

DEVELOPMENT AGREEMENT

Between

THE RURAL MUNICIPALITY OF HEADINGLEY

and

THE DEVELOPER, of the Rural Municipality of
Anywhere, (Owner)

THIS AGREEMENT made as of the _____ day of _____, 1996.

BETWEEN:

THE RURAL MUNICIPALITY OF HEADINGLEY,
(the "Municipality")

OF THE FIRST PART,

- and -

THE DEVELOPER, of the Rural Municipality of
Anywhere, (the "Owner")

OF THE SECOND PART.

WHEREAS:

1. the Developer represents that he is the registered owner of the lands located within the Rural Municipality of Headingley legally described on Schedule "A" attached hereto and shown outlined on a plan attached hereto as Schedule "B" (the "Planned Area");
2. the Municipality has the general power and jurisdiction to enter into contracts and agreements with respect to the Development of land within its municipal boundaries pursuant to Section 4 of *The Municipal Act* of Manitoba and has specific power and jurisdiction upon applications for subdivision approval and rezoning pursuant to the provisions of *The Planning Act* of Manitoba;
3. the Municipality has approved a subdivision application for the Planned Area subject to the prior execution of this Agreement; and has given second reading to a by-law rezoning the Planned Area to "RR1-A" Rural Residential Planned Unit Development, which rezoning is subject to the prior execution of this Agreement;
4. the Developer, subject to the approval of the Municipality, proposes to install and construct utilities and other services in and to serve the Planned Area, and the Developer and the Municipality wish to establish development conditions for the Planned Area.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the terms and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1.00 PREAMBLE

1.01 The Preamble to this Agreement shall be a part hereof and the representations therein contained shall constitute the representations of the parties hereto and shall be binding upon them as if repeated herein.

ARTICLE 2.00 DEFINITIONS

2.01 For the purposes of this agreement, the following definitions shall apply:

"Approved Standard" shall mean as a minimum, any standards established and set forth in any plans and specifications attached hereto, or referenced herein, or subsequently prepared with reference hereto as determined by the Municipal Engineer;

"Developer Owned Land" shall mean all the land within the Planned Area owned by the Developer or in which a beneficial interest is held by the Developer, its successors, assigns, purchasers or nominees at any time during the term of this Agreement;

"Development" shall mean

- (i) the carrying out of the construction, erection or placing of any building structure or excavation or other operation on, over or under land; or
- (ii) the making of any change in the use or intensity of use of any land or buildings or premises;

"Engineer" shall mean a duly qualified professional engineer licensed to practice in the Province of Manitoba.

"Lot or Lots" shall mean any lot or lots created by the registration of any plan of subdivision subdividing land within the Planned Area.

"Municipal Engineer" shall mean the Engineer or the person or persons appointed by the Municipality from time to time to act as its Engineer.

"Municipal Services" shall mean the Roads and all drainage ditches, swales, services, utilities and works required to be installed by the Developer within the Planned Area pursuant to Article 6 of this Agreement.

"Phase" or "Phases" shall refer to the respective areas of phased development contemplated by Article 5.04 hereof;

"Private Crossings" shall mean the crossings providing vehicular access from any Lot to the Roads.

"Privately Owned Land" shall mean all the land adjacent to the Planned Area other than Developer Owned Land benefitting from services installed to serve the Planned Area;

"Substantial Completion" shall mean completion as certified by a professional engineer or landscape architect in accordance with *The Builders Lien Act*.

"Roads" shall mean the roads, including the cul-de-sacs, within the Planned Area but shall not include Private Crossings or driveways with a Lot.

ARTICLE 3.00 AGREEMENT DOCUMENTS

3.01 This Agreement shall consist of the following:

- (a) this Agreement consisting of twelve (12) pages;
- (b) Schedule "A": the legal description of the Developer's land;
- (c) Schedule "B": a plan of the Planned Area;
- (d) Schedule "C": Special Clauses regulating to capital levies, installation of municipal services, open space dedication, payment of costs, and phasing;

- (e) Schedule "D": the Engineering Specifications prepared by the Developer's Engineer and accepted by the Municipal Engineer. These will describe the material used for roadways, underground municipal services, trees and landscaping and the minimum standards to which they are installed;
- (f) Schedule "E": Detailed Plans, specification and drawings submitted by the Developer's Engineer and approved by the Municipal Engineer:
 - i. current land elevations
 - ii. proposal plan overview
 - iii. proposed site grading, pond and creek construction, municipal services and finished lot elevations
 - iv. paved roadways, curb and gutter, walkway cross sections and profiles/elevations
 - v. storm sewers, sanitary sewer, sewage lift station, watermains profiles/elevations
 - vi. hydrants and valve locations
 - vii. dedicated lands, road rights-of-way and building lot lines
- (g) Schedule "F": Plans and specifications for the design and planting of the landscaped areas shown as boulevards, public reserve and plans and specifications for bridges built over the "creek";
- (h) Schedule "G": Plans for Hydro, telephone and natural gas agreements
- (i) Schedule "H": Architectural Controls and restrictive covenants

ARTICLE 4.00 MUNICIPAL ENGINEER

4.01 The Municipality shall be entitled to retain the services of the Municipal Engineer to review all matters pertaining to the Development of the Planned Area, including services of the Municipal Engineer related to the preparation or approval of Schedules "D" and "E" within Agreement and the schedules thereto and related to the inspection of any Development within the Planned Area (including lot grading and drainage works) to ensure that such Development is in accordance with the Agreement, the Schedules and any plans and specifications.

4.02 The Developer grants to the Municipal Engineer and to the delegates of the Municipal Engineer free and uninterrupted access to the Planned Area, including access for the purpose of completing surveys, the conducting of inspections and all other actions as the Municipal Engineer or the Municipality deems necessary for the purpose of confirming compliance with the terms of the within Agreement and Schedules. If any materials, design or installation does not conform to this Agreement or to the requirements of the Municipal Engineer, the Municipal Engineer may stop any further work and order the removal and replacement of unsatisfactory works.

4.03 It is understood and agreed that the selection of the Municipal Engineer shall be solely and completely in the discretion of the Municipality and all services to be rendered by the Municipal Engineer in regard to the Development of the Planned Area are for the benefit of the Municipality alone and the Municipal Engineer acts on behalf of the Municipality alone, notwithstanding the fact that the Developer shall be responsible for the reasonable fees and expenses of the Municipal Engineer. None of the foregoing provisions shall prevent the Developer from retaining his own engineering consultants at his own expense, nor shall they prevent the Municipality from designating the Developer's Engineer as the Municipal Engineer.

ARTICLE 5.00 DEVELOPMENT CONTROL

5.01 No Development, including excavation and landscaping improvements, shall take place within the Planned Area without application to the Municipality and its prior written approval as to conformity of such Development with the provisions of this Agreement, The Rural

Municipality of Headingley Development Plan and Zoning By-laws and any amendments thereto, *The Planning Act* of Manitoba and Manitoba Building Code and all other relevant building codes.

5.02 No Development shall be permitted within the Planned Area except for Development required to comply with this condition, until all Municipal Services have been installed to the satisfaction of the Municipal Engineer or arrangements satisfactory to the Municipality for their installation have been made.

5.03 The Developer acknowledges that before commencing any Development, he shall familiarize himself with all designs and specifications of any relevant governmental authority, and agrees that all materials and workmanship to be installed or to be performed by the Developer under this Agreement shall conform to such specifications and designs currently in force and with the requirements under this Agreement and, in the case of any conflict between specifications and designs, the most stringent and onerous requirement shall govern.

5.04 Development will proceed in accordance with phasing as shown in Schedule "C". No Phases may proceed until 70% of the Lots in the preceding Phase have been sold.

ARTICLE 6.00 INSTALLATION OF MUNICIPAL SERVICES

6.01 The Developer hereby covenants and agrees to supply, construct, install, complete and provide the following services within the Planned Area, in a good and workmanlike manner, to the Approved Standard, and at the Developer's sole expense:

- (a) underground hydro-electric and telephone services to the limit of each Lot within the Planned Area. The Developer undertakes and agrees to comply with all requirements of Manitoba Hydro and the Manitoba Telephone System regarding installation;
- (b) the Walkways, Asphalt Roadways complete with concrete curb and gutter, domestic sewer and water mains, house connections, and storm sewers to be constructed in strict accordance and conformity to this Agreement and the Schedules attached;
- (c) drainage works, including:
 - (i) the construction and the sodding or seeding with a perennial grass or grass mixture, of all land drainage ditches, to the elevations and at the locations shown on Schedule "E" hereto;
 - (ii) the construction of all drainage swales to the elevations and in the locations shown on Schedule "E" hereto;
 - (iii) the installation and construction of all culverts necessary and essential for the proper and adequate drainage of all parts of the Planned Area (excepting culverts required for Private Crossings) at locations shown on Schedules "D" and "E" hereto; and
 - (iv) the construction of the creek shown on the plan attached hereto as Schedule "E";
 all such drainage works to be sufficient to dispose of all surface waters going to and from the Planned Area to be constructed in accordance with this Agreement, the Schedules attached, and the plans and specifications to be prepared by the Developer's Engineer and approved by the Municipal Engineer;
- (e) permanent street name signs at the intersection of each of the Roads within the Planned Area and such traffic control signs as may be required by the Municipality within the Planned Area. The name of the Roads may be chosen by the Developer providing the name is acceptable to the Municipality;
- (f) street lights, acceptable to Manitoba Hydro and to the Municipality, at locations shown on Schedule "G" hereof;
- (g) the establishment of a temporary benchmark or benchmarks for survey purposes to be installed by the Developer, subject to the approval of the Municipal Engineer;

- (h) the landscaping of all lands shown on the plan attached as Schedule "B" as "Public Reserve", in accordance with the plans and specifications attached as Schedule "F" hereto, including the construction of the bridges over the creek;

6.02 The Developer and its successors-in-title shall grant and convey reasonable easements for land drainage and other services within the Planned Area in such form as may be required by the Municipality and the Municipal Engineer as may be required to construct, maintain, alter, deepen or widen any drain, swale or drainage work within any Lot.

6.03 Until pavement is installed by the Developer under the terms of this Agreement, the Developer shall be responsible for gravelling and maintaining the Roads in a passable and usable condition when such Roads are required as access roads or as a road upon which dwellings are being constructed, provided always that such installation, gravelling and maintenance shall be at the cost and expense of the Developer. The Municipal Engineer shall be the sole judge as to whether a street is in passable or usable condition provided that nothing contained in this Article 6.03 shall in any way affect the obligation of the Developer to pave all the Roads as elsewhere provided in this Agreement and provided further that nothing shall obligate the Municipality to provide snow clearance for any of the Roads which are being used as an access road and which are unpaved.

6.04 All Municipal Services referred to in this Agreement and which the Developer is required to install pursuant to the terms hereof shall become the property of the Municipality or the Provincial Crown, as the case may be, without any cost to any of the aforementioned parties upon certification by the Municipal Engineer that such work has been Substantially Completed.

6.05 The Developer guarantees the Municipal Services constructed or installed against faulty workmanship or defective materials for a period of twelve (12) months (*twenty-four (24) months*) the date of certification by the Municipal Engineer, or the date title vests in the Municipality or relevant government agency, whichever is later. The Developer shall assign to the Municipality the benefit of any and all guarantees obtained from sub-contractors, manufacturers and suppliers to the Municipality to the extent that such guarantees are assignable.

6.06 Until such time as the Municipal Services become the property of Municipality or the Provincial Crown, the Developer shall be responsible for repairing and maintaining the Municipal Services and all Developer-owned land and all Public Reserves, including cutting the grass and weeds not less than three times a year, providing proper drainage for any water that may accumulate so as to ensure public safety, applying and maintaining satisfactory dust abatement materials on the Roads, clearing the Roads of snow, removing debris and litter, all as may be required by the Municipality.

ARTICLE 7.00 BUILDING PERMITS/DEVELOPMENT

7.01 No building permits shall be issued by the Municipality and no buildings or structures shall be constructed or located on the Land unless and until:

Clause required if Municipality cannot supply Sewer and Water -

- (a) *the Developer has obtained the necessary permits and approvals from the Department of Environment for private sewage disposal system with respect to each Lot. In this respect the Developer acknowledges that the Lots are only suitable for servicing by sewage holding tanks under the Winnipeg Region Requirements for Private Sewage Systems; and*
- (b) all payment due to the Municipality as provided for in Article 9.00 have been made in full; and
- (c) all Municipal Services required to be installed or constructed by the Developer have been installed or constructed in accordance with this Agreement and the Schedules attached hereto, and the Municipal Engineer has provided the Municipality with a Certificate of Substantial Completion; except that, if the Developer has not paved the Roads, the Municipality may issue building permits for the construction of

buildings on any Lot within the Planned Area if the Municipal Engineer determines that the Roads have been constructed and gravelled to the Approved Standard, and the Developer has provided the Municipality with a Letter of Credit for 100% of the value of the work, services and materials to be done, provided or supplied in performance of the Developer's obligation to pave and maintain the Roads, in a form satisfactory to the Municipality.

- (d) the Plan of Subdivision herein referred to has been registered in the Winnipeg Land Titles Office.

ARTICLE 8.00 BUILDING RESTRICTIONS

The provisions of Municipal By-laws and Schedule "H" shall apply within the Planned Area:

- 8.01 No building, structure, fixture or erection of any kind shall be erected on the land unless the plans, specification and locations thereof as indicated by a site plan, including the distances from the front, side and rear limits shall have been first submitted to, and the approval in writing by the Municipality or its building inspector has been obtained, and no such building or other erection shall be constructed or placed on lands otherwise than in conformity with such plans, specifications and site plans. No building permit shall be issued until such time as the Municipal Engineer has certified that the roads and sanitary sewer services have been installed and are acceptable for service.
- 8.02 No building waste or other materials of any kind shall be dumped or stored on the land except clean earth for the purpose of levelling in connection with the erection of a building thereon or the immediate improvement of the grounds.
- 8.03 Each principal residence constructed on each site within the "Planned Area" shall provide weeping tile drainage to a sump hole constructed and the discharge of all weeping tile drainage shall be discharged into the municipality drainage system adjacent to the property by means of a sump pump. No weeping tile drainage or storm water eaves trough drainage shall be discharged into the sanitary sewer system.
- 8.04 The burden and benefit of these restrictions and covenants shall run with the land and shall be annexed to and run with each and every part of the land.

ARTICLE 9.00 PAYMENTS TO THE MUNICIPALITY

- 9.01 The Developer undertakes and agrees:
- (a) on the execution of this Agreement, to pay general subdivision examination fees and Capital Levies as required in Schedule "C" and to pay all taxes and all tax arrears (if any) on the land within the Planned Area;
- (b) to pay for all technical, administrative, professional, consultative or other services reasonably required by the Municipality in examining and approving the Application and in preparing this Agreement, and for this purpose, the Developer shall pay the Municipality upon execution of the Agreement, a deposit in the sum of Three Thousand (\$3,000.00) Dollars to be held by the Municipality to be applied against the said costs but said sum is not intended to be a limit on the amount of such costs or on the obligation of the Developer to reimburse the Municipality.

ARTICLE 10.00 LETTERS OF CREDIT

- 10.01 The Developer shall, and does hereby agree to, indemnify and save the Municipality harmless from and against all loss, claims, costs (including court costs), expenses and professional

fees paid or incurred by the Municipality arising out of or related to any duty or obligation imposed on the Municipality by *The Builders' Liens Act* in respect of any work carried out by or on behalf of the Developer pursuant to this Agreement, or any work carried out by or on behalf of the Developer within and to serve the Planned Area.

10.02 The Developer shall provide to the Municipality prior to commencement of any work under this Agreement an irrevocable Letter of Credit in favour of the Municipality in an amount equal to 50% of the value of the work, services and materials to be done, provided or supplied in performance of its obligations under this Agreement, as determined by the Municipal Engineer, in a form satisfactory to the Municipality, guaranteeing performance of the Developer's obligations under Article 10.03.

10.03 If, upon a date 30 days or less prior to the date of expiry of said Letter of Credit or of the Letter of Credit in respect of *The Builders' Liens Act* referred to in Article 10.01 of this Agreement there is an outstanding covenant or obligation of the Developer which, in the opinion of the Municipal Engineer is not completely carried out, the Municipality may draw the full amount of that Letter of Credit or any portion thereof and hold those monies in place of that Letter of Credit unless the Developer earlier provides a replacement Letter of Credit, and the provisions of this Article shall apply to that replacement Letter of Credit and all subsequent replacement Letters of Credit. For the avoidance of doubt, it is understood and agreed that failure by the Developer to so provide a replacement Letter of Credit shall constitute a default under this Agreement entitling the Municipality to draw the full proceeds of the existing Letter of Credit without notice and any such monies so held in place of a Letter of Credit may be used as provided in this Agreement in the event of default.

10.04 The parties hereto agree that the Letter of Credit provided for herein shall be issued by a bank licensed to carry on business in Canada.

10.05 In the event of default under or termination of this Agreement, for whatever cause, the Municipality shall have the right to use the proceeds of any Letters of Credit or the amount of approved equivalent security provided by the Developer in such a manner as the Municipality may deem most advisable for the orderly completion of all work or works still unconstructed to serve the Planned Area and the Municipality may, in its own discretion, complete such work or repair any faulty works to serve the Planned Area for the purpose of completing as far as possible, the development of the Planned Area as contemplated by this Agreement and the Municipality shall have the right to enter upon and use any Developer-owned lands, and the Developer does hereby grant such rights irrevocably to the Municipality for the purposes set out herein. The extent of the work to be done by the Municipality under the terms hereof, and the time within which work shall be completed shall be in the sole discretion of the Municipality.

10.06 Where as a result of the Developer's default, building permits with respect to any of the lands contained within the Planned Area are refused, it is understood and agreed that such refusal shall not create any liability for damages against the Municipality.

ARTICLE 11.00 REMEDIES CUMULATIVE AND NOT ALTERNATIVE

11.01 Notwithstanding, and in addition to any other remedies provided by law, or in the within Agreement available to either party, the other party shall, in addition, and at its option, as a cumulative and not an alternative remedy, be entitled to restrain any such breach and enforce compliance with any term or condition by way of an injunction applied for in Court of Queen's Bench, in the Province of Manitoba. All of the remedies of each party hereto shall and are hereby deemed to be cumulative and not alternative, and either party hereto may exercise any one or all of the remedies available to it under the terms hereof, or available to it by law, at any time whatsoever.

ARTICLE 12.00 MAINTENANCE AND INDEMNITIES

12.01 The Developer hereby further covenants, warrants, undertakes and agrees:

- (a) subject to any other provision of this Agreement, or the Schedules attached thereto,

all municipal services, works or improvements installed by the Developer pursuant to the terms of this Agreement will be maintained in good operating condition for a period of one year from the date shown in the relevant completion certificates issued as herein provided in Schedule "C" with the exception of planting trees and sodding which the Developer agrees to maintain at its own expense for a period of two years from the date of planting trees and sodding or until third party occupancy of a relevant house in accordance with this agreement and any Letter of Credit posted by the Developer shall provide for all such guarantees and warranties of maintenance.

- (b) during the term of this Agreement, to indemnify and save harmless the Municipality from and against all public liability and property damage claims and personal damage claims arising in respect of construction, installation or manner or method of such construction or installation of any improvement or Municipal Service and work to be constructed by the Developer hereunder, or in respect of any defect therein or thereby, together with all costs, charges and expenses arising by reason of or in connection with any such claims, and the Developer hereby agrees to procure and maintain at its own expense, or if the Municipality consents, to cause any contractor installing any such improvement, work or service to procure and maintain at its own expense, a policy of public liability and property damage insurance in an amount satisfactory to the Municipality, and to furnish to the Municipality a copy of each policy, showing loss payable thereunder to the Developer, and/or the subcontractor, and/or the Municipality as their respective interests may appear; provided that nothing in this Article 12.01 (b) shall extend the indemnity to any act, matter or thing done, or omitted to be done by the Municipality, or its agents, servants or employees, or invitees, provided that nothing in this Agreement shall deem the Developer or any agent, employee, or servant of the Developer to be an agent, servant, employee or invitee of the Municipality.

ARTICLE 13.00 GENERAL INDEMNITY BY THE DEVELOPER

13.01 Nothing herein contained shall be construed so as to make the Developer the agent of the Municipality, it being distinctly understood and agreed that the Developer shall execute, carry out and implement the improvements, works and services referred to in this Agreement on its own behalf in a safe and prudent manner. Accordingly, the Developer hereby agrees to and does indemnify and save harmless the Municipality from and against all claims, demands, actions, sums, liabilities, obligations, losses or suits of any nature or kind whatsoever, whether at law or equity arising at any time during the currency of this Agreement out of any matter or thing provided to be done or permitted to be done by the Developer under the terms of this Agreement, provided that nothing shall extend this indemnity to any act or thing done by the Municipality or omitted to be done by the Municipality.

13.02 It is distinctly understood and agreed that all of the covenants and agreements herein made by the Municipality, and all of the acts and undertakings herein agreed to be done by the Municipality shall be performed, done and undertaken within the limits of the powers of the Municipality from time to time, and notwithstanding anything hereinbefore contained, the Municipality shall be under no higher obligation or duty than to exercise its best efforts to perform, do and undertake those covenants, agreements or undertakings hereinbefore referred to, and the Municipality shall be under no liability to the Developer, or any other person, firm or corporation for the Municipality's failure to perform, do or undertake such covenant, agreement, act or undertaking, if such failure is beyond the control of the Municipality or is caused by the operation of law; and in that event, the Municipality shall not be liable for any losses or damages suffered by the Developer as a result of the failure or inability of the Municipality to perform, do or undertake any such covenant, agreement, act or undertaking.

ARTICLE 14.00 DEDICATION OF LAND FOR ROADS AND PUBLIC RESERVE

14.01 The Developer further undertakes and agrees to dedicate to the Municipality without compensation, the Roads as shown on Schedule "B" hereto.

14.02 The Developer also agrees to dedicate to the Municipality without compensation, the land shown as "Public Reserve" on Schedule "B" hereto.

ARTICLE 15.00 ARBITRATION

15.01 Should a dispute arise between the Developer and the Municipal Engineer, or the Municipality, as to any of the terms, covenants, conditions or provisions contained herein, or contained in the Schedules attached hereto, or as to their interpretation or applicability, or as to any sums payable hereunder (with the exception of those matters as set out in the Agreement which are to be completed to the sole satisfaction of the Municipal Engineer, or are to be decided solely by him) then the matter shall be referred to a single arbitrator, if the parties can mutually agree upon one, otherwise to a Board of three arbitrators, who shall be qualified Engineers, one arbitrator to be appointed by the Developer, one arbitrator to be appointed by the Municipality, and the third arbitrator to be chosen by the first two arbitrators so appointed.

15.03 Should arbitration under this Agreement become necessary then such arbitration shall be conducted subject to the provisions of *The Arbitration Act* of Manitoba, as amended from time to time. In the event that the parties are unable to agree upon a sole arbitrator, and it becomes necessary to arbitrate with a Board of three arbitrators, if the first two named arbitrators are unable to agree on the third arbitrator, either may apply to any Judge of the Court of Queen's Bench in Manitoba, upon ten days notice in writing to the other arbitrator, and the said Judge shall then appoint a third arbitrator. In the event that one of the parties to this Agreement refuses or neglects to appoint its arbitrator within 30 days after the other of them has appointed its arbitrator, and serves written notice upon the other party requiring an appointment to be made under the terms hereof, then the arbitrator first appointed shall, after the expiry of the said 30 day period, at the request of the party appointing him, proceed to hear and determine the matter or question in difference as if he were a single arbitrator appointed by all parties for the purpose. The award or determination made by the said arbitrator, or the said Board of Arbitrators, or the majority of them (including the appointment and awarding of costs of the arbitration) shall be final and binding upon the parties hereto and their respective successors and assigns.

ARTICLE 16.00 AUTHORITY AND CAPACITY OF THE DEVELOPER TO CONTRACT

16.01 This Agreement shall be of no force or effect whatsoever until the Developer has delivered to the Municipality, in form satisfactory to the Municipality, such certified copies of Land Titles Office searches, or such other documents as may be necessary to satisfy the Municipality that the Developer does in fact own the lands to be developed within the Planned Area, or has a sufficient interest in them, or is otherwise in a position to effectively deal with same.

16.02 The Developer hereby covenants and agrees for itself and its successors and assigns, that it will not, in any way, attempt to impeach the validity of this Agreement, or any part hereof, or in any way challenge or attempt to impeach the capacity of the Municipality to enter into this Agreement, and all the provisions herein contained, provided that nothing herein shall prevent either party hereto from litigating their respective rights under this Agreement subject to the provisions in this Article 16.02. In the event that notwithstanding the provisions of this Article 16.02, any provision of this Agreement shall ever be found by a court of competent jurisdiction to be void, invalid or unenforceable it shall be severable from the rest of the Agreement, and the rest and remaining portion of the Agreement shall be valid and shall remain in full force and effect.

16.03 Notwithstanding anything hereinbefore provided, in the event that it shall ever be found by a court of competent jurisdiction that any obligation, commitment, covenant or provision of this Agreement, on the part of the Developer to be carried out or performed or observed for the benefit of the Municipality, is invalid or unenforceable or void, then, notwithstanding such ruling, the Developer shall and does hereby dedicate and donate the benefit of such invalid or void or unenforceable provision against it to the Municipality for valuable consideration, and the enforcement of this Article 16.03 against the Developer by the Municipality may be made by a claim for specific performance, or damages by the Municipality, at its option and any breach of any

provision of this Agreement by the Developer may be restrained by the Municipality by way of injunction, or claim for damages, or both.

ARTICLE 17.00 DEFAULT BY THE DEVELOPER

17.01 If the Developer should default under any provision of this Agreement, the Municipality shall give the Developer notice of the particulars of such default.

17.02 If within fourteen (14) days after the giving of such notice, the Developer fails to rectify such default as contained in the notice, to the satisfaction of the Municipality, then the Municipality shall be entitled to draw upon the performance security provided by the Developer and itself remedy the default in whole or in part and recover from the Developer any costs thereof in excess of that performance security or to specific performance to rectify such breach or default, or alternatively shall be entitled to seek an injunction to restrain such breach, or to enforce any term or condition of this Agreement or shall be entitled to seek a declaration terminating this Agreement for non-performance, or any and all such remedies, (which remedies are hereby acknowledged as being cumulative and not alternative), provided further that if the Agreement is so terminated, by virtue of the Developer's default, the parties hereto agree that the Municipality shall not be liable for any loss or damage that may be suffered by the Developer as a result of such termination, and the parties hereto further covenant and agree that the Municipality in any such event, shall not be liable for any loss or damage suffered by any other person, firm or corporation by virtue of such termination, and the Developer does hereby for itself and its successors and assigns indemnify and save harmless the Municipality, and its successors and assigns, from any claim or demand from any person, firm or corporation which may suffer loss or damage by reason of the termination of this Agreement because of the Developer's failure or default as aforesaid.

ARTICLE 18.00 PLAN OF SUBDIVISION AND CAVEAT

18.01 The Developer acknowledges and agrees that a Plan of Subdivision for the Planned Area is required to be registered which said Plan of Planned Area shall be in a form satisfactory for registration in the Winnipeg Land Titles Office at the sole cost and expense of the Developer.

18.02 The Developer shall pay the full cost of maintaining all survey monuments within the Planned Area, to the satisfaction of the Municipal Engineer and in cases where the survey monuments have been disturbed, moved, covered or mutilated in any way, or destroyed, the Developer shall cause the monuments to be replaced at his expense by a Manitoba Land Surveyor.

18.03 The Developer acknowledges that the Municipality may register a Caveat in the Winnipeg Land Titles Office together with a copy of the final, duly executed agreement between the parties hereto as an attachment to such Caveat and the same will be registered against title to the Planned Area.

ARTICLE 19.00 GENERAL

19.01 This Agreement shall not be assignable by the Developer without the consent of the Municipality first being had and obtained in writing; which consent is not to be unreasonably withheld.

19.02 The headings of the paragraphs contained in this Agreement are hereby stated to be inserted for convenience only, and shall in no way define, limit or restrict or describe the scope of intent of this Agreement nor affect in any way whatsoever its terms and provisions;

19.03 Any notice required to be given by either of the parties hereto, shall be deemed to have been legally given if delivered personally, on the date of such delivery, or if mailed, by registered mail, on the third business day following the date of the mailing. Any notice if mailed shall be addressed to the parties as follows:

The Rural Municipality of Headingley

1-126 Bridge Road
Headingley, MB
R4H 1G9

19.04 This Agreement is intended by the parties to run with the land and shall bind the Developer, its assigns and successors in title, and the owner of the Lots from time to time.

19.05 The term "Developer" as used in this Agreement shall mean and include the Developer, its administrators, successors and assigns and their successors-in-title and the owners of the Planned Area and all Lots from time to time. Any successor-in-title of the Planned Area or any part thereof including any Lot within the Planned Area shall be bound by the provisions of this agreement and such purchaser may be required by the Municipality to enter into an agreement with the Municipality whereby such purchaser is bound by the terms and conditions of the Agreement.

19.06 The terms and currency of this Agreement shall be from the date of its signing until each and every covenant of the Developer has been performed to the satisfaction of the Municipality, unless the Agreement is sooner terminated as provided herein.

19.07 Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF **THE RURAL MUNICIPALITY OF HEADINGLEY** has hereunto affixed its corporate seals attested by the hands of its proper officers in that behalf and **RONALD JAMES RUHR** has affixed his hand and seal the day and year first above written.

SIGNED, SEALED, AND)
DELIVERED in the presence of)
))
) **THE RURAL MUNICIPALITY OF HEADINGLEY**
))
))
) Per: _____
) Reeve
))
))
) Per: _____
) Municipal Administrator
))
))
_____) _____
WITNESS) **THE DEVELOPER**
))
))

SCHEDULE "A"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being the legal description of the lands located within The Rural Municipality of Headingley and owned by the Developer.

SCHEDULE "B"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being a plan of the Planned Area, which plan, before being attached, shall be approved by the Municipal Engineer and the Municipality.

SCHEDULE "C"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being special clauses regulating installation of municipal services, open space dedication, and payment of costs:

PAYMENT OF COSTS

1. Pay the \$2,500 per lot capital levy as building permits are requested. When 70% of the lots are sold, the Capital Levy for the balance of the Phase shall be paid.
2. Supply a letter of Credit of 50% covering construction costs; municipality's legal costs, engineering costs; landscaping costs, and warranty.

If actual construction costs are undetermined at the time of the signing of the development agreement, council would use a figure of \$16,000 per lot which would be reduced when actual prices are submitted.

Letter of Credit covering hydro and telephone fees is not required as these would be prepaid at the time of signing.

Letter of Credit would cover the development as it is phased for construction.

Entire Letter of Credit would remain in place until at least 50% of construction value is paid for and then reduced as construction is completed.

5% Letter of Credit should be maintained after construction is accepted by the Municipality to the end of the warranty period.

Example

50% Letter of Credit determination and Reduction Procedure:

ITEM	CONSTRUC- TION VALUE	LETTER OF CREDIT REDUCTION	LETTER OF CREDIT RETAINED
Total Development Costs	\$1,012,044		\$506,022
1) Sewer & Water Completed	500,000	0	506,022
2) Roads & Drainage Completed	300,000	300,000	212,044
3) Walkways & Bridges Completed	80,000	80,000	132,044
4) Landscaping, trees (10% of items 1-3)	88,000	88,000	44,044
5) Legal Fees (1% of items 1-4)	9,680	9,680	34,364
6) R.M. Engineering (1% of items 1-4)	9,680	9,680	24,684
7) 2 year warranty (22% of items 1-6)	<u>24,684</u>	<u>24,684</u>	0
	\$1,012,044	512,044	

3. Morrow has agreed to pay a lump sum connection fee of \$300,000 to be applied to the actual debenture and paid immediately prior to selling of debentures.

If he requires any building permit before the debenture is established, he would have to pay \$10,000 per lot thereby reducing the \$300,000 connection fee accordingly.

This money could be applied to L.I.D. No. 1 or the general levy.

4. Administration fees as provided under Municipal By-Law No. 25/95.

SCHEDULE "D"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being a plan of the Planned Area, showing the proposed Engineering Specifications for installation of municipal services; paved roadways, curb and gutter, walkways, storm sewers, sanitary sewer, sewage lift station, watermains, hydrants and valve locations, which specifications before being attached, shall be approved by the Municipal Engineer and the Municipality.

SCHEDULE "E"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being the plans and specifications for the design and planting of the landscaped areas shown on the plan as "Public Reserve", which specifications before being attached, shall be approved by the Municipal Engineer and the Municipality.

SCHEDULE "F"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being Plans and Specifications for the design and planting of the landscaped areas shown as boulevards, public reserve and plans and specifications for bridges built over the "creek".

SCHEDULE "G"

Hydro and Telephone and Natural Gas Agreements

SCHEDULE "H"

Attached to and forming part of a Development Agreement made between **THE RURAL MUNICIPALITY OF HEADINGLEY** and _____ and being Architectural Controls and restrictive covenants;