and shareholders of this Agreement and the purchase and sale of the Property in accordance with the terms and conditions thereof;
- (d) The City, at its cost, having carried out the rezoning as set out in Section 4.1(g);
- (e) The Purchase and the City have each agreed to the form of development agreement (the **"Development Agreement"**) relating to the City's ability to re-purchase all or a portion of the Property should the Purchaser not satisfy its obligations relating to the development of the Property, the general principals, standards and milestones (including but not limited to the form of servicing agreement, servicing agreement / development levy fees, performance security and insurance matters) relating to the Purchaser's development of the Property;
- (f) The completion of any consolidations of the titles to the Property in accordance with

Section 6.1 of this Agreement;

- (g) The City having provided confirmation, in writing, to the Purchaser that no part of the Property or any adjoining areas shall be used or is being considered for use for landfill purposes;
- (h) The City having provided the Purchaser with a copy of SaskPower's infrastructure plan and design as it pertains to those lands traversing and/or adjacent to the Property, (if such plans and designs are available, or, if such plans and designs are not available, then genuine estimates of the expected costs and such information, drawings, and drafts that the City may reasonably provide), and the Purchaser's satisfactory review thereof, in the Purchaser's sole discretion;
- (i) The City having provided the Purchaser with letters of reliance, if available, for all environmental, geotechnical, soil, and other engineering reports provided to the Purchaser pursuant to Section 2.7 above;
- (j) The execution of a purchase and sale agreement relating to the Purchaser's purchase of 64 acres of additional residential lands from the City on or before the Closing Date; and
- (k) The Purchaser and its solicitors, in their sole discretion, being wholly satisfied with the inspection of all title, encumbrances, local improvement charges and assessments, operating statements and reports and all contracts relating to the Property, including the Permitted Encumbrances.

The Purchaser's Conditions Precedent are for the sole benefit of the Purchaser and may be waived in writing at the sole discretion of the Purchaser. If the Purchaser has satisfied or wishes to waive the Purchaser's Conditions Precedent (or any of them), it shall provide written notice to that effect to the City on or before the Condition Date. If the Purchaser's Conditions Precedent have not been satisfied or waived by the Purchaser in writing on or before the Condition Date, this Agreement shall be null and void and be of no further force or effect.

5.2 CITY'S CONDITIONS PRECEDENT

This Agreement is subject to the following condition precedent (the "**City's Condition Precedent**") being satisfied or waived in writing by the City on or before 5:00pm (CST) on the Condition Date:

- (a) Approval of this Agreement by City Council;
- (b) The execution of a purchase and sale agreement relating to the Purchaser's purchase of 64 acres of additional residential lands from the City on or before the Closing Date; and
- (c) The Purchaser and the City each agreeing on the form of Development Agreement and the approval by City Council of the form of Development Agreement.

The City's Condition Precedent is for the sole benefit of the City and may be waived in writing at the sole discretion of the City. If the City has satisfied or wishes to waive the City's Condition Precedent, it shall provide written notice to that effect to the Purchaser on or before the Condition Date. If the City's Condition Precedent has not been satisfied or waived by the City in writing on or before the Condition Date, this Agreement shall be null and void and be of no further force or effect.

5.3 CLOSING CONDITIONS

The obligations of the City and the Purchaser to complete the transactions contemplated herein are conditional upon the following:

- (a) There shall not be any legal and/or physical encumbrances that will prohibit or limit the use of the Property that cannot be removed or discharged prior to the Closing Date.

PART 6 PREPARING THE PROPERTY

6.1 COMPLETION OF SUBDIVISION/CONSOLIDATION

The City shall, at its sole cost and expense and in consultation with the Purchaser, complete the required survey(s) and make all necessary applications and complete the registration of the Property such that title to the Property may be raised or otherwise transformed before the Closing Date into such parcels of land as may be determined by the City, acting reasonably and in consultation with the Purchaser, such consolidated parcels to be transferred to the Purchaser on the Closing Date in accordance with this Agreement.

6.2 REZONING APPLICATION

Consistent with the SE Industrial Concept Plan, the City administration will make an application to City Council requesting that the Zoning Bylaw be amended such that the Property be rezoned to support a residential development in accordance with the intended use of the Property by the Purchaser. The City shall provide written notice to the Purchaser when City Council is to consider the Rezoning Application.

6.3 ASSIGNMENT OF EXISTING FARMING LEASES

The Purchaser acknowledges and agrees that the City is currently leasing portions of the Property to third parties for use as agricultural land and that all or portions of the Property have been seeded and maintain growing crops that are owned by and the property of third party tenants pursuant to those leases provided by the City to the Purchaser, which are listed in Schedule C hereto (the "**Leases**"). The City shall assign, and the Purchaser shall assume, all or a portion of the Leases effective on the Property as of the Closing Date, and any adjustments as between the City and the Purchaser for any rent, prepaid rent, proceeds of insurance, and any adjustments required as a result of the Leases shall be made in accordance with Section 2.4 hereof. The City shall cooperate in good faith with the Purchaser to effect any amendments, assignments, and assumptions of the Leases on or prior to the Closing Date.

6.4 RISK AND INSURANCE

Until closing of the transaction contemplated by this Agreement, the Property shall be at the risk of the City. The City shall maintain in full force and effect until the Closing Date those policies of insurance currently in effect over the Property or portions thereof. The Purchaser acknowledges and agrees that the City has not placed, and will not be required to place, policies of insurance over certain portions of the Property.

PART 7 ACCESS TO THE PROPERTY

7.1 ACCESS TO THE PROPERTY

Other than as expressly set forth in this Agreement, the Purchaser shall not, without the prior written consent of the City, have access to, occupy or use the Property prior to the Closing Date. In the event that the City grants the Purchaser access to the Property prior to the Closing Date, such access shall be subject to any conditions that may be imposed by the City in its absolute and unfettered discretion.

7.2 ACCESS TO PROPERTY FOR LIMITED PURPOSES

The City hereby grants to the Purchaser, its servants, agents, contractors, workers, representatives and

their respective vehicles and equipment, access to the Property and permission to enter onto the Property at the time or times, prior to the Closing Date, mutually agreed to by the Parties for the sole and limited purpose of one or more of the following:

- a) conducting an environmental site assessment;
- b) conducting soil and geotechnical testing;
- c) determining the availability and suitability of water, sanitary sewer and storm sewer services and/or other utilities to and from the Property;
- d) locating survey pins or monuments markers and/or conducting topographical surveys at or near the Property; and
- e) conducting preliminary engineering and site analysis work necessary to undertake the proposed development.

7.3 INDEMNIFICATION

The Purchaser shall make good any damage arising out of or resulting from its access to the Property and any inspections made thereof or tests performed in respect thereof and shall (and does hereby agree to) indemnify and save the City harmless from any and all costs, expenses or claims whatsoever incurred or suffered by the City arising out of or resulting from the Purchaser's access hereunder to the Property and any inspections made thereof or tests performed in respect thereof. This provision shall survive the Closing Date and the termination of this Agreement.

PART 8 CLOSING ARRANGEMENTS

8.1 CLOSING DOCUMENTS

- (a) The City covenants to execute, where applicable, and deliver to the Purchaser's solicitor, at least five (5) Business Days prior to the Closing Date, the following:
 - (i) a transfer, in favour of the Purchaser, of a 100% fee simple interest in the Property, in form acceptable for registration;
 - (ii) a Transform Approval Certificate, if applicable and in accordance with section 6.1 of this Agreement, in registrable form, duly prepared for registration by the Purchaser on the Closing Date;
 - (iii) a statement of adjustments, calculating all debits and credits in accordance with this Agreement;
 - (iv) a certificate signed by an officer of the City dated as of the Closing Date certifying that all the representations and warranties of the City set forth in this Agreement are true and correct, that the Leases are in full force and effect and in good standing on the parts of both the City and the tenants thereunder without modification or amendment except as shall have been previously disclosed to the Purchaser, and that the City is not in breach of any of its covenants under this Agreement;
 - (v) an assignment and assumption agreement for all or a portion of those leases in effect as of the Closing Date pursuant to Section 6.3; and
 - (vi) such other documentation relating to the completion of the transaction

contemplated by this Agreement as the Purchaser may reasonably require.

- (b) The Purchaser covenants to execute, where applicable, and deliver to the City's solicitor, on or before the Closing Date, the following:
 - (i) the balance of the Purchase Price;
 - (ii) a certificate signed by an officer of the Purchaser dated as of the Closing Date certifying that all the representations and warranties of the Purchaser set forth in this Agreement are true and correct and that the Purchaser is not in breach of any of its covenants hereunder;
 - (iii) a declaration to, and indemnity in favour of, the City with respect to GST;
 - (iv) an assignment and assumption agreement for those leases in effect as of the Closing Date pursuant to Section 6.3; and
 - (v) such further documentation relating to the completion of the transaction contemplated by this Agreement as the City may reasonably require.

8.2 PURCHASER'S OBLIGATIONS

The Purchaser shall:

- a) submit the transfer authorization for registration at the Saskatchewan Land Titles Registry no later than five days following receipt of the transfer authorization and upon registration shall immediately notify the City Solicitor of such registration;
- b) pay all taxes, charges and levies properly assessed on or against the Property from time to time, including local improvement rates following the Closing Date; and
- c) indemnify and save harmless the City from and against any and all manner of claims, damages, losses, costs, charges, judgments or awards whatsoever occasioned to, suffered by or imposed upon the City, either directly or indirectly, arising out of the occupancy or use of the Property by the Purchaser prior to the Closing Date.

The provisions of this subsection 8.2(c) shall survive the Closing Date.

8.3 EXCLUSIVITY

From the date this Agreement is executed by the City, the City shall not, directly or indirectly: (a) solicit, initiate, seek, entertain, consider, encourage, discuss, negotiate or accept any expression of interest, enquiry, proposal or offer, whether oral, written or otherwise, from any person (other than the Purchaser or any person acting on its behalf) with respect to any sale of the Property (or any part thereof); or (b) participate in or continue any discussions or negotiations or enter into any oral or written agreement or understanding with, or provide any confidential, proprietary or non-public information to, any person (other than the Purchaser or any person acting on its behalf) with respect to any sale of the Property. The City shall immediately cease and cause to be terminated any existing discussions, negotiations or other activities with any parties with respect to any competing offer for the Property.

PART 9 FORCE MAJEURE

9.1 FORCE MAJEURE GENERALLY

Each Party to this Agreement shall be excused (for so long as a Force Majeure Event continues) from

performing its contractual obligations hereunder if it is prevented or delayed in such performance by any Force Majeure Event.

PART 10 MISCELLANEOUS

10.1 ENUREMENT

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators and successors.

10.2 TIME OF THE ESSENCE

Time is expressly declared to be of the essence of this Agreement and each of the terms and conditions thereof.

10.3 COUNTERPARTS

This Agreement may be executed in counterparts and may be signed by facsimile or other means of electronic communication producing a printed copy, each of which, when so executed, shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the date first written above.

10.4 WAIVER

No waiver of either Party is effective unless in writing, and a waiver affects only the matter and its occurrence specifically identified in the writing granting the waiver and does not extend to any other matter or occurrence.

10.5 WAIVER OF LEGISLATION

The Purchaser covenants and agrees with the City:

- (a) that *The Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action as defined in *The Land Contracts (Actions) Act* (Saskatchewan) with respect to this Agreement;
- (b) that *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to:
 - (i) this Agreement;
 - (ii) any mortgage or charge or other security for the payment of money made, given or created by this Agreement;
 - (iii) any Agreement or instrument renewing or extending or collateral to this agreement or renewing and/or extending or collateral to any mortgage, charge or other security referred to or mentioned in (ii) of (b) of this paragraph; and
 - (iv) the rights, powers, remedies of the City under this Agreement or under any mortgage, charge or other security agreement or instrument referred to or mentioned in (ii) and (iii) of (b) of this paragraph.

10.6 INDEPENDENT LEGAL ADVICE

Each of the Parties hereto, by their execution of this Agreement, acknowledge that such Party has carefully read and fully understands the terms of this Agreement and has obtained independent legal

advice with respect to this Agreement.

10.7 NOTICES

Any notice, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered personally by hand, or delivered by facsimile or email transmission to the other Party at the address, facsimile transmission number or email address for such Party set out below or other such address as the Parties may advise by notice:

To the City:

City Clerk/Solicitor
City of Moose Jaw
228 Main Street North
Moose Jaw, SK S6H 3J8
F: (306) 692-4518
E: MGulka-Tiechko@moosejaw.ca

To the Purchaser:

Carpere Canada Industrial Park Corp.
280 – 2899 No. 3 Road
Richmond, BC V6X 2B2
F:
E:

With a copy to:

MLT Aikins LLP
1500 – 410 22nd Street East
Saskatoon, SK S7K 5T6

F: 306-975-7145
E: mchoi@mltaikins.com
Attention: Michael M. J. Choi

A notice is deemed to be received on the following days:

- a) if a notice is hand delivered, such notice is deemed to be received on the date of delivery;
- b) if a notice is sent by registered mail, such notice is deemed to be received three days after the date of such mailing;
- c) if a notice is sent by facsimile transmission, such notice is deemed to be received on the day such facsimile transmission is sent;
- d) if a notice is sent by email, such notice is deemed to be received on the date shown on the "read receipt" message from the Party being notified; and
- e) if postal service is interrupted or substantially delayed, all notices shall be hand-delivered or sent by facsimile or email during the period of such interruption or substantial delay.

10.8 COSTS

All costs and expenses incurred in connection with the negotiation, execution and delivery of this and any related agreements, and the consummation of the purchase, will be paid by the party incurring such costs and expenses.

10.9 ASSIGNMENT

Upon consent and approval of the City, which will not be unreasonably withheld, conditioned or delayed, the Purchaser shall have the ability to assign this Agreement and any other ancillary agreements between the City and the Purchaser to an affiliate, subsidiary, nominee, partnership, limited partnership, or other related entity of the Purchaser. Upon the assignee becoming bound by and obligated to observe and

perform the covenants and obligations of the Purchaser thereunder, the Purchaser (including, without limitation, its directors, officers, agents, employees, members, and shareholders) shall, without further agreement, be released on an absolute and irrevocable basis from any and all liability of any kind whatsoever upon such covenants and obligations. For greater clarity, this restriction only applies to this Agreement and not to any transfers of land by the Purchaser to third-party purchasers following the Closing Date.

10.10 FURTHER ASSURANCES

The City and the Purchaser covenant and agree to take all steps and sign all further documents as are reasonably required or necessary to give effect to the transaction set forth in this Agreement.

10.11 JURISDICTION

This Agreement shall be governed by the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein.

10.12 SEVERABILITY

If any provision contained in this Agreement or its application to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first written above.

CITY OF MOOSE JAW

Per: _____

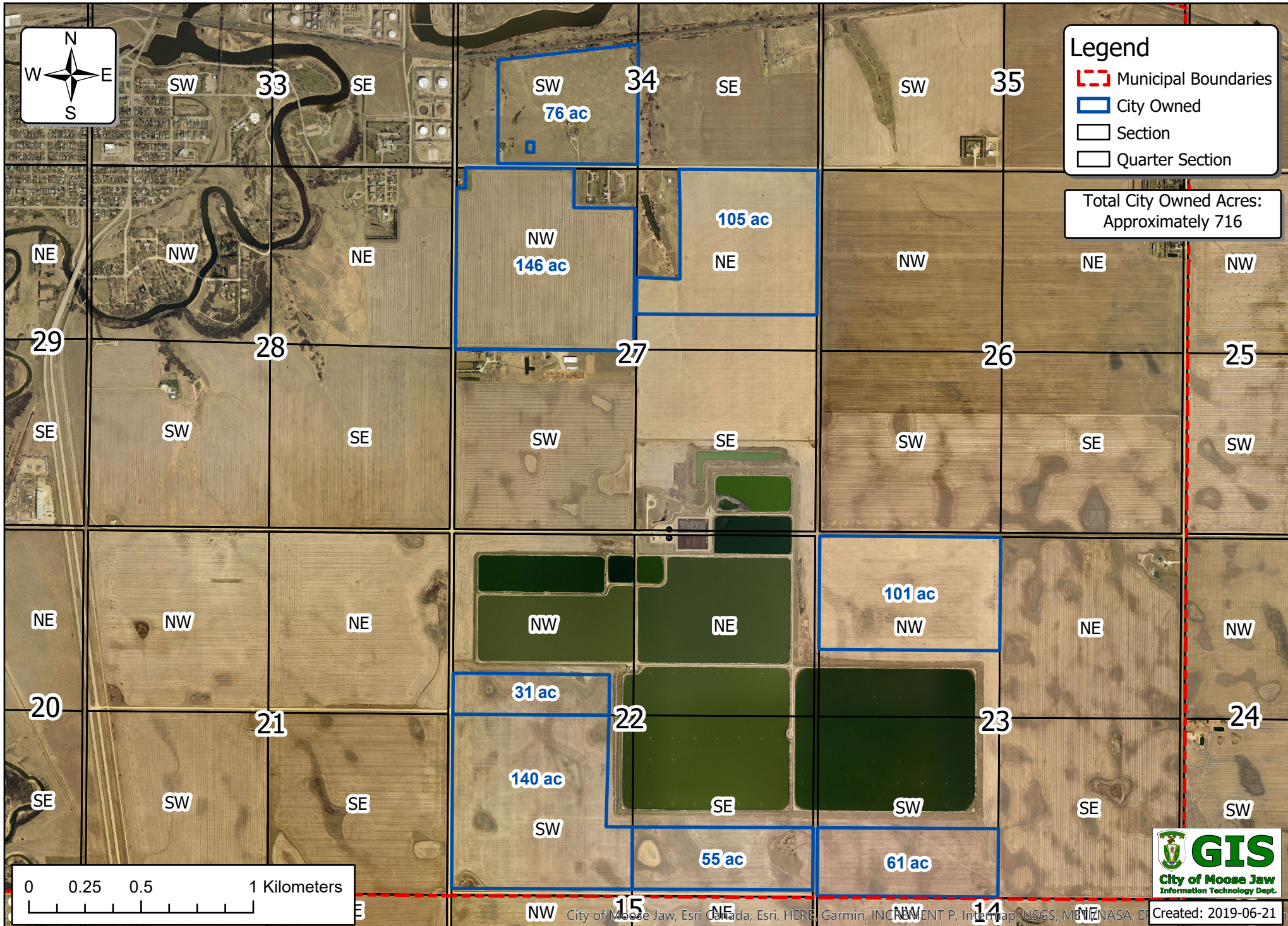
Per: _____

**CARPERE MOOSE JAW INDUSTRIAL PARK
CORP.**

Per: _____

SCHEDULE A
LAND

Carpere Purchase Agreement Lands



SCHEDULE B
PERMITTED ENCUMBRANCES

**SCHEDULE C
LEASES**

PURCHASE AGREEMENT

THIS AGREEMENT dated _____, 2019.

BETWEEN:

CITY OF MOOSE JAW, a municipal corporation continued under *The Cities Act* (Saskatchewan)

(the "City")

AND:

CARPERE VALLEY DEVELOPMENT CORP., a business corporation incorporated pursuant to the laws of the Province of Saskatchewan

(the "Purchaser")

WHEREAS the City is the registered and beneficial owner of the Property (as hereinafter defined);

AND WHEREAS the Purchaser wishes to purchase the Property from the City, and the City wishes to sell the Property to the Purchaser, on and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration now paid and delivered by each party to the other (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

PART I INTERPRETATION

1.1 DEFINITIONS

In this Agreement, capitalized terms used but not otherwise defined shall have the following meanings:

- a) **"Adverse Conditions"** means that, in the reasonable opinion of the City or the Purchaser, the results of the concept plan, including but not limited to, the geotechnical report, environmental site assessment, biophysical assessment or heritage screening, all to be prepared by the City, are not satisfactory;
- b) **"Agreement"**, "this Agreement", "hereto", "hereof", "herein", "hereunder", "hereby" and similar expressions refer, unless otherwise expressly stated, to this Agreement, including any schedules hereto, as it may be supplemented or amended from time to time.
- c) **"Applicable Laws"** means, in relation to any person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of all federal, provincial, municipal and local governmental bodies (whether administrative, legislative, executive or otherwise) and judgments, orders, awards and decrees of all courts, arbitrators, commissions or bodies exercising similar functions in actions or proceedings in which the person in question is a party or by which it is bound or having application to the transaction or event in question;
- d) **"City Council"** means the Council of the City;

- e) **"Closing"** means the completion and consummation of the purchase and sale transaction provided for in this Agreement on the Closing Date;
- f) **"Closing Date"** means October 31, 2019 or such other date as the Parties may otherwise agree to in writing;
- g) **"Force Majeure Event"** or **"Force Majeure"** means any condition, event or circumstance which is unavoidable or beyond a Party's reasonable control including, without limitation, acts of God, acts of public enemies, terrorism, civil disturbance, riots, blizzards, blockades, hostilities, epidemics, lightning, confiscation, seizure or order by governmental authority, floods, rockslides, landslides, snowslides, washouts, avalanches, storms, earthquake, fire or explosion, strikes, lockouts, walkouts or other industrial disputes of any Party, war, sabotage, insurrection, derailment, labour shortages, electrical power or fuel shortages, or the act or failure to act of a governmental authority;
- h) **"GST"** means goods and services tax under the *Excise Tax Act* (Canada);
- i) **"Property"** means collectively certain lands owned by the City of Moose Jaw comprising an area of approximately 64 acres, all as described in Schedule A attached hereto, and subject to measurement pursuant to Section 2.2;
- j) **"Purchase Price"** has the meaning ascribed thereto in Section 2.2.

1.2 NUMBER

In this Agreement, the singular includes the plural and vice versa.

1.3 DIVISION OF AGREEMENT AND HEADINGS

The division of this Agreement into parts, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the interpretation of this Agreement.

1.4 CURRENCY

In this Agreement, all currency is in Canadian dollars.

1.5 SEVERABILITY

All of the provisions of this Agreement shall be treated as separate and distinct. If any provision hereof is declared invalid, illegal or unenforceable; the other provisions shall nevertheless remain in full force and effect.

1.6 ENTIRE AGREEMENT

This Agreement (including any schedules hereto) constitutes the entire agreement between the Parties relating to the purchase and sale of the Property and replaces and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written of the Parties, including but not limited to the Offer to Purchase between the Parties dated as of March 26, 2019. The Parties each agree that there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification or amendment of this Agreement shall be binding unless agreed to in writing by each of the Parties.

1.7 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein. The Parties agree that court proceedings that

may be brought by either Party against the other Party under or by virtue of this Agreement shall be brought in a court of competent jurisdiction in the Province of Saskatchewan, and each Party hereby irrevocably submits, and covenants and agrees to submit, to the non-exclusive jurisdiction of such court in the event that such Party is named as a party in any such proceeding.

PART 2 PURCHASE AND SALE

2.1 AGREEMENT OF PURCHASE AND SALE

Subject to the terms and conditions of this Agreement, the City agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the City, on the Closing Date, all of the City's right, title and interest in and to the Property for the Purchase Price free and clear of all encumbrances, excepting the permitted encumbrances listed in Schedule B hereto (collectively, the "**Permitted Encumbrances**").

2.2 CALCULATION OF PURCHASE PRICE

The total purchase price payable for the Property (the "**Purchase Price**"), shall be **SIX HUNDRED AND FORTY THOUSAND (\$640,000.00) DOLLARS** calculated based on the sum of **TEN THOUSAND (\$10,000.00) DOLLARS** per acre of the Property and subject to adjustment based on the actual acreage of the Property to be determined prior to the Closing Date, as follows:

- (a) The actual acreage of the Property shall be conclusively calculated and determined for the purpose of this Agreement by a land surveyor, duly qualified to practice in the Province of Saskatchewan who is designated and paid by the City. The calculation of the acreage of the Property by the said land surveyor shall be final and binding upon the Parties unless demonstrably proven that the said land surveyor was in error by an independent architect.

2.3 PAYMENT OF PURCHASE PRICE

The Purchase Price shall be payable by the Purchaser to the City as follows:

- (a) A deposit of ten (10%) percent of the Purchase Price, being the sum of **SIXTY-FOUR THOUSAND (\$64,000.00) DOLLARS** (the "**Deposit**"), which the Purchaser has already paid to the City's external legal counsel and the City acknowledges receipt thereof. The Deposit shall be held in trust by the City's external legal counsel, with interest, and maintained in trust by the City's external legal counsel until the Closing Date, and upon closing of the transactions contemplated herein on the Closing Date, the Deposit and any interest accrued thereupon shall be released to the City and credited towards the Purchase Price payable by the Purchaser; and
- (b) The balance of the Purchase Price, subject to the Adjustments set out in section 2.4 herein, shall be paid to the City's external legal counsel on the Closing Date by bank draft, certified cheque, wire transfer, or solicitor's trust cheque.

2.4 ADJUSTMENTS

The adjustments to the Purchase Price (the "**Adjustments**") shall be made as of the Closing Date. The City shall be responsible for all expenses for and entitled to all revenues accrued from the Property for that period ending on the day before the Closing Date. From and including the Closing Date, the Purchaser shall be responsible for all expenses for and shall be entitled to all revenues accruing from the

Property. The Adjustments shall include all operating costs, realty taxes, local improvement rates and charges, water and assessment rates, current rents, prepaid monthly parking charges, prepaid rents and interest thereon (if any), security deposits and interest thereon, current expenses and utility deposits. If the final cost or amount of an item which is to be adjusted cannot be determined at the Closing Date, then an initial adjustment for such item shall be made at the Closing Date, such amount to be estimated by the parties hereto acting reasonably as of the Closing Date on the basis of the best evidence available at the Closing Date as to what the final cost or amount of such item will be. In each case when such cost or amount is subsequently finally determined, the City or Purchaser, as the case may be, shall, within 30 days of such determination, provide a complete statement thereof to the other and within 30 days thereafter the parties hereto shall make a final adjustment as of the Closing Date for the item in question.

2.5 CLOSING PROCEDURE

The parties agree that the closing procedure to be followed shall in all respects follow the usual procedure for closing commercial real estate transactions in Saskatchewan, and, in particular:

- (a) all closing documents shall be delivered in trust on such reasonable trust conditions and undertakings as would customarily be imposed in a similar transaction in Saskatchewan, and with sufficient time to permit registration of a transfer of land with respect to Property (the "**Transfer**") on or prior to the Closing Date or forthwith thereafter, and which shall include the following conditions:
 - (i) conditions regarding the manner in which the Transfer and any other documents permitted or required to be registered hereunder, including for certainty any new financing, are to be submitted to the Saskatchewan Land Titles Office for registration; and
 - (ii) it is specifically agreed that nothing will be complete at the Closing until the Transfer and any other documents permitted or required to be registered hereunder respecting the Property, including for certainty any new financing, are registered and fee simple title to the Property has been issued in the name of the Purchaser; provided that, if the Purchaser has obtained a title insurance policy with respect to the Transfer including a letter of reliance from the title insurer for the benefit of legal counsel representing the parties, completion of registration shall not be required as a condition of release of documents and funds hereunder.
- (b) The preparation of the closing documentation and any discharge of encumbrances against title to the Property which are not Permitted Encumbrances, shall be completed by the City at its expense.
- (c) If the Purchase Price or a portion thereof is not releasable to the City on Closing Date due to delay of registrations of documents at land titles or the registry office and provided the City has delivered such documents to the Purchaser with sufficient time to affect registration by the Closing Date, being at least five (5) Business Days before the Closing Date, the Purchaser shall pay interest to the City at the rate of 3% per annum from and including the Closing Date until the date the Purchase Price is received and is unconditionally releasable to the City. Any amount received or releasable after 1 p.m. Central Standard Time shall be deemed to be received the next day. This provision shall not relieve the Purchaser of its obligations under this Agreement nor shall this provision deprive the City of any of its remedies if the Purchaser fails to perform its obligations under this Agreement. In the event that this provision shall become applicable, time shall continue to be of the essence.

2.6 PAYMENT AND REMITTANCE OF GST

Any GST owing in respect of the Purchase Price shall be remitted to the Receiver General of Canada

in accordance with the *Excise Tax Act* (Canada), as follows:

- (a) if the Purchaser is a "registrant" within the meaning of the *Excise Tax Act* (Canada), the Purchaser shall self-assess and remit any GST payable on the Purchase Price to the Receiver General directly; or
- (b) if the Purchaser is not a "registrant" within the meaning of the *Excise Tax Act* (Canada), the Purchaser shall pay any GST owing in respect of the Purchase Price to the City in addition to the Purchase Price on the Closing Date and the City shall remit such GST to the Receiver General.

Each of the Parties hereby indemnifies and holds the other Party harmless from any liability under the *Excise Tax Act* (Canada) arising as a result of a breach of any obligation of either Party under that Act in relation to this Agreement, together with all losses, costs and expenses incurred by the indemnified party resulting from such a breach. This provision shall survive the Closing and the termination of this Agreement.

2.7 DELIVERIES

Within five (5) business days following the date of this Agreement, the City shall deliver to the Purchaser copies of the following:

- (a) all current surveys, easement and right-of-way plans and other plans relating to the Property in the City's possession or control;
- (b) copies of all tests and inspections and reports thereof relating to the Property, if any, including environmental, geotechnical and soil reports in the City's possession or control; and
- (c) all other documents and materials relating to the Property in the City's possession or control, including the City's existing Concept Plan documentation.

Prior to the Condition Date, the City shall use commercially reasonable efforts to obtain and deliver to the Purchaser reliance letters from third party consulting engineers relating to any environmental, geotechnical or soil reports provided to the Purchaser pursuant to this section 2.7, such reliance letters to be in the form customarily provided by such consulting engineers and failure to obtain and deliver such reliance letter(s) shall not be a default under this Agreement.

The Purchaser agrees that the City is providing such documentary information for purposes of notice only and such documentary information does not constitute a warranty or representation of any kind as to the accuracy or completeness of any of the documentary information or the quality or condition (whether environmental or otherwise) of the Property or the suitability or fitness of the Property for any of the Purchaser's purposes or intended uses whatsoever.

2.8 ENVIRONMENTAL REPORTS

As soon as reasonably practical following the execution and delivery of this Agreement, the City shall, at its sole cost and expense, arrange to have a third party engineering firm complete a Phase I and Phase II Environmental Site Assessment of:

- (a) an area equal to 100 metres surrounding the refinery lands located at the intersection of Lorne Avenue and Coteau Street and which area forms part of the Property (the "**Subject Area**"),

and prepare reports relating to such assessments (collectively, the "**Environmental Reports**"). The City shall provide the Purchaser with a copy of the Environmental Reports and shall arrange to have the third

party engineering consultant provide a letter of reliance addressed to the Purchaser confirming that the Purchaser and its consultants are entitled to use and rely on the Environmental Reports and that the Environmental Reports have been prepared in accordance with current industry practices. The City shall use all commercially reasonable efforts to complete the Environmental Reports by no later than September 30, 2019.

With regard to the Subject Area, the City and the Purchaser shall review the Environmental Reports and enter into good faith negotiations to identify and implement any remediation solutions as may required and as may be mutually satisfactory to both parties, both acting reasonably. In the event that the City and the Purchaser are unable to identify a mutually acceptable remediation strategy for the Subject Area and any adjacent areas impacted, the Purchaser and the City may, by mutual agreement, elect to remove those portions of the Subject Area from the Property purchased by the Purchaser from the City pursuant to this Agreement.

The City and the Purchaser each acknowledge and agree that the Closing Date solely as it pertains to the transfer of the Subject Area (and by necessary implication, the Condition Date) shall be extended as may be required to facilitate the negotiations contemplated by this Section 2.8 for a maximum time of one hundred and eighty (180) days. If the City and the Purchaser cannot reach an agreement within one hundred and eighty (180) days from the delivery of the Environmental Reports relating to: (i) an acceptable remediation strategy; or (ii) the removal of portions of the Subject Area from the Property purchased by the Purchaser pursuant to this Agreement, then the Subject Area shall be removed from the Property being acquired by the Purchaser pursuant to this Agreement and the Purchaser shall have no further liability or obligation to purchase Subject Area.

2.9 DEPOSIT

The Deposit shall be held in trust by the City's external legal counsel. Any interest accrued thereupon shall be for the benefit of the Buyer and credited towards the balance of the Purchase Price payable on the Closing Date. The City and the Buyer irrevocably authorize and direct the City's external legal counsel that the Deposit shall be dealt with as follows:

- (a) if any of the Purchaser's Conditions Precedent are not waived, satisfied, or removed in the manner and within the time provided in this Agreement, then the Deposit together with the accrued interest thereon, shall forthwith be paid to the Purchaser and in such event, this Agreement shall be null and void and of no further force and effect whatsoever;
- (b) if any of the City's Conditions Precedent are not waived, satisfied, or removed in the manner and within the time provided in this Agreement, then the Deposit together with the accrued interest thereon shall forthwith be paid to the Purchaser and in such event, this Agreement shall be null and void and of no further force and effect whatsoever; and
- (c) if following the wavier, satisfaction or removal of the City's Conditions Precedent, the transaction contemplated by this Agreement is not completed as a result of the default of the City, then the Deposit together with the accrued interest thereon shall forthwith be paid to the Purchaser, and, in addition, the Purchaser, in its sole discretion, may make any other claim against the City at law or in equity.

PART 3 ASSESSMENT AND TAXATION OF PROPERTY

3.1 ASSESSMENT AND TAXATION

The Parties hereby acknowledge and agree that the Property is presently exempt from taxation as a municipally owned and occupied property, but that the City may assess and levy taxes on the Property by supplementary assessment and tax notices from and after the Closing Date. Any such assessment

and taxation of the Property shall be carried out in accordance with *The Cities Act* (Saskatchewan) and *The Saskatchewan Assessment Management Agency Act* (Saskatchewan) and shall be prorated effective as of the Closing Date for the balance of the applicable taxation year.

PART 4 REPRESENTATIONS AND WARRANTIES

4.1 REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE CITY

The City hereby represents, warrants, and covenants to the Purchaser (which representations, warranties, and covenants shall, unless specifically indicated to the contrary in this Agreement, be deemed to have been made effective both upon the execution of this Agreement and as at the Closing Date) that:

- a) the City has the full right, power and authority to enter into this Agreement and to sell and transfer the Property to the Purchaser;
- b) upon consummation of the purchase, the City shall convey to the Purchaser a good and marketable title to the Property, free and clear of any and all registered liens, mortgages, charges, encumbrances and other registrations, save and except for the Permitted Encumbrances, including, without limitation:
 - i. the conditions and reservations in the original grant of the Property from the Crown or those which may attach by implication pursuant to *The Land Titles Act, 2000* (Saskatchewan); and
 - ii. any liens or claims arising from or in relation to any activities of the Purchaser or its servants, agents, contractors, workers or representatives on the Property prior to the Closing Date;
- (c) this Agreement has been validly executed by the City and constitutes a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and subject to the general principles of equity;
- (d) there shall be no municipal tax arrears or related penalties, local improvement levies, outstanding utility accounts, charges or other monies owing in connection with or imposed on or against the Property;
- (e) the City has not received written notice of, and to the best of its knowledge, there is no pending or threatened action or governmental proceeding relating to expropriation of the Property or any part thereof;
- (f) there is no action, suit, claim, litigation or proceeding pending or, to the knowledge of the City, threatened against the Property or the City before any court, arbitration panel or administrative tribunal or agency which, if decided adversely to the City, might materially affect the ability of the City to perform any of its obligations under this Agreement or that would interfere with the use and enjoyment of the Property, or the Purchaser's right to own, occupy and develop the Property;
- (g) prior to the Closing Date, the City will bring an application forward to City Council to re-zone approximately 64 acres of the Purchaser's development to be used for residential use to the satisfaction of the Purchaser, the location of the lands for residential use to be in the residential areas identified in the City's Official Community Plan;

- (h) other than the Leases (as defined in Section 6.3 hereunder), there are no leases, tenancies, licenses or other rights of occupancy or use for any portion of the Property;
- (i) there are no agreements, options, contracts, or commitments to sell, transfer, or otherwise dispose of the City's right, title and/or interest in the Real Property or which would otherwise restrict the ability of the City to transfer its right, title and/or interest in the Property, including, without limitation, any option to purchase, right of first refusal, or any other right of a similar or comparable nature under any of the Leases;
- (j) the Leases are in good standing, creates good and valid leasehold estates in the Property thereby demised, and are in full force and effect without amendment;
- (k) the City is a municipal corporation, continued under *The Cities Act* (Saskatchewan);
- (l) between the date this Agreement is executed by the City and the Closing Date, the City shall continue to operate and maintain the Property as a prudent owner and in the best interests of a prudent owner;
- (m) between the date this Agreement is executed by the City and the Closing Date, the City will not enter into any agreements extending beyond the Closing Date with respect to the Property without the written consent of the Purchaser;
- (n) the City shall operate and maintain all existing servicing and utility infrastructure providing servicing to the Property in accordance with Applicable Laws;
- (o) the current uses of the Property by the City comply in all respects with Applicable Laws;
- (p) all accounts for material, work and services with respect to the Property (except for current accounts the payment dates of which have not yet passed) have been fully paid and satisfied and no person is entitled to claim a lien under *The Builders' Lien Act* (Saskatchewan); and
- (q) save and except as may have been disclosed to the Purchaser, the City has not entered into any agreement or obligation to construct or provide, or to pay any amount to any person concerning, off-site services, utilities or similar services concerning the Property, now or in the future;
- (r) the City shall not, on the Closing Date, have any indebtedness to any person which might now or hereafter by operation of law or otherwise constitute a lien, charge or encumbrance on all or part of the Property or which could affect the Purchaser's right to own, occupy and obtain revenue from all or part of the Property; and
- (s) to the best of the knowledge of the City, there are no hazardous substances on or in the Property or on any Properties adjacent to the Property and the City has not received notice of any contamination or breach of any environment law or regulation with respect to the Property.

The representations and warranties contained in this Section shall survive the Closing Date. If any investigations, inspections, tests or enquiries made by or on behalf of the Purchaser disclose that any of the representations or warranties made by the City are untrue or inaccurate and the Purchaser becomes aware of such breach of the City's representations or warranties on or before the Closing Date, the Purchaser shall notify the City in writing of such breach of its representations and warranties as soon as reasonably possible prior to the Closing Date, setting out the nature of such breach in reasonable detail. The City and the Purchaser shall use commercially reasonable efforts to rectify or remedy such breaches prior to the Closing Date or, in the event that such breach cannot be rectified or remedied prior to the Closing Date, the City and the Purchaser shall, in good faith, attempt to negotiate a mutually acceptable

resolution to adjust for or otherwise account for the said breach. If, notwithstanding such breach, the Purchaser proceeds to complete the purchase of the Property, then the Purchaser shall thereafter not be entitled to take any action or proceeding against the City in respect of such breach, other than any action or proceeding relating to outstanding work or remediation not yet completed by the City for Subject Area or portions of the Property impacted thereby, as the case may be, as of the Closing Date which work or remediation shall be carried out and completed by the City notwithstanding that the transactions contemplated herein have completed as of the Closing Date.

The phrase **to the best of the knowledge of the City** means to the best of the knowledge and belief on the date of this Agreement of the City's Director of Planning and Development Services or such other representative as may be designated instead by the City from time to time, such representative to have made reasonable enquiries in respect of the subject matter in question, and does not extend to any other employee or agent of the City. The City's representative shall have no personal liability under this Agreement.

4.2 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the City (which representations and warranties shall, unless specifically indicated to the contrary in this Agreement, be deemed to have been made effective both upon the execution of this Agreement and as at the Closing Date) that:

- a) the Purchaser has the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- b) this Agreement has been validly executed by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser, enforceable against the Purchaser in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights and subject to the general principles of equity;
- c) as of the Closing Date, the Purchaser shall not be a "non-resident" of Canada for the purposes of the *Income Tax Act* (Canada); and
- d) the Purchaser has taken all necessary corporate measures to complete the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

The representations and warranties contained in this Section shall survive the Closing Date and shall continue in full force and effect for the City's benefit.

4.3 LIABILITIES AND INDEMNITY

- (a) The Purchaser acknowledges that, except as expressly set forth in this Agreement and the closing documents, there are no agreements, representations, promises, warranties, guarantees or conditions of any kind whatsoever, statutory or otherwise, express or implied, with respect to the Property. On the Closing Date, the Purchaser shall be deemed to have accepted all aspects and liabilities of the Property including, without limitation, all physical, financial, legal and environmental aspects and liabilities of the Property and the Purchaser shall assume any and all liabilities associated with the Property from and after the Closing Date all without any liability or recourse to the City whatsoever, other than any outstanding work or remediation as may be negotiated and mutually agreed upon by the City and the Purchaser in accordance with Section 2.8 above and which is not yet completed by the City for the Subject Area or portions of the Property impacted thereby, as the case may be, as of the Closing Date, and which work or remediation shall be carried out and completed by the City notwithstanding that the transactions contemplated herein have completed as of the Closing Date.

- (b) The City shall indemnify the Purchaser and save it harmless from any and all liabilities, damages, costs, expenses, causes of action, suits, claims or judgments arising from or out of any contract, agreement or other matter whatsoever with respect to the Property and arising before or after the Closing Date but in existence in or relating to the period of time up to the Closing Date.
- (c) The Purchaser shall indemnify the City and save it harmless from any and all liabilities, damages, costs, expenses, causes of action, suits, claims or judgments arising from or out of any contract or agreement assumed by the Purchaser with respect to the Property and arising after the Closing Date.
- (d) This Section 4.3 shall survive the Closing Date and the termination of this Agreement.

PART 5 CONDITIONS PRECEDENT TO CLOSING

5.1 PURCHASER'S CONDITIONS PRECEDENT

This Agreement is subject to the following conditions precedent (collectively, the **"Purchaser's Conditions Precedent"**) being satisfied or waived in writing by the Purchaser on or before 5:00pm (CST) on or before ten (10) days prior to the Closing Date (the **"Condition Date"**):

- (a) The Purchaser, in its sole discretion, being wholly satisfied with the results of all physical inspections of the Property and the surrounding lands, including, without limitation, the Environmental Reports and the absence of any Adverse Conditions;
- (b) The Purchaser, in its sole discretion, being wholly satisfied and approved for financing for the Purchase Price and the terms and conditions thereof;
- (c) The Purchaser receiving the approval of its directors and shareholders of this Agreement and the purchase and sale of the Property in accordance with the terms and conditions thereof;
- (d) The City, at its cost, having carried out the rezoning as set out in Section 4.1(g);
- (e) The Purchase and the City have each agreed to the form of development agreement (the **"Development Agreement"**) relating to the City's ability to re-purchase all or a portion of the Property should the Purchaser not satisfy its obligations relating to the development of the Property, the general principals, standards and milestones (including but not limited to the form of servicing agreement, servicing agreement / development levy fees, performance security and insurance matters) relating to the Purchaser's development of the Property;
- (f) The completion of any consolidations of the titles to the Property in accordance with Section 6.1 of this Agreement;
- (g) The City having provided confirmation, in writing, to the Purchaser that no part of the Property or any adjoining areas shall be used or is being considered for use for landfill purposes;
- (h) The City having provided the Purchaser with a copy of SaskPower's infrastructure plan and design as it pertains to those lands traversing and/or adjacent to the Property, (if such plans and designs are available, or, if such plans and designs are not available, then genuine estimates of the expected costs and such information, drawings, and drafts that the City may reasonably provide), and the Purchaser's satisfactory review thereof, in the

Purchaser's sole discretion;

- (i) The City having provided the Purchaser with letters of reliance, if available, for all environmental, geotechnical, soil, and other engineering reports provided to the Purchaser pursuant to Section 2.7 above; and
- (j) The Purchaser and its solicitors, in their sole discretion, being wholly satisfied with the inspection of all title, encumbrances, local improvement charges and assessments, operating statements and reports and all contracts relating to the Property, including the Permitted Encumbrances.

The Purchaser's Conditions Precedent are for the sole benefit of the Purchaser and may be waived in writing at the sole discretion of the Purchaser. If the Purchaser has satisfied or wishes to waive the Purchaser's Conditions Precedent (or any of them), it shall provide written notice to that effect to the City on or before the Condition Date. If the Purchaser's Conditions Precedent have not been satisfied or waived by the Purchaser in writing on or before the Condition Date, this Agreement shall be null and void and be of no further force or effect.

5.2 CITY'S CONDITIONS PRECEDENT

This Agreement is subject to the following condition precedent (the “**City's Condition Precedent**”) being satisfied or waived in writing by the City on or before 5:00pm (CST) on the Condition Date:

- (a) Approval of this Agreement by City Council; and
- (b) The Purchaser and the City each agreeing on the form of Development Agreement and the approval by City Council of the form of Development Agreement.

The City's Condition Precedent is for the sole benefit of the City and may be waived in writing at the sole discretion of the City. If the City has satisfied or wishes to waive the City's Condition Precedent, it shall provide written notice to that effect to the Purchaser on or before the Condition Date. If the City's Condition Precedent has not been satisfied or waived by the City in writing on or before the Condition Date, this Agreement shall be null and void and be of no further force or effect.

5.3 CLOSING CONDITIONS

The obligations of the City and the Purchaser to complete the transactions contemplated herein are conditional upon the following:

- (a) There shall not be any legal and/or physical encumbrances that will prohibit or limit the use of the Property that cannot be removed or discharged prior to the Closing Date.

PART 6 PREPARING THE PROPERTY

6.1 COMPLETION OF SUBDIVISION/CONSOLIDATION

The City shall, at its sole cost and expense and in consultation with the Purchaser, complete the required survey(s) and make all necessary applications and complete the registration of the Property such that title to the Property may be raised or otherwise transformed before the Closing Date into such parcels of land as may be determined by the City, acting reasonably and in consultation with the Purchaser, such consolidated parcels to be transferred to the Purchaser on the Closing Date in accordance with this Agreement.

6.2 REZONING APPLICATION

Consistent with the SE Industrial Concept Plan, the City administration will make an application to City Council requesting that the Zoning Bylaw be amended such that the Property be rezoned to support a residential development in accordance with the intended use of the Property by the Purchaser. The City shall provide written notice to the Purchaser when City Council is to consider the Rezoning Application.

6.3 ASSIGNMENT OF EXISTING FARMING LEASES

The Purchaser acknowledges and agrees that the City is currently leasing portions of the Property to third parties for use as agricultural land and that all or portions of the Property have been seeded and maintain growing crops that are owned by and the property of third party tenants pursuant to those leases provided by the City to the Purchaser, which are listed in Schedule C hereto (the "**Leases**"). The City shall assign, and the Purchaser shall assume, all or a portion of the Leases effective on the Property as of the Closing Date, and any adjustments as between the City and the Purchaser for any rent, prepaid rent, proceeds of insurance, and any adjustments required as a result of the Leases shall be made in accordance with Section 2.4 hereof. The City shall cooperate in good faith with the Purchaser to effect any amendments, assignments, and assumptions of the Leases on or prior to the Closing Date.

6.4 RISK AND INSURANCE

Until closing of the transaction contemplated by this Agreement, the Property shall be at the risk of the City. The City shall maintain in full force and effect until the Closing Date those policies of insurance currently in effect over the Property or portions thereof. The Purchaser acknowledges and agrees that the City has not placed, and will not be required to place, policies of insurance over certain portions of the Property.

PART 7 ACCESS TO THE PROPERTY

7.1 ACCESS TO THE PROPERTY

Other than as expressly set forth in this Agreement, the Purchaser shall not, without the prior written consent of the City, have access to, occupy or use the Property prior to the Closing Date. In the event that the City grants the Purchaser access to the Property prior to the Closing Date, such access shall be subject to any conditions that may be imposed by the City in its absolute and unfettered discretion.

7.2 ACCESS TO PROPERTY FOR LIMITED PURPOSES

The City hereby grants to the Purchaser, its servants, agents, contractors, workers, representatives and their respective vehicles and equipment, access to the Property and permission to enter onto the Property at the time or times, prior to the Closing Date, mutually agreed to by the Parties for the sole and limited purpose of one or more of the following:

- a) conducting an environmental site assessment;
- b) conducting soil and geotechnical testing;
- c) determining the availability and suitability of water, sanitary sewer and storm sewer services and/or other utilities to and from the Property;
- d) locating survey pins or monuments markers and/or conducting topographical surveys at or near the Property; and
- e) conducting preliminary engineering and site analysis work necessary to undertake the proposed development.

7.3 INDEMNIFICATION

The Purchaser shall make good any damage arising out of or resulting from its access to the Property and any inspections made thereof or tests performed in respect thereof and shall (and does hereby agree to) indemnify and save the City harmless from any and all costs, expenses or claims whatsoever incurred or suffered by the City arising out of or resulting from the Purchaser's access hereunder to the Property and any inspections made thereof or tests performed in respect thereof. This provision shall survive the Closing Date and the termination of this Agreement.

PART 8 CLOSING ARRANGEMENTS

8.1 CLOSING DOCUMENTS

- (a) The City covenants to execute, where applicable, and deliver to the Purchaser's solicitor, at least five (5) Business Days prior to the Closing Date, the following:
 - (i) a transfer, in favour of the Purchaser, of a 100% fee simple interest in the Property, in form acceptable for registration;
 - (ii) a Transform Approval Certificate, if applicable and in accordance with section 6.1 of this Agreement, in registrable form, duly prepared for registration by the Purchaser on the Closing Date;
 - (iii) a statement of adjustments, calculating all debits and credits in accordance with this Agreement;
 - (iv) a certificate signed by an officer of the City dated as of the Closing Date certifying that all the representations and warranties of the City set forth in this Agreement are true and correct, that the Leases are in full force and effect and in good standing on the parts of both the City and the tenants thereunder without modification or amendment except as shall have been previously disclosed to the Purchaser, and that the City is not in breach of any of its covenants under this Agreement;
 - (v) an assignment and assumption agreement for all or a portion of those leases in effect as of the Closing Date pursuant to Section 6.3; and
 - (vi) such other documentation relating to the completion of the transaction contemplated by this Agreement as the Purchaser may reasonably require.
- (b) The Purchaser covenants to execute, where applicable, and deliver to the City's solicitor, on or before the Closing Date, the following:
 - (i) the balance of the Purchase Price;
 - (ii) a certificate signed by an officer of the Purchaser dated as of the Closing Date certifying that all the representations and warranties of the Purchaser set forth in this Agreement are true and correct and that the Purchaser is not in breach of any of its covenants hereunder;
 - (iii) a declaration to, and indemnity in favour of, the City with respect to GST;
 - (iv) an assignment and assumption agreement for those leases in effect as of the

Closing Date pursuant to Section 6.3; and

- (v) such further documentation relating to the completion of the transaction contemplated by this Agreement as the City may reasonably require.

8.2 PURCHASER'S OBLIGATIONS

The Purchaser shall:

- a) submit the transfer authorization for registration at the Saskatchewan Land Titles Registry no later than five days following receipt of the transfer authorization and upon registration shall immediately notify the City Solicitor of such registration;
- b) pay all taxes, charges and levies properly assessed on or against the Property from time to time, including local improvement rates following the Closing Date; and
- c) indemnify and save harmless the City from and against any and all manner of claims, damages, losses, costs, charges, judgments or awards whatsoever occasioned to, suffered by or imposed upon the City, either directly or indirectly, arising out of the occupancy or use of the Property by the Purchaser prior to the Closing Date.

The provisions of this subsection 8.2(c) shall survive the Closing Date.

8.3 EXCLUSIVITY

From the date this Agreement is executed by the City, the City shall not, directly or indirectly: (a) solicit, initiate, seek, entertain, consider, encourage, discuss, negotiate or accept any expression of interest, enquiry, proposal or offer, whether oral, written or otherwise, from any person (other than the Purchaser or any person acting on its behalf) with respect to any sale of the Property (or any part thereof); or (b) participate in or continue any discussions or negotiations or enter into any oral or written agreement or understanding with, or provide any confidential, proprietary or non-public information to, any person (other than the Purchaser or any person acting on its behalf) with respect to any sale of the Property. The City shall immediately cease and cause to be terminated any existing discussions, negotiations or other activities with any parties with respect to any competing offer for the Property.

PART 9 FORCE MAJEURE

9.1 FORCE MAJEURE GENERALLY

Each Party to this Agreement shall be excused (for so long as a Force Majeure Event continues) from performing its contractual obligations hereunder if it is prevented or delayed in such performance by any Force Majeure Event.

PART 10 MISCELLANEOUS

10.1 ENUREMENT

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators and successors.

10.2 TIME OF THE ESSENCE

Time is expressly declared to be of the essence of this Agreement and each of the terms and conditions thereof.

10.3 COUNTERPARTS

This Agreement may be executed in counterparts and may be signed by facsimile or other means of electronic communication producing a printed copy, each of which, when so executed, shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the date first written above.

10.4 WAIVER

No waiver of either Party is effective unless in writing, and a waiver affects only the matter and its occurrence specifically identified in the writing granting the waiver and does not extend to any other matter or occurrence.

10.5 WAIVER OF LEGISLATION

The Purchaser covenants and agrees with the City:

- (a) that *The Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action as defined in *The Land Contracts (Actions) Act* (Saskatchewan) with respect to this Agreement;
- (b) that *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to:
 - (i) this Agreement;
 - (ii) any mortgage or charge or other security for the payment of money made, given or created by this Agreement;
 - (iii) any Agreement or instrument renewing or extending or collateral to this agreement or renewing and/or extending or collateral to any mortgage, charge or other security referred to or mentioned in (ii) of (b) of this paragraph; and
 - (iv) the rights, powers, remedies of the City under this Agreement or under any mortgage, charge or other security agreement or instrument referred to or mentioned in (ii) and (iii) of (b) of this paragraph.

10.6 INDEPENDENT LEGAL ADVICE

Each of the Parties hereto, by their execution of this Agreement, acknowledge that such Party has carefully read and fully understands the terms of this Agreement and has obtained independent legal advice with respect to this Agreement.

10.7 NOTICES

Any notice, document or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered personally by hand, or delivered by facsimile or email transmission to the other Party at the address, facsimile transmission number or email address for such Party set out below or other such address as the Parties may advise by notice:

To the City:

City Clerk/Solicitor
City of Moose Jaw
228 Main Street North
Moose Jaw, SK S6H 3J8
F: (306) 692-4518
E: MGulka-Tiechko@moosejaw.ca

To the Purchaser:

Carpere Valley Development Corp.
280 – 2899 No. 3 Road
Richmond, BC V6X 2B2
F:
E:

With a copy to:

MLT Aikins LLP
1500 – 410 22nd Street East
Saskatoon, SK S7K 5T6

F: 306-975-7145
E: mchoi@mltaikins.com
Attention: Michael M. J. Choi

A notice is deemed to be received on the following days:

- a) if a notice is hand delivered, such notice is deemed to be received on the date of delivery;
- b) if a notice is sent by registered mail, such notice is deemed to be received three days after the date of such mailing;
- c) if a notice is sent by facsimile transmission, such notice is deemed to be received on the day such facsimile transmission is sent;
- d) if a notice is sent by email, such notice is deemed to be received on the date shown on the "read receipt" message from the Party being notified; and
- e) if postal service is interrupted or substantially delayed, all notices shall be hand-delivered or sent by facsimile or email during the period of such interruption or substantial delay.

10.8 COSTS

All costs and expenses incurred in connection with the negotiation, execution and delivery of this and any related agreements, and the consummation of the purchase, will be paid by the party incurring such costs and expenses.

10.9 ASSIGNMENT

Upon consent and approval of the City, which will not be unreasonably withheld, conditioned or delayed, the Purchaser shall have the ability to assign this Agreement and any other ancillary agreements between the City and the Purchaser to an affiliate, subsidiary, nominee, partnership, limited partnership, or other related entity of the Purchaser. Upon the assignee becoming bound by and obligated to observe and perform the covenants and obligations of the Purchaser thereunder, the Purchaser (including, without limitation, its directors, officers, agents, employees, members, and shareholders) shall, without further agreement, be released on an absolute and irrevocable basis from any and all liability of any kind whatsoever upon such covenants and obligations. For greater clarity, this restriction only applies to this Agreement and not to any transfers of land by the Purchaser to third-party purchasers following the Closing Date.

10.10 FURTHER ASSURANCES

The City and the Purchaser covenant and agree to take all steps and sign all further documents as are

reasonably required or necessary to give effect to the transaction set forth in this Agreement.

10.11 JURISDICTION

This Agreement shall be governed by the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein.

10.12 SEVERABILITY

If any provision contained in this Agreement or its application to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first written above.

CITY OF MOOSE JAW

Per: _____

Per: _____

CARPERE VALLEY DEVELOPMENT CORP.

Per: _____

SCHEDULE A
LAND



SW

33

SE

SW

Legend



City Owned Land

City Owned Land

- parcel is approximately 64 acres

NW

NE

64 ac

28

NW

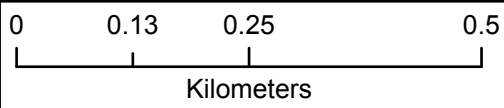
NE

27

SW

SE

SW



GIS

City of Moose Jaw
Information Technology Dept.

Created: 03/07/2019 10:20 AM

SCHEDULE B
PERMITTED ENCUMBRANCES

**SCHEDULE C
LEASES**



MASTER DEVELOPMENT AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, 2019.

BETWEEN:

CITY OF MOOSE JAW a municipal corporation continued under *The Cities Act* (the "**City**")

-and-

CARPERE MOOSE JAW INDUSTRIAL PARK CORP., a corporation duly incorporated pursuant to the federal laws of Canada ("**Carpere**")

RECITALS:

- A. Carpere is or will be the registered owner of the lands in accordance with the Purchase Agreement (the "**Lands**");
- B. Carpere wishes to develop the Lands into certain residential, commercial and industrial uses in accordance with the concept plan as shown in Schedule "B" to this Agreement (the "**Concept Plan**") (the "**Proposed Development**");
- C. Carpere and the City each wish to enter into this Agreement to set out the general terms and conditions on which Carpere will develop the Lands and carry out the Proposed Development, including but not limited to the responsibilities and rights of each of Carpere and the City; and
- D. The Proposed Development is a long-term vision and shall be developed in phases over the following decades. The exact scope and timing of the phases of the Proposed Development shall be determined by market demand and shall be flexible to accommodate a variety of uses.

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

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement:

- (a) "**Agreement**" means this Master Development Agreement and all Schedules hereto, as the same may be amended or restated from time to time;

- (b) **"Applicable Laws"** means all present and future federal and provincial statutes, laws, ordinances, codes, rules and regulations in effect in Saskatchewan, as amended and/or re-enacted from time to time, and all rules, orders and directives issued by any governmental department, regulatory agency or court of law in Canada, and all municipal bylaws applicable to Carpere or the Lands or any part thereof or to any activity that takes place thereon;
- (c) **"Business Day"** means any day of the week except Saturday, Sunday or any statutory holiday in Saskatchewan;
- (d) **"City Council"** means the Council of the City;
- (e) **"City Engineer"** means City's Director of Engineering or his or her delegate;
- (f) **"City's System"** means the Fresh Water and Waste Water infrastructure which is owned and operated by the City including all meters, pipelines, water mains, waste water mains, reservoirs, pumps, booster pumping facilities, lift stations, improvements, works and facilities whether free standing or otherwise, appurtenances, access roads, gates, land, easements and rights of way or whether ancillary thereto or connected therewith, together with any and all associated approvals, licenses, storage tanks, pumps, pipes, improvements, works and facilities, whether free standing or otherwise, or whether ancillary thereto or connected therewith and whether existing as at the date of this Agreement or constructed in the future;
- (g) **"Concept Plan"** has the meaning given in Recital B to this Agreement
- (h) **"Construction Area"** means the area of the Lands and the portion of the land surrounding the Lands upon which the City will construct and install the Carpere Infrastructure;
- (i) **"Consulting Engineer"** means a professional engineer or firm of professional engineers duly licensed to practice by the Association of Professional Engineers and Geoscientists of Saskatchewan;
- (j) **"Development Levy Bylaw"** means the City of Moose Jaw Development Levy Bylaw, as the same may be amended or restated from time to time;
- (k) **"Environmental Laws"** includes all common law and any and all present and future federal and provincial statutes, laws, ordinances, codes, rules and regulations in effect in Saskatchewan, as amended and/or re-enacted from time to time and any rule, order or directive issued by any governmental department, regulatory agency or court of law in Canada and all municipal bylaws and ordinances relating to the protection of the environment, the care, maintenance, use, storage and possession of hazardous substances or contaminants, and the safe guarding of the health and safety of persons coming or potentially coming into contact with such substances;

- (l) **"Force Majeure Event" or "Force Majeure"** means any condition, event or circumstance which is unavoidable or beyond a party's reasonable control including, without limitation, the occurrence of an extreme weather event, fire, explosion, acts of public enemies, war, revolution, terrorism, civil disturbance, embargoes, strikes, lockouts, labour disputes, walkouts or other industrial disputes of any party, riots, blockades, hostilities, epidemics, confiscation, seizure or order by governmental authority, electrical power or fuel shortages, or the act or failure to act of any governmental authority;
- (m) **"Fresh Water"** means potable water suitable for human consumption which has been treated and tested by the City to meet applicable drinking water standards;
- (n) **"GST"** means federal Goods and Services Tax, Harmonized Sales Tax or other similar tax in force from time to time pursuant to the *Excise Tax Act* (Canada), as applicable;
- (o) **"Hazardous Substance"** includes any contaminant or hazardous or toxic chemical or waste or other material or substance within the meaning of any Environmental Laws relating to or imposing liability or standards of conduct concerning such contaminant, hazardous or toxic chemical, or waste or other material or substance, all as in effect from time to time, and any distinguishable kind of organic or inorganic matter, whether animate or inanimate, entering or which may enter the air, land, water or layers of the atmosphere in a quantity or concentration or under conditions that: (i) have or may have an immediate or long term harmful effect on the environment; (ii) constitute or may constitute a danger to the environment on which human life depends, or (iii) constitute or may constitute a danger to human life or health;
- (p) **"Lands"** means those lands as set out for purchase in the Purchase Agreement and as shown in Schedule "A";
- (q) **"Proposed Development"** has the meaning given in Recital B to this Agreement;
- (r) **"Purchase Agreement"** means, collectively, the purchase and sale agreements relating to the purchase of the Lands by Carpere from the City dated as of *;
- (s) **"Service Connection"** has the meaning given to that term in *The Cities Act* (Saskatchewan);
- (t) **"Servicing Agreement"** means the form of agreement described in Schedule "C" attached to this Agreement;
- (u) **"Subdivision Approval"** means the issuance by Information Services Corporation of a Transform Approval Certificate which, when registered at the Saskatchewan Lands Titles Registry, will cause a new title to be issued in respect of those portions of the Lands to be developed;
- (v) **"Utility Bylaw"** means the City of Moose Jaw Bylaw No. 5152 and any other bylaw

now or hereafter established, amended or replaced from time to time by the City Council;

- (w) **"Water Quality Requirements"** means the requirements of any and all permits, approvals and Applicable Laws (including the Utility Bylaw) governing or otherwise applying to the treatment and the supply of Fresh Water or Waste Water, as applicable;
- (x) **"Waste Water"** means liquid effluent produced from or arising in conjunction with the operation of the Proposed Development, excluding stormwater created by snow melt, precipitation and other means, and any sub-surface drainage;
- (y) **"Waste Water Connection Point"** means the point of delivery sanitary sewer waste water from the Lands to the City System; and
- (z) **"Zoning Bylaw"** means the City of Moose Jaw Bylaw No. 5346 and any other bylaw now or hereafter established, amended or replaced from time to time by the City Council governing the zoning of the Lands.

Interpretation

1.2 In this Agreement, except as otherwise expressly provided:

- (a) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, governmental authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;
 - (i) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
 - (ii) "hereof", "herein", "hereto", "hereinafter", and other terms of similar import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;
 - (iii) any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency;
 - (iv) the words, "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", will not be deemed limited by the specific enumeration of items but will, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";

- (v) the division of this Agreement into parts, articles and sections and the use of headings is for convenience of reference only and will not modify or affect the interpretation or construction of this Agreement or any of its provisions;
- (vi) any reference to a statute of any governmental authority will include and will be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto; and
- (vii) this Agreement is a servicing agreement as contemplated by section 172 of *The Planning and Development Act, 2007* (Saskatchewan) and, among other things, the City is entitled to all powers, rights and remedies granted by the Act in relation thereto.

Severability

- 1.3 Any part, article, section or other subdivision or any other provision of this Agreement which is, is deemed to be, or becomes void, illegal, invalid or unenforceable will be severable from this Agreement and ineffective to the extent of such voidability, illegality, invalidity or unenforceability and will not invalidate, affect or impair the remaining provisions of this Agreement which will be severable from any void, illegal, invalid or unenforceable part, article, section or other subdivision or provision.

Time

- 1.4 Time is of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the City and Carpere or by their respective solicitors who are hereby expressly appointed in this regard. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited will extend to the next following Business Day.

Governing Law

- 1.5 This Agreement and its application and interpretation will be governed by and construed in accordance with the laws in force in the Province of Saskatchewan including, without limitation, *The Planning and Development Act, 2007* (Saskatchewan) and the performance of the obligations contemplated by this Agreement will be performed in accordance with all Applicable Laws. Without limiting the generality of the foregoing, Carpere agrees to observe and comply with all of the City's bylaws in effect from time to time and to obtain all required approvals and permits from all government authorities having jurisdiction over the Lands, Carpere, and the Proposed Development. Each of the parties irrevocably submits to the jurisdiction of the courts of the Province of Saskatchewan for the interpretation and

enforcement of this Agreement.

Schedules

1.6 The following Schedules are attached hereto and form a part of this Agreement:

Schedule A – Lands

Schedule B – Concept Plan

Schedule C – Form of Servicing Agreement

PART 2 SUBDIVISION AND DEVELOPMENT OF THE LANDS

Phases and Stages of Proposed Development

2.1 The City and Carpere each acknowledge and agree that Carpere will be proceeding in good faith to complete the Proposed Development in a commercially reasonable manner, developing of the Lands through phases and stages of such size and content as may be determined by Carpere from time to time and which shall be consistent with the Zoning Bylaw and the City's policies from time to time.

Composition of Development and Re-Zoning Applications for Residential Areas

2.2 The City and Carpere each acknowledge and agree that the Proposed Development contains an aggregate area of approximately 100 acres of proposed residential development, such residential development to be completed by Carpere in those areas that are identified for residential use in the City's Official Community Plan.

2.3 The City agrees that, in conjunction with the Purchase Agreement, it shall bring forward any required applications before its City Council to re-zone approximately 64 acres of the Lands in those areas that are identified for residential use in the City's Official Community Plan, which were previously owned by the City, to be used for residential use as part of the Proposed Development.

2.4 The City further acknowledges and agrees that Carpere wishes to have an additional area consisting of approximately 36 acres or more appropriate for rezoning to be used for residential use. Provided that those areas that are subject to rezoning are identified as residential use in the City's Official Community Plan, the City agrees to act in good faith in facilitating any subsequent applications to be brought before its City Council relating to any re-zoning relating to the additional proposed residential lands within the Proposed Development.

Servicing Agreements for Stages and Phases of Development

- 2.5 The City and Carpere each acknowledge and agree that each phase or stage of the Proposed Development as may be completed by Carpere from time to time shall be subject to the parties each entering into a Servicing Agreement that prescribes any additional servicing infrastructure and Service Connections required for the applicable phase or stage of the Proposed Development, the specific terms and conditions relating to the construction and installation of such additional servicing infrastructure and Service Connections, any servicing agreement or development levy fees payable relating to the applicable phase or stage of the Proposed Development, any requirements of the City relating to land dedication and any performance security required by the City relating to Carpere's obligations under a Servicing Agreement.
- 2.6 The City and Carpere each acknowledge and agree that the Servicing Agreements to be used for the Proposed Development shall be substantially in the form as is appended as Schedule "C" to this Agreement or such other form as may be agreed by the City and Carpere from time to time.
- 2.7 For the purposes of calculating the servicing agreement or development levy fees payable by Carpere to the City relating to each applicable phase or stage of the Proposed Development, the City and Carpere each acknowledge and agree that such servicing agreement fees or development levies shall be payable in accordance with the City's policies as may be effect as at the date of the applicable Servicing Agreement. Notwithstanding the foregoing, the City and Carpere each acknowledge and agree that the applicable servicing agreement fee or development levy rate for each Servicing Agreement relating to the Proposed Development shall be fixed at the lesser of \$49,600.00 per acre or the then-current development levy rates being offered for similar developments in the City of Moose Jaw for a period of ten (10) years from the effective date of this Agreement, following which period the applicable servicing agreement fee or development levy rate for each Servicing Agreement shall be the then current rate(s) in effect and adopted by City Council or such other rate(s) as may be approved by City Council from time to time.
- 2.8 For further clarity, the City and Carpere each acknowledge and agree with the other that:
- (a) servicing agreement or development levy fees shall be payable by Carpere upon Carpere submitting a development permit application to the City ; and
 - (b) servicing agreement or development levy fees shall not apply to any portions of the Proposed Development to be used for purposes excluded under the Development Levy Bylaw.

Easements and Lands Dedication

- 2.9 The City will provide, prepare, cause to be executed and register all easements required by the City for the installation, operation, maintenance and repair of any City water, sanitary or drainage or utility in, on, under or above the Lands as may be required and further described

in each Servicing Agreement, and will further provide and see to the registration of easements required by any third party utility company.

- 2.10 All agreements pertaining to restrictive access to or from the Lands or to access easements and or rights-of-way or other covenants of a restrictive nature with respect to the use of the Lands, will be prepared, provided and executed by the City, and will be registered by and at the cost of the City, as a first charge against the title if so required by the City in conjunction with any required subdivision of the applicable Lands and the execution and completion of applicable Servicing Agreements.
- 2.11 The easements and agreements described above will be registered at the Saskatchewan Lands Titles Registry prior to the transfer of title to any portion of the Lands to third parties.
- 2.12 Carpere and the City will co-operate for the purposes of identifying, documenting and registering interests based on easements and caveated agreements in a timely and cost-effective manner.

PART 3 INFRASTRUCTURE REQUIREMENTS

Construction and Installation of Infrastructure

- 3.1 Carpere and the City each acknowledge and agree that regional servicing infrastructure (including water, sewer and roadways) (the “**SaskPower Infrastructure**”) will be provided to the areas surrounding the Lands through a separate agreement between the City and Saskatchewan Power Corporation (“**SaskPower**”) relating to the lands located at NE 27-16-26 Ext 2 and SE 27-16-26-2 Ext 3 (collectively, “**SaskPower Site**”) (the “**SaskPower Agreement**”). Carpere and the City each acknowledge and agree that any upgrades to the SaskPower Infrastructure that are required exclusively to support the Lands or that are otherwise for the exclusive benefit of Carpere and the Lands (the “**Carpere Infrastructure**”) shall be the sole cost and responsibility of Carpere. Carpere and the City shall enter into cost sharing agreement(s) in such form and content as may be reasonably provided by the City and reasonably acceptable to Carpere (the “**Cost Sharing Agreement**”) wherein Carpere shall reimburse the City, on a cost recovery basis, for the 100% of the actual incurred costs in completing the Carpere Infrastructure in addition to any servicing agreement or development levy fees payable relating to the Lands or the Proposed Development.
- 3.2 Unless otherwise set out in this Agreement or an applicable Servicing Agreement, all of the Carpere Infrastructure to be constructed and/or installed by the City will be constructed and/or installed in accordance with the City's then current development standards and specifications with respect to industrial development.
- 3.3 The Carpere Infrastructure to be constructed or installed by the City will be installed to the property line of the Lands and will not include any Service Connections or any other portions of the water or sanitary sewer systems located within the boundaries of the Lands, except for any portions thereof that are intended to service lands other than the Lands and which must

cross under, on, or over the Lands. For further certainty, unless otherwise agreed to by the City, in writing, or such infrastructure is intended to serve lands other than the Lands, the City will not have any responsibility for the construction or modification of any other infrastructure to support the Proposed Development other than the Carpere Infrastructure.

- 3.4 The City may engage a Consulting Engineer to assist with the design and installation of the Carpere Infrastructure. The City and its Consulting Engineer will consult with Carpere regarding the design and installation of the Carpere Infrastructure for the Proposed Development. The City will instruct its Consulting Engineer to work cooperatively with Carpere in accommodating Carpere's infrastructure needs, including Carpere's Service Connections. Notwithstanding any such consultation, the City will have complete and absolute discretion regarding the design, placement, construction and installation of the Carpere Infrastructure, subject to the terms of this Agreement.

Carpere – Proposed Development Infrastructure and Service Connections

- 3.5 Carpere will design, construct and install any additional servicing infrastructure required in addition to the Carpere Infrastructure that may be required to support the Proposed Development. Any additional, supplemental, upgraded, or expanded servicing infrastructure constructed by Carpere above and beyond its own requirements at the request of the City that provides the City or any other owner or user of other lands with infrastructure servicing shall be subject to Carpere and the City reaching a mutually agreeable cost sharing arrangement.
- 3.6 Carpere will, at its own cost, install all Service Connections to buildings now or hereafter constructed on the Lands.
- 3.7 All additional servicing infrastructure required for the Proposed Development and any Service Connections shall be constructed and completed by Carpere shall be constructed and/or installed as may be agreed by the parties from time to time through Servicing Agreements to be entered into pursuant to section 2.5 of this Agreement. Unless otherwise set out in this Agreement or an applicable Servicing Agreement, all of the additional servicing infrastructure required for the Proposed Development and any Service Connections to be constructed and/or installed by Carpere will be constructed and/or installed in accordance with the City's then current development standards and specifications with respect to industrial development.
- 3.8 Designs and locations of the additional servicing infrastructure required for the Proposed Development and any Service Connections are subject to the approval of the City Engineer for conformity with existing and planned locations of City infrastructure, which approval will be obtained prior to the construction or installation of such works.

Carpere – General Covenants

- 3.9 Carpere will, at its sole cost and expense:
- (b) comply with the requirements and provisions of Applicable Laws, except as otherwise

specifically contemplated in this Agreement;

- (c) construct and operate the Proposed Development and in so doing Carpere will comply with the requirements of all Applicable Laws including, without limitation, all Environmental Laws, in connection with the construction and operation of the Proposed Development and all other improvements and appurtenances to be constructed and/or operated by or on behalf of Carpere;
- (d) submit to the City the plans and specifications for the Proposed Development and shall obtain all required permits and approvals prior to the commencement of construction;
- (e) operate and maintain the Service Connections located above, on or underneath the Lands and make all repairs and replacements to the Service Connections as are necessary to keep the Service Connections in a good state of repair and use reasonable efforts including regular monitoring and inspection to ensure that the Service Connections do not contain leaks. The City may require Carpere to perform periodic inspections, testing and/or repairs of all or any of the Service Connections at any time for the purpose of ensuring that the Service Connections are being maintained in a good state of repair by providing written notice to Carpere. All installations must be first approved by the City;
- (f) where a leak or other disrepair in a Service Connection is detected within the Lands, Carpere will perform all necessary repair and replacement work to remedy the leak or other disrepair as soon as reasonably possible; and
- (g) where any part of the Service Connections is damaged or destroyed for any reason within the Lands, Carpere will, as soon as possible perform all necessary repairs and replacements at its sole cost and expense.

- 3.10 Carpere will not install any temporary, permanent or potential water connection that allows or may allow backflow of contaminants, pollutants, infectious agents, other materials or substances that may change the water quality in the City System and includes swivels or changeover devices, removable sections, jumper connections and by-pass arrangements. Carpere will install such backflow prevention devices with all Service Connections as the City may require from time to time.
- 3.11 Except as expressly permitted by this Agreement, Carpere will not allow, suffer or permit any Overstrength Waste Water, Hazardous Substances, contamination, pollutants, foreign matter or like materials to enter the City System from the Lands.
- 3.12 The City and Carpere each acknowledge and agrees that the covenants in this Part 3 shall only be enforceable and exercisable against those Lands owned by Carpere until such time as Carpere has entered into a Servicing Agreement, upon which time Carpere shall be released from the covenants in Part 3 of this Agreement and such covenants shall thenceforth be of no further force or effect against Carpere.

City – General Commitments

- 3.13 The City will assist in promoting and attracting future investment and businesses into the development. While not a contractual obligation, it is the mutual desire of the Parties to have both serviced land and greenfield space available to attract new tenants to the Lands.
- 3.14 The City shall use its best efforts to have the approval process for all development and building permits for the Land be adjudicated within 28 Business Days from submission thereof, or such other reasonable length of time. The Parties agree to cooperate and share information with each other in advance of submissions, where reasonably possible, in order to obtain provisional or other preliminary approval of submissions for development and building permits.

Site Grading

- 3.15 Carpere will complete all site grading of the Lands as is required by the City's engineers and Applicable Laws, and will agree to such drainage easements, if required, on the Lands that ensures proper overland surface drainage of water. Carpere site drainage plans must be approved by the City's engineers prior to site grading work being completed. Carpere will give reasonable notice to the City upon completion of site grading such that the City's engineers may inspect and approve site grading.

Fire Suppression Requirements

- 3.16 Carpere will be responsible for the installation of any private hydrants required by the City, which will be outlined in the development and building permit process and subject to the requirements of the applicable Servicing Agreement and final fire protection design.

Damage to City Infrastructure

- 3.17 When installing or constructing or causing the installation or construction of the Proposed Development, Carpere will ensure that all Carpere Infrastructure and other City property and infrastructure in the Construction Area and the area immediately surrounding the Construction Area, is at all times protected from damage, normal wear and tear excepted.
- 3.18 Carpere will promptly notify the City of any damage to any Carpere Infrastructure or other City property or infrastructure that occurs during the course of any construction or development on the Lands or otherwise arising from Carpere's operations and after such notice, at the City's option, Carpere will make all required repairs and replacements to repair the damage or will reimburse the City for all of the direct costs and expenses incurred by the City to make such repairs and replacements.

Inspection and Testing

- 3.19 Carpere will permit the City, its officers, employees, consultants, representatives and other agents upon providing the proper notice, to have free and uninterrupted access to the Construction Area for the purposes of inspecting and testing to determine whether the Carpere

Infrastructure or any other work or service under this Agreement, comply with this Agreement, other City requirements, and the City of Moose Jaw Bylaws. Any inspection or testing conducted by the City, its officers, employees, consultants, representatives or other agents, contemplated by this Section 3.19 will be supplementary to and not in lieu of any other inspections or testing conducted or required to be conducted by Carpere in accordance with this Agreement, any Servicing Agreement or Applicable Laws.

PART 4 DEVELOPMENT MILESTONES

Development Milestones

- 4.1 Carpere shall cause the Lands to be developed in accordance with the Proposed Development and in accordance with the following principles and guidelines (the “**Development Guidelines**”):
- (a) Carpere and the City entering to the Cost Sharing Agreement on or before March 1, 2020;
 - (b) Carpere fully satisfying all of its payment and other obligations to the City pursuant and under the Cost Sharing Agreement on or before December 31, 2021; and
 - (c) Following December 31, 2021, the Developer shall maintain a minimum of 10 acres of the Lands and Proposed Developer that are developed, serviced and available for sale. For clarity, the Developer shall be deemed to have met the requirement set out herein if the Developer has entered into or is using its commercially reasonable efforts to actively and in good faith pursue and enter into a Servicing Agreement for a sufficient portion of the Lands to satisfy this obligation.

Discussions relating to Progress of Development

- 4.2 The parties each acknowledge and agree to review and discuss the progress and any matters relating to the Proposed Development not less frequently than every six months to ensure that this Agreement and the Proposed Development is proceeding and meeting the goals of each respective party and the Development Guidelines set out herein.

Failure to Meet Development Guidelines

- 4.3 If Carpere fails to achieve or abide by the Development Guidelines, the City and Carpere each acknowledge and agree that, at the City’s option and discretion, the following process shall occur:
- (a) the City shall provide written notice to Carpere relating to the failure to achieve or abide by the Development Guidelines and any particulars thereto (the “**Development Guideline Notice**”);

- (b) Carpere shall have thirty (30) days from the date of service of the Development Guideline Notice to refute the notice from the City and to provide any applicable evidence relating to its compliance with the Development Guidelines; and
- (c) the City and Carpere shall discuss the Development Guidelines any breach of such requirements by Carpere at the next following meeting between the parties in accordance with section 4.2 herein.
- (d) if Carpere does not correct the breach of the Development Guidelines or commence activities on the Lands in order to comply with the Development Guidelines or executes a mutually agreeable extension with the City within a period of eighteen (18) months following receipt of the Development Guideline Notice, or such other period as may be agreed upon or extended by mutual agreement of the City and Carpere (the “**Option Notice Period**”), then Carpere acknowledges and agrees that the City, may in its sole discretion, exercise the Option to Re-Purchase in accordance with Part 5 of this Agreement.

PART 5 OPTION TO RE-PURCHASE

Option to Re-Purchase

5.1 In the event of Carpere’s failure to achieve or abide by the Development Guidelines in accordance with section 4.3(d) herein, Carpere grants the City an option to purchase those undeveloped portions of the Lands, as follows (the “**Option to Re-Purchase**”):

- (a) the City may purchase any undeveloped portions of the Lands, as may be designated by the City in its sole discretion, for a purchase price of:
 - (i) \$10,000.00 per acre, if the Option to Re-Purchase is exercised prior to the tenth (10th) anniversary of the full execution of this Agreement, plus the fair market value of any improvements constructed on the optioned Lands; or
 - (ii) Fair market value (having regard for both the value of the Lands and any improvements constructed thereupon), if the Option to Re-Purchase is exercised after the tenth (10th) anniversary of the full execution of this Agreement, which fair market value shall determined by a qualified and independent appraiser mutually agreeable to the City and Carpere, both acting reasonably,

(in either event, the “**Option Price**”)

which Option to Re-Purchase will be exercisable at the sole discretion of the City.

5.2 The Option to Re-Purchase may be exercised upon the completion of the Option Notice Period.

5.3 The City will have until 5:00 p.m., on the 180th day following the completion of the Option

Notice Period, to exercise its Option to Re-Purchase, by providing Carpere written notice in accordance with this Agreement that the City is exercising its Option to Re-Purchase. If the 180th day falls on a weekend or a statutory holiday, then the City has until 5:00 p.m. the next following Business Day to exercise its Option to Re-Purchase.

- 5.4 Within 10 Business Days after the City's notice to exercise its Option to Re-Purchase, Carpere shall deliver to the City a duly executed registerable transfer authorization(s) in respect of those portions of the Lands which are subject to the Option to Re-Purchase, which the City will immediately execute and submit for registration at the Saskatchewan Lands Titles Registry.
- 5.5 Upon registration of the transfer, the City shall immediately notify Carpere of such registration(s), and forward the Option Price to Carpere.
- 5.6 Carpere shall convey to the City a good and marketable title to the portions of the Lands which are subject to the Option to Re-Purchase, free and clear of any and all registered liens, mortgages, charges, encumbrances and other registrations save and except the following permitted encumbrances:
 - (a) the conditions and reservations in the original grant of the propert(ies) from the Crown or those which may attach by implication pursuant to *The Lands Titles Act 2000* (Saskatchewan); and
 - (b) any registered or unregistered easement interest to the benefit of a provincial or municipal utility.
- 5.7 At the time of the sale of the Lands which are subject to the Option to Re-Purchase to the City, there shall be no municipal tax arrears or related penalties, local improvement levies outstanding utility accounts, charge or other monies owing in connection with or imposed on or against those propert(ies) since the time the propert(ies) were originally sold to Carpere under this Agreement. For further clarity, Carpere shall be permitted to pay out any such arrears or other amounts owing from the sale proceeds payable by the City to Carpere pursuant to the Option to Re-Purchase.

This Option to Re-Purchase is granted by Carpere upon the execution of this Agreement by all of the Parties hereof, and the Option to Re-Purchase shall be deemed to be expired and of no further force or effect thereafter for any portions of the Lands for which the City and Carpere have entered into a Servicing Agreement.

- 5.8 The City and Carpere each acknowledge and agree that this Option to Re-Purchase shall be enforceable and exercisable against Lands and shall run with the Lands until such time as Carpere has entered into a Servicing Agreement, upon which time, the City shall forthwith

provide Carpere with a release and discharge of any encumbrance relating to this Option to Re-Purchase charging such Lands.

PART 6 EVENTS OF DEFAULT AND REMEDIES

Events of Default

6.1 The following shall be events of default by Carpere:

- (a) failure to make any payment when due and payable;
- (b) bankruptcy, insolvency, the making of an assignment for the benefit of creditors, having a receiver, manager or trustee appointed by any means in respect of substantial operations or assets of Carpere or the taking of the benefit of any legislation enacted for the benefit of insolvent or bankrupt creditors;
- (c) failure or refusal to repair or replace defective or deficient portions of any of the additional servicing infrastructure required for the Proposed Development or any Service Connections in accordance with the requirements of this Agreement or as may be further defined in a Servicing Agreement;
- (d) failure to comply with any Servicing Agreement; or
- (e) failure of Carpere to fulfil its obligations under this Agreement in a timely manner.

Declaration of Default

6.2 Upon the happening of any event of default, the City may claim default by giving written notice by way of notice to Carpere. In the event that the default is not cured or reasonable steps have not been taken by Carpere to cure such default within forty five days from the date such notification is mailed by the City, the City shall be entitled to avail itself of any and all rights it may have with respect to that default, such as are defined pursuant to the terms of this Agreement, or by common law or equity or under any statute.

City Rights to Cure Default

6.3 Upon the City being entitled to enforce its rights upon default by Carpere, the City may, in its sole discretion, do one, any or all of the following, in addition to any other rights or remedies that the City may have available to it, whether under this Agreement, by common law or equity, or under any statute;

- (a) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to supply all materials and do all necessary work in connection with any outstanding work or construction, including repair or reconstruction of faulty work, and the replacement of materials which are not in accordance with such specifications and to charge the cost of so doing, together with an engineering fee equal to 10% of

the cost of the materials and works to Carpere; and

- (b) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to repair and/or maintain any additional servicing infrastructure required for the Proposed Development or any Service Connections which are the responsibility of Carpere, including repair or reconstruction, and the replacement of any materials which had not been supplied in accordance with the requirements of due and proper maintenance, together with an administrative fee of 10% of the cost of such material and work, and to charge that cost to Carpere.

City's Other Remedies

6.4 In addition to any other right or remedy granted to the City at law, in equity or by statute:

- (a) in the event that Carpere should fail to pay any sum owing to the City within 60 days of the date of any invoice rendered by the City, the City may deduct the sums owing from any cash deposit held as security, or shall be entitled to seek payment from any surety company who has issued a bond posted as security, or shall be entitled to draw upon any letter of credit issued by any chartered bank in favour of the City as security;
- (b) in the event that Carpere should fail to pay any sum owing to the City within 60 days of the date of any invoice issued by the City, Carpere agrees, upon the City's request, to execute a mortgage of the Carpere's then remaining interest in the Lands, to better secure the repayment of sums owing by Carpere to the City;
- (c) in the event that any monies owing by Carpere to the City pursuant to this Agreement, or any other Agreement relating to the development of the Lands, should not be paid by Carpere within 60 days of any invoice issued by the City, the City shall be entitled to recover the same from Carpere as a debt due and owing to the City, together with interest thereon at a rate of 8% per annum from the date of the invoice issued by the City, together with solicitor-and-client costs of any legal proceedings brought to collect such debt; and
- (d) to the extent permitted by law and equity, the City may bring action in a court of competent jurisdiction against Carpere, seeking specific performance of the terms of this Agreement, and/or a mandatory and/or prohibitory injunction, to enforce compliance with the terms of this Agreement.

PART 7 RISK AND INDEMNITY

Indemnity

- 7.1 Carpere will indemnify, defend and hold harmless the City from and against any and all claims, costs, losses, demands, damages, actions or causes of action (the "**costs**") which may be brought against or incurred by the City at the instance of any person(s) for injury, loss, or

damage, whether to person or to property arising from or related to Carpere's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the Carpere's obligations under this Agreement.

- 7.2 The City will indemnify, defend and hold harmless Carpere from and against any and all claims, costs, losses, demands, damages, actions or causes of action (the "**costs**") which may be brought against or incurred by Carpere at the instance of any person(s) for injury, loss, or damage, whether to person or to property arising from or related to the City's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the City's obligations under this Agreement.
- 7.3 The covenants of indemnity described in Section 7.1 and Section 7.2 will survive the termination or expiration of this Agreement.

PART 8 NOTICES

- 8.1 Any notice, request or other writing required or permitted to be given to either party under this Agreement will be in writing and will be delivered to the other party by hand, or by sending it by fax, by prepaid registered mail or by email, addressed:

To the City:

City Clerk/Solicitor
City of Moose Jaw
228 Main Street North
Moose Jaw, SK S6H 3J8
F: (306) 692-4518
E: cclerk@moosejaw.ca

To the Purchaser:

Carpere Moose Jaw Industrial Park Corp.
280 – 2899 No. 3 Road
Richmond, BC V6X 2B2
F:
E:

With a copy to:

MLT Aikins LLP
1500 – 410 22nd Street East
Saskatoon, SK S7K 5T6

F: 306-975-7145
E: mchoi@mltaikins.com
Attention: Michael M. J. Choi

or such address as the parties may advise by notice.

- 8.2 A notice is deemed to be received on the following days:
- (a) if a notice is hand delivered, such notice is deemed to be received on the date of delivery;
 - (b) if a notice is sent by registered mail, such notice is deemed to be received three days after the date of such mailing;

- (c) if a notice is sent by fax, such notice is deemed to be received on the day such fax is sent;
- (d) if a notice is sent by email, such notice is deemed to be received on the date shown on the "read receipt" message from the party being notified; and
- (e) if postal service is interrupted or substantially delayed, all notices will be hand-delivered or sent by fax or email during the period of such interruption or substantial delay.

PART 9 GENERAL

Independent Legal Advice

- 9.1 Each of the parties, by their execution of this Agreement, acknowledge that the party has carefully read and fully understands the terms of this Agreement and has obtained independent legal advice with respect to this Agreement.

Conflicts and Paramourty

- 9.2 In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Servicing Agreement, the provisions of this Agreement shall prevail and be paramount. If any provision of this Agreement is in conflict with or is inconsistent with a provision of any Servicing Agreement relating to the same specific matter, such provision in the Servicing Agreement shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent

Non-Waiver

- 9.3 A failure or delay by either one of the parties to exercise a right, recourse or privilege under this Agreement will not be considered as being a waiver on the part of the party to exercise such a right, recourse or privilege.
- 9.4 No waiver of either party is effective unless in writing, and a waiver affects only the matter and its occurrence specifically identified in the writing granting the waiver and does not extend to any other matter or occurrence.

Force Majeure

- 9.5 If either party is delayed, hindered or prevented from the performance of any of its obligations under this Agreement by reason of a Force Majeure Event, then the time for completing the portion of the obligation that was delayed, will be extended by a period equal to the period of delay.
- 9.6 Either party affected in the performance of its obligations by a Force Majeure Event will, to the extent practicable, take all commercially reasonable steps to remedy the event and effect

of a Force Majeure Event, provided however, that nothing contained in this section will require either party to settle any industrial dispute or to test any Applicable Laws.

- 9.7 In the event of Force Majeure, the party so affected will give prompt written notice to the other party describing the Force Majeure Event in question in reasonable detail and give prompt written notice when the condition and effect of the Force Majeure has ended.

Remedies Generally

- 9.8 Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy will be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.
- 9.9 If and whenever Carpere fails to observe or perform any of its obligations in this Agreement and fails to remedy such default within the specified cure period, if any, the City may, at its option, remedy or attempt to remedy any default of Carpere under this Agreement for the account of Carpere and to enter upon the Lands for such purposes and no notice of the City's intention to remedy any default need be given to Carpere and the City will not be liable to Carpere for any loss, injury or damage caused by acts of the City in remedying or attempting to remedy such default and Carpere will pay to the City all costs expenses incurred by the City in connection with remedying or attempting to remedy such default.

Tender

- 9.10 Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the City's solicitors on behalf of the City and by Carpere's solicitors on behalf of Carpere and any tender of closing documents or money may be made upon the City's solicitors and Carpere's solicitors, as the case may be. Payments of money under this Agreement will be made only by certified cheque, negotiable bank draft, wire transfer or solicitor's trust cheque.

Registration of Agreement

- 9.11 The City may register the Option to Re-Purchase or notice thereof on the titles of the Lands in accordance with *The Planning and Development Act, 2007* (Saskatchewan).

Assignment

- 9.12 Upon consent and approval of the City, which will not be unreasonably withheld, conditioned or delayed, Carpere shall have the ability to assign this Agreement and any other ancillary agreements between the City and Carpere to an affiliate, subsidiary, nominee, partnership,

limited partnership, or other related entity of Carpere, provided, however, that notwithstanding any assignment by Carpere, Carpere shall not be released from the provisions hereof.

Other General

- 9.13 Nothing contained in this Agreement will be deemed or construed by the parties nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties, it being understood and agreed that none of the provisions contained in this Agreement nor any act of the parties will be deemed to create any relationship between the parties other than an independent service agreement between the two parties at arm's length.
- 9.14 Except for the representations and warranties provided by the City under this Agreement, the City makes no further representations or warranties to Carpere of any kind, character or nature whether expressly implied, statutory or otherwise.
- 9.15 The indemnities provided by either party under this Agreement will survive the termination or expiration of this Agreement.
- 9.16 Save as otherwise provided herein, each of the parties will bear its own costs and expenses incurred or to be incurred in negotiating and preparing this Agreement and in the closing.
- 9.17 No amendment or modification to this Agreement will be binding upon either party unless it is agreed to in writing and signed by the parties. Carpere acknowledges and agrees that the City may only be bound upon resolution of City Council. Accordingly, Carpere understands that no modification of this Agreement, or any representation, warranty, collateral agreement, or other agreement between the parties will be validly binding upon the City until such time as a binding resolution or bylaw has been passed in relation thereto.
- 9.18 Each of the parties will at all times hereafter execute and deliver, at the request of any other party and without further consideration, all such further documents and instruments and will do and perform all such further acts as may be reasonably required by that other party to give full effect to the intent and meaning of this Agreement.
- 9.19 This Agreement will run with the Lands and will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and upon Carpere's successors in title and or interest in the Lands or any part thereof.

Fax or Electronic Copies

- 9.20 This Agreement may be executed and delivered by facsimile or other electronic means of transmission and the parties hereto may rely upon such copies of the Agreement so delivered as though such copies are originals of this Agreement.

Counterpart Execution

- 9.21 This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to be dated as of the date written at the beginning of this Agreement.

[Signature Page Follows]

The parties have duly executed this Agreement as of the date written above.

CITY OF MOOSE JAW

**CARPERE MOOSE JAW INDUSTRIAL
PARK CORP.**

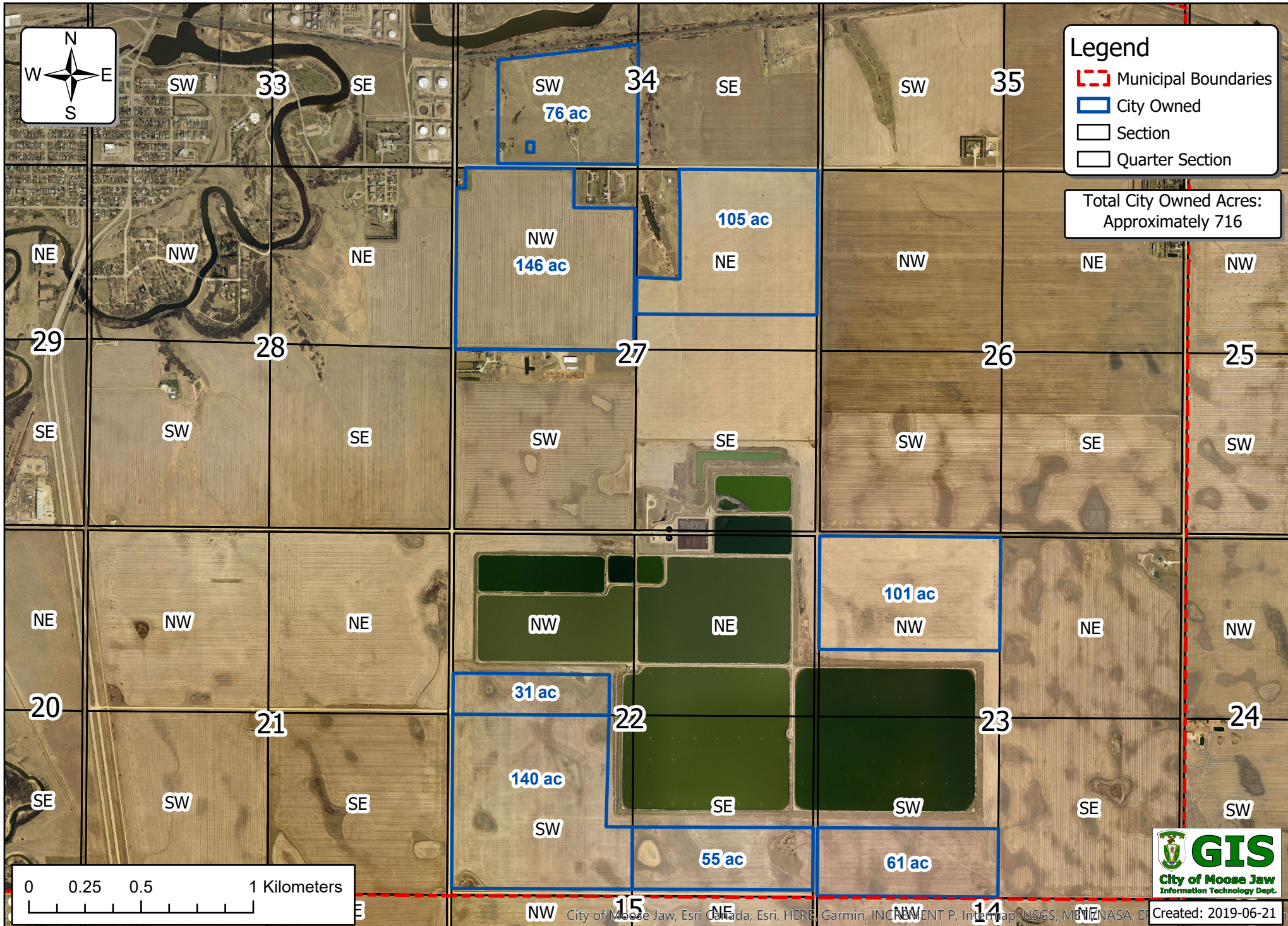
City Clerk

Mayor

Schedule A

Lands

Carpere Purchase Agreement Lands



Schedule B
Concept Plan

Schedule C
Form of Servicing Agreement

SERVICING AGREEMENT

THIS AGREEMENT made effective on the ____ day of _____, 20____.

BETWEEN:

CITY OF MOOSE JAW
(the “**City**”)

AND:

CARPERE MOOSE JAW INDUSTRIAL PARK CORP.
(the “**Developer**”)

WHEREAS:

- A. The Developer is the registered owner of the lands (collectively, the “**Lands**”) described in Schedule “A”;
- B. The Developer proposes to subdivide the Lands in accordance with the Plan of Proposed Subdivision (attached hereto as Schedule “B”);
- C. The Developer has applied to the City and to the Director of Planning and Development Services for approval of the Plan of Proposed Subdivision; and
- D. The City considers it in the public interest that the Lands be subdivided in accordance with the Plan of Proposed Subdivision subject to the Developer entering into an agreement with the City under Section 172 of the Act concerning the supply, installation or construction of certain public services, and the levy of certain fees relating to present or future costs arising from the anticipated provision by the City of services to the Lands, as subdivided.

NOW THEREFORE in consideration of the approval given to the Developer by the City, and in further consideration of the mutual promises made in this Agreement, the Parties covenant and agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

Where used in this Agreement and Schedules, the following terms have the following meanings:

- (a) “**Act**” means *The Planning and Development Act, 2007* S.S. P.-13.2, 2007, as amended and any successor legislation thereto;
- (b) “**Agreement**” means this servicing agreement, including the attached Schedules,

together with any amendments made from time to time, and the expressions “herein”, “hereto”, “hereof”, “hereby”, “hereunder”, and similar expressions referred to in this agreement shall refer to this agreement and all Schedules hereto and not to any particular article, section, subsection or other subdivisions hereof;

- (c) **“Approved Plans and Specifications”** means the plans and specifications of Developer’s Services submitted by the Developer to the City and approved by all appropriate federal, provincial, and municipal authorities as contemplated in Section 2.2 herein, including any approved amendments thereto;
- (d) **“Certificate of Final Completion”** means the maintenance release issued by the City pursuant to Section 7.2;
- (e) **“Certificate of Substantial Completion”** means the Certificate of Substantial Completion issued pursuant to Section 6.3;
- (f) **“Council”** means the City Council of the City of Moose Jaw;
- (g) **“Developer’s Services”** means all works and services of any kind whatsoever to be constructed and installed by the Developer pursuant to the provisions of this Agreement, including without limitation, all Work, all On-Site Services and all Off-Site Services required for the completion of the Development;
- (h) **“Development and Construction Standards”** means the general development, construction and servicing standards that may be adopted and approved by the City from time to time;
- (i) **“Director of Community Planning”** means the Director of Planning and Development Services for the City;
- (j) **“Drainage and Grading Plan”** means the drainage plan for the Subdivision appended as Schedule “D” to this Agreement;
- (k) **“Effective Date”** means the date first-stated above and the date of execution of this Agreement;
- (l) **“Environmental Reserve”** has the meaning ascribed to that term as set out in Section 5.3;
- (m) **“Governmental Authority”** means any governmental department, commission, board, bureau, agency or instrumentality of Canada, or any province, territory, county, municipality, city, or other political jurisdiction, whether now or in the future constituted or existing;
- (n) **“Lands”** has the meaning ascribed to that term as set out in recital A hereto;
- (o) **“Lot”** means a subdivided lot, created in accordance with the Plan of Subdivision;
- (p) **“Master Development Agreement”** means the agreement entered into between the City and the Developer dated [*].

- (q) **“Municipal Buffer”** has the meaning ascribed to that term as set out in Section 5.4;
- (r) **“Municipal Engineer”** means the Director of Engineering Services for the City designated by the City to review, inspect and monitor the construction and installation of the Work and/or such other person (including but not being limited to an employee of the City), to whom the City may delegate all or part of the responsibilities assigned to the Municipal Engineer pursuant to this Agreement;
- (s) **“Municipal Reserve”** has the meaning ascribed to that term as set out in Section 5.2;
- (t) **“Off-Site Services”**, are those services which are to be constructed and installed at those locations outside the Subdivision and that directly or indirectly serve the Subdivision, all as set out in the Approved Plans and Specifications;
- (u) **“On-Site Services”**, are those services which are to be constructed and installed in the Subdivision, all as set out in the Approved Plans and Specifications;
- (v) **“Party”** means any Person who is from time to time a party to this Agreement
- (w) **“Person”** means an individual, partnership, co-tenancy, corporation, trust, unincorporated organization, union, governmental body, the heirs, executors, administrators or other legal representatives of an individual, and any other legal entity capable of entering a contractual relationship;
- (x) **“Plan of Subdivision”** means the final Plan of Subdivision, agreed in writing by the Parties, and as registered at the requisite Lands Titles Office;
- (y) **“Proposed Plan of Subdivision”** means the proposed Plan of Subdivision appended as Schedule “B” and any substitution made therefor by the written consent of the Parties;
- (z) **“Roadways”** has the meaning ascribed to that term as set out in Section 5.1;
- (aa) **“Stop Work Order”** means an Order issued by the Municipal Engineer pursuant to Section 2.3;
- (bb) **“Subdivision”** shall mean, in the aggregate, all of the Lots subdivided from the Lands, and all Roadways, Municipal Reserve, Municipal Buffer and Walkways dedicated pursuant to the Plan of Subdivision, all Utility Parcels and all other lands, if any, that are a part of the Lands. For the sake of clarity, the term “Subdivision” may be used interchangeably with the term “Lands”;
- (cc) **“Utilities”** and **“Utility”** have the meaning ascribed to those terms set out in Section 3.4 herein;
- (dd) **“Utility Parcel”** and **“Utility Parcels”** have the has the meaning ascribed to those terms set out in Section 5.6;

- (ee) **“Utility Service”** and **“Utility Services”** have the meaning ascribed to those terms set out in Section 3.4 herein;
- (ff) **“Walkways”** has the meaning ascribed to that term as set out in Section 5.5;
- (gg) **“Warranty Period”** commences upon the issuance of the Certificate of Substantial Completion for each of the services as per Articles 2 & 3. The Warranty Period continues for a period of one (1) year, at which time the Developer is able to apply for the issuance of the Certificate of Final Completion. The Warranty Period and warranty works is a continuing obligation by the Developer until a Certificate of Final Completion has been issued and the development has been formally taken over by the City;
- (hh) **“Work”** has the meaning ascribed to that term set out in Subsection 2.1(a) and where the context requires, the term “Work” or shall also mean the Work described in Subsection 2.1(a) as constructed and installed and the re-construction and installation of the Work.

1.2 Other Defined Terms

- (a) Except as expressly provided in this Agreement, and except where the context clearly requires otherwise, all definitions used in Act shall further apply to this Agreement.
- (b) In this Agreement, unless a clear contrary intention appears, the term “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term.

1.3 Nature of Agreement

This Agreement is a servicing agreement under Section 172 of Act, and the City is entitled to all powers and remedies granted by that Act, in relation hereto. Without limiting the foregoing, the City may register this Agreement or a summary of this Agreement in order to protect the City's interest with respect to the development and servicing of the Lands.

1.4 Proper Law of Contract

This Agreement shall be construed in accordance with and be governed by the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

1.5 Headings

The division of this Agreement into Articles, Sections and any other subdivision, and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.6 Expanded Meanings

In this Agreement and attached Schedules, unless there is something in the subject matter

or context inconsistent with the same:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to any statute extends to and includes any amendment or re-enactment of such statute;
- (c) this Agreement, excluding the Schedules, overrides the Schedules; and
- (d) the masculine includes the feminine.

1.7 Schedules

Attached to and forming part of this Agreement are the following Schedules:

Schedule "A":	Lands Description
Schedule "B":	Proposed Plan of Subdivision
Schedule "C":	Developer Services / Work
Schedule "D":	Drainage and Grading Plan

1.8 Authority to Make Representations and Bind

- (a) No supplement, modification, waiver or termination of this Agreement is binding unless signed in writing.
- (b) It is understood that the City may only be bound upon resolution of its Council. Accordingly, the Developer understands that no modification of this Agreement, representation, warranty, collateral warranty, or other agreement between the parties may be validly binding upon the City, until such time as a binding resolution or bylaw has been passed with relation thereto, and has been communicated to the Developer.

1.9 Recitals

The recitals to this Agreement shall form an integral part of this Agreement as though repeated at length herein.

ARTICLE 2 CONSTRUCTION, INSTALLATION AND SERVICING OBLIGATIONS OF DEVELOPER

2.1 Services

- (a) The Developer shall be responsible for constructing and installing or causing to be constructed and installed the following public services (being, collectively, the Developer's Services, or, alternatively, the "**Work**") at its own expense and in accordance with the provisions of this Agreement, including Article 3 and Article 4 of this Agreement and the standards, plans and specifications set out in the Schedules hereto, including Schedule "C"

- (i) ●
- (ii) ●
- (b) In addition to constructing and installing the On-Site Services and the Off-Site Services, the Developer shall be responsible at its own expense for the registration of the Approved Plan of Subdivision with Information Service Corporation (ISC), and the preparation and registration of the Legal Survey.
- (c) The Developer agrees that all Work shall be constructed in a logical and sequential fashion and as promptly as possible.

2.2 Plans and Specifications

- (a) At least 30 days before the construction and installation of any of the Work, the Developer shall submit to the City all design work, plans and specifications showing the location and routing of the Work to be done (collectively, the “**Plans and Specifications**”).
- (b) The Work may proceed only after:
 - (i) all necessary approvals for construction and installation are obtained from any Governmental Authority; and
 - (ii) the Plans and Specifications have been approved by the City in accordance with section 2.3 of this Agreement.

(Hereinafter, the Plans and Specifications as approved by this section 2.2 shall be referred to as “**Approved Plans and Specifications**”).

- (c) Any amendments to the Plans and Specifications that may be necessary are subject to approval in accordance with Subsections 2.2(b)(i) and (ii) and Work in accordance with any amendments to the Plans and Specifications may only proceed after such approval has been obtained.

2.3 Review, Inspection and Monitoring of Work by Municipal Engineer

The Work shall be reviewed, inspected and monitored, when required, by the Municipal Engineer in accordance with the following provisions:

- (a) as a precondition to obtaining the approval of the City mentioned in Subsection 2.2(b)(ii), the Developer must file with the City the Plans and Specifications and design information describing the Work required, together with a copy of all tender and contract documents to be employed by the Developer for the purposes of undertaking the Work;
- (b) as a further precondition to obtaining the approval of the City mentioned in Subsection 2.2(b)(ii), all Plans and Specifications shall be reviewed by the Municipal Engineer, who shall be responsible for making recommendations to the City, with respect to the approval of such plans, pursuant to Section 2.2 above.

The City agrees to use its best efforts to review the information submitted within 14 days of the date they are submitted to the City for review;

- (c) in the event that re-design of the Approved Plans and Specifications is required at any stage of the construction and installation of the Work, plans and drawings with respect to such re-design shall also be reviewed and approved pursuant to Section 2.2 above;
- (d) all Work shall be monitored by the Municipal Engineer, who shall be entitled to inspect the performance of the Work at any time or place to ensure that the Work is consistent with the Approved Plans and Specifications;
- (e) where the Municipal Engineer requires prior notification of Work, so as to conduct a proper inspection, reasonable advance notice of the Municipal Engineer's requirement shall be given by the Municipal Engineer to the Developer;
- (f) where the Municipal Engineer is of the opinion that the Work is not being done in a good and workmanlike manner, or is otherwise of a standard not reasonably acceptable to the City, the Municipal Engineer may issue a Stop Work Order and:
 - (i) all work covered by the Stop Work Order shall cease forthwith, and not proceed until the Stop Work Order is lifted by the Municipal Engineer; and
 - (ii) the Developer shall be responsible for complying with all reasonable directions given for remediation and future Work, as may be directed by the Municipal Engineer.

2.4 Supervision of Work by Developer's Engineer

The Developer shall retain a Professional Engineer (the "**Developer's Engineer**") licensed under *The Engineering and GeoScience Professions Act* (Saskatchewan) who shall do all design work, including preparation of the Plans and Specifications, provide construction supervision and make the necessary contracts for the construction and construction supervision of the Work. All such design work, including the Plans and Specifications, shall be sealed by the Developer's Engineer.

2.5 Time for Commencement and Completion of Work

The Developer shall commence construction and installation of the Work within twelve (12) months of the execution of this Agreement. Construction and installation of the Work shall be undertaken diligently and shall be completed within twenty-four (24) months of the execution of this Agreement or such other amount of time as the City and the Developer may mutually agree, acting reasonably and with due understanding paid to the nature and scope of the Work.

2.6 Construction Standards

- (a) All Work shall be constructed and installed in accordance with the Approved Plans and Specifications and the Development and Construction Standards.
- (b) All work related to the Work shall be done in a good and workmanlike fashion.

2.7 Drawings Showing Installed Work (Record Drawings)

Upon completion of the installation of the Work, the Developer shall cause the Developer's Engineer to complete a set of drawings showing the exact location of the Work as actually constructed and installed and to deposit one set of prints and an electronic copy of any related drawings or plan with the City, in such formats as may be reasonably requested by the City.

2.8 Public Consideration and Safety

- (a) If the Subdivision is adjacent to an existing neighbourhood (the "**Neighbourhood**"), the Developer shall take all reasonable precaution to ensure that the Neighbourhood is not disturbed during the construction period.
- (b) The City reserves the right to refuse access to any construction traffic should it be deemed that it is dangerous or unsafe for residents, it is causing excessive damage to the residential street.
- (c) Construction noise shall be kept to a minimum, and in strict compliance with the City's noise bylaws.
- (d) During the construction and installation of the Work, the Developer shall put up such barricades, lights, or other protection for persons and property as will adequately protect the public or any person in the Neighbourhood and will upon the request of the City or police authority, improve or change the same.
- (e) The Developer will ensure dust control guidelines pursuant to the Development and Construction Standards are at all times followed when the Work is being constructed and installed with a view to ensuring the City does not receive complaints about dust from residents of the Neighbourhood.

2.9 Utility Easements

The Developer agrees that it shall throughout the Subdivision:

- (a) grant, obtain and provide all utility, construction and service easements which may be required, at no cost to the City or any Utility and to keep the said easements clear for the purposes of the various Utilities; and
- (b) provide and register a utility easement plan as may be required by the City.

2.10 Ownership of Works

The Developer acknowledges that the Work provided for in this Agreement shall become the property of the City when installed and/or constructed on, in, under or over a public

highway, road allowance, street, avenue, lane, lands owned by the City or lands over which the City or any Utility has been granted an easement in its favour; provided, however, that notwithstanding that ownership may vest in the City, the Developer shall not be relieved of its obligations to properly install, maintain and warrant such Work in accordance with the terms of this Agreement. Notwithstanding any of the foregoing, the Developer may not connect a Utility Service in the Subdivision to any utility service line from outside the Subdivision provided by any Utility without the prior written consent of the City.

2.11 No City Obligation to Construct and Install Work

Unless expressly stated in this Agreement or the Master Development Agreement, the City shall have no responsibility:

- (a) to construct and install any of the Work; and/or
- (b) for any of the cost or expense for any of the Work.

ARTICLE 3 WORKS

3.1 Water and Sewer Works

- (a) The Developer shall, at its own expense, be responsible for the construction and installation of the Off-Site Services as follows:



- (b) The City shall be responsible for:
 - (i) providing an adequate treated central water supply for the purpose of serving the Subdivision in accordance with the Master Development Agreement;
 - (ii) obtaining all easements affecting lands outside the Subdivision that may be required for the construction and installation of any water and sewer mainlines; and
 - (iii) providing, wherever commercially reasonable, for the collection or remittance of any latecomer or endeavour to assist payments to the Developer by subsequent landowners benefitting from the Off-Site Services.

3.2 Permit Requirements and Connections to City Mains

No construction of any sewer main, water main or any other Work shall commence nor shall construction proceed, save and except pursuant to and in accordance with such issued, valid and existing permits as may be required by the Water Security Agency of Saskatchewan and by any other governmental or administrative authority. A copy of any

such permit must be filed with the City before construction may commence. No sewer main or water main which is being constructed pursuant to this agreement shall be connected to a City sewer main or water main until after the consent of the Municipal Engineer for that specific connection has been obtained.

3.3 Roadways

- (a) The Developer shall be responsible for the construction and installation of all roadways connecting to the Subdivision from where the last pavement portions of road are located; and all roadways in the Subdivision, including internal roadways, all as shown in the Plan of Proposed Subdivision. Any arterial roads typically designed as free flowing, with controlled intersection spacing and considered a benefit to the community at large and included in the contribution of new developments as offsite levies at a proportionate share cost shall be the sole responsibility of the City.
- (b) All roadways shall be constructed and installed in accordance with the Development and Construction Standards and shall conform to the grades and details as per the Plans and Specifications submitted by the Developer and approved by the City.
- (c) No construction or Work shall commence or proceed within 90 metres of a provincial highway until such time as the Developer shall have obtained all required permits from the Ministry of Highways and Infrastructure. A copy of any such permit must be filed with the City before the commencement of construction. A Statutory Declaration by the Developer shall be filed with the City at the completion of these works testifying that all of the works have been completed as per the permit issued by the Ministry of Highways and Infrastructure.
- (d) Construction of the roads for the approved development or phase of the development shall start when the engineering drawings are signed, all securities are deposited and the subdivision plan is registered.
- (e) The Plans and Specifications prepared by the Developer's Engineer and submitted by the Developer for approval by the City under Section 2.2 shall detail the roadways and provide specifications for the paving of the roadways, if any such paving is required.
- (f) All roadways that are to be paved are to be paved in accordance with the Approved Plans and Specifications.
- (g) Road construction for any paved roadways is to be completed in two phases as follows;
 - (i) All roads within the development or the phase of the development where paving is required shall be completed to a base asphalt (40 mm) prior to issuance of any individual development permit; and

- (ii) Top asphalt (30 mm) for all the roads within the development or the phase of the development may be placed once 75% of the lots in the development or the phase of the development have constructed buildings.
- (h) Road construction for any graveled roadways is to be completed such that all materials and final grading shall be in place and maintained in accordance with the Development and Construction Standards at all times during the development and construction of any constructed buildings on the Lands.
- (i) All utility road crossings must be installed prior to placement of the road base materials or base asphalt as the case may be.

3.4 Power, Gas, Telephone and Cable Utilities

Within the Subdivision, the Developer shall, with the approval, as required, of SaskPower, SaskEnergy, SaskTel, and Access Communications Co-operative Limited, and any other utility agency or provider of any utility service of any nature or kind whatsoever (collectively, the “**Utilities**” and each a “**Utility**”), arrange for the design and construction and installation of underground electrical power, natural gas, telephone and cable lines, and any other Utility that may be reasonably required to service the Subdivision and Lots within the Subdivision (collectively, the “**Utility Services**” and each a “**Utility Service**”). It shall be the responsibility of the Developer to pay for and obtain all such approvals, as required, from any Utility and/or Governmental Authority in respect of the construction and installation of the Utility Services.

3.5 Street Lights and Mailboxes

- (a) The Plans and Specifications prepared by the Developer’s Engineer and submitted to the City for approval shall specify details for the installation of street lights and mailboxes in the Subdivision. Mailboxes should be consistent with Canada Post; Delivery Planning Standards Manual for Builders and Developers, January 2015.
- (b) The Developer shall provide, construct and install street and pathway lights in the Subdivision in accordance with the Approved Plans and Specifications.
- (c) The Developer shall request Canada Post mailboxes and ensure the installation of them as required in the Subdivision and in accordance with the Approved Plans and Specifications and Canada Post Specifications and Guidelines.

3.6 Street Signs

The Developer shall provide, construct and install initial street and stop signs as required by the City and in accordance with the Development and Construction Standards. The street names shall be determined by existing City policies. In the alternative, the Developer may, instead of providing such, instead elect to reimburse the City for all direct costs associated with the initial construction and installation of all street and stop signs as required hereunder.

ARTICLE 4

DRAINAGE AND GRADING PLAN

4.1 Drainage and Grading Plan

- (a) The Developer shall prepare and deposit with the City the Drainage and Grading Plan, which shall be approved by the Municipal Engineer in both paper and electronic formats as may be directed by the City.
- (b) The Developer shall construct and install or cause to be constructed and installed a drainage control network in the Subdivision in accordance with the Drainage and Grading Plan and/or where required by the Municipal Engineer, including the following:
 - (i) designed drainage profiles for all roads, walkways and lots, including all necessary culverts, storm sewers, offsite connections and other drainage measures as may be required; and
 - (ii) erosion protection works and/or measures where steep slopes, or other conditions conducive to soil erosion exist.
- (c) Galvanized steel culverts, ditches, swales, storm sewers, outfalls or other drainage works, and vegetation cover, stone riprap, ditch blocks, or other erosion protection works, shall be installed by the Developer at its own expense, but only where required by the Drainage and Grading Plan or where found to be necessary by the Municipal Engineer during construction and during the “**Warranty Period**”.
- (d) The Developer shall be responsible for all costs associated with the maintenance of drainage within the Subdivision until a Certificate of Final Completion has been issued.
- (e) The Developer shall be responsible for repairs to the drainage within the Subdivision during the “Warranty Period”, except where landscaping and drainage has been approved for lots that have completed construction and landscaping.

4.2 Drainage and Grading Plan Requirements

- (a) The Drainage and Grading Plan shall show a drainage control network for and all storm drainage areas in the Subdivision, the areas in hectares, and the runoff coefficient for each specific runoff area. The Drainage and Grading Plan shall include a standard storm calculation and shall comply with the Development and Construction Standards. Without limiting the generality of the foregoing the Drainage and Grading Plan shall provide:
 - (i) designed drainage profiles for all roads, walkways and Lots, including all necessary culverts, swales or ditches, offsite connections and other drainage measures as may be required;

- (ii) erosion protection works and/or measures where steep slopes or other conditions conducive to soil erosion exist; and
 - (iii) proposed grades for each Lot, the roadways, and the overall grading requirements for the Subdivision with the finished grade level of each Lot to meet the 1:500 Flood level plus 0.5 meters freeboard safe building elevation to ensure all habitable portions of any building are above this level.
- (b) Prior to the issuance of a Certificate of Substantial Completion, the Developer shall deliver a final grading and drainage report bearing the signature and seal of either a Registered Saskatchewan Professional Engineer or a Saskatchewan Lands Surveyor that certifies that the actual finished elevation and grading of the Lots and Lands conform to the Grading and Drainage Plan.

4.3 Site Elevations

No person shall, at any time, add fill to a lot or grade a lot in such a manner that it will cause surface water to flow along the surface from that lot to any adjacent lot, except in accordance with the provisions of this Agreement and in accordance with the Drainage and Grading Plan.

ARTICLE 5 LANDS FOR MUNICIPAL PURPOSES

5.1 Dedication of Roadways

- (a) All roads (the “**Roadways**”) designated as such in the Plan of Subdivision shall be dedicated as a public highway pursuant to the Act, *The Subdivision Regulations, 2014*, *The Dedicated Lands Regulations, 2009* and the *Cities Act* and:
- (i) the Developer agrees to dedicate such additional land as may be reasonably necessary to allow access from the existing municipal roadways;
 - (ii) the Developer agrees to execute all documents as may be reasonably necessary for the purposes of such dedication; and
 - (iii) all such documents shall be executed in a timely fashion upon approval of the Developer’s subdivision application.

5.2 Municipal Reserve

- (a) All municipal reserve (the “**Municipal Reserve**”) designated in the Plan of Subdivision as such shall be dedicated as municipal reserve pursuant to the Act, *The Subdivision Regulations, 2014*, *The Dedicated Lands Regulations, 2009* and, the City acknowledges and agrees that the foregoing shall satisfy the obligations on the Developer under the Act with respect to municipal reserve.

- (b) The Developer shall, at its own expense, cause the Municipal Reserve to be designed and landscaped in accordance with Development and Construction Standards.

5.3 Environmental Reserve

- (a) All environmental reserve (the “**Environmental Reserve**”) designated in the Plan of Subdivision as such shall be dedicated as environmental reserve pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* and the City acknowledges and agrees that the foregoing shall satisfy the obligations of the Developer under the Act with respect to environmental reserve.
- (b) The Developer shall, at its own expense, cause the environmental reserve to be sodded and landscaped in accordance with the Development and Construction Standards.

5.4 Municipal Buffer

- (a) All buffer strips (the “**Municipal Buffer**”) designated in the Plan of Subdivision as such shall be dedicated as buffers strips pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* and the City acknowledges and agrees that the foregoing shall satisfy the obligations of the Developer under the Act with respect to buffer strips.
- (b) The Developer shall, at its own expense, cause the Municipal Buffers to be sodded and landscaped in accordance with the Development and Construction Standards.

5.5 Walkways

- (a) All walkways (the “**Walkways**”) designated in the Plan of Subdivision as such shall be dedicated as walkways pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations*.
- (b) The Developer shall, at its own expense, cause the Walkways to be constructed in accordance with the Development and Construction Standards.

5.6 Utility Parcels

All municipal utility parcels (the “**Utility Parcels**” and each a “**Utility Parcel**”) designated in the Plan of Subdivision as such shall be the property of the City and shall either be dedicated as Utility Parcels pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* or the Developer shall cause title to such Utility Parcels to be transferred to the City, as required.

ARTICLE 6 REPORTING, INSPECTION AND SUBSTANTIAL COMPLETION

6.1 Reporting Requirement

Commencing ninety (90) days after execution of this Agreement, and thereafter, every ninety (90) days until the Certificate of Final Completion shall be issued, the Developer shall submit a written report to the City, in which the Developer shall advise the City of progress toward completion of the subdivision process, design of the Work, progress on approvals and permits required by the Developer, progress on construction, progress on curing deficiencies, any sales or anticipated sales of Lots, and any other matter which the City should reasonably require of the Developer from time to time.

6.2 Ongoing Inspection of Work

As each component of the Work is completed, an inspection shall be conducted by the Municipal Engineer, and such Person shall make such recommendations to the City as may appear appropriate, following which report, the City shall advise the Developer whether the City such component is substantially complete. In the event that any such component of the Work is found to not be substantially complete, the City shall provide the Developer with a written list of such deficiencies pertaining to the Work to be corrected by the Developer.

6.3 Certificate of Substantial Completion

When the Work has been completed, such remaining inspections thereof as the Municipal Engineer shall consider appropriate shall be conducted and the Municipal Engineer shall make a recommendation to the City as to whether the Work is substantially complete and:

- (a) following such report, provided that the Work of that service is substantially complete, the City shall issue a certificate of substantial completion (the “**Certificate of Substantial Completion**”); and
- (b) where the Work is found to not be substantially complete, the City shall provide the Developer with a written list such deficiencies pertaining to the Work to be corrected by the Developer along with a reasonable time frame or time frames for the rectification of such deficiencies. The Developer shall be bound to rectify such deficiencies in accordance with the time frames as may be reasonably stipulated by the City.

6.4 Compliance as a Pre-Condition

- (a) As a pre-condition to the issuance of a Certificate of Substantial Completion, the Developer shall supply the City with a statutory declaration that all accounts for work and materials and construction and installation services have been paid, except for such holdbacks as may be required pursuant to *The Builders’ Lien Act*, and any similar legislation. The statutory declaration shall further warrant that there are no claims for lien or otherwise which have been presented to the Developer, or of which the Developer or any Person with a registered mortgage against the Lands is aware or has notice, in connection with such work done, or materials supplied for, or on behalf of the Developer, in connection with the construction and provision of services to the Lands. The Developer shall also warrant compliance with *The Workers’ Compensation Act*.

- (b) As a pre-condition to the issuance of a Certificate of Substantial Completion, the Developer shall cure all outstanding deficiencies or defaults, pursuant to the terms of this Agreement and any other agreement between the Developer and the City.

ARTICLE 7 WARRANTY PERIOD

7.1 Maintenance and Warranty Period

The Developer acknowledges and agrees that it shall be responsible for maintenance of the Work up to and including the date upon which the Certificate of Substantial Completion shall issue, and shall thereafter be responsible for all repairs to the Work and the replacement of any defective Work during the Warranty Period, together with the maintenance obligations as referenced below, and until a Certificate of Final Completion has been issued. Work required as a result of normal wear and tear, vandalism, storms, wildlife damage, motor vehicle accidents, damage by snow removal operations, and such other risks as are normally incurred in municipal operations shall not be subject to Warranty.

7.2 Certificate of Final Completion

- (a) Subject to this Section 7.2 and Section 7.5, the Developer may apply to the City for the issuance of a certificate of final completion (the “**Certificate of Final Completion**”).
- (b) The Certificate of Final Completion shall be issued in accordance with this Section 7.2 and Section 7.3.
- (c) Eight weeks prior to the end of the Warranty Period for any of the Works, the Developer may apply for a Certificate of Final Completion. This application shall be made in accordance with the Development and Construction Standards.
- (d) Within 30 days of receipt of the request for a Certificate of Final Completion, the Municipal Engineer shall inspect all the Work to determine whether the Developer has discharged its obligation during the Warranty Period.
- (e) Within a reasonable time of completing such inspection, the City shall notify the Developer with respect to any maintenance, repair and replacement items which have not been properly completed by the Developer (as such items have been identified by the Municipal Engineer) during the Warranty Period, and the Developer shall be responsible for rectifying such items within 45 days of the date of such notice.
- (f) Upon rectification of all maintenance, repair and replacement deficiencies pursuant to this section 7.2, or in the event that no such deficiencies are identified, the City shall issue the Certificate of Final Completion, and the Developer’s obligations under this Article 7 shall thereafter cease.
- (g) It shall be a pre-condition to the issuance of the Certificate of Final Completion

that the Developer shall cure any deficiency or default pursuant to this Agreement.

7.3 Road Maintenance

Without limiting the generality of the foregoing:

- (a) prior to the issuance of a Certificate of Final Completion, the Developer shall be responsible for maintaining all roadways within the Subdivision, during the Warranty Period, including, but not being limited to the supply and application of such asphalt patching, gravel or any other remedial action as may be reasonably required; and
- (b) the Developer shall repair any damage caused to any existing road, road allowance or existing structure located on any roadway outside of the Proposed Plan of Subdivision as a result of the development of the Lands, reasonable wear and tear excepted..

For further clarity, the obligations and responsibilities described in Section 7.3(a) above shall pass to the City upon the issuance of the Certificate of Final Completion.

7.4 Construction Garbage

- (a) During the construction and installation of the Work until the issuance of the Certificate of Final Completion, the Developer shall be responsible for the removal of all construction garbage (other than garbage related to individual buildings) and debris from the Subdivision or the surrounding area that may have been affected.
- (b) The Developer shall require all dwelling construction contractors and/or owners within this Subdivision, to install and regularly empty a construction disposal bin during the construction of any buildings within the Subdivision.
- (c) The Developer shall require, with assistance from the City (as a means of enforcement only), that all construction sites are to be maintained in neat and orderly condition during the period of dwelling construction.

7.5 Repairs and Replacements to Work by City

Without in any way limiting the generality of the foregoing, if:

- (a) during the Warranty Period any defects become apparent in any of the Work installed or constructed by the Developer under this Agreement;
- (b) the Municipal Engineer shall require repairs or replacements to be done,

the Developer shall:

- (c) be notified and within a reasonable period of time after said notice cause such repairs to be done,

If the Developer shall default in causing such repairs or replacements to be made, the City may do the repairs or replacements of the Work, and recover the cost thereof from the Developer.

ARTICLE 8

FEES, COSTS AND TAXES PAYABLE BY THE DEVELOPER

Without limiting the generality of any other provision of this Agreement, the Developer shall be responsible for payment of the fees, costs, expenses, taxes and other amounts as provided for in this Article 8 as follows:

8.1 Development Fee

- (a) The Developer shall pay to the City upon the execution of this Agreement by way of cash, certified cheque or bank draft, a fee (the “**Development Fee**”) in the aggregate amount of \$●for the whole or part of the capital cost of providing, altering, expanding or upgrading certain Off-Site Services, which fee is calculated as follows:
 -
- (b) Other than the Development Fee, the Developer shall not be required to pay any further fees to the City in payment for the whole or part of the capital cost of constructing, installing, providing, altering, expanding or upgrading Off-Site Services.
- (c) For greater certainty, notwithstanding anything to the contrary in paragraph (b) above, the Developer shall be responsible for the costs of constructing and installing the Off-Site Services set out in Section 2.1 in addition to payment of the Development Fees.
- (d) Payment of the fees and levies contemplated in this Section shall be a pre-condition of the granting of a development or building permit with respect to any construction on any Lot and shall bind the Developer and any other person having an interest in any Lot.

8.2 Tax Arrears

The Developer shall pay all arrears of taxes outstanding against the Lands, if any, at the time of execution of this Agreement and shall thereafter keep all taxes current as provided for herein.

8.3 Tax Payments

The Developer shall be responsible for, at the Developers own cost and expense, the payment of municipal and school property taxes levied. The tax shall be levied on the subdivided assessment of the land and/or improvements and the applied yearly mill rate and/or tax tool established by the City and any relevant school division.

ARTICLE 9 AGREEMENT RUNS WITH THE LAND

9.1 Agreement Runs with Lands and May Be Registered

It is agreed that:

- (a) the obligations of the Developer under this Agreement run with the land, pursuant to common law and equity, and pursuant to the provisions of Act;
- (b) the City is entitled to register this Agreement pursuant to the Act;
- (c) the Developer shall pay the costs of registration, and agrees to pay such costs within 30 days of the date of the invoice rendered with respect thereto by the City;
- (d) the Developer hereby agrees that any interest in the Lands that is in favour of the City based on this Agreement shall have priority over all other interests in favour any other person, including any mortgage registered by and in favour of the Developer's mortgagee against the title to the Lands and all such other interests shall be postponed to the City's interest in the Lands based on this Agreement.

ARTICLE 10 INDEMNITY BY DEVELOPER

10.1 Indemnification Re: Development

The Developer hereby indemnifies and saves harmless the City with respect to any claim, action, judgment, cost or expense incurred by or assessed against the City in respect of damages suffered by any third party arising out of any act or omission of the Developer with respect to the Subdivision and the Work contemplated by this Agreement.

10.2 Indemnification

The Developer shall indemnify and save harmless the City with respect to any claim, action, judgment, cost or expense incurred by or assessed against the City in respect of damages suffered by any third party, and related in any way to any Work to be maintained by the Developer during the Warranty Period, but not to the extent that any Developer's Services are performed by the City.

10.3 Indemnity Extends to Legal Costs

The indemnities granted by the Developer in this Agreement shall extend to all costs incurred by the City in defending any claim, including the retention of consultants and experts, and including legal fees on a solicitor-and-client-basis and disbursements.

10.4 Indemnity Extends to Individuals

The indemnities granted by the Developer in this Agreement shall extend to every official, elected or otherwise, of the City, and to every employee, servant, agent and consultant of the City. To the extent required by law, the City declares itself to be the

agent and representative of such person, and accrues the benefit of indemnification for such persons in that capacity.

ARTICLE 11 LIABILITY INSURANCE

11.1 Obligation to Insure

The Developer, upon execution of this Agreement, shall forthwith deposit with the City a certificate of insurance disclosing that the Developer holds liability insurance with an insurer satisfactory to the City. Thereafter, upon 14 days written demand, the Developer shall deposit proof that the insurance remains in force, in a form satisfactory to the City.

11.2 Requirements of Insurance

- (a) The Developer shall obtain and keep in force the following insurance coverage during the term of this Agreement:
 - (i) comprehensive commercial general liability insurance with a limit of liability of \$5,000,000, combined single limit, for bodily injury and property damage, for each claim or series of claims arising from the same originating cause and such policy shall include:
 - (I) The City as an Additional Insured;
 - (II) A Cross Liability clause; and
 - (III) Contractual liability coverage.
- (b) Insurance obtained and provided shall include a provision for the City to be given thirty (30) days written notice prior to cancellation or any material change of the required insurance policies.
- (c) The Developer covenants and agrees that the City's insurance requirements mentioned above will not be construed to and shall in no manner limit or restricts the liability of the Developer under this Agreement.
- (d) The Developer is solely responsible for full payment of any premium amounts and any deductible amounts which may be due in the event of any and all claims under policies and shall provide the City with proof of the insurance required pursuant to this Agreement annually in a form satisfactory to the City.
- (e) The Developer shall provide the City with written notice of any incident that may result in a claim against either the Developer or the City, including, but not limited to such losses as, property damage to City assets, third party property damage, injury or death of any person and any third party bodily injury within 7 days of becoming aware of such incident.

ARTICLE 12 SECURITY FOR PERFORMANCE

12.1 Posting of Security

As security for performance of its obligations under this Agreement, and the payment of all obligations of the Developer pursuant to this Agreement, the Developer shall post security as set forth in this Article 12.

12.2 Time for Posting Security

Security as required by this Agreement shall be posted forthwith upon execution of this Agreement and no steps shall be taken to register the Plan of Subdivision or to commence any work hereunder until security is posted.

12.3 Form of Security

The Developer shall post security by way of:

- (a) depositing with the City, cash in the amount of 10% of the estimated costs of the Work or such other amount as may be agreed to by the City and the Developer from time to time, as such costs are estimated by the Municipal Engineers; or
- (b) depositing with the City, an irrevocable non-expiring letter of credit issued by a chartered bank in Canada, acceptable to the City, in the amount of 10% of the estimated cost of the Work or such other amount as may be agreed to by the City and the Developer from time to time, as estimated by the Municipal Engineer.
- (c) Any letter of credit provided in accordance with section 12.3(b) herein shall:
 - i. include an acknowledgement by the issuing bank that the City shall be entitled to draw on the 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;
 - ii. be irremovable;
 - iii. include a statement that the letter of credit is issued in favour of the City;
 - iv. be in a form acceptable to the City, acting reasonably;
 - v. contain a condition for automatic renewal to the City's satisfaction, acting reasonably; and
 - vi. permit partial drawings.
- (d) Where any letter of credit provided herein is set to expire within 30 days and the Developer has failed to satisfy the obligations secured thereunder, the Developer shall provide the City with a replacement or renewal letter of credit. If such replacement or renewal is not provided by the Developer, the Developer shall be deemed to be in breach of this Agreement and the City may present the letter of credit to which the obligations pertain for payment in whole or in part and shall not be liable to the Developer therefore.

12.4 Reduction of Security

The security held by the City may be reduced in accordance with the provisions of this Section 12.4. Upon written application by the Developer, and upon certification of the estimated cost of completion of the Work by the Municipal Engineer, security will be released by the City as follows:

- (a) forty-two days after the issuance of the Certificate of Substantial Completion, 80% of the original security shall be released, less the estimated cost of remedying the deficiencies identified by the City at the time the Certificate of Substantial Completion is issued. Upon curing all deficiencies set forth in the list issued by the City, the City shall release the sum retained as the estimated cost of curing those deficiencies. For the sake of clarity, the City shall retain the entire holdback until all deficiencies have been cured; and
- (b) forty-two days after the issuance of the Certificate of Final Completion, the City shall release the final 20% of the original security.

12.5 No Reduction on or After Default

In the event that the Developer should be in default under this Agreement, or in the event that the Developer should have previously defaulted pursuant to the terms of this Agreement, the City shall not be obliged to release any security, in whole or in part, held by the City, until the Developer has satisfied the entirety of its obligations pursuant to this Agreement.

ARTICLE 13 DEFAULT AND REALIZATION ON SECURITY

13.1 Events of Default - Construction of the Work

Default shall occur in the event that the Developer:

- (a) fails to undertake the Work in accordance with the Approved Plans and Specifications;
- (b) having commenced the Work, fails or neglects to proceed on a timely and reasonable basis;
- (c) fails to undertake the Work in accordance with the Approved Plans and Specifications in a good and workmanlike manner;
- (d) fails to remedy any deficiency relating to the Approved Plans and Specifications identified by the Municipal Engineer or the City within a reasonable time.

13.2 Other Elements of Default

Default shall occur in the event that the Developer fails to:

- (a) make payment of any sum owing by the Developer to the City, pursuant to this

Agreement; and

- (b) comply with the terms of this Agreement.

13.3 Declaration of Default

Upon the happening of any event of default, the City may claim default by giving written notice to the Developer. In the event that the default is not cured or reasonable steps have not been taken by the Developer to cure such default within thirty (30) days from the date such notification is mailed by the City, the City shall be entitled to avail itself of any and all rights it may have with respect to that default, such as are defined pursuant to the terms of this Agreement, or by common law or equity or under any statute.

13.4 City's Rights to Cure Default

Upon the City being entitled to enforce its rights upon default by the Developer, the City may, in its sole discretion, do one, any or all of the following, in addition to any other rights or remedies that the City may have available to it, whether under this Agreement, by common law or equity, or under any statute;

- (a) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to supply all materials and do all necessary work in connection with the Work, including repair or reconstruction of faulty work, and the replacement of materials which are not in accordance with such specifications and to charge the cost of so doing, together with an engineering fee equal to 10% of the cost of the materials and works to the Developer; and
- (b) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to repair and/or maintain any Developer's Service which is the responsibility of the Developer, up to the expiry of the Warranty Period, including repair or reconstruction, and the replacement of any materials which had not been supplied in accordance with the requirements of due and proper maintenance, together with an administrative fee of 10% of the cost of such material and work, and to charge that cost to the Developer.

13.5 City's Other Remedies

In addition to any other right or remedy granted to the City at law, in equity or by statute:

- (a) in the event that the Developer should fail to pay any sum owing to the City within sixty (60) days of the date of any invoice rendered by the City, the City may deduct the sums owing from the cash deposit held as security, or shall be entitled to seek payment from any surety company who has posted as security, or shall be entitled to draw upon any letter of credit issued by any chartered bank in favour of the City as security;
- (b) in the event that any monies owing by the Developer to the City pursuant to this Agreement, or any other Agreement relating to the development of the Lands, should not be paid by the Developer within 60 days of any invoice issued by the

City, the City shall be entitled to recover the same from the Developer as a debt due and owing to the City, together with interest thereon at a rate of 8% per annum from the date of the invoice issued by the City, together with solicitor-and-client costs of any legal proceedings brought to collect such debt; and

- (c) to the extent permitted by law and equity, the City may bring action in a court of competent jurisdiction against the Developer, seeking specific performance of the terms of this Agreement, and/or a mandatory and/or prohibitory injunction, to enforce compliance with the terms of this Agreement.

13.6 Right to Refuse Permit

In addition to any other remedy it may have, the City may refuse to issue any building or development permit for any building or development within the Subdivision until all Work is complete in accordance with the requirements of this Agreement.

ARTICLE 14 NON-WAIVER BY CITY

14.1 Entry as Agent

It is understood and agreed between the parties that any entry upon the Lands by the City, pursuant to a default by the Developer, shall be as an agent for the Developer and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of any service by the City. The Developer further agrees that the indemnities given with respect to construction and installation of the Developer's Services on the Lands extend to any action undertaken by the City as a result of the Developer's default.

14.2 Non-Waiver - Maintenance

The Developer hereby acknowledges that the City, by providing any access, removing any snow or ice, or performing any other act with respect to the provision or maintenance of any Developer's Service, during the Warranty Period, does not assume responsibility for such Developer's Services, and no such action undertaken by the City shall be deemed, in any way, to be an acceptance by the City of any obligation to provide any such Developer's Service, except as provided herein. Such actions may be taken by the City without prejudicing the City's right to enforce the maintenance provisions contained in this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Subdivision Approval

Any recommendations by the City for approval of the Proposed Plan of Subdivision shall be subject to the Developer's due compliance with the applicable provisions of the Act, *The Subdivision Regulation, 2014*, *The Dedicated Lands Regulations, 2009*, *The Municipalities Act* and the requirements of any relevant federal, provincial and municipal government authorities and agencies.

15.2 Municipal Bylaw Compliance

Nothing herein contained shall be deemed to oblige the City to sanction or permit any breach of or deviation from the City's bylaws, nor to issue any permit for any construction within the Subdivision, except upon due compliance with the City's bylaws and all other regulations pertaining to development.

ARTICLE 16 ARBITRATION

16.1 Arbitration Provisions

- (a) In the case of a dispute between the Parties hereto concerning any aspect of this agreement, either Party shall be entitled to give the other notice of such dispute and demand arbitration thereof. Within fourteen (14) days after such notice and demand have been given, each Party shall appoint an arbitrator who shall jointly select a third. The Parties agree that the decision of any two of the arbitrators shall be final and binding upon the parties. *The Arbitration Act, 1992* shall apply to any arbitration hereunder, and the costs of arbitration shall be apportioned equally between the parties.
- (b) If the two arbitrators appointed by the Parties do not agree upon a third, or a Party who has been notified of a dispute fails to appoint an arbitrator, then the third arbitrator, or an arbitrator to represent the Party who fails to appoint an arbitrator, may be appointed by a Justice of the Court of Queen's Bench upon application by either Party.

ARTICLE 17 CONDITIONS PRECEDENT

17.1 Conditions Precedent to the Obligations of Both Parties

- (a) Notwithstanding anything herein contained, the obligations of each of the City and the Developer to complete the transaction contemplated under this Agreement shall be subject to the fulfillment of the following conditions precedent on or before the signing of this agreement, or such later date as to which the Parties may mutually agree in writing, and each of the Parties covenants to use its best efforts to ensure that such conditions are fulfilled:
 - (i) approval by the appropriate approving authority of the re-zoning of the Subdivision; and
 - (ii) approval by the appropriate approving authority of the Plan of Subdivision and registration of the transform approval certificate with respect to the Plan of Subdivision under the Saskatchewan Land Titles System with Information Services Corporation of Saskatchewan.
- (b) The foregoing are conditions precedent for the mutual benefit of both Parties and may be waived in whole or in part only if both Parties waive them in whole or in

part and where the conditions precedent are waived in part, they shall have been waived in part to the same extent by both Parties.

ARTICLE 18 GENERAL PROVISIONS

18.1 Conflicts and Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Master Agreement, the provisions of the Master Agreement shall prevail and be paramount. If any provision of this Agreement is in conflict with or is inconsistent with a provision of the Master Agreement relating to the same specific matter, such provision in this Agreement shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent.

18.2 Cancellation of Agreement

In the event that the Plan of Subdivision is not registered within two years from the date hereof, the City may, at its option on one month's notice to the Developer, declare this Agreement to be null and void, provided that any such declaration shall not relieve the Developer from the payment of any costs incurred by the City which, pursuant to the terms of this Agreement, are to be paid by the Developer.

18.3 Assignment of Agreement

Neither this Agreement nor any rights or obligations under this Agreement are not assignable by the Developer without the prior written consent of the City, but this consent shall not be unreasonably withheld, conditioned, or delayed. In determining whether consent is reasonable, the Developer acknowledges that in determining whether to enter this Agreement, the City has had specific regard to the attributes of the Developer, including its financial capacity, expertise and reputation.

18.4 Further Acts

The parties shall from time to time and at all times do such further acts and things and execute all such further documents and instruments as may be reasonably required in order to carry out and implement the true intent and meaning of this Agreement.

18.5 Severability

Each of the covenants, provisions, articles, sections and other subdivisions hereof are severable from every other covenant, provision, article, section and subdivision; and the invalidity or unenforceability of any one or more covenants, provisions, articles, sections or subdivisions of this Agreement shall not affect the validity or enforceability of the remainder of the Agreement.

18.6 Enurement of Benefit

This Agreement shall enure to the benefit of and be binding upon the respective heirs,

executors, administrators, successors and permitted assigns of the Parties.

18.7 No Partnership

The rights, duties, obligations and liabilities of the Parties hereto shall be separate and not joint and collective. Each Party shall be responsible only for its obligations as set out in this Agreement. It is not the intention of the Parties to create a commercial or other partnership or agency relationship between the Parties, save for as expressly provided herein, and this Agreement shall not be construed so as to render the Parties liable as partners or as creating a commercial or other partnership. No Parties shall be, except as expressly permitted herein, deemed to be or shall hold itself out to be the agent of the other party.

18.8 Waiver

No consent or waiver expressed or implied by either Party in respect of any breach or default by the other in the performance by such other of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default.

18.9 Notice

Any notice required to be given hereunder may be given by way of registered mail addressed to the Developer at:

•

Any notice required to be given hereunder may be given by way of registered mail addressed to the City at its offices at:

•

18.10 Time of the Essence

Time shall be the essence of this Agreement.

18.11 Counterparts

This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to be dated as of the date written at the beginning of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as at the ____ day of _____, 20_____.

CITY OF MOOSE JAW

Per: _____
Name: _____
Title: Mayor

(Seal)

Per: _____
Name: _____
Title: _____

**CARPERE MOOSE JAW INDUSTRIAL
PARK CORP.**

Per: _____
Name: _____
Title: _____

(Seal)

Per: _____
Name: _____
Title: _____

SCHEDULE “A”
DESCRIPTION OF THE LANDS

SCHEDULE “B”
PROPOSED PLAN OF SUBDIVISION

SCHEDULE “C”
DEVELOPER SERVICES / WORK

**SCHEDULE “D”
DRAINAGE AND GRADING PLAN**



MASTER DEVELOPMENT AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, 2019.

BETWEEN:

CITY OF MOOSE JAW a municipal corporation continued under *The Cities Act* (the "**City**")

-and-

CARPERE VALLEY DEVELOPMENT CORP., a corporation duly incorporated pursuant to the laws of the Province of Saskatchewan ("**Carpere**")

RECITALS:

- A. Carpere is or will be the registered owner of the lands in accordance with the Purchase Agreement (the "**Lands**");
- B. Carpere wishes to develop the Lands into certain residential, commercial and industrial uses in accordance with the concept plan as shown in Schedule "B" to this Agreement (the "**Concept Plan**") (the "**Proposed Development**");
- C. Carpere and the City each wish to enter into this Agreement to set out the general terms and conditions on which Carpere will develop the Lands and carry out the Proposed Development, including but not limited to the responsibilities and rights of each of Carpere and the City; and
- D. The Proposed Development is a long-term vision and shall be developed in phases over the following decades. The exact scope and timing of the phases of the Proposed Development shall be determined by market demand and shall be flexible to accommodate a variety of uses.

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

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement:

- (a) "**Agreement**" means this Master Development Agreement and all Schedules hereto, as the same may be amended or restated from time to time;

- (b) "**Applicable Laws**" means all present and future federal and provincial statutes, laws, ordinances, codes, rules and regulations in effect in Saskatchewan, as amended and/or re-enacted from time to time, and all rules, orders and directives issued by any governmental department, regulatory agency or court of law in Canada, and all municipal bylaws applicable to Carpere or the Lands or any part thereof or to any activity that takes place thereon;
- (c) "**Business Day**" means any day of the week except Saturday, Sunday or any statutory holiday in Saskatchewan;
- (d) "**Carpere Infrastructure**" means the municipal related services and improvements to be constructed and/or installed by the City to support the Proposed Development on or under the Construction Area as set out in the Servicing Agreement;
- (e) "**City Council**" means the Council of the City;
- (f) "**City Engineer**" means City's Director of Engineering or his or her delegate;
- (g) "**City's System**" means the Fresh Water and Waste Water infrastructure which is owned and operated by the City including all meters, pipelines, water mains, waste water mains, reservoirs, pumps, booster pumping facilities, lift stations, improvements, works and facilities whether free standing or otherwise, appurtenances, access roads, gates, land, easements and rights of way or whether ancillary thereto or connected therewith, together with any and all associated approvals, licenses, storage tanks, pumps, pipes, improvements, works and facilities, whether free standing or otherwise, or whether ancillary thereto or connected therewith and whether existing as at the date of this Agreement or constructed in the future;
- (h) "**Concept Plan**" has the meaning given in Recital B to this Agreement
- (i) "**Construction Area**" means the area of the Lands and the portion of the land surrounding the Lands upon which the City will construct and install the Carpere Infrastructure;
- (j) "**Consulting Engineer**" means a professional engineer or firm of professional engineers duly licensed to practice by the Association of Professional Engineers and Geoscientists of Saskatchewan;
- (k) "**Development Levy Bylaw**" means the City of Moose Jaw Development Levy Bylaw, as the same may be amended or restated from time to time;
- (l) "**Environmental Laws**" includes all common law and any and all present and future federal and provincial statutes, laws, ordinances, codes, rules and regulations in effect in Saskatchewan, as amended and/or re-enacted from time to time and any rule, order or directive issued by any governmental department, regulatory agency or court of law in Canada and all municipal bylaws and ordinances relating to the protection of the environment, the care, maintenance, use, storage and possession of hazardous

substances or contaminants, and the safe guarding of the health and safety of persons coming or potentially coming into contact with such substances;

- (m) **"Force Majeure Event"** or **"Force Majeure"** means any condition, event or circumstance which is unavoidable or beyond a party's reasonable control including, without limitation, the occurrence of an extreme weather event, fire, explosion, acts of public enemies, war, revolution, terrorism, civil disturbance, embargoes, strikes, lockouts, labour disputes, walkouts or other industrial disputes of any party, riots, blockades, hostilities, epidemics, confiscation, seizure or order by governmental authority, electrical power or fuel shortages, or the act or failure to act of any governmental authority;
- (n) **"Fresh Water"** means potable water suitable for human consumption which has been treated and tested by the City to meet applicable drinking water standards;
- (o) **"GST"** means federal Goods and Services Tax, Harmonized Sales Tax or other similar tax in force from time to time pursuant to the *Excise Tax Act* (Canada), as applicable;
- (p) **"Hazardous Substance"** includes any contaminant or hazardous or toxic chemical or waste or other material or substance within the meaning of any Environmental Laws relating to or imposing liability or standards of conduct concerning such contaminant, hazardous or toxic chemical, or waste or other material or substance, all as in effect from time to time, and any distinguishable kind of organic or inorganic matter, whether animate or inanimate, entering or which may enter the air, land, water or layers of the atmosphere in a quantity or concentration or under conditions that: (i) have or may have an immediate or long term harmful effect on the environment; (ii) constitute or may constitute a danger to the environment on which human life depends, or (iii) constitute or may constitute a danger to human life or health;
- (q) **"Lands"** means those lands as set out for purchase in the Purchase Agreement and as shown in Schedule "A";
- (r) **"Proposed Development"** has the meaning given in Recital B to this Agreement;
- (s) **"Purchase Agreement"** means, collectively, the purchase and sale agreements relating to the purchase of the Lands by Carpere from the City dated as of *;
- (t) **"Service Connection"** has the meaning given to that term in *The Cities Act* (Saskatchewan);
- (u) **"Servicing Agreement"** means the form of agreement described in Schedule "C" attached to this Agreement;
- (v) **"Subdivision Approval"** means the issuance by Information Services Corporation of a Transform Approval Certificate which, when registered at the Saskatchewan Lands Titles Registry, will cause a new title to be issued in respect of those portions of the Lands to be developed;

- (w) **"Utility Bylaw"** means the City of Moose Jaw Bylaw No. 5152 and any other bylaw now or hereafter established, amended or replaced from time to time by the City Council;
- (x) **"Water Quality Requirements"** means the requirements of any and all permits, approvals and Applicable Laws (including the Utility Bylaw) governing or otherwise applying to the treatment and the supply of Fresh Water or Waste Water, as applicable;
- (y) **"Waste Water"** means liquid effluent produced from or arising in conjunction with the operation of the Proposed Development, excluding stormwater created by snow melt, precipitation and other means, and any sub-surface drainage;
- (z) **"Waste Water Connection Point"** means the point of delivery sanitary sewer waste water from the Lands to the City System; and
- (aa) **"Zoning Bylaw"** means the City of Moose Jaw Bylaw No. 5346 and any other bylaw now or hereafter established, amended or replaced from time to time by the City Council governing the zoning of the Lands.

Interpretation

1.2 In this Agreement, except as otherwise expressly provided:

- (a) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, governmental authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity;
 - (i) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
 - (ii) "hereof", "herein", "hereto", "hereinafter", and other terms of similar import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;
 - (iii) any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency;
 - (iv) the words, "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", will not be deemed limited by the specific enumeration of items but will, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation";
 - (v) the division of this Agreement into parts, articles and sections and the use of

headings is for convenience of reference only and will not modify or affect the interpretation or construction of this Agreement or any of its provisions;

- (vi) any reference to a statute of any governmental authority will include and will be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto; and
- (vii) this Agreement is a servicing agreement as contemplated by section 172 of *The Planning and Development Act, 2007* (Saskatchewan) and, among other things, the City is entitled to all powers, rights and remedies granted by the Act in relation thereto.

Severability

- 1.3 Any part, article, section or other subdivision or any other provision of this Agreement which is, is deemed to be, or becomes void, illegal, invalid or unenforceable will be severable from this Agreement and ineffective to the extent of such voidability, illegality, invalidity or unenforceability and will not invalidate, affect or impair the remaining provisions of this Agreement which will be severable from any void, illegal, invalid or unenforceable part, article, section or other subdivision or provision.

Time

- 1.4 Time is of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the City and Carpere or by their respective solicitors who are hereby expressly appointed in this regard. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited will extend to the next following Business Day.

Governing Law

- 1.5 This Agreement and its application and interpretation will be governed by and construed in accordance with the laws in force in the Province of Saskatchewan including, without limitation, *The Planning and Development Act, 2007* (Saskatchewan) and the performance of the obligations contemplated by this Agreement will be performed in accordance with all Applicable Laws. Without limiting the generality of the foregoing, Carpere agrees to observe and comply with all of the City's bylaws in effect from time to time and to obtain all required approvals and permits from all government authorities having jurisdiction over the Lands, Carpere, and the Proposed Development. Each of the parties irrevocably submits to the jurisdiction of the courts of the Province of Saskatchewan for the interpretation and enforcement of this Agreement.

Schedules

- 1.6 The following Schedules are attached hereto and form a part of this Agreement:

Schedule A – Lands

Schedule B – Concept Plan

Schedule C – Form of Servicing Agreement

PART 2 SUBDIVISION AND DEVELOPMENT OF THE LANDS

Phases and Stages of Proposed Development

- 2.1 The City and Carpere each acknowledge and agree that Carpere will be proceeding in good faith to complete the Proposed Development in a commercially reasonable manner, developing of the Lands through phases and stages of such size and content as may be determined by Carpere from time to time and which shall be consistent with the Zoning Bylaw and the City's policies from time to time.

Composition of Development and Re-Zoning Applications for Residential Areas

- 2.2 The City and Carpere each acknowledge and agree that the Proposed Development contains an aggregate area of approximately 100 acres of proposed residential development, such residential development to be completed by Carpere in those areas that are identified for residential use in the City's Official Community Plan.
- 2.3 The City agrees that, in conjunction with the Purchase Agreement, it shall bring forward any required applications before its City Council to re-zone approximately 64 acres of the Lands in those areas that are identified for residential use in the City's Official Community Plan, which were previously owned by the City, to be used for residential use as part of the Proposed Development.
- 2.4 The City further acknowledges and agrees that Carpere wishes to have an additional area consisting of approximately 36 acres or more appropriate for rezoning to be used for residential use. Provided that those areas that are subject to rezoning are identified as residential use in the City's Official Community Plan, the City agrees to act in good faith in facilitating any subsequent applications to be brought before its City Council relating to any re-zoning relating to the additional proposed residential lands within the Proposed Development.

Servicing Agreements for Stages and Phases of Development

- 2.5 The City and Carpere each acknowledge and agree that each phase or stage of the Proposed Development as may be completed by Carpere from time to time shall be subject to the parties each entering into a Servicing Agreement that prescribes any additional servicing infrastructure and Service Connections required for the applicable phase or stage of the Proposed Development, the specific terms and conditions relating to the construction and installation of such additional servicing infrastructure and Service Connections, any servicing

agreement or development levy fees payable relating to the applicable phase or stage of the Proposed Development, any requirements of the City relating to land dedication and any performance security required by the City relating to Carpere's obligations under a Servicing Agreement.

- 2.6 The City and Carpere each acknowledge and agree that the Servicing Agreements to be used for the Proposed Development shall be substantially in the form as is appended as Schedule "C" to this Agreement or such other form as may be agreed by the City and Carpere from time to time.
- 2.7 For the purposes of calculating the servicing agreement or development levy fees payable by Carpere to the City relating to each applicable phase or stage of the Proposed Development, the City and Carpere each acknowledge and agree that such servicing agreement fees or development levies shall be payable in accordance with the City's policies as may be effect as at the date of the applicable Servicing Agreement. Notwithstanding the foregoing, the City and Carpere each acknowledge and agree that the applicable servicing agreement fee or development levy rate for each Servicing Agreement relating to the Proposed Development shall be fixed at the lesser of \$49,600.00 per acre or the then-current development levy rates being offered for similar developments in the City of Moose Jaw for a period of ten (10) years from the effective date of this Agreement, following which period the applicable servicing agreement fee or development levy rate for each Servicing Agreement shall be the then current rate(s) in effect and adopted by City Council or such other rate(s) as may be approved by City Council from time to time.
- 2.8 For further clarity, the City and Carpere each acknowledge and agree with the other that:
 - (a) servicing agreement or development levy fees shall be payable by Carpere upon Carpere submitting a development permit application to the City ; and
 - (b) servicing agreement or development levy fees shall not apply to any portions of the Proposed Development to be used for purposes excluded under the Development Levy Bylaw.

Easements and Lands Dedication

- 2.9 The City will provide, prepare, cause to be executed and register all easements required by the City for the installation, operation, maintenance and repair of any City water, sanitary or drainage or utility in, on, under or above the Lands as may be required and further described in each Servicing Agreement, and will further provide and see to the registration of easements required by any third party utility company.
- 2.10 All agreements pertaining to restrictive access to or from the Lands or to access easements and or rights-of-way or other covenants of a restrictive nature with respect to the use of the Lands, will be prepared, provided and executed by the City, and will be registered by and at the cost of the City, as a first charge against the title if so required by the City in conjunction with any

required subdivision of the applicable Lands and the execution and completion of applicable Servicing Agreements.

- 2.11 The easements and agreements described above will be registered at the Saskatchewan Lands Titles Registry prior to the transfer of title to any portion of the Lands to third parties.
- 2.12 Carpere and the City will co-operate for the purposes of identifying, documenting and registering interests based on easements and caveated agreements in a timely and cost-effective manner.

PART 3 INFRASTRUCTURE REQUIREMENTS

Construction and Installation of Infrastructure

- 3.1 All of the Carpere Infrastructure as set out in the applicable Servicing Agreement which is to be constructed and/or installed by the City will be constructed and/or installed in accordance with the City's then current development standards and specifications with respect to industrial development.
- 3.2 The Carpere Infrastructure to be constructed or installed by the City will be installed to the property line of the Lands and will not include any Service Connections or any other portions of the water or sanitary sewer systems located within the boundaries of the Lands, except for any portions thereof that are intended to service lands other than the Lands and which must cross under, on, or over the Lands. For further certainty, unless otherwise agreed to by the City, in writing, or such infrastructure is intended to serve lands other than the Lands, the City will not have any responsibility for the construction or modification of any other infrastructure to support the Proposed Development other than the Carpere Infrastructure.
- 3.3 The City may engage a Consulting Engineer to assist with the design and installation of the Carpere Infrastructure. The City and its Consulting Engineer will consult with Carpere regarding the design and installation of the Carpere Infrastructure for the Proposed Development. The City will instruct its Consulting Engineer to work cooperatively with Carpere in accommodating Carpere's infrastructure needs, including Carpere's Service Connections. Notwithstanding any such consultation, the City will have complete and absolute discretion regarding the design, placement, construction and installation of the Carpere Infrastructure, subject to the terms of this Agreement.

Carpere – Proposed Development Infrastructure and Service Connections

- 3.4 Carpere will design, construct and install any additional servicing infrastructure required in addition to the Carpere Infrastructure that may be required to support the Proposed Development. Any additional, supplemental, upgraded, or expanded servicing infrastructure constructed by Carpere above and beyond its own requirements at the request of the City that provides the City or any other owner or user of other lands with infrastructure servicing shall be subject to Carpere and the City reaching a mutually agreeable cost sharing arrangement.
- 3.5 Carpere will, at its own cost, install all Service Connections to buildings now or hereafter

constructed on the Lands.

- 3.6 All additional servicing infrastructure required for the Proposed Development and any Service Connections shall be constructed and completed by Carpere shall be constructed and/or installed as may be agreed by the parties from time to time through Servicing Agreements to be entered into pursuant to section 2.5 of this Agreement. Unless otherwise set out in this Agreement or an applicable Servicing Agreement, all of the additional servicing infrastructure required for the Proposed Development and any Service Connections to be constructed and/or installed by Carpere will be constructed and/or installed in accordance with the City's then current development standards and specifications with respect to industrial development.
- 3.7 Designs and locations of the additional servicing infrastructure required for the Proposed Development and any Service Connections are subject to the approval of the City Engineer for conformity with existing and planned locations of City infrastructure, which approval will be obtained prior to the construction or installation of such works.

Carpere – General Covenants

- 3.8 Carpere will, at its sole cost and expense:
- (b) comply with the requirements and provisions of Applicable Laws, except as otherwise specifically contemplated in this Agreement;
 - (c) construct and operate the Proposed Development and in so doing Carpere will comply with the requirements of all Applicable Laws including, without limitation, all Environmental Laws, in connection with the construction and operation of the Proposed Development and all other improvements and appurtenances to be constructed and/or operated by or on behalf of Carpere;
 - (d) submit to the City the plans and specifications for the Proposed Development and shall obtain all required permits and approvals prior to the commencement of construction;
 - (e) operate and maintain the Service Connections located above, on or underneath the Lands and make all repairs and replacements to the Service Connections as are necessary to keep the Service Connections in a good state of repair and use reasonable efforts including regular monitoring and inspection to ensure that the Service Connections do not contain leaks. The City may require Carpere to perform periodic inspections, testing and/or repairs of all or any of the Service Connections at any time for the purpose of ensuring that the Service Connections are being maintained in a good state of repair by providing written notice to Carpere. All installations must be first approved by the City;
 - (f) where a leak or other disrepair in a Service Connection is detected within the Lands, Carpere will perform all necessary repair and replacement work to remedy the leak or other disrepair as soon as reasonably possible; and
 - (g) where any part of the Service Connections is damaged or destroyed for any reason

within the Lands, Carpere will, as soon as possible perform all necessary repairs and replacements at its sole cost and expense.

- 3.9 Carpere will not install any temporary, permanent or potential water connection that allows or may allow backflow of contaminants, pollutants, infectious agents, other materials or substances that may change the water quality in the City System and includes swivels or changeover devices, removable sections, jumper connections and by-pass arrangements. Carpere will install such backflow prevention devices with all Service Connections as the City may require from time to time.
- 3.10 Except as expressly permitted by this Agreement, Carpere will not allow, suffer or permit any Overstrength Waste Water, Hazardous Substances, contamination, pollutants, foreign matter or like materials to enter the City System from the Lands.
- 3.11 The City and Carpere each acknowledge and agrees that the covenants in this Part 3 shall only be enforceable and exercisable against those Lands owned by Carpere until such time as Carpere has entered into a Servicing Agreement, upon which time Carpere shall be released from the covenants in Part 3 of this Agreement and such covenants shall thenceforth be of no further force or effect against Carpere.

City – General Commitments

- 3.12 The City will assist in promoting and attracting future investment and businesses into the development. While not a contractual obligation, it is the mutual desire of the Parties to have both serviced land and greenfield space available to attract new tenants to the Lands.
- 3.13 The City shall use its best efforts to have the approval process for all development and building permits for the Land be adjudicated within 28 Business Days from submission thereof, or such other reasonable length of time. The Parties agree to cooperate and share information with each other in advance of submissions, where reasonably possible, in order to obtain provisional or other preliminary approval of submissions for development and building permits.

Site Grading

- 3.14 Carpere will complete all site grading of the Lands as is required by the City's engineers and Applicable Laws, and will agree to such drainage easements, if required, on the Lands that ensures proper overland surface drainage of water. Carpere site drainage plans must be approved by the City's engineers prior to site grading work being completed. Carpere will give reasonable notice to the City upon completion of site grading such that the City's engineers may inspect and approve site grading.

Fire Suppression Requirements

- 3.15 Carpere will be responsible for the installation of any private hydrants required by the City, which will be outlined in the development and building permit process and subject to the requirements of the applicable Servicing Agreement and final fire protection design.

Damage to City Infrastructure

- 3.16 When installing or constructing or causing the installation or construction of the Proposed Development, Carpere will ensure that all Carpere Infrastructure and other City property and infrastructure in the Construction Area and the area immediately surrounding the Construction Area, is at all times protected from damage, normal wear and tear excepted.
- 3.17 Carpere will promptly notify the City of any damage to any Carpere Infrastructure or other City property or infrastructure that occurs during the course of any construction or development on the Lands or otherwise arising from Carpere's operations and after such notice, at the City's option, Carpere will make all required repairs and replacements to repair the damage or will reimburse the City for all of the direct costs and expenses incurred by the City to make such repairs and replacements.

Inspection and Testing

- 3.18 Carpere will permit the City, its officers, employees, consultants, representatives and other agents upon providing the proper notice, to have free and uninterrupted access to the Construction Area for the purposes of inspecting and testing to determine whether the Carpere Infrastructure or any other work or service under this Agreement, comply with this Agreement, other City requirements, and the City of Moose Jaw Bylaws. Any inspection or testing conducted by the City, its officers, employees, consultants, representatives or other agents, contemplated by this Section 3.19 will be supplementary to and not in lieu of any other inspections or testing conducted or required to be conducted by Carpere in accordance with this Agreement, any Servicing Agreement or Applicable Laws.

PART 4 DEVELOPMENT MILESTONES

Development Milestones

- 4.1 Carpere shall cause the Lands to be developed in accordance with the Proposed Development and in accordance with the following principles and guidelines (the “**Development Guidelines**”):
- (a) Carpere shall maintain a minimum of 10 acres of the Lands and Proposed Developer that are developed, serviced and available for sale. For clarity, the Developer shall be deemed to have met the requirement set out herein if the Developer has entered into or is using its commercially reasonable efforts to actively and in good faith pursue and enter into a Servicing Agreement for a sufficient portion of the Lands to satisfy this obligation.

Discussions relating to Progress of Development

- 4.1 The parties each acknowledge and agree to review and discuss the progress and any matters relating to the Proposed Development not less frequently than every six months to ensure that

this Agreement and the Proposed Development is proceeding and meeting the goals of each respective party and the Development Guidelines set out herein.

Failure to Meet Development Guidelines

- 4.2 If Carpere fails to achieve or abide by the Development Guidelines, the City and Carpere each acknowledge and agree that, at the City's option and discretion, the following process shall occur:
- (a) the City shall provide written notice to Carpere relating to the failure to achieve or abide by the Development Guidelines and any particulars thereto (the “**Development Guideline Notice**”);
 - (b) Carpere shall have thirty (30) days from the date of service of the Development Guideline Notice to refute the notice from the City and to provide any applicable evidence relating to its compliance with the Development Guidelines;
 - (c) the City and Carpere shall discuss the Development Guidelines any breach of such requirements by Carpere at the next following meeting between the parties in accordance with section 4.2 herein; and
 - (d) if Carpere does not correct the breach of the Development Guidelines or commence activities on the Lands in order to comply with the Development Guidelines or executes a mutually agreeable extension with the City within a period of eighteen (18) months following receipt of the Development Guideline Notice, or such other period as may be agreed upon or extended by mutual agreement of the City and Carpere (the “**Option Notice Period**”), then Carpere acknowledges and agrees that the City, may in its sole discretion, exercise the Option to Re-Purchase in accordance with Part 5 of this Agreement.

PART 5 OPTION TO RE-PURCHASE

Option to Re-Purchase

- 5.1 In the event of Carpere's failure to achieve or abide by the Development Guidelines in accordance with Section 4.2(d) herein, Carpere grants the City an option to purchase those undeveloped portions of the Lands, as follows (the “**Option to Re-Purchase**”):
- (a) the City may purchase any undeveloped portions of the Lands, as may be designated by the City in its sole discretion, for a purchase price of:
 - (i) \$10,000.00 per acre, if the Option to Re-Purchase is exercised prior to the tenth (10th) anniversary of the full execution of this Agreement, plus the fair market value of any improvements constructed on the optioned Lands; or
 - (ii) Fair market value (having regard for both the value of the Lands and any improvements constructed thereupon), if the Option to Re-Purchase is

exercised after the tenth (10th) anniversary of the full execution of this Agreement, which fair market value shall be determined by a qualified and independent appraiser mutually agreeable to the City and Carpere, both acting reasonably,

(in either event, the “**Option Price**”)

which Option to Re-Purchase will be exercisable at the sole discretion of the City.

- 5.2 The Option to Re-Purchase may be exercised upon the completion of the Option Notice Period.
- 5.3 The City will have until 5:00 p.m., on the 180th day following the completion of the Option Notice Period, to exercise its Option to Re-Purchase, by providing Carpere written notice in accordance with this Agreement that the City is exercising its Option to Re-Purchase. If the 180th day falls on a weekend or a statutory holiday, then the City has until 5:00 p.m. the next following Business Day to exercise its Option to Re-Purchase.
- 5.4 Within 10 Business Days after the City’s notice to exercise its Option to Re-Purchase, Carpere shall deliver to the City a duly executed registerable transfer authorization(s) in respect of those portions of the Lands which are subject to the Option to Re-Purchase, which the City will immediately execute and submit for registration at the Saskatchewan Lands Titles Registry.
- 5.5 Upon registration of the transfer, the City shall immediately notify Carpere of such registration(s), and forward the Option Price to Carpere.
- 5.6 Carpere shall convey to the City a good and marketable title to the portions of the Lands which are subject to the Option to Re-Purchase, free and clear of any and all registered liens, mortgages, charges, encumbrances and other registrations save and except the following permitted encumbrances:
 - (a) the conditions and reservations in the original grant of the property(ies) from the Crown or those which may attach by implication pursuant to *The Lands Titles Act 2000* (Saskatchewan); and
 - (b) any registered or unregistered easement interest to the benefit of a provincial or municipal utility.
- 5.7 At the time of the sale of the Lands which are subject to the Option to Re-Purchase to the City, there shall be no municipal tax arrears or related penalties, local improvement levies outstanding utility accounts, charge or other monies owing in connection with or imposed on or against those property(ies) since the time the property(ies) were originally sold to Carpere under this Agreement. For further clarity, Carpere shall be permitted to pay out any such arrears or other amounts owing from the sale proceeds payable by the City to Carpere pursuant to the Option to Re-Purchase.

This Option to Re-Purchase is granted by Carpere upon the execution of this Agreement by all

of the Parties hereof, and the Option to Re-Purchase shall be deemed to be expired and of no further force or effect thereafter for any portions of the Lands for which the City and Carpere have entered into a Servicing Agreement.

- 5.8 The City and Carpere each acknowledge and agree that this Option to Re-Purchase shall be enforceable and exercisable against Lands and shall run with the Lands until such time as Carpere has entered into a Servicing Agreement, upon which time, the City shall forthwith provide Carpere with a release and discharge of any encumbrance relating to this Option to Re-Purchase charging such Lands.

PART 6 EVENTS OF DEFAULT AND REMEDIES

Events of Default

- 6.1 The following shall be events of default by Carpere:

- (a) failure to make any payment when due and payable;
- (b) bankruptcy, insolvency, the making of an assignment for the benefit of creditors, having a receiver, manager or trustee appointed by any means in respect of substantial operations or assets of Carpere or the taking of the benefit of any legislation enacted for the benefit of insolvent or bankrupt creditors;
- (c) failure or refusal to repair or replace defective or deficient portions of any of the additional servicing infrastructure required for the Proposed Development or any Service Connections in accordance with the requirements of this Agreement or as may be further defined in a Servicing Agreement;
- (d) failure to comply with any Servicing Agreement; or
- (e) failure of Carpere to fulfil its obligations under this Agreement in a timely manner.

Declaration of Default

- 6.2 Upon the happening of any event of default, the City may claim default by giving written notice by way of notice to Carpere. In the event that the default is not cured or reasonable steps have not been taken by Carpere to cure such default within forty five days from the date such notification is mailed by the City, the City shall be entitled to avail itself of any and all rights it may have with respect to that default, such as are defined pursuant to the terms of this Agreement, or by common law or equity or under any statute.

City Rights to Cure Default

- 6.3 Upon the City being entitled to enforce its rights upon default by Carpere, the City may, in its sole discretion, do one, any or all of the following, in addition to any other rights or remedies

that the City may have available to it, whether under this Agreement, by common law or equity, or under any statute;

- (a) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to supply all materials and do all necessary work in connection with any outstanding work or construction, including repair or reconstruction of faulty work, and the replacement of materials which are not in accordance with such specifications and to charge the cost of so doing, together with an engineering fee equal to 10% of the cost of the materials and works to Carpere; and
- (b) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to repair and/or maintain any additional servicing infrastructure required for the Proposed Development or any Service Connections which are the responsibility of Carpere, including repair or reconstruction, and the replacement of any materials which had not been supplied in accordance with the requirements of due and proper maintenance, together with an administrative fee of 10% of the cost of such material and work, and to charge that cost to Carpere.

City's Other Remedies

6.4 In addition to any other right or remedy granted to the City at law, in equity or by statute:

- (a) in the event that Carpere should fail to pay any sum owing to the City within 60 days of the date of any invoice rendered by the City, the City may deduct the sums owing from any cash deposit held as security, or shall be entitled to seek payment from any surety company who has issued a bond posted as security, or shall be entitled to draw upon any letter of credit issued by any chartered bank in favour of the City as security;
- (b) in the event that Carpere should fail to pay any sum owing to the City within 60 days of the date of any invoice issued by the City, Carpere agrees, upon the City's request, to execute a mortgage of the Carpere's then remaining interest in the Lands, to better secure the repayment of sums owing by Carpere to the City;
- (c) in the event that any monies owing by Carpere to the City pursuant to this Agreement, or any other Agreement relating to the development of the Lands, should not be paid by Carpere within 60 days of any invoice issued by the City, the City shall be entitled to recover the same from Carpere as a debt due and owing to the City, together with interest thereon at a rate of 8% per annum from the date of the invoice issued by the City, together with solicitor-and-client costs of any legal proceedings brought to collect such debt; and
- (d) to the extent permitted by law and equity, the City may bring action in a court of competent jurisdiction against Carpere, seeking specific performance of the terms of this Agreement, and/or a mandatory and/or prohibitory injunction, to enforce compliance with the terms of this Agreement.

PART 7 RISK AND INDEMNITY

Indemnity

- 7.1 Carpere will indemnify, defend and hold harmless the City from and against any and all claims, costs, losses, demands, damages, actions or causes of action (the "**costs**") which may be brought against or incurred by the City at the instance of any person(s) for injury, loss, or damage, whether to person or to property arising from or related to Carpere's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the Carpere's obligations under this Agreement.
- 7.2 The City will indemnify, defend and hold harmless Carpere from and against any and all claims, costs, losses, demands, damages, actions or causes of action (the "**costs**") which may be brought against or incurred by Carpere at the instance of any person(s) for injury, loss, or damage, whether to person or to property arising from or related to the City's wrongful or negligent (including, grossly negligent) acts, errors or omissions in performance of the City's obligations under this Agreement.
- 7.3 The covenants of indemnity described in Section 7.1 and Section 7.2 will survive the termination or expiration of this Agreement.

PART 8 NOTICES

- 8.1 Any notice, request or other writing required or permitted to be given to either party under this Agreement will be in writing and will be delivered to the other party by hand, or by sending it by fax, by prepaid registered mail or by email, addressed:

To the City:

City Clerk/Solicitor
City of Moose Jaw
228 Main Street North
Moose Jaw, SK S6H 3J8
F: (306) 692-4518
E: cclerk@moosejaw.ca

To the Purchaser:

Carpere Valley Development Corp.
280 – 2899 No. 3 Road
Richmond, BC V6X 2B2
F:
E:

With a copy to:

MLT Aikins LLP
1500 – 410 22nd Street East
Saskatoon, SK S7K 5T6

F: 306-975-7145
E: mchoi@mltaikins.com
Attention: Michael M. J. Choi

or such address as the parties may advise by notice.

- 8.2 A notice is deemed to be received on the following days:

- (a) if a notice is hand delivered, such notice is deemed to be received on the date of delivery;
- (b) if a notice is sent by registered mail, such notice is deemed to be received three days after the date of such mailing;
- (c) if a notice is sent by fax, such notice is deemed to be received on the day such fax is sent;
- (d) if a notice is sent by email, such notice is deemed to be received on the date shown on the "read receipt" message from the party being notified; and
- (e) if postal service is interrupted or substantially delayed, all notices will be hand-delivered or sent by fax or email during the period of such interruption or substantial delay.

PART 9 GENERAL

Independent Legal Advice

- 9.1 Each of the parties, by their execution of this Agreement, acknowledge that the party has carefully read and fully understands the terms of this Agreement and has obtained independent legal advice with respect to this Agreement.

Conflicts and Paramountcy

- 9.2 In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any Servicing Agreement, the provisions of this Agreement shall prevail and be paramount. If any provision of this Agreement is in conflict with or is inconsistent with a provision of any Servicing Agreement relating to the same specific matter, such provision in the Servicing Agreement shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent

Non-Waiver

- 9.3 A failure or delay by either one of the parties to exercise a right, recourse or privilege under this Agreement will not be considered as being a waiver on the part of the party to exercise such a right, recourse or privilege.
- 9.4 No waiver of either party is effective unless in writing, and a waiver affects only the matter and its occurrence specifically identified in the writing granting the waiver and does not extend to any other matter or occurrence.

Force Majeure

- 9.5 If either party is delayed, hindered or prevented from the performance of any of its obligations under this Agreement by reason of a Force Majeure Event, then the time for completing the portion of the obligation that was delayed, will be extended by a period equal to the period of

delay.

- 9.6 Either party affected in the performance of its obligations by a Force Majeure Event will, to the extent practicable, take all commercially reasonable steps to remedy the event and effect of a Force Majeure Event, provided however, that nothing contained in this section will require either party to settle any industrial dispute or to test any Applicable Laws.
- 9.7 In the event of Force Majeure, the party so affected will give prompt written notice to the other party describing the Force Majeure Event in question in reasonable detail and give prompt written notice when the condition and effect of the Force Majeure has ended.

Remedies Generally

- 9.8 Mention in this Agreement of any particular remedy of a party in respect of a default by the other party does not preclude the first party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy will be exclusive or dependent upon any other remedy, but a party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.
- 9.9 If and whenever Carpere fails to observe or perform any of its obligations in this Agreement and fails to remedy such default within the specified cure period, if any, the City may, at its option, remedy or attempt to remedy any default of Carpere under this Agreement for the account of Carpere and to enter upon the Lands for such purposes and no notice of the City's intention to remedy any default need be given to Carpere and the City will not be liable to Carpere for any loss, injury or damage caused by acts of the City in remedying or attempting to remedy such default and Carpere will pay to the City all costs expenses incurred by the City in connection with remedying or attempting to remedy such default.

Tender

- 9.10 Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the City's solicitors on behalf of the City and by Carpere's solicitors on behalf of Carpere and any tender of closing documents or money may be made upon the City's solicitors and Carpere's solicitors, as the case may be. Payments of money under this Agreement will be made only by certified cheque, negotiable bank draft, wire transfer or solicitor's trust cheque.

Registration of Agreement

- 9.11 The City may register the Option to Re-Purchase or notice thereof on the titles of the Lands in accordance with *The Planning and Development Act, 2007* (Saskatchewan).

Assignment

- 9.12 Upon consent and approval of the City, which will not be unreasonably withheld, conditioned or delayed, Carpere shall have the ability to assign this Agreement and any other ancillary

agreements between the City and Carpere to an affiliate, subsidiary, nominee, partnership, limited partnership, or other related entity of Carpere, provided, however, that notwithstanding any assignment by Carpere, Carpere shall not be released from the provisions hereof.

Other General

- 9.13 Nothing contained in this Agreement will be deemed or construed by the parties nor by any third party, as creating the relationship of employer and employee, principal and agent, partnership, or of a joint venture between the parties, it being understood and agreed that none of the provisions contained in this Agreement nor any act of the parties will be deemed to create any relationship between the parties other than an independent service agreement between the two parties at arm's length.
- 9.14 Except for the representations and warranties provided by the City under this Agreement, the City makes no further representations or warranties to Carpere of any kind, character or nature whether expressly implied, statutory or otherwise.
- 9.15 The indemnities provided by either party under this Agreement will survive the termination or expiration of this Agreement.
- 9.16 Save as otherwise provided herein, each of the parties will bear its own costs and expenses incurred or to be incurred in negotiating and preparing this Agreement and in the closing.
- 9.17 No amendment or modification to this Agreement will be binding upon either party unless it is agreed to in writing and signed by the parties. Carpere acknowledges and agrees that the City may only be bound upon resolution of City Council. Accordingly, Carpere understands that no modification of this Agreement, or any representation, warranty, collateral agreement, or other agreement between the parties will be validly binding upon the City until such time as a binding resolution or bylaw has been passed in relation thereto.
- 9.18 Each of the parties will at all times hereafter execute and deliver, at the request of any other party and without further consideration, all such further documents and instruments and will do and perform all such further acts as may be reasonably required by that other party to give full effect to the intent and meaning of this Agreement.
- 9.19 This Agreement will run with the Lands and will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and upon Carpere's successors in title and or interest in the Lands or any part thereof.

Fax or Electronic Copies

- 9.20 This Agreement may be executed and delivered by facsimile or other electronic means of transmission and the parties hereto may rely upon such copies of the Agreement so delivered as though such copies are originals of this Agreement.

Counterpart Execution

- 9.21 This Agreement may be executed by the parties in separate counterparts, each of which when

so executed and delivered will be deemed to be an original, and all such counterparts together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to be dated as of the date written at the beginning of this Agreement.

[Signature Page Follows]

The parties have duly executed this Agreement as of the date written above.

CITY OF MOOSE JAW

**CARPERE VALLEY DEVELOPMENT
CORP.**

City Clerk

Mayor

Schedule A

Lands



SW

33

SE

SW

Legend



City Owned Land

City Owned Land

- parcel is approximately 64 acres

NW

NE

64 ac

28

NW

NE

27

SW

SE

SW

0 0.13 0.25 0.5

Kilometers



GIS

City of Moose Jaw
Information Technology Dept.

Created: 03/07/2019 10:20 AM

Schedule B
Concept Plan

Schedule C
Form of Servicing Agreement

SERVICING AGREEMENT

THIS AGREEMENT made effective on the ____ day of _____, 20____.

BETWEEN:

CITY OF MOOSE JAW
(the “**City**”)

AND:

CARPERE VALLEY DEVELOPMENT CORP.
(the “**Developer**”)

WHEREAS:

- A. The Developer is the registered owner of the lands (collectively, the “**Lands**”) described in Schedule “A”;
- B. The Developer proposes to subdivide the Lands in accordance with the Plan of Proposed Subdivision (attached hereto as Schedule “B”);
- C. The Developer has applied to the City and to the Director of Planning and Development Services for approval of the Plan of Proposed Subdivision; and
- D. The City considers it in the public interest that the Lands be subdivided in accordance with the Plan of Proposed Subdivision subject to the Developer entering into an agreement with the City under Section 172 of the Act concerning the supply, installation or construction of certain public services, and the levy of certain fees relating to present or future costs arising from the anticipated provision by the City of services to the Lands, as subdivided.

NOW THEREFORE in consideration of the approval given to the Developer by the City, and in further consideration of the mutual promises made in this Agreement, the Parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Where used in this Agreement and Schedules, the following terms have the following meanings:

- (a) “**Act**” means *The Planning and Development Act, 2007* S.S. P.-13.2, 2007, as amended and any successor legislation thereto;
- (b) “**Agreement**” means this servicing agreement, including the attached Schedules, together with any amendments made from time to time, and the expressions

“herein”, “hereto”, “hereof”, “hereby”, “hereunder”, and similar expressions referred to in this agreement shall refer to this agreement and all Schedules hereto and not to any particular article, section, subsection or other subdivisions hereof;

- (c) **“Approved Plans and Specifications”** means the plans and specifications of Developer’s Services submitted by the Developer to the City and approved by all appropriate federal, provincial, and municipal authorities as contemplated in Section 2.2 herein, including any approved amendments thereto;
- (d) **“Carpere Infrastructure”** means the municipal related services and improvements to be constructed and/or installed by the City at those locations outside the Subdivision and that directly or indirectly serve the Subdivision;
- (e) **“Certificate of Final Completion”** means the maintenance release issued by the City pursuant to Section 7.2;
- (f) **“Certificate of Substantial Completion”** means the Certificate of Substantial Completion issued pursuant to Section 6.3;
- (g) **“Council”** means the City Council of the City of Moose Jaw;
- (h) **“Developer’s Services”** means all works and services of any kind whatsoever to be constructed and installed by the Developer pursuant to the provisions of this Agreement, including without limitation, all Work, all On-Site Services and all Off-Site Services required for the completion of the Development;
- (i) **“Development and Construction Standards”** means the general development, construction and servicing standards that may be adopted and approved by the City from time to time;
- (j) **“Director of Community Planning”** means the Director of Planning and Development Services for the City;
- (k) **“Drainage and Grading Plan”** means the drainage plan for the Subdivision appended as Schedule “D” to this Agreement;
- (l) **“Effective Date”** means the date first-stated above and the date of execution of this Agreement;
- (m) **“Environmental Reserve”** has the meaning ascribed to that term as set out in Section 5.3;
- (n) **“Governmental Authority”** means any governmental department, commission, board, bureau, agency or instrumentality of Canada, or any province, territory, county, municipality, city, or other political jurisdiction, whether now or in the future constituted or existing;
- (o) **“Lands”** has the meaning ascribed to that term as set out in recital A hereto;
- (p) **“Lot”** means a subdivided lot, created in accordance with the Plan of Subdivision;

- (q) “**Master Development Agreement**” means the agreement entered into between the City and the Developer dated [*].
- (r) “**Municipal Buffer**” has the meaning ascribed to that term as set out in Section 5.4;
- (s) “**Municipal Engineer**” means the Director of Engineering Services for the City designated by the City to review, inspect and monitor the construction and installation of the Work and/or such other person (including but not being limited to an employee of the City), to whom the City may delegate all or part of the responsibilities assigned to the Municipal Engineer pursuant to this Agreement;
- (t) “**Municipal Reserve**” has the meaning ascribed to that term as set out in Section 5.2;
- (u) “**Off-Site Services**”, are those services which are to be constructed and installed at those locations outside the Subdivision and that directly or indirectly serve the Subdivision, all as set out in the Approved Plans and Specifications;
- (v) “**On-Site Services**”, are those services which are to be constructed and installed in the Subdivision, all as set out in the Approved Plans and Specifications;
- (w) “**Party**” means any Person who is from time to time a party to this Agreement
- (x) “**Person**” means an individual, partnership, co-tenancy, corporation, trust, unincorporated organization, union, governmental body, the heirs, executors, administrators or other legal representatives of an individual, and any other legal entity capable of entering a contractual relationship;
- (y) “**Plan of Subdivision**” means the final Plan of Subdivision, agreed in writing by the Parties, and as registered at the requisite Lands Titles Office;
- (z) “**Proposed Plan of Subdivision**” means the proposed Plan of Subdivision appended as Schedule “B” and any substitution made therefor by the written consent of the Parties;
- (aa) “**Roadways**” has the meaning ascribed to that term as set out in Section 5.1;
- (bb) “**Stop Work Order**” means an Order issued by the Municipal Engineer pursuant to Section 2.3;
- (cc) “**Subdivision**” shall mean, in the aggregate, all of the Lots subdivided from the Lands, and all Roadways, Municipal Reserve, Municipal Buffer and Walkways dedicated pursuant to the Plan of Subdivision, all Utility Parcels and all other lands, if any, that are a part of the Lands. For the sake of clarity, the term “Subdivision” may be used interchangeably with the term “Lands”;
- (dd) “**Utilities**” and “**Utility**” have the meaning ascribed to those terms set out in Section 3.4 herein;
- (ee) “**Utility Parcel**” and “**Utility Parcels**” have the has the meaning ascribed to those

terms set out in Section 5.6;

- (ff) **“Utility Service”** and **“Utility Services”** have the meaning ascribed to those terms set out in Section 3.4 herein;
- (gg) **“Walkways”** has the meaning ascribed to that term as set out in Section 5.5;
- (hh) **“Warranty Period”** commences upon the issuance of the Certificate of Substantial Completion for each of the services as per Articles 2 & 3. The Warranty Period continues for a period of one (1) year, at which time the Developer is able to apply for the issuance of the Certificate of Final Completion. The Warranty Period and warranty works is a continuing obligation by the Developer until a Certificate of Final Completion has been issued and the development has been formally taken over by the City;
- (ii) **“Work”** has the meaning ascribed to that term set out in Subsection 2.1(a) and where the context requires, the term “Work” or shall also mean the Work described in Subsection 2.1(a) as constructed and installed and the re-construction and installation of the Work.

1.2 Other Defined Terms

- (a) Except as expressly provided in this Agreement, and except where the context clearly requires otherwise, all definitions used in Act shall further apply to this Agreement.
- (b) In this Agreement, unless a clear contrary intention appears, the term “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term.

1.3 Nature of Agreement

This Agreement is a servicing agreement under Section 172 of Act, and the City is entitled to all powers and remedies granted by that Act, in relation hereto. Without limiting the foregoing, the City may register this Agreement or a summary of this Agreement in order to protect the City's interest with respect to the development and servicing of the Lands.

1.4 Proper Law of Contract

This Agreement shall be construed in accordance with and be governed by the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

1.5 Headings

The division of this Agreement into Articles, Sections and any other subdivision, and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.6 Expanded Meanings

In this Agreement and attached Schedules, unless there is something in the subject matter or context inconsistent with the same:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to any statute extends to and includes any amendment or re-enactment of such statute;
- (c) this Agreement, excluding the Schedules, overrides the Schedules; and
- (d) the masculine includes the feminine.

1.7 Schedules

Attached to and forming part of this Agreement are the following Schedules:

Schedule "A":	Lands Description
Schedule "B":	Proposed Plan of Subdivision
Schedule "C":	Developer Services / Work
Schedule "D":	Drainage and Grading Plan

1.8 Authority to Make Representations and Bind

- (a) No supplement, modification, waiver or termination of this Agreement is binding unless signed in writing.
- (b) It is understood that the City may only be bound upon resolution of its Council. Accordingly, the Developer understands that no modification of this Agreement, representation, warranty, collateral warranty, or other agreement between the parties may be validly binding upon the City, until such time as a binding resolution or bylaw has been passed with relation thereto, and has been communicated to the Developer.

1.9 Recitals

The recitals to this Agreement shall form an integral part of this Agreement as though repeated at length herein.

ARTICLE 2 CONSTRUCTION, INSTALLATION AND SERVICING OBLIGATIONS OF DEVELOPER

2.1 Services

- (a) The Developer shall be responsible for constructing and installing or causing to be constructed and installed the following public services (being, collectively, the Developer's Services, or, alternatively, the "**Work**") at its own expense and in accordance with the provisions of this Agreement, including Article 3 and Article 4 of this Agreement and the standards, plans and specifications set out in the Schedules hereto, including Schedule "C"

- (i) ●
- (ii) ●
- (b) In addition to constructing and installing the On-Site Services and the Off-Site Services, the Developer shall be responsible at its own expense for the registration of the Approved Plan of Subdivision with Information Service Corporation (ISC), and the preparation and registration of the Legal Survey.
- (c) The Developer agrees that all Work shall be constructed in a logical and sequential fashion and as promptly as possible.

2.2 Plans and Specifications

- (a) At least 30 days before the construction and installation of any of the Work, the Developer shall submit to the City all design work, plans and specifications showing the location and routing of the Work to be done (collectively, the “**Plans and Specifications**”).
- (b) The Work may proceed only after:
 - (i) all necessary approvals for construction and installation are obtained from any Governmental Authority; and
 - (ii) the Plans and Specifications have been approved by the City in accordance with section 2.3 of this Agreement.

(Hereinafter, the Plans and Specifications as approved by this section 2.2 shall be referred to as “**Approved Plans and Specifications**”).

- (c) Any amendments to the Plans and Specifications that may be necessary are subject to approval in accordance with Subsections 2.2(b)(i) and (ii) and Work in accordance with any amendments to the Plans and Specifications may only proceed after such approval has been obtained.

2.3 Review, Inspection and Monitoring of Work by Municipal Engineer

The Work shall be reviewed, inspected and monitored, when required, by the Municipal Engineer in accordance with the following provisions:

- (a) as a precondition to obtaining the approval of the City mentioned in Subsection 2.2(b)(ii), the Developer must file with the City the Plans and Specifications and design information describing the Work required, together with a copy of all tender and contract documents to be employed by the Developer for the purposes of undertaking the Work;
- (b) as a further precondition to obtaining the approval of the City mentioned in Subsection 2.2(b)(ii), all Plans and Specifications shall be reviewed by the Municipal Engineer, who shall be responsible for making recommendations to the City, with respect to the approval of such plans, pursuant to Section 2.2 above. The

City agrees to use its best efforts to review the information submitted within 14 days of the date they are submitted to the City for review;

- (c) in the event that re-design of the Approved Plans and Specifications is required at any stage of the construction and installation of the Work, plans and drawings with respect to such re-design shall also be reviewed and approved pursuant to Section 2.2 above;
- (d) all Work shall be monitored by the Municipal Engineer, who shall be entitled to inspect the performance of the Work at any time or place to ensure that the Work is consistent with the Approved Plans and Specifications;
- (e) where the Municipal Engineer requires prior notification of Work, so as to conduct a proper inspection, reasonable advance notice of the Municipal Engineer's requirement shall be given by the Municipal Engineer to the Developer;
- (f) where the Municipal Engineer is of the opinion that the Work is not being done in a good and workmanlike manner, or is otherwise of a standard not reasonably acceptable to the City, the Municipal Engineer may issue a Stop Work Order and:
 - (i) all work covered by the Stop Work Order shall cease forthwith, and not proceed until the Stop Work Order is lifted by the Municipal Engineer; and
 - (ii) the Developer shall be responsible for complying with all reasonable directions given for remediation and future Work, as may be directed by the Municipal Engineer.

2.4 Supervision of Work by Developer's Engineer

The Developer shall retain a Professional Engineer (the "**Developer's Engineer**") licensed under *The Engineering and GeoScience Professions Act* (Saskatchewan) who shall do all design work, including preparation of the Plans and Specifications, provide construction supervision and make the necessary contracts for the construction and construction supervision of the Work. All such design work, including the Plans and Specifications, shall be sealed by the Developer's Engineer.

2.5 Time for Commencement and Completion of Work

The Developer shall commence construction and installation of the Work within twelve (12) months of the execution of this Agreement. Construction and installation of the Work shall be undertaken diligently and shall be completed within twenty-four (24) months of the execution of this Agreement or such other amount of time as the City and the Developer may mutually agree, acting reasonably and with due understanding paid to the nature and scope of the Work.

2.6 Construction Standards

- (a) All Work shall be constructed and installed in accordance with the Approved Plans and Specifications and the Development and Construction Standards.

- (b) All work related to the Work shall be done in a good and workmanlike fashion.

2.7 Drawings Showing Installed Work (Record Drawings)

Upon completion of the installation of the Work, the Developer shall cause the Developer's Engineer to complete a set of drawings showing the exact location of the Work as actually constructed and installed and to deposit one set of prints and an electronic copy of any related drawings or plan with the City, in such formats as may be reasonably requested by the City.

2.8 Public Consideration and Safety

- (a) If the Subdivision is adjacent to an existing neighbourhood (the "**Neighbourhood**"), the Developer shall take all reasonable precaution to ensure that the Neighbourhood is not disturbed during the construction period.
- (b) The City reserves the right to refuse access to any construction traffic should it be deemed that it is dangerous or unsafe for residents, it is causing excessive damage to the residential street.
- (c) Construction noise shall be kept to a minimum, and in strict compliance with the City's noise bylaws.
- (d) During the construction and installation of the Work, the Developer shall put up such barricades, lights, or other protection for persons and property as will adequately protect the public or any person in the Neighbourhood and will upon the request of the City or police authority, improve or change the same.
- (e) The Developer will ensure dust control guidelines pursuant to the Development and Construction Standards are at all times followed when the Work is being constructed and installed with a view to ensuring the City does not receive complaints about dust from residents of the Neighbourhood.

2.9 Utility Easements

The Developer agrees that it shall throughout the Subdivision:

- (a) grant, obtain and provide all utility, construction and service easements which may be required, at no cost to the City or any Utility and to keep the said easements clear for the purposes of the various Utilities; and
- (b) provide and register a utility easement plan as may be required by the City.

2.10 Ownership of Works

The Developer acknowledges that the Work provided for in this Agreement shall become the property of the City when installed and/or constructed on, in, under or over a public highway, road allowance, street, avenue, lane, lands owned by the City or lands over which the City or any Utility has been granted an easement in its favour; provided, however, that notwithstanding that ownership may vest in the City, the Developer shall not be relieved

of its obligations to properly install, maintain and warrant such Work in accordance with the terms of this Agreement. Notwithstanding any of the foregoing, the Developer may not connect a Utility Service in the Subdivision to any utility service line from outside the Subdivision provided by any Utility without the prior written consent of the City.

2.11 No City Obligation to Construct and Install Work

Unless expressly stated in this Agreement or the Master Development Agreement, the City shall have no responsibility:

- (a) to construct and install any of the Work; and/or
- (b) for any of the cost or expense for any of the Work.

ARTICLE 3 WORKS

3.1 Water and Sewer Works

- (a) The Developer shall, at its own expense, be responsible for the construction and installation of the Off-Site Services as follows:

-

- (b) The City shall be responsible for:
 - (i) the construction and installation of Carpere Infrastructure as follows:
 -
 - (ii) providing an adequate treated central water supply for the purpose of serving the Subdivision in accordance with the Master Development Agreement;
 - (iii) obtaining all easements affecting lands outside the Subdivision that may be required for the construction and installation of any water and sewer mainlines; and
 - (iv) providing, wherever commercially reasonable, for the collection or remittance of any latecomer or endeavour to assist payments to the Developer by subsequent landowners benefitting from the Off-Site Services.

3.2 Permit Requirements and Connections to City Mains

No construction of any sewer main, water main or any other Work shall commence nor shall construction proceed, save and except pursuant to and in accordance with such issued, valid and existing permits as may be required by the Water Security Agency of Saskatchewan and by any other governmental or administrative authority. A copy of any

such permit must be filed with the City before construction may commence. No sewer main or water main which is being constructed pursuant to this agreement shall be connected to a City sewer main or water main until after the consent of the Municipal Engineer for that specific connection has been obtained.

3.3 Roadways

- (a) The Developer shall be responsible for the construction and installation of all roadways connecting to the Subdivision from where the last pavement portions of road are located; and all roadways in the Subdivision, including internal roadways, all as shown in the Plan of Proposed Subdivision. Any arterial roads typically designed as free flowing, with controlled intersection spacing and considered a benefit to the community at large and included in the contribution of new developments as offsite levies at a proportionate share cost shall be the sole responsibility of the City.
- (b) All roadways shall be constructed and installed in accordance with the Development and Construction Standards and shall conform to the grades and details as per the Plans and Specifications submitted by the Developer and approved by the City.
- (c) No construction or Work shall commence or proceed within 90 metres of a provincial highway until such time as the Developer shall have obtained all required permits from the Ministry of Highways and Infrastructure. A copy of any such permit must be filed with the City before the commencement of construction. A Statutory Declaration by the Developer shall be filed with the City at the completion of these works testifying that all of the works have been completed as per the permit issued by the Ministry of Highways and Infrastructure.
- (d) Construction of the roads for the approved development or phase of the development shall start when the engineering drawings are signed, all securities are deposited and the subdivision plan is registered.
- (e) The Plans and Specifications prepared by the Developer's Engineer and submitted by the Developer for approval by the City under Section 2.2 shall detail the roadways and provide specifications for the paving of the roadways, if any such paving is required.
- (f) All roadways that are to be paved are to be paved in accordance with the Approved Plans and Specifications.
- (g) Road construction for any paved roadways is to be completed in two phases as follows;
 - (i) All roads within the development or the phase of the development where paving is required shall be completed to a base asphalt (40 mm) prior to issuance of any individual development permit; and
 - (ii) Top asphalt (30 mm) for all the roads within the development or the phase

of the development may be placed once 75% of the lots in the development or the phase of the development have constructed buildings.

- (h) Road construction for any graveled roadways is to be completed such that all materials and final grading shall be in place and maintained in accordance with the Development and Construction Standards at all times during the development and construction of any constructed buildings on the Lands.
- (i) All utility road crossings must be installed prior to placement of the road base materials or base asphalt as the case may be.

3.4 Power, Gas, Telephone and Cable Utilities

Within the Subdivision, the Developer shall, with the approval, as required, of SaskPower, SaskEnergy, SaskTel, and Access Communications Co-operative Limited, and any other utility agency or provider of any utility service of any nature or kind whatsoever (collectively, the “**Utilities**” and each a “**Utility**”), arrange for the design and construction and installation of underground electrical power, natural gas, telephone and cable lines, and any other Utility that may be reasonably required to service the Subdivision and Lots within the Subdivision (collectively, the “**Utility Services**” and each a “**Utility Service**”). It shall be the responsibility of the Developer to pay for and obtain all such approvals, as required, from any Utility and/or Governmental Authority in respect of the construction and installation of the Utility Services.

3.5 Street Lights and Mailboxes

- (a) The Plans and Specifications prepared by the Developer’s Engineer and submitted to the City for approval shall specify details for the installation of street lights and mailboxes in the Subdivision. Mailboxes should be consistent with Canada Post; Delivery Planning Standards Manual for Builders and Developers, January 2015.
- (b) The Developer shall provide, construct and install street and pathway lights in the Subdivision in accordance with the Approved Plans and Specifications.
- (c) The Developer shall request Canada Post mailboxes and ensure the installation of them as required in the Subdivision and in accordance with the Approved Plans and Specifications and Canada Post Specifications and Guidelines.

3.6 Street Signs

The Developer shall provide, construct and install initial street and stop signs as required by the City and in accordance with the Development and Construction Standards. The street names shall be determined by existing City policies. In the alternative, the Developer may, instead of providing such, instead elect to reimburse the City for all direct costs associated with the initial construction and installation of all street and stop signs as required hereunder.

ARTICLE 4 DRAINAGE AND GRADING PLAN

4.1 Drainage and Grading Plan

- (a) The Developer shall prepare and deposit with the City the Drainage and Grading Plan, which shall be approved by the Municipal Engineer in both paper and electronic formats as may be directed by the City.
- (b) The Developer shall construct and install or cause to be constructed and installed a drainage control network in the Subdivision in accordance with the Drainage and Grading Plan and/or where required by the Municipal Engineer, including the following:
 - (i) designed drainage profiles for all roads, walkways and lots, including all necessary culverts, storm sewers, offsite connections and other drainage measures as may be required; and
 - (ii) erosion protection works and/or measures where steep slopes, or other conditions conducive to soil erosion exist.
- (c) Galvanized steel culverts, ditches, swales, storm sewers, outfalls or other drainage works, and vegetation cover, stone riprap, ditch blocks, or other erosion protection works, shall be installed by the Developer at its own expense, but only where required by the Drainage and Grading Plan or where found to be necessary by the Municipal Engineer during construction and during the “**Warranty Period**”.
- (d) The Developer shall be responsible for all costs associated with the maintenance of drainage within the Subdivision until a Certificate of Final Completion has been issued.
- (e) The Developer shall be responsible for repairs to the drainage within the Subdivision during the “Warranty Period”, except where landscaping and drainage has been approved for lots that have completed construction and landscaping.

4.2 Drainage and Grading Plan Requirements

- (a) The Drainage and Grading Plan shall show a drainage control network for and all storm drainage areas in the Subdivision, the areas in hectares, and the runoff coefficient for each specific runoff area. The Drainage and Grading Plan shall include a standard storm calculation and shall comply with the Development and Construction Standards. Without limiting the generality of the foregoing the Drainage and Grading Plan shall provide:
 - (i) designed drainage profiles for all roads, walkways and Lots, including all necessary culverts, swales or ditches, offsite connections and other drainage measures as may be required;
 - (ii) erosion protection works and/or measures where steep slopes or other conditions conducive to soil erosion exist; and
 - (iii) proposed grades for each Lot, the roadways, and the overall grading

requirements for the Subdivision with the finished grade level of each Lot to meet the 1:500 Flood level plus 0.5 meters freeboard safe building elevation to ensure all habitable portions of any building are above this level.

- (b) Prior to the issuance of a Certificate of Substantial Completion, the Developer shall deliver a final grading and drainage report bearing the signature and seal of either a Registered Saskatchewan Professional Engineer or a Saskatchewan Lands Surveyor that certifies that the actual finished elevation and grading of the Lots and Lands conform to the Grading and Drainage Plan.

4.3 Site Elevations

No person shall, at any time, add fill to a lot or grade a lot in such a manner that it will cause surface water to flow along the surface from that lot to any adjacent lot, except in accordance with the provisions of this Agreement and in accordance with the Drainage and Grading Plan.

ARTICLE 5 LANDS FOR MUNICIPAL PURPOSES

5.1 Dedication of Roadways

- (a) All roads (the “**Roadways**”) designated as such in the Plan of Subdivision shall be dedicated as a public highway pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations, 2009 and the Cities Act* and:
 - (i) the Developer agrees to dedicate such additional land as may be reasonably necessary to allow access from the existing municipal roadways;
 - (ii) the Developer agrees to execute all documents as may be reasonably necessary for the purposes of such dedication; and
 - (iii) all such documents shall be executed in a timely fashion upon approval of the Developer’s subdivision application.

5.2 Municipal Reserve

- (a) All municipal reserve (the “**Municipal Reserve**”) designated in the Plan of Subdivision as such shall be dedicated as municipal reserve pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations, 2009* and, the City acknowledges and agrees that the foregoing shall satisfy the obligations on the Developer under the Act with respect to municipal reserve.
- (b) The Developer shall, at its own expense, cause the Municipal Reserve to be designed and landscaped in accordance with Development and Construction Standards.

5.3 Environmental Reserve

- (a) All environmental reserve (the “**Environmental Reserve**”) designated in the Plan of Subdivision as such shall be dedicated as environmental reserve pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* and the City acknowledges and agrees that the foregoing shall satisfy the obligations of the Developer under the Act with respect to environmental reserve.
- (b) The Developer shall, at its own expense, cause the environmental reserve to be sodded and landscaped in accordance with the Development and Construction Standards.

5.4 Municipal Buffer

- (a) All buffer strips (the “**Municipal Buffer**”) designated in the Plan of Subdivision as such shall be dedicated as buffers strips pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* and the City acknowledges and agrees that the foregoing shall satisfy the obligations of the Developer under the Act with respect to buffer strips.
- (b) The Developer shall, at its own expense, cause the Municipal Buffers to be sodded and landscaped in accordance with the Development and Construction Standards.

5.5 Walkways

- (a) All walkways (the “**Walkways**”) designated in the Plan of Subdivision as such shall be dedicated as walkways pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations*.
- (b) The Developer shall, at its own expense, cause the Walkways to be constructed in accordance with the Development and Construction Standards.

5.6 Utility Parcels

All municipal utility parcels (the “**Utility Parcels**” and each a “**Utility Parcel**”) designated in the Plan of Subdivision as such shall be the property of the City and shall either be dedicated as Utility Parcels pursuant to the Act, *The Subdivision Regulations, 2014, The Dedicated Lands Regulations* or the Developer shall cause title to such Utility Parcels to be transferred to the City, as required.

ARTICLE 6 REPORTING, INSPECTION AND SUBSTANTIAL COMPLETION

6.1 Reporting Requirement

Commencing ninety (90) days after execution of this Agreement, and thereafter, every ninety (90) days until the Certificate of Final Completion shall be issued, the Developer shall submit a written report to the City, in which the Developer shall advise the City of progress toward completion of the subdivision process, design of the Work, progress on approvals and permits required by the Developer, progress on construction, progress on

curing deficiencies, any sales or anticipated sales of Lots, and any other matter which the City should reasonably require of the Developer from time to time.

6.2 Ongoing Inspection of Work

As each component of the Work is completed, an inspection shall be conducted by the Municipal Engineer, and such Person shall make such recommendations to the City as may appear appropriate, following which report, the City shall advise the Developer whether the City such component is substantially complete. In the event that any such component of the Work is found to not be substantially complete, the City shall provide the Developer with a written list of such deficiencies pertaining to the Work to be corrected by the Developer.

6.3 Certificate of Substantial Completion

When the Work has been completed, such remaining inspections thereof as the Municipal Engineer shall consider appropriate shall be conducted and the Municipal Engineer shall make a recommendation to the City as to whether the Work is substantially complete and:

- (a) following such report, provided that the Work of that service is substantially complete, the City shall issue a certificate of substantial completion (the “**Certificate of Substantial Completion**”); and
- (b) where the Work is found to not be substantially complete, the City shall provide the Developer with a written list such deficiencies pertaining to the Work to be corrected by the Developer along with a reasonable time frame or time frames for the rectification of such deficiencies. The Developer shall be bound to rectify such deficiencies in accordance with the time frames as may be reasonably stipulated by the City.

6.4 Compliance as a Pre-Condition

- (a) As a pre-condition to the issuance of a Certificate of Substantial Completion, the Developer shall supply the City with a statutory declaration that all accounts for work and materials and construction and installation services have been paid, except for such holdbacks as may be required pursuant to *The Builders’ Lien Act*, and any similar legislation. The statutory declaration shall further warrant that there are no claims for lien or otherwise which have been presented to the Developer, or of which the Developer or any Person with a registered mortgage against the Lands is aware or has notice, in connection with such work done, or materials supplied for, or on behalf of the Developer, in connection with the construction and provision of services to the Lands. The Developer shall also warrant compliance with *The Workers’ Compensation Act*.
- (b) As a pre-condition to the issuance of a Certificate of Substantial Completion, the Developer shall cure all outstanding deficiencies or defaults, pursuant to the terms of this Agreement and any other agreement between the Developer and the City.

ARTICLE 7

WARRANTY PERIOD

7.1 Maintenance and Warranty Period

The Developer acknowledges and agrees that it shall be responsible for maintenance of the Work up to and including the date upon which the Certificate of Substantial Completion shall issue, and shall thereafter be responsible for all repairs to the Work and the replacement of any defective Work during the Warranty Period, together with the maintenance obligations as referenced below, and until a Certificate of Final Completion has been issued. Work required as a result of normal wear and tear, vandalism, storms, wildlife damage, motor vehicle accidents, damage by snow removal operations, and such other risks as are normally incurred in municipal operations shall not be subject to Warranty.

7.2 Certificate of Final Completion

- (a) Subject to this Section 7.2 and Section 7.5, the Developer may apply to the City for the issuance of a certificate of final completion (the “**Certificate of Final Completion**”).
- (b) The Certificate of Final Completion shall be issued in accordance with this Section 7.2 and Section 7.3.
- (c) Eight weeks prior to the end of the Warranty Period for any of the Works, the Developer may apply for a Certificate of Final Completion. This application shall be made in accordance with the Development and Construction Standards.
- (d) Within 30 days of receipt of the request for a Certificate of Final Completion, the Municipal Engineer shall inspect all the Work to determine whether the Developer has discharged its obligation during the Warranty Period.
- (e) Within a reasonable time of completing such inspection, the City shall notify the Developer with respect to any maintenance, repair and replacement items which have not been properly completed by the Developer (as such items have been identified by the Municipal Engineer) during the Warranty Period, and the Developer shall be responsible for rectifying such items within 45 days of the date of such notice.
- (f) Upon rectification of all maintenance, repair and replacement deficiencies pursuant to this section 7.2, or in the event that no such deficiencies are identified, the City shall issue the Certificate of Final Completion, and the Developer’s obligations under this Article 7 shall thereafter cease.
- (g) It shall be a pre-condition to the issuance of the Certificate of Final Completion that the Developer shall cure any deficiency or default pursuant to this Agreement.

7.3 Road Maintenance

Without limiting the generality of the foregoing:

- (a) prior to the issuance of a Certificate of Final Completion, the Developer shall be responsible for maintaining all roadways within the Subdivision, during the Warranty Period, including, but not being limited to the supply and application of such asphalt patching, gravel or any other remedial action as may be reasonably required; and
- (b) the Developer shall repair any damage caused to any existing road, road allowance or existing structure located on any roadway outside of the Proposed Plan of Subdivision as a result of the development of the Lands, reasonable wear and tear excepted..

For further clarity, the obligations and responsibilities described in Section 7.3(a) above shall pass to the City upon the issuance of the Certificate of Final Completion.

7.4 Construction Garbage

- (a) During the construction and installation of the Work until the issuance of the Certificate of Final Completion, the Developer shall be responsible for the removal of all construction garbage (other than garbage related to individual buildings) and debris from the Subdivision or the surrounding area that may have been affected.
- (b) The Developer shall require all dwelling construction contractors and/or owners within this Subdivision, to install and regularly empty a construction disposal bin during the construction of any buildings within the Subdivision.
- (c) The Developer shall require, with assistance from the City (as a means of enforcement only), that all construction sites are to be maintained in neat and orderly condition during the period of dwelling construction.

7.5 Repairs and Replacements to Work by City

Without in any way limiting the generality of the foregoing, if:

- (a) during the Warranty Period any defects become apparent in any of the Work installed or constructed by the Developer under this Agreement;
- (b) the Municipal Engineer shall require repairs or replacements to be done,

the Developer shall:

- (c) be notified and within a reasonable period of time after said notice cause such repairs to be done,

If the Developer shall default in causing such repairs or replacements to be made, the City may do the repairs or replacements of the Work, and recover the cost thereof from the Developer.

ARTICLE 8 FEES, COSTS AND TAXES PAYABLE BY THE DEVELOPER

Without limiting the generality of any other provision of this Agreement, the Developer shall be responsible for payment of the fees, costs, expenses, taxes and other amounts as provided for in this Article 8 as follows:

8.1 Development Fee

- (a) The Developer shall pay to the City upon the execution of this Agreement by way of cash, certified cheque or bank draft, a fee (the “**Development Fee**”) in the aggregate amount of \$●for the whole or part of the capital cost of providing, altering, expanding or upgrading certain Off-Site Services, which fee is calculated as follows:
 -
- (b) Other than the Development Fee, the Developer shall not be required to pay any further fees to the City in payment for the whole or part of the capital cost of constructing, installing, providing, altering, expanding or upgrading Off-Site Services.
- (c) For greater certainty, notwithstanding anything to the contrary in paragraph (b) above, the Developer shall be responsible for the costs of constructing and installing the Off-Site Services set out in Section 2.1 in addition to payment of the Development Fees.
- (d) Payment of the fees and levies contemplated in this Section shall be a pre-condition of the granting of a development or building permit with respect to any construction on any Lot and shall bind the Developer and any other person having an interest in any Lot.

8.2 Tax Arrears

The Developer shall pay all arrears of taxes outstanding against the Lands, if any, at the time of execution of this Agreement and shall thereafter keep all taxes current as provided for herein.

8.3 Tax Payments

The Developer shall be responsible for, at the Developers own cost and expense, the payment of municipal and school property taxes levied. The tax shall be levied on the subdivided assessment of the land and/or improvements and the applied yearly mill rate and/or tax tool established by the City and any relevant school division.

ARTICLE 9 AGREEMENT RUNS WITH THE LAND

9.1 Agreement Runs with Lands and May Be Registered

It is agreed that:

- (a) the obligations of the Developer under this Agreement run with the land, pursuant

to common law and equity, and pursuant to the provisions of Act;

- (b) the City is entitled to register this Agreement pursuant to the Act;
- (c) the Developer shall pay the costs of registration, and agrees to pay such costs within 30 days of the date of the invoice rendered with respect thereto by the City;
- (d) the Developer hereby agrees that any interest in the Lands that is in favour of the City based on this Agreement shall have priority over all other interests in favour any other person, including any mortgage registered by and in favour of the Developer's mortgagee against the title to the Lands and all such other interests shall be postponed to the City's interest in the Lands based on this Agreement.

ARTICLE 10 INDEMNITY BY DEVELOPER

10.1 Indemnification Re: Development

The Developer hereby indemnifies and saves harmless the City with respect to any claim, action, judgment, cost or expense incurred by or assessed against the City in respect of damages suffered by any third party arising out of any act or omission of the Developer with respect to the Subdivision and the Work contemplated by this Agreement.

10.2 Indemnification

The Developer shall indemnify and save harmless the City with respect to any claim, action, judgment, cost or expense incurred by or assessed against the City in respect of damages suffered by any third party, and related in any way to any Work to be maintained by the Developer during the Warranty Period, but not to the extent that any Developer's Services are performed by the City.

10.3 Indemnity Extends to Legal Costs

The indemnities granted by the Developer in this Agreement shall extend to all costs incurred by the City in defending any claim, including the retention of consultants and experts, and including legal fees on a solicitor-and-client-basis and disbursements.

10.4 Indemnity Extends to Individuals

The indemnities granted by the Developer in this Agreement shall extend to every official, elected or otherwise, of the City, and to every employee, servant, agent and consultant of the City. To the extent required by law, the City declares itself to be the agent and representative of such person, and accrues the benefit of indemnification for such persons in that capacity.

ARTICLE 11 LIABILITY INSURANCE

11.1 Obligation to Insure

The Developer, upon execution of this Agreement, shall forthwith deposit with the City a certificate of insurance disclosing that the Developer holds liability insurance with an insurer satisfactory to the City. Thereafter, upon 14 days written demand, the Developer shall deposit proof that the insurance remains in force, in a form satisfactory to the City.

11.2 Requirements of Insurance

- (a) The Developer shall obtain and keep in force the following insurance coverage during the term of this Agreement:
 - (i) comprehensive commercial general liability insurance with a limit of liability of \$5,000,000, combined single limit, for bodily injury and property damage, for each claim or series of claims arising from the same originating cause and such policy shall include:
 - (I) The City as an Additional Insured;
 - (II) A Cross Liability clause; and
 - (III) Contractual liability coverage.
- (b) Insurance obtained and provided shall include a provision for the City to be given thirty (30) days written notice prior to cancellation or any material change of the required insurance policies.
- (c) The Developer covenants and agrees that the City's insurance requirements mentioned above will not be construed to and shall in no manner limit or restricts the liability of the Developer under this Agreement.
- (d) The Developer is solely responsible for full payment of any premium amounts and any deductible amounts which may be due in the event of any and all claims under policies and shall provide the City with proof of the insurance required pursuant to this Agreement annually in a form satisfactory to the City.
- (e) The Developer shall provide the City with written notice of any incident that may result in a claim against either the Developer or the City, including, but not limited to such losses as, property damage to City assets, third party property damage, injury or death of any person and any third party bodily injury within 7 days of becoming aware of such incident.

ARTICLE 12 SECURITY FOR PERFORMANCE

12.1 Posting of Security

As security for performance of its obligations under this Agreement, and the payment of all obligations of the Developer pursuant to this Agreement, the Developer shall post security as set forth in this Article 12.

12.2 Time for Posting Security

Security as required by this Agreement shall be posted forthwith upon execution of this Agreement and no steps shall be taken to register the Plan of Subdivision or to commence any work hereunder until security is posted.

12.3 Form of Security

The Developer shall post security by way of:

- (a) depositing with the City, cash in the amount of 10% of the estimated costs of the Work or such other amount as may be agreed to by the City and the Developer from time to time, as such costs are estimated by the Municipal Engineers; or
- (b) depositing with the City, an irrevocable non-expiring letter of credit issued by a chartered bank in Canada, acceptable to the City, in the amount of 10% of the estimated cost of the Work or such other amount as may be agreed to by the City and the Developer from time to time, as estimated by the Municipal Engineer.
- (c) Any letter of credit provided in accordance with section 12.3(b) herein shall:
 - i. include an acknowledgement by the issuing bank that the City shall be entitled to draw on the 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;
 - ii. be irremovable;
 - iii. include a statement that the letter of credit is issued in favour of the City;
 - iv. be in a form acceptable to the City, acting reasonably;
 - v. contain a condition for automatic renewal to the City's satisfaction, acting reasonably; and
 - vi. permit partial drawings.
- (d) Where any letter of credit provided herein is set to expire within 30 days and the Developer has failed to satisfy the obligations secured thereunder, the Developer shall provide the City with a replacement or renewal letter of credit. If such replacement or renewal is not provided by the Developer, the Developer shall be deemed to be in breach of this Agreement and the City may present the letter of credit to which the obligations pertain for payment in whole or in part and shall not be liable to the Developer therefore.

12.4 Reduction of Security

The security held by the City may be reduced in accordance with the provisions of this Section 12.4. Upon written application by the Developer, and upon certification of the estimated cost of completion of the Work by the Municipal Engineer, security will be released by the City as follows:

- (a) forty-two days after the issuance of the Certificate of Substantial Completion, 80% of the original security shall be released, less the estimated cost of remedying the deficiencies identified by the City at the time the Certificate of Substantial Completion is issued. Upon curing all deficiencies set forth in the list issued by the City, the City shall release the sum retained as the estimated cost of curing those deficiencies. For the sake of clarity, the City shall retain the entire holdback until all deficiencies have been cured; and
- (b) forty-two days after the issuance of the Certificate of Final Completion, the City shall release the final 20% of the original security.

12.5 No Reduction on or After Default

In the event that the Developer should be in default under this Agreement, or in the event that the Developer should have previously defaulted pursuant to the terms of this Agreement, the City shall not be obliged to release any security, in whole or in part, held by the City, until the Developer has satisfied the entirety of its obligations pursuant to this Agreement.

ARTICLE 13 DEFAULT AND REALIZATION ON SECURITY

13.1 Events of Default - Construction of the Work

Default shall occur in the event that the Developer:

- (a) fails to undertake the Work in accordance with the Approved Plans and Specifications;
- (b) having commenced the Work, fails or neglects to proceed on a timely and reasonable basis;
- (c) fails to undertake the Work in accordance with the Approved Plans and Specifications in a good and workmanlike manner;
- (d) fails to remedy any deficiency relating to the Approved Plans and Specifications identified by the Municipal Engineer or the City within a reasonable time.

13.2 Other Elements of Default

Default shall occur in the event that the Developer fails to:

- (a) make payment of any sum owing by the Developer to the City, pursuant to this Agreement; and
- (b) comply with the terms of this Agreement.

13.3 Declaration of Default

Upon the happening of any event of default, the City may claim default by giving written

notice to the Developer. In the event that the default is not cured or reasonable steps have not been taken by the Developer to cure such default within thirty (30) days from the date such notification is mailed by the City, the City shall be entitled to avail itself of any and all rights it may have with respect to that default, such as are defined pursuant to the terms of this Agreement, or by common law or equity or under any statute.

13.4 City's Rights to Cure Default

Upon the City being entitled to enforce its rights upon default by the Developer, the City may, in its sole discretion, do one, any or all of the following, in addition to any other rights or remedies that the City may have available to it, whether under this Agreement, by common law or equity, or under any statute;

- (a) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to supply all materials and do all necessary work in connection with the Work, including repair or reconstruction of faulty work, and the replacement of materials which are not in accordance with such specifications and to charge the cost of so doing, together with an engineering fee equal to 10% of the cost of the materials and works to the Developer; and
- (b) on its own behalf or by way of its servants, agents or contractors, enter upon the Lands and proceed to repair and/or maintain any Developer's Service which is the responsibility of the Developer, up to the expiry of the Warranty Period, including repair or reconstruction, and the replacement of any materials which had not been supplied in accordance with the requirements of due and proper maintenance, together with an administrative fee of 10% of the cost of such material and work, and to charge that cost to the Developer.

13.5 City's Other Remedies

In addition to any other right or remedy granted to the City at law, in equity or by statute:

- (a) in the event that the Developer should fail to pay any sum owing to the City within sixty (60) days of the date of any invoice rendered by the City, the City may deduct the sums owing from the cash deposit held as security, or shall be entitled to seek payment from any surety company who has posted as security, or shall be entitled to draw upon any letter of credit issued by any chartered bank in favour of the City as security;
- (b) in the event that any monies owing by the Developer to the City pursuant to this Agreement, or any other Agreement relating to the development of the Lands, should not be paid by the Developer within 60 days of any invoice issued by the City, the City shall be entitled to recover the same from the Developer as a debt due and owing to the City, together with interest thereon at a rate of 8% per annum from the date of the invoice issued by the City, together with solicitor-and-client costs of any legal proceedings brought to collect such debt; and
- (c) to the extent permitted by law and equity, the City may bring action in a court of competent jurisdiction against the Developer, seeking specific performance of the

terms of this Agreement, and/or a mandatory and/or prohibitory injunction, to enforce compliance with the terms of this Agreement.

13.6 Right to Refuse Permit

In addition to any other remedy it may have, the City may refuse to issue any building or development permit for any building or development within the Subdivision until all Work is complete in accordance with the requirements of this Agreement.

ARTICLE 14 NON-WAIVER BY CITY

14.1 Entry as Agent

It is understood and agreed between the parties that any entry upon the Lands by the City, pursuant to a default by the Developer, shall be as an agent for the Developer and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of any service by the City. The Developer further agrees that the indemnities given with respect to construction and installation of the Developer's Services on the Lands extend to any action undertaken by the City as a result of the Developer's default.

14.2 Non-Waiver - Maintenance

The Developer hereby acknowledges that the City, by providing any access, removing any snow or ice, or performing any other act with respect to the provision or maintenance of any Developer's Service, during the Warranty Period, does not assume responsibility for such Developer's Services, and no such action undertaken by the City shall be deemed, in any way, to be an acceptance by the City of any obligation to provide any such Developer's Service, except as provided herein. Such actions may be taken by the City without prejudicing the City's right to enforce the maintenance provisions contained in this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Subdivision Approval

Any recommendations by the City for approval of the Proposed Plan of Subdivision shall be subject to the Developer's due compliance with the applicable provisions of the Act, *The Subdivision Regulation, 2014*, *The Dedicated Lands Regulations, 2009*, *The Municipalities Act* and the requirements of any relevant federal, provincial and municipal government authorities and agencies.

15.2 Municipal Bylaw Compliance

Nothing herein contained shall be deemed to oblige the City to sanction or permit any breach of or deviation from the City's bylaws, nor to issue any permit for any construction within the Subdivision, except upon due compliance with the City's bylaws and all other regulations pertaining to development.

ARTICLE 16 ARBITRATION

16.1 Arbitration Provisions

- (a) In the case of a dispute between the Parties hereto concerning any aspect of this agreement, either Party shall be entitled to give the other notice of such dispute and demand arbitration thereof. Within fourteen (14) days after such notice and demand have been given, each Party shall appoint an arbitrator who shall jointly select a third. The Parties agree that the decision of any two of the arbitrators shall be final and binding upon the parties. *The Arbitration Act, 1992* shall apply to any arbitration hereunder, and the costs of arbitration shall be apportioned equally between the parties.
- (b) If the two arbitrators appointed by the Parties do not agree upon a third, or a Party who has been notified of a dispute fails to appoint an arbitrator, then the third arbitrator, or an arbitrator to represent the Party who fails to appoint an arbitrator, may be appointed by a Justice of the Court of Queen's Bench upon application by either Party.

ARTICLE 17 CONDITIONS PRECEDENT

17.1 Conditions Precedent to the Obligations of Both Parties

- (a) Notwithstanding anything herein contained, the obligations of each of the City and the Developer to complete the transaction contemplated under this Agreement shall be subject to the fulfillment of the following conditions precedent on or before the signing of this agreement, or such later date as to which the Parties may mutually agree in writing, and each of the Parties covenants to use its best efforts to ensure that such conditions are fulfilled:
 - (i) approval by the appropriate approving authority of the re-zoning of the Subdivision; and
 - (ii) approval by the appropriate approving authority of the Plan of Subdivision and registration of the transform approval certificate with respect to the Plan of Subdivision under the Saskatchewan Land Titles System with Information Services Corporation of Saskatchewan.
- (b) The foregoing are conditions precedent for the mutual benefit of both Parties and may be waived in whole or in part only if both Parties waive them in whole or in part and where the conditions precedent are waived in part, they shall have been waived in part to the same extent by both Parties.

ARTICLE 18 GENERAL PROVISIONS

18.1 Conflicts and Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Master Agreement, the provisions of the Master Agreement shall prevail and be paramount. If any provision of this Agreement is in conflict with or is inconsistent with a provision of the Master Agreement relating to the same specific matter, such provision in this Agreement shall be deemed to be amended to the extent necessary to ensure that it is not in conflict with or inconsistent.

18.2 Cancellation of Agreement

In the event that the Plan of Subdivision is not registered within two years from the date hereof, the City may, at its option on one month's notice to the Developer, declare this Agreement to be null and void, provided that any such declaration shall not relieve the Developer from the payment of any costs incurred by the City which, pursuant to the terms of this Agreement, are to be paid by the Developer.

18.3 Assignment of Agreement

Neither this Agreement nor any rights or obligations under this Agreement are not assignable by the Developer without the prior written consent of the City, but this consent shall not be unreasonably withheld, conditioned, or delayed. In determining whether consent is reasonable, the Developer acknowledges that in determining whether to enter this Agreement, the City has had specific regard to the attributes of the Developer, including its financial capacity, expertise and reputation.

18.4 Further Acts

The parties shall from time to time and at all times do such further acts and things and execute all such further documents and instruments as may be reasonably required in order to carry out and implement the true intent and meaning of this Agreement.

18.5 Severability

Each of the covenants, provisions, articles, sections and other subdivisions hereof are severable from every other covenant, provision, article, section and subdivision; and the invalidity or unenforceability of any one or more covenants, provisions, articles, sections or subdivisions of this Agreement shall not affect the validity or enforceability of the remainder of the Agreement.

18.6 Enurement of Benefit

This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties.

18.7 No Partnership

The rights, duties, obligations and liabilities of the Parties hereto shall be separate and not joint and collective. Each Party shall be responsible only for its obligations as set out in this Agreement. It is not the intention of the Parties to create a commercial or other partnership or agency relationship between the Parties, save for as expressly provided

herein, and this Agreement shall not be construed so as to render the Parties liable as partners or as creating a commercial or other partnership. No Parties shall be, except as expressly permitted herein, deemed to be or shall hold itself out to be the agent of the other party.

18.8 Waiver

No consent or waiver expressed or implied by either Party in respect of any breach or default by the other in the performance by such other of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default.

18.9 Notice

Any notice required to be given hereunder may be given by way of registered mail addressed to the Developer at:

-

Any notice required to be given hereunder may be given by way of registered mail addressed to the City at its offices at:

-

18.10 Time of the Essence

Time shall be the essence of this Agreement.

18.11 Counterparts

This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts together will constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to be dated as of the date written at the beginning of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as at the ____ day of _____, 20_____.

CITY OF MOOSE JAW

Per: _____
Name: _____
Title: Mayor

(Seal)

Per: _____
Name: _____
Title: City Clerk

**CARPERE VALLEY DEVELOPMENT
CORP.**

Per: _____
Name: _____
Title: _____

(Seal)

Per: _____
Name: _____
Title: _____

**SCHEDULE “A”
DESCRIPTION OF THE LANDS**

**SCHEDULE “B”
PROPOSED PLAN OF SUBDIVISION**

SCHEDULE “C”
DEVELOPER SERVICES / WORK

SCHEDULE "D"
DRAINAGE AND GRADING PLAN