

LAND SALES AGREEMENT

BETWEEN:

CITY OF MEDICINE HAT
(the "City")

-and-

(the "Purchaser")

A. The City is the registered owner of land legally described as:

PLAN _____

BLOCK _____

LOT _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipal Address: _____
(the "Property")

B. The Purchaser has agreed to purchase from the City and the City has agreed to sell to the Purchaser the Property for a purchase price of _____ DOLLARS (the "Purchase Price") in accordance with the terms and conditions set out in this Agreement.

C. The City and the Purchaser acknowledge and agree that the Property is being sold for development of a residential building by the Purchaser and that it is a fundamental term of this Agreement that the Purchaser develop the Property within the specified deadlines.

IN CONSIDERATION OF the sale of the Property and the payment of the Purchase price, the City and the Purchaser agree as follows:

1. Payment of Purchase Price

1.1 The Purchaser shall purchase the Property from the City and the City shall sell the Property to the Purchaser for the Purchase Price subject to the encumbrances set out in section 9.4 of this Agreement, the subdivision details set out in Schedule "A" and the terms and conditions set out in this Agreement. The Purchaser shall pay the Purchase Price in the following manner:

(a) A deposit in the amount of _____ DOLLARS must be delivered by the Purchaser to the City upon execution and delivery of this Agreement by the Purchaser to the City (the "Deposit"). **After execution of this Agreement by the City, the Deposit immediately becomes non-refundable, subject only to the satisfaction of the conditions precedent set out in section 2.1;** and

(b) **The balance of the Purchase Price in the amount of _____ DOLLARS (plus GST, if applicable, on the full purchase price) must be delivered to the City not later than 4:30pm on _____, failing**

which this Agreement shall automatically terminate, the Deposit shall be forfeited to the City and the Purchaser shall have no further interest in the Property, as more fully set out in section 1.2.

- 1.2 **Subject to the satisfaction of the conditions precedent set out in section 2.1, if the Purchaser fails to pay the balance of the Purchase Price on or before the deadline set out in subsection 1.1(b), the Deposit, plus any and all earned interest, will be immediately forfeited to the City on account of damages and not as penalty, and the interest of the Purchaser in the Property as created by this Agreement shall terminate without any legal proceedings being taken or any other act being performed by the City, and the Property shall revert to and revest in the City. The Purchaser shall promptly discharge any caveat, encumbrance, lien, charge or other instrument which the Purchaser may have registered or caused to be registered against the title to the Property. The City shall be entitled to all costs incurred on a solicitor and client basis as a result of the Purchaser's failure to complete the purchase of the Property.**
- 1.3 For greater certainty the parties acknowledge that notwithstanding any other provision of this Agreement, the Purchase Price is exclusive of GST. For the purposes of this Agreement, "GST" means the Goods and Services Tax as provided for in Part IX of the *Excise Tax Act* (Canada), as amended or replaced from time to time. The Purchaser shall be responsible for paying any GST in relation to this transaction, as more fully set out in article 12.
- 1.4 All references to currency in this Agreement shall be deemed to be references to Canadian dollars unless otherwise expressly set forth.

2. Condition Precedent

- 2.1 This Agreement is expressly subject to and conditional upon:
- (a) acceptance for registration by the South Alberta Land Titles Office of a plan of subdivision creating a certificate of title for the Property, and
 - (b) completion of utility servicing to the Property in accordance with section 6.1.

If the above conditions precedent are not satisfied by the deadline set out in subsection 1.1(b), the Deposit shall be returned by the Vendor to the Purchaser and this Agreement shall terminate in accordance with section 1.2. The Deposit will not be returned under any other circumstances. The conditions precedent set out above are for the benefit of the Vendor and the Purchaser and may not be waived.

3. Possession of the Property

- 3.1 Subject to satisfaction of the conditions precedent set out in section 2.1 and the Purchaser complying with the terms and conditions of this Agreement, vacant possession of the Property will be available to the Purchaser after the Purchaser pays the balance of the Purchase Price to the City in accordance with section 1.1(b).

- 3.2 All outgoings, including but not limited to taxes (or at the option of the City, an amount in lieu of taxes equal to the pro-rated estimated taxes for the Property for the current year), rates, levies, charges, local improvement charges, assessments, utility charges and hook-up fees, and any other imposition whatsoever, rated, charged, assessed or imposed by authority of Parliament, or of any legislature, or local authority or otherwise howsoever on or with respect to the Property and any rents in relation to the Property shall be adjusted as of _____.

4. **Purchaser's Obligation to Commence Construction on the Property**

- 4.1 As further consideration for the sale of the Property by the City, the Purchaser covenants and agrees to Commence Construction of a residential building on the Property on or before _____, failing which the Purchaser agrees to pay the extension fees set out in section 4.2. For the purposes of this Agreement "Commence Construction" or any variation thereof means that all basement walls and the entire subfloor must be completed and all outside basement excavation backfilled and in place for a residential building constructed on the Property, in accordance with the plans submitted to the City's Planning & Building Services Department.

- 4.2 Upon inspecting the Property or receiving a written request from the Purchaser, the City's Manager of Land and Properties or designate (the "Manager") may grant extensions for the deadline to Commence Construction for the Property on a month-to-month basis, **subject to the Purchaser paying the following extension fees to the City, which shall be payable in advance of any extension:**

- (a) One percent (1%) of the Purchase Price for each month (or portion thereof) up to and including the third (3rd) month;
- (b) Two percent (2%) of the Purchase Price for the fourth (4th) month (or portion thereof); and
- (c) The Manager may, at his or her absolute discretion, grant further extensions beyond the fourth (4th) month for an extension fee of two percent (2%) of the Purchase Price per month (or any portion thereof).

- 4.3 **In the event that title has not transferred to the Purchaser and either:**

- (a) **the deadline to Commence Construction (and any extension granted) expires, or**
- (b) **the Purchaser fails to pay any of the extension fees set out in section 4.2,**

the Manager may, at his or her absolute discretion, terminate this Agreement and upon return of the balance of the Purchase Price set out in section 1.1(b) to the Purchaser (less the Deposit and any extension fees payable) the interest of the Purchaser in the Property as created by this Agreement shall terminate without any legal proceedings being taken or any other act being performed by the City, and the Property shall revert to and revest in the City. The Purchaser shall promptly

discharge any caveat, encumbrance, lien, charge or other instrument which the Purchaser may have registered or caused to be registered against the title to the Property. The City shall be entitled to all costs incurred on a solicitor and client basis as a result of the termination of this Agreement. The Deposit, plus any and all earned interest, and any extension fees payable will be immediately forfeited to the City on account of damages and not as penalty.

5. Purchaser's Obligation to Complete Construction

5.1 As further consideration for the sale of the Property by the City, the Purchaser covenants and agrees to Complete Construction of a residential building on the Property on or before _____, failing which the Purchaser agrees to pay the extension fees set out in section 5.2. For the purposes of this agreement "Complete Construction" or any variation thereof means that construction of a residential building on the Property is complete and the building is ready for occupancy, as determined by the City's Building Inspector.

5.2 **The Purchaser agrees to pay to the City the following extension fees for the extension of the deadline to Complete Construction, which shall be payable in advance:**

- (a) One percent (1%) of the Purchase Price for each month up to and including the third (3rd) month (or any portion thereof); and
- (b) Two percent (2%) of the Purchase Price for the fourth (4th) month and any extensions beyond the fourth (4th) month (or any portion thereof).

6. Utility Services

6.1 Gas, electric, water and sanitary sewer utility services for the Property will be available from the nearest point of service. For the purposes of this Agreement, the "nearest point of service" shall be defined as the closest point to the Property at which the utility service connections can be hooked up to the utility service mains.

6.2 The Purchaser shall be solely responsible for paying any and all costs, charges, fees, levies, payments and other amounts whatsoever associated with providing utility services in relation to the Property, including but not limited to any and all costs, charges, levies, payments and other amounts with respect to utility installations, extensions, oversizing and hook-ups, and electric capacity charges. For the purposes of this Agreement, "utility services" includes but is not limited to gas, electric, water, sanitary sewer and storm sewer.

6.3 The Purchaser acknowledges and agrees that it is responsible for verifying the location, standards, specifications and availability of utility services to the Property with the applicable utility departments of the City of Medicine Hat and for determining the Purchaser's specifications and requirements for utility services.

6.4 All proposed vehicular access points to the Property shall be approved by the City's Municipal Engineering Department at the time of the Purchaser's development application.

6.5 The Purchaser is responsible for paying any and all off-site levies payable in relation to the development of the Property as may be payable pursuant to Bylaw No. 3054, as amended or replaced from time to time.

7. **"AS IS, WHERE IS" Purchase of the Property**

7.1 Notwithstanding any term or condition of this Agreement, the Purchaser shall purchase the Property on the express understanding that:

- (a) there are no agreements, conditions, warranties or representations relating to the Property or land in the vicinity of the Property other than stated in this article 7;
- (b) except as provided in this article 7, the City does not warrant:
 - (i) the quality, condition or sufficiency of the Property for any use or purpose,
 - (ii) the adequacy of any or all utility services and municipal improvements and infrastructure either to or on the Property, or
 - (iii) the absence or presence of hazardous substances in, on, under, over or adjacent to the Property;
- (c) the Property is being sold to the Purchaser on a strictly "as is, where is" basis and the Purchaser shall acquire the Property at its own risk, with all faults and imperfections whatsoever, including without limitation, the presence of all hazardous substances (if any) in, on, under, over or adjacent to the Property; and
- (d) the Purchaser shall satisfy itself as to the condition of the Property (including but not limited to the presence or absence of hazardous substances) and the fitness and suitability of the Property for the Purchaser's intended use.

7.2 For the purposes of subsection 7.1(a), the City warrants that, to the best of the actual knowledge of the City's Manager of Land and Properties, the City, its employees or agents have not deposited, placed or brought onto the Property any hazardous substances, nor to the best of the knowledge of the City's Manager of Land and Properties, is the City aware of the existence of any hazardous substances on, in, over or under the Property.

7.3 For the purposes of this Agreement, the term "hazardous substances" includes but is not limited to petroleum products and by-products, any contaminants, pollutants, dangerous substances, hauled liquid wastes, toxic substances, industrial wastes, hazardous wastes, hazardous materials, or hazardous substances as defined in or pursuant to any federal, provincial, or municipal law, bylaw, statute, regulation or order.

8. **Temporary Access to the Property**

8.1 Upon execution of this Agreement by the City and payment of the Deposit to the City, and subject to the Purchaser complying with the terms and conditions of this Agreement, the Purchaser shall be granted a right of entry upon the Property for the sole purposes of erecting a

sign in accordance with section 8.2 and carrying out of soil, geotechnical and engineering tests, surveys and other investigations relating to the Property, at its sole risk and expense, on the condition and agreement that:

- (a) the Purchaser shall and hereby agrees to indemnify and save harmless the City from and against any and all liabilities, losses, damages, claims, demands, awards, judgments, actions, proceedings, costs (including solicitor and client costs), and expenses suffered or incurred by the City arising out of or in any way connected with the entry upon the Property by the Purchaser, its servants, agents, employees or contractors, including without limitation, the acts, omissions, negligence or wilful misconduct of any of the foregoing;
- (b) the Purchaser shall, at its sole expense, immediately repair any damage caused to the Property or any adjacent lands, to the satisfaction of the City, by virtue of such entry thereon or the exercise of any rights granted to the Purchaser pursuant to this article 8; and
- (c) the Purchaser shall, at its sole expense, first provide to the City such insurance in a form, amount and content as the City may reasonably require in such circumstances.

This section 8.1 shall survive closing or the termination of this Agreement.

8.2 Upon execution of this Agreement by the City and payment of the Deposit to the City, the Purchaser may erect one temporary sign on the Property subject to:

- (a) the Purchaser obtaining, at its expense, any required planning, development and building approvals and permits for the sign, and
- (b) the express condition that the Purchaser agrees and covenants to remove the sign within 48 hours of receiving any such direction from the Manager.

9. **Transfer of the Property and Encumbrances**

9.1 The City shall not be required to transfer title of the Property to the Purchaser unless and until:

- (a) the Purchase Price and any applicable extension fees have been paid to the City in full,
- (b) the Purchaser has completed the Commence Construction requirement set out in section 4.1 to the satisfaction of the Manager, or the City's Land & Properties Department is in receipt of mortgage instructions from the Purchaser's solicitor for the purpose of securing financing for the development of the Property, and
- (c) a proper written request is received from the Purchaser at the Land & Properties Department.

9.2 Transfer by the City to any party other than the Purchaser shall only be from a Purchaser who is a licensed contractor to the individual to whom the contractor intends to sell the Property, provided that the contractor has provided such written authorization.

- 9.3 The Purchaser agrees to immediately register the Transfer of Land delivered by the City.
- 9.4 The City reserves the right to register any encumbrances, as required by the City, prior to transfer of title of the Property to the Purchaser. The sale of the Property shall be subject to any and all encumbrances registered against the certificate of title. For the purposes of this Agreement, an "encumbrance" includes but is not limited to any encumbrance:
- (a) related to utility services, other services provided to the Property or storm water drainage (including but not limited to trap lows),
 - (b) restricting the development of the Property (including but not limited to building setbacks, height restrictions and parking restrictions), or
 - (c) notifying prospective Purchasers and landowners in the vicinity regarding unique features of the Property or land in the vicinity of the Property.

Encumbrances include but are not limited to easements, utility rights-of-way and restrictive covenants.

- 9.5 The Purchaser acknowledges and agrees that it is solely the responsibility of the Purchaser to review, investigate and make inquiries into:
- (a) any encumbrances registered on the certificate of title for the Property,
 - (b) any encumbrances or restrictions referenced in the subdivision details set out in Schedule "A" which may affect the Property or be registered against the title of the Property prior to the transfer to the Purchaser,
 - (c) the land use designation of the Property and other land in the vicinity of the Property, and
 - (d) any other matters that could affect the Purchaser's development, use or enjoyment of the Property.

10. **Construction on or about the Property**

- 10.1 During the development of the Property, the Purchaser and/or its contractor shall not place or deposit any excavated dirt upon City land (including but not limited to any City easement or utility right-of-way), and if such excavated dirt is so deposited, the City shall have the right to have the dirt removed at the expense of the Purchaser.
- 10.2 The Purchaser shall ensure that all debris, building materials, cement, garbage and refuse are retained on the Property during construction and properly disposed of by the Purchaser or its contractor. The Purchaser shall not permit any of the foregoing materials to be deposited (intentionally or unintentionally) upon City land, including but not limited to any park reserve and open space areas. The Purchaser shall not permit lightweight materials to be blown away by wind from the Property. Any debris, building materials, cement, garbage or refuse that is

disposed on or blows onto City land may be removed by the City at the expense of the Purchaser. Additional fines and penalties may be levied against the Purchaser in accordance with any applicable statute, regulation or bylaw.

11. Representations and Warranties

- 11.1 The City represents and warrants to the Purchaser that it is not now within the meaning of the *Income Tax Act* a non-resident of Canada nor is it an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada.
- 11.2 The Purchaser represents and warrants that it has the requisite power, capacity and authority to enter into this Agreement and has the requisite power to perform the terms of this Agreement.
- 11.3 The Parties agree that the representations, warranties, covenants and indemnities set out in this Agreement will not merge by the acceptance of documents, the registration of documents or the taking of possession by the Purchaser and shall survive closing of this transaction.

12. Goods and Services Tax (GST)

- 12.1 The Purchaser agrees that it shall be liable for the payment of any GST which may become payable in connection with the purchase and sale of the Property.
- 12.2 If the Purchaser is a GST registrant, it shall remit any GST payable to the Canadian Customs and Revenue Agency (CCRA), unless otherwise required by the City. The Purchaser's GST registration number is _____.
- 12.3 In the event that the Purchaser is not a GST registrant, it shall remit any GST payable to the City with the balance of the Purchase Price.
- 12.4 The Purchaser agrees to indemnify and save harmless the City against any liability, cost or expense incurred as a result of any GST payable in respect of the Property or this transaction.

13. Time is of the Essence

- 13.1 Time shall in all respects be of the essence in this Agreement, and therefore, whenever in this Agreement either the City or the Purchaser is required to do something by a particular date, the time for the doing of the particular thing shall only be amended by written agreement of the City and the Purchaser.

14. Notices

- 14.1 Whenever it shall be required or permitted that notice or demand be given or served by either party on the other party, such notice or demand shall be in writing and may be delivered or sent by prepaid registered or certified letter addressed to the other party for which it is intended at the address hereunder or by facsimile transmission to the facsimile number hereunder, or to such other address or facsimile number as may be substituted therefor from time to time by proper notice:

Address of City: Manager of Land and Properties
 City of Medicine Hat
 580 First Street S.E.
 Medicine Hat, Alberta, T1A 8E6

and if transmitted by facsimile, shall be transmitted to (403) 502-8055

Address of Purchaser:

and if transmitted by facsimile, shall be transmitted to (403) _____

14.2 Any notice or correspondence delivered by mail shall be deemed to have been received within five (5) business days following the postmark date, excepting that in the case of a postal strike or disruption this deeming provision shall not apply to any notice or correspondence sent during or within five (5) business days prior to the postal strike or disruption and any notice or correspondence shall be hand delivered or sent by facsimile during the course of a postal strike or disruption. Any notice or correspondence sent by facsimile shall be deemed to have been received on the same day if transmitted on a business day during normal business hours, or the next business day if not transmitted on a business day or if transmitted after normal business hours on a business day. For the purposes of this Agreement, "business day" shall not include Saturdays, Sundays or Alberta statutory holidays.

15. Real Estate Commissions

15.1 The Purchaser represents and warrants to the City that the Purchaser is not aware of any party that may be entitled to any commission from this transaction, and that the Purchaser has not done any act or thing whereby any commission whatsoever may be claimed from the purchase and sale of the Property. The Purchaser agrees to indemnify and save harmless the City from and against all other claims for commissions which may arise from any act or thing done by the Purchaser.

16. Assignment by the Purchaser

16.1 The Purchaser covenants and warrants that it is not purchasing the Property for the purpose of land speculation. Prior to the satisfaction of the Purchaser's obligation to Commence Construction on the Property, the Purchaser shall not re-sell, transfer, subvide, assign or otherwise dispose of its right, title, interest or equity in or to the Property, or any part thereof, without first obtaining the written consent of the City, which may be arbitrarily withheld by the City, excepting that if the Purchaser is a licensed contractor, the Purchaser may transfer the Property to the intended purchaser of the residential building being constructed on the Property. Any such consent shall be subject to the parties entering into an assignment agreement with the third party satisfactory to the City, which shall include a term stating that

notwithstanding any assignment or transfer, the Purchaser shall remain liable to the City for the fulfilment of the terms and conditions set out in this Contract.

17. **General**

17.1 This Agreement shall be construed and the relations between the parties determined in accordance with the laws of the Province of Alberta. The Courts of the Province of Alberta shall have exclusive jurisdiction with respect to all matters relating to or arising out of this Agreement.

17.2 The terms and conditions of this Agreement will enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties.

17.3 Waiver by the City of the strict performance of any condition, covenant or agreement herein contained shall not constitute a waiver of or abrogate any other condition, covenant or agreement nor shall it be deemed a waiver of any subsequent breach of the same or of any other condition, covenant or agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions.

17.4 This Agreement constitutes the entire agreement between the parties hereto and no representations, warranties or promises have been made as between the parties hereto save where herein contained.

17.5 This Agreement and any Records or Personal Information in relation to this Agreement are subject to the *Freedom of Information and Protection of Privacy Act* (Alberta).

17.6 In reading and interpreting this Agreement:

- (a) the headings used throughout this Agreement are inserted for reference purposes only and are not to be considered or taken into account in construing the terms and provisions of any section or clause and are not to be deemed in any way to qualify, modify or explain the effects of such provisions or terms;
- (b) the recitals set out at the beginning of this Agreement and any attached Schedules form part of this Agreement;
- (c) the word "Purchaser" shall be read and interpreted as in the plural instead of the singular number, if there is more than one purchaser named, and the terms and conditions of this Agreement shall be binding on the purchasers individually as well as jointly;
- (d) the masculine gender shall include the feminine or body corporate where, in this Agreement, the context or the parties require;
- (e) the word "shall" is to be read and interpreted as mandatory and the word "may" is to be read and interpreted as permissive; and

- (f) any bolding or capitalization of portions of this Agreement have been inserted for emphasis only and are not to be construed as affecting the interpretation or construction of this Agreement.

ATTENTION: THE PURCHASER SHOULD CAREFULLY READ THE ENTIRE AGREEMENT (INCLUDING ANY SCHEDULES) BEFORE SIGNING. IN PARTICULAR, NOTE THAT THE PURCHASER'S DEPOSIT IS NON-REFUNDABLE UPON EXECUTION OF THIS AGREEMENT BY THE CITY, SUBJECT ONLY TO REGISTRATION OF THE PLAN OF SUBDIVISION AND COMPLETION OF SERVICING FOR THE PROPERTY. THIS AGREEMENT WILL TERMINATE AND THE DEPOSIT IS FORFEITED TO THE CITY IF THE PURCHASER FAILS TO PAY THE BALANCE OF THE PURCHASE PRICE BY THE DEADLINE SET OUT IN SECTION 1.1(b). THIS AGREEMENT MAY ALSO TERMINATE IF THE PURCHASER FAILS TO COMMENCE CONSTRUCTION IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

THE **PURCHASER** has executed this Contract on the _____ day of _____, 200__.

THE **CITY** has executed this Contract on the _____ day of _____, 200__.

CITY OF MEDICINE HAT

PURCHASER

MAYOR GARTH VALLELY

Per: _____

LARRY P. GODIN, CITY CLERK

Per: _____

Witness to signature of Purchaser