

SERVICING AGREEMENT

THIS AGREEMENT made effective on the ____ day of June, 2021.

BETWEEN:

CITY OF MOOSE JAW
(the “City”)

AND:

NEWROCK DEVELOPMENTS (SASK) INC.
(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.

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) **“Final Acceptance Certificate”** means the maintenance release issued by the City pursuant to Section 5.2;
- (e) **“Construction Completion Certificate”** means the Construction Completion Certificate issued pursuant to Section 4.3;
- (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) **“Effective Date”** means the date first-stated above and the date of execution of this Agreement;
- (k) **“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;
- (l) **“Lands”** has the meaning ascribed to that term as set out in recital A hereto;
- (m) **“Lot”** means a subdivided lot, created in accordance with the Plan of Subdivision;
- (n) **“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;
- (o) **“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;

- (p) **“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;
- (q) **“Party”** means any Person who is from time to time a party to this Agreement
- (r) **“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;
- (s) **“Plan of Subdivision”** means the final Plan of Subdivision, agreed in writing by the Parties, and as registered at the requisite Lands Titles Office;
- (t) **“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;
- (u) **“Stop Work Order”** means an Order issued by the Municipal Engineer pursuant to Section 2.3;
- (v) **“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”;
- (w) **“Utilities”** and **“Utility”** have the meaning ascribed to those terms set out in Section 3.4 herein;
- (x) **“Utility Service”** and **“Utility Services”** have the meaning ascribed to those terms set out in Section 3.4 herein;
- (y) **“Warranty Period”** commences upon the issuance of the Construction Completion Certificate 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 Final Acceptance Certificate. The Warranty Period and warranty works is a continuing obligation by the Developer until a Final Acceptance Certificate has been issued and the development has been formally taken over by the City;
- (z) **“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 – parcel picture
Schedule “B”:	Plan of Proposed Subdivision
Schedule “C”:	Developer Services / Work

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 of this Agreement and the standards, plans and specifications set out in the Schedules hereto, including Schedule "C"
 - (i) Extension of 200mm Sanitary Sewer main
 - (ii) Sanitary manhole installation
 - (iii) Sanitary service
 - (iv) Roadway, concrete, and landscape restoration
- (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 or his/her delegate, 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, the Developer shall be responsible to provide notice to the Municipal Engineer as to any required inspections;
- (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 Municipal Engineer 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 Municipal Engineer, in such formats as may be reasonably requested by the Municipal Engineer.

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 at the Developer's cost 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, 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:
 - (i) Extension of 200mm Sanitary Sewer main as shown on Schedule “C”
 - (ii) Sanitary manhole installation
 - (iii) Sanitary service
 - (iv) Roadway, concrete, and landscape restoration

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 any other governmental or administrative authority. A copy of any such permit must be filed with the Municipal Engineer 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) All roadways that are affected by the construction and installation of certain public services as shown on Schedule “C”, the Developer shall in a good and workmanlike manner, restore, as far as possible, the area, roadway and the property immediately next to it to the condition prior to the Developer’s work, including but not limited to repair or replacement of paved/asphalt surfaces, roadways. All roadways are to be paved in accordance with the Approved Plans and Specifications.

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.

ARTICLE 4

REPORTING, INSPECTION AND SUBSTANTIAL COMPLETION

4.1 Reporting Requirement

Commencing ninety (90) days after execution of this Agreement, and thereafter, every ninety (90) days until the Final Acceptance Certificate 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.

4.2 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 agrees such component is substantially complete. In the event that any such component of the Work is found to not be substantially complete, the Municipal Engineer shall provide the Developer with a written list of such deficiencies pertaining to the Work to be corrected by the Developer.

4.3 Construction Completion Certificate

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 Construction Completion Certificate (the “**Construction Completion Certificate**”); and
- (b) where the Work is found to not be substantially complete, the Municipal Engineer shall provide the Developer with a written list of 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.

4.4 Compliance as a Pre-Condition

- (a) As a pre-condition to the issuance of a Construction Completion Certificate, 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 Construction Completion Certificate, 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 5 WARRANTY PERIOD

5.1 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 Construction Completion Certificate 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 Final Acceptance Certificate 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.

5.2 Final Acceptance Certificate

- (a) Subject to this Section 5.2 and Section 5.5, the Developer may apply to the Municipal Engineer for the issuance of a Final Acceptance Certificate (the “**Final Acceptance Certificate**”).
- (b) The Final Acceptance Certificate shall be issued in accordance with this Section 5.2 and Section 5.3.
- (c) Eight weeks prior to the end of the Warranty Period for any of the Works, the Developer may apply for a Final Acceptance Certificate. This application shall be made in accordance with the Development and Construction Standards.
- (d) Within 30 days of receipt of the request for a Final Acceptance Certificate, 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 Municipal Engineer or delegate 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 5.2, or in the event that no such deficiencies are identified, the City

shall issue the Final Acceptance Certificate, and the Developer's obligations under this Article 5 shall thereafter cease.

- (g) It shall be a pre-condition to the issuance of the Final Acceptance Certificate that the Developer shall cure any deficiency or default pursuant to this Agreement.

5.3 Road Maintenance

Without limiting the generality of the foregoing:

- (a) 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 construction and installing the Work and development of the Lands, reasonable wear and tear excepted.

For further clarity, the obligations and responsibilities described in Section 5.3(a) above shall pass to the City upon the issuance of the Final Acceptance Certificate.

5.4 Construction Garbage

- (a) During the construction and installation of the Work until the issuance of the Final Acceptance Certificate, 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.

5.5 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 6 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 6 as follows:

6.1 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.

6.2 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 7 AGREEMENT RUNS WITH THE LAND

7.1 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 8 INDEMNITY BY DEVELOPER

8.1 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.

8.2 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.

8.3 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.

8.4 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 9 LIABILITY INSURANCE

9.1 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.

9.2 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 10 SECURITY FOR PERFORMANCE

10.1 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 10.

10.2 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.

10.3 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.

10.4 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 Construction Completion Certificate, 80% of the original security shall be released, less the estimated cost of remedying the deficiencies identified by the City at the time the Construction Completion Certificate 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 Final Acceptance Certificate, the City shall release the final 20% of the original security.

10.5 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 11

DEFAULT AND REALIZATION ON SECURITY

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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 12 NON-WAIVER BY CITY

12.1 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.

12.2 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 13 MISCELLANEOUS PROVISIONS

13.1 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.

13.2 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 14 ARBITRATION

14.1 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 15 GENERAL PROVISIONS

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 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.

15.8 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.

15.9 Notice

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

NewRock Developments (Sask) Inc.
671 Industrial Avenue SE
Medicine Hat, AB, T1A 3L5

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

City of Moose Jaw
228 Main Street North,
Moose Jaw, SK, S6H 3J8
Email: Planning@moosejaw.ca and Contactengineering@moosejaw.ca

15.10 Time of the Essence

Time shall be the essence of this Agreement.

15.11 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 _____, 2021.

CITY OF MOOSE JAW

Per: _____
 Name: _____
 Title: Mayor

(Seal)

Per: _____
 Name: _____
 Title: _____

**NEWROCK DEVELOPMENTS (SASK)
 INC.**

Per: _____
 Name: _____
 Title: _____

(Seal)

Per: _____
 Name: _____
 Title: _____

SCHEDULE "A" DESCRIPTION OF THE LANDS



Surface Parcel Number: 203023369

REQUEST DATE: Tue Jun 8 15:23:53 GMT-06:00 2021



Owner Name(s) : NEWROCK DEVELOPMENTS (SASK) INC.

Municipality : CITY OF MOOSE JAW

Area : 0.827 hectares (2.04 acres)

Title Number(s) : 145790826

Converted Title Number : 87MJ17820 / SK144405895 / SK144

Parcel Class : Parcel (Generic)

Ownership Share : 1:1

Land Description : Blk/Par D-Plan 102167782 Ext 0

Source Quarter Section : NE-30-16-26-2

Commodity/Unit : Not Applicable

SCHEDULE "B" **PROPOSED PLAN OF SUBDIVISION**



