

DRAFT REAL ESTATE PURCHASE CONTRACT

[ANY ADDITIONAL TERMS OR CONDITIONS OR CHANGES TO THIS DRAFT CONTRACT MUST BE SUBMITTED BY THE PROSPECTIVE PURCHASER WITH THE PURCHASER'S APPLICATION IN ORDER TO BE CONSIDERED BY THE CITY. ANY REQUESTED CHANGES TO THE CONTRACT ARE NOT BINDING UPON THE CITY. THE CITY RESERVES THE RIGHT TO ACCEPT, REJECT, AMEND OR NEGOTIATE ANY PROPOSED OR OTHER TERMS OR CONDITIONS OR CHANGES TO THE CONTRACT WITH THE PROSPECTIVE PURCHASER.]

BETWEEN:

CITY OF MEDICINE HAT
(the "City")

-and-

(the "Purchaser")

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

- (1) PLAN MEDICINE HAT 1491
BLOCK SIX (6)
LOTS ONE (1) TO FOUR (4) INCLUSIVE
EXCEPTING OUT OF LOTS ONE (1) AND TWO (2) A PORTION
FOR ROAD WIDENING ON PLAN 8310172
EXCEPTING THEREOUT ALL MINES AND MINERALS

Certificate of Title No. 071 259 283 +3

- (2) PLAN 1491
BLOCK 6
LOTS 5 AND 6
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Certificate of Title No. 071 259 283 +2

- (3) PLAN 1491
BLOCK 6
LOTS 7 TO 12 INCLUSIVE
EXCEPTING THEREOUT ALL MINES AND MINERALS

Certificate of Title No. o71 259 283 +1

- (4) PLAN 1491
BLOCK 6
LOTS 13 AND 14
EXCEPTING THEREOUT:

	HECTARES	(ACRES)	MORE OR LESS
A) PLAN 0213944 ROAD	0.001	0.0025	

EXCEPTING THEREOUT ALL MINES AND MINERALS

Certificate of Title No. 071 259 283

Municipal Address: 603 1st Street S.E., Medicine Hat, Alberta,

(collectively called 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 the Purchase Price of _____ DOLLARS (\$_____.00) (the "Purchase Price") in accordance with the terms and conditions set out in this Contract.

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 and Closing Date

- 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 9.3 of this Contract and upon the terms and conditions set out in this Contract. The Purchase Price shall be paid in the following manner:

- (a) A deposit in the amount of _____ [**10% of the Purchase Price**] DOLLARS (\$_____.00) to be delivered by the Purchaser to the City upon execution and delivery of this Contract by the Purchaser to the City (the "Deposit"). After execution of the Contract by the City, the Deposit may be immediately deposited by the City in its general account with all interest earned to accrue to the benefit of the City. **\$_____.00 of the Deposit shall immediately become non-refundable upon approval by the City of the sale of the Property as outlined in subsection 2.1(a);** and
- (b) The balance of the Purchase Price in the amount of _____ DOLLARS (\$_____.00) to be delivered to the City on or before 12:00 noon on _____, 2010, or such other date as the parties may mutually agree to in writing, subject to article 4 of this Contract (the "Closing Date").

- 1.2 For greater certainty the parties acknowledge that notwithstanding any other provision of this Contract, the Purchase Price is exclusive of GST. For the purposes of this Contract, "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 11.

1.3 All references to currency in this Contract shall be deemed to be references to Canadian dollars unless otherwise expressly set forth.

2. **Conditions Precedent**

2.1 This Contract is expressly subject to and conditional upon:

- (a) The approval of the City's Municipal Council ("Council") at a public meeting of the sale of the Property to the Purchaser on the general terms and conditions set out in this Contract, at Council's absolute discretion, on or before _____, 2010;
- (b) The Purchaser, at its expense, obtaining a development permit from the Development Approving Authority (without an appeal being filed) for the Purchaser's proposed development for the Property, on terms and conditions satisfactory to the Purchaser and the City, acting reasonably, on or before _____, 2010;
- (c) The City, at its expense, terminating parking on the Property (including termination of parking passes) and removing barricades relating to the control of parking, to the satisfaction of the City, on or before Closing Date. The parties acknowledge and agree that the City will require not less than 60 days prior to the Closing Date to terminate parking passes; and
- (d) The satisfaction or waiver by the Purchaser of the conditions set out in Schedule "A" (the "Purchaser's Conditions") in accordance with article 3, on or before _____, 2010.

[Note: The City reserves the right to negotiate dates and require further conditions precedent. The City may also require that separate dates be set out in Schedule "A" for the Purchaser's Conditions.]

2.2 If the conditions precedent set out in section 2.1 are not satisfied or waived in accordance with article 3 by the dates set out in section 2.1 (or such other dates as the Purchaser and City may mutually agree to in writing subject to section 4), this Contract for the purchase of the Property shall terminate (except for the obligations and rights contained in article 8) and **the Deposit will be returned to the Purchaser less:**

- (a) **\$_____00, which shall be forfeited to and retained by the City as an administrative fee (if the condition precedent set out in subsection 2.1(a) has been satisfied or waived), and**
- (b) any and all earned interest on the Deposit, which will enure to the benefit of the City.

Upon receipt of such sums by the Purchaser, all rights and obligations of the City and the Purchaser pursuant to this Contract (except for the obligations and rights contained in article 8) will cease and will be of no further force or effect and this Contract shall terminate without any legal proceedings being taken or 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.

2.3 If after the satisfaction or waiver of the conditions precedent set out in section 2.1 the Purchaser fails to complete the purchase of the Property in accordance with the terms and conditions of this Contract, otherwise than as a result of the City's default, 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 Contract shall terminate without any legal proceedings being taken or other act being performed by the City, and the Property shall revert to and revest in the City, without prejudice to the City's right to take such other action or to pursue such other remedies against the Purchaser as the City may have at law and 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.

3. Satisfaction or Waiver of Conditions Precedent

3.1 The conditions precedent set out in subsections 2.1(a) and (c) are for the benefit of the City and may only be waived in writing by the City.

3.2 The condition precedent set out in subsection 2.1(b) is for the benefit of both the City and the Purchaser and may only be waived by mutual agreement in writing by both the City and the Purchaser, at each party's absolute discretion.

3.3 The Purchaser's Conditions referenced in subsection 2.1(d) and set out in Schedule "A" are for the sole benefit of the Purchaser and may only be waived in writing by the Purchaser.

3.4 It is understood and agreed that nothing contained in this Contract will be interpreted or deemed to fetter the discretion of the Municipal Council of the City, its commissions, committees, boards, officers, officials or employees, including but not limited to with respect to the approval of the sale of the Property, the issuance of a development permit or any terms and conditions set out in this Contract.

4. Extension of Deadlines

4.1 The City and the Purchaser acknowledge and agree that time is of the essence and that the parties intend for this transaction to close on or before the Closing Date. Upon written request by the Purchaser, the City may, at its absolute discretion, extend the deadline for any of the conditions precedent set out in section 2.1 or the Closing Date but the City shall not be obligated to grant any extension or extensions whatsoever. Any extension granted by the City shall only be binding if delivered in writing to the Purchaser.

4.2 The Purchaser further acknowledges and agrees that in the event that the Purchaser requests one or more extensions:

- (a) to the Closing Date, or
- (b) to any of the deadlines for the conditions precedent set out in section 2.1 (with the exception of the condition precedent set out in subsection 2.1(a)),

that would cause the Closing Date to occur more than _____ months from the deadline for the City to approve this transaction set out in subsection 2.1(a), at the written request of the Purchaser, the City may, at its absolute discretion, agree to one or more one month extensions (an "Extension") subject to the fees and terms set out in section 4.3.

[Note: The City reserves the right to determine the amount of time until closing, and when extension fees become payable.]

4.3 The City and the Purchaser acknowledge and agree that an Extension referred to in section 4.2 may only be granted subject to the following terms:

- (a) any request by the Purchaser for an Extension must be made in writing and received by the City at least three (3) business days prior to the expiry of the applicable deadline(s);
- (b) the Purchaser agrees to pay 0.5% of the Purchase Price per month (\$_____ per month) to the City as consideration for each month or portion of a month of any Extension (the "Extension Fee") which shall be payable in advance to the City prior to an Extension taking effect;
- (c) a maximum of three (3) one month Extensions may be granted by the City, at its absolute discretion;
- (d) the City reserves the right to refuse any Extension requested by the Purchaser and nothing in this article limits or affects any rights or remedies of the City set out in this Contract or at law or equity;
- (e) the City may waive an Extension Fee if the City determines, at its absolute discretion, that an Extension is necessary due to the actions of the City; and

- (f) any and all Extension Fees paid by the Purchaser immediately become the property of the City, are non-refundable (regardless of whether or not closing occurs) and shall not be applied against the Purchase Price.

5. Possession, Adjustments and Interest

- 5.1 Subject to the Purchaser complying with the terms and conditions of this Contract including without limitation, payment of the Purchase Price, vacant possession of the Property shall be available to the Purchaser on the Closing Date.
- 5.2 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 the Closing Date.
- 5.3 The balance of the Purchase Price owing to the City shall be paid to the City's lawyer or the City's lawyer's agent on or before the Closing Date. If the City agrees to accept monies after the Closing Date, the Purchaser will pay interest at the rate of 10% per annum on any money owing to the City at the Closing Date, from the Closing Date or the possession date, whichever first occurs, until the money has been paid.

6. Utility Services and Other Municipal Improvements and Infrastructure

- 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 Contract, 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, levies, payments and other amounts whatsoever associated with providing utility services and other municipal improvements and infrastructure 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, connections, extensions, oversizing and hook-ups, and electric capacity charges. Without limiting the generality of the foregoing, the Purchaser shall, at its expense, be specifically responsible for:
 - (a) the installation of storm sewers,
 - (b) the installation of sidewalks,
 - (c) developing, landscaping and maintaining boulevards, and

- (d) providing site grading, site drainage and site storm water management plans in relation to the Property satisfactory to the City of Medicine Hat's Planning, Building and Development Services Department.

6.3 Without limiting the generality of section 6.2, the Purchaser acknowledges and agrees that:

- (a) the Property is considered to be an "infill site" and utility servicing and other municipal improvements and infrastructure in relation to the Property may not meet the City's municipal servicing standards;
- (b) the Purchaser shall be responsible, at its sole expense, for any additional work and costs to develop the Property to meet the City's municipal servicing standards and any other requirements or standards determined by the City or the Development Authority;
- (c) the Purchaser shall be responsible, at its sole expense, for the installation of storm sewers and sidewalks and for the installation and maintenance of boulevards in relation to the Property; and
- (d) the Purchaser shall be responsible, at its sole expense, for replacing curbs, gutters and sidewalks adjacent to the Property along First Street SE, repairing any damage to the curbs, gutters and sidewalks adjacent to the Property along 6th Avenue SE and repairing and repaving the lane adjacent to the Property arising from the Purchaser's construction on the Property, to the satisfaction of the City.

6.4 The Purchaser expressly acknowledges and agrees that the Purchase Price does not include the City of Medicine Hat's Electric Department electric transformer capacity charge, and that this charge is part of the electric servicing costs for the Property (which is the responsibility of the Purchaser) and will be detailed when the electric service size in amps and service voltage have been confirmed by the Electric Department.

6.5 Without limiting the generality of sections 6.2, 6.3 and 6.4, in the event that the Purchaser requires any other or additional utility services, connections, extensions or infrastructure, or any oversizing of utility service lines, the Purchaser shall be solely responsible for all such costs, charges, levies, payments and other amounts, and for satisfying any conditions imposed by the Development Authority arising from any development permit application in relation to the Property.

6.6 All proposed vehicular access points to the Property shall be approved by the City of Medicine Hat's Planning, Building and Development Services Department at the time of the Purchaser's development permit application and all costs associated with any auxiliary lanes, curb crossings, median breaks or other similar road works required for any proposed development shall be at the expense of the Purchaser. All adjacent

lanes shall be paved at the expense of the Purchaser and to the satisfaction of the City.

6.7 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.

6.8 For the purposes of this Contract, "utility services and other municipal improvements and infrastructure" includes but is not limited to gas, electric, water, sanitary sewers, storm sewers, roads, sidewalks, boulevards, street lighting, telephone and cable television.

6.9 The Purchaser is responsible for paying any and all off-site levies payable in relation to the Property from time to time.

[Note: The City reserves the right to amend article 6 depending upon the servicing required for the Property.]

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

7.1 Notwithstanding any term or condition of this Contract, it is agreed by the Purchaser that 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 or otherwise that may in any way directly or indirectly affect the Property;
- (b) the City does not warrant:
 - (i) the quality, condition, sufficiency or land use classification 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 by the City 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, adjacent to or in the vicinity of 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.

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- 7.2 Without limiting the generality of section 7.1, the Purchaser expressly acknowledges and agrees that:
- (a) the City has provided to the Purchaser copies of the following environmental reports;
 - (i) Phase II Environmental Assessment, Glanville Property, Medicine Hat, Alberta prepared by Golder Associates dated March 1995,
 - (ii) Supplemental Environmental Investigation, Screening Level Risk Assessment, Glanville Property, Medicine Hat, Alberta prepared by Golder Associates dated April 1998, and
 - (iii) Confidential Report, Glanville Property, Medicine Hat, Alberta prepared by Golder Associates dated May, 2000,(collectively called the "Golder Reports") and
 - (iv) a letter dated January 25, 2001 from Alberta Environment in relation the Golder Reports,that review environmental issues with respect to the Property, including but not limited to:
 - (v) the former location and removal of underground storage tanks from the Property;
 - (vi) the migration and remediation of hydrocarbons in relation to the Property from a service station located west of the Property; and
 - (vii) a summary of groundwater and soil test results in relation to the Property and adjacent road;
 - (b) the Purchaser is also aware that concrete foundations and building materials are present beneath the existing paving within the Property and that the Purchaser shall be responsible for removing such materials and compacting the Property, at its sole expense;
 - (c) the City has provided a full and fair opportunity for inspection of the Property and performance of such soil, hydrological, groundwater, geotechnical or other tests or assessments as the Purchaser may reasonably desire;
 - (d) notwithstanding subsection 7.2(a), the City does not warrant the contents or accuracy of the Golder Reports or their conclusions or and the Purchaser shall make its own independent inspections and investigations of all

elements of the Property, including but not limited to the presence or absence of hazardous substances, or will have knowingly waived its right to do so;

- (e) the Purchaser shall rely solely on its own independent inspections and investigations, if any, and the Purchaser's evaluation and assessment of the Property and all matters relating thereto, including but not limited to the presence or absence of hazardous substances in, on, under, over, adjacent to or in the vicinity of the Property; and
- (f) that the Purchaser shall retain the Golder Reports in strict confidence (including executing a confidentiality agreement if requested by the City and/or the author of the Golder Reports) and shall only disclose their contents to the Purchaser's officers, employees, agents, professional consultants and lenders as is absolutely necessary to evaluate the Property and its suitability for the Purchaser's purposes, and in the event that this purchase and sale of the Property fails to close, the Purchaser shall immediately return the Golder Reports and any and all copies thereof to the City, along with a copy of any and all environmental or geotechnical reports prepared by or on behalf of the Purchaser in relation to the Property.

7.3 Notwithstanding any other provision of this Contract, the Purchaser agrees to assume any and all environmental risks and liabilities relating to the Property, including but not limited to any liability for clean-up of any hazardous substances on, in, over or under the Property. The Purchaser agrees to indemnify, defend and save harmless the City and its officers, employees, servants, agents, contractors and elected officials from and against any and all liabilities, losses, damages, claims, demands, awards, judgments, actions, proceedings, costs (including solicitor and client costs) and expenses brought against, suffered or incurred by them arising out of or in any way connected with any environmental contamination or pollution in relation to the Property or lands in the vicinity of the Property or as a result of the presence of hazardous substances in, on, over, under, adjacent to or in the vicinity of the Property or arising from the development of the Property.

7.4 For the purposes of this Contract, 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, regulation or order.

[Note: The City reserves the right to amend article 7 and any other provisions relating to the environmental condition of the Property.]

8. Temporary Access to the Property and Placement of a Sign

8.1 Upon execution of this Contract by the City and subject to the Purchaser complying with the terms and conditions of this Contract, the Purchaser shall be granted a right of entry upon the Property for the sole purposes of erecting a temporary 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 officers, servants, employees, agents, contractors or sub-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 paragraph; 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.

8.2 Upon execution of this Contract by both the City and the Purchaser and satisfaction of the condition precedent set out in subsection 2.1(a), the Purchaser may erect one temporary sign on the Property subject to:

- (a) the prior written approval of the City's Manager of Land and Properties with respect to the location, size, height, design, materials and contents of the sign,
- (b) the Purchaser obtaining, at its expense, any required planning, development and building approvals and permits for the sign, and
- (c) the express condition that the Purchaser agrees and covenants to remove the sign within 48 hours of receiving any such direction from the City's Manager of Land and Properties.

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

9.1 A Transfer of Land in registrable form will be prepared at the expense of the City and delivered to the Purchaser's lawyer within a reasonable time prior to the Closing Date. If a new mortgage is a condition of the commitment for financing required by the Purchaser, the City agrees to allow the Purchaser's lawyer to register the Transfer of Land to obtain the advance of mortgage funds on the mortgage, provided that the Purchaser's lawyer complies with reasonable trust conditions imposed by the City's lawyer until the City has been paid the total Purchase Price. The Purchaser shall pay all costs and expenses in relation to any new mortgage.

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- 9.2 Prior to closing, the Purchaser shall execute a transfer-back to the City to be held in trust by the Purchaser's solicitor and released to the City upon demand in the event that:
- (a) the Purchaser fails to pay the City the balance of the Purchase Price; or
 - (b) after closing the City exercises the Buy Back Option as more fully set out in article 13.
- 9.3 The City and Purchaser agree that the purchase and transfer of the Property to the Purchaser shall be expressly subject to:
- (a) a utility right-of-way registered against the certificate of title for Lots 7 to 12 Inclusive of the Property on October 21, 2008 as registration number 081 394 469;
 - (b) a utility right-of-way registered against the certificate of title for Lots 13 to 14 of the Property on January 24, 1995 as registration number 951 019 925
 - (c) any other utility rights-of-way, easements or other encumbrances in relation to the Property required by the City for utility services and other municipal improvements and infrastructure or for any municipal purpose; and
 - (d) one or more Caveats to be registered by the City pursuant to this Contract, including without limiting the generality of the foregoing, caveats relating to a vendor's lien, Transfer of Land back to the City, and the Buy Back Option, as provided for in article 13. It is agreed and acknowledged that the City's caveats shall be registered and remain as first charge against the Property, subject only to the City's utility right-of-way and the City's caveats. Upon the Purchaser satisfying the commencement of construction requirement set out in section 13.1 to the satisfaction of the City, the City agrees to discharge its caveats with respect to the Buy Back Option.

[Note: Other specific encumbrances may also be included in section 9.3]

10. Representations and Warranties

- 10.1 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.
- 10.2 The Purchaser represents and warrants that it has the requisite power, capacity and authority to enter into this Contract and has the requisite power to perform the terms of this Contract.

10.3 The Parties agree that the representations, warranties, covenants and indemnities set out in this Contract 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.

11. Goods and Services Tax (GST)

11.1 The Purchaser agrees that it shall be liable for the payment of any GST which may become payable in connection with the transaction.

11.2 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 _____.

11.3 In the event that the Purchaser is not a GST registrant, it shall remit any GST payable to the City.

11.4 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.

12. Time is of the Essence

12.1 Time shall in all respects be of the essence in this Contract, and therefore, whenever in this Contract 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.

13. Buy Back Option

13.1 Notwithstanding any other provision contained in this Contract, it is expressly understood and agreed to between the City and the Purchaser, that as additional consideration for the sale of the Property by the City to the Purchaser, within twelve (12) months after the Closing Date, the Purchaser shall commence construction of a _____ development on the Property with a main floor area of not less than _____ square metres and ____ or more additional stories in accordance with the development permit referenced in subsection 2.1(b) (the "Purchaser's Development"). For the purposes of this Contract, the term "commence construction" or any variation thereof shall mean that the Purchaser shall have completed construction of all footings and foundations required for the construction of the Purchaser's Development.

[Note: Section 13.1 may be revised in accordance with the details of the Purchaser's proposed development.]

13.2 In further consideration for the sale of the Property to the Purchaser by the City, the Purchaser, as Optionor, grants to the City, as Optionee, an exclusive and irrevocable Option to Purchase the Property together with all buildings, permanent fixtures and

improvements from the Purchaser for a purchase price of _____ **[90% of the Purchase Price]** DOLLARS (\$_____ .00) ("Buy Back Option"). The difference between the original Purchase Price for the Property and the Purchase Price contained in this Buy Back Option shall be forfeited to the City on account of damages and not as penalty, without prejudice to the City's right to pursue such other remedies against the Purchaser as the City may have at law. The Buy Back Option herein granted may be exercised by the City, at its sole discretion, upon the Purchaser failing to commence construction of the Purchaser's Development on the Property within the time limit stipulated in section 13.1. Prior to closing, the Purchaser shall execute a Transfer of Land back to the City to be held in trust by the Purchaser's solicitor and released to the City upon demand in the event that the Purchaser fails to pay the City the balance of the Purchase Price or in the event that the City exercises the Buy Back Option.

13.3 The Buy Back Option herein granted shall be exercisable by the City in the following manner:

- (a) In the case that the Purchaser fails to commence construction in accordance with section 13.1, the City may, at its absolute discretion, at any time within ninety (90) days of the failure of the Purchaser to commence construction serve written notice on the Purchaser in the manner provided for in this Contract, to commence construction within thirty (30) days from the date of the written notice. Upon the expiration of the time limit in such notice and the Purchaser failing to commence construction on the Property in the manner provided for in section 13.1, then for all intents and purposes, the City shall be deemed to have exercised the Buy Back Option and the Purchaser shall sell and transfer the Property back to the City in accordance with this Contract;
- (b) The Closing Date for the Buy Back of the Property ("Buy Back Option Closing Date") shall be at 12:00 noon thirty (30) days following the date that this Buy Back Option is deemed to be exercised pursuant to subsection 13.3(a);
- (c) A Transfer of Land in registrable form shall be prepared at the expense of the Purchaser and delivered to the City within a reasonable time prior to the Buy Back Option Closing Date;
- (d) The Purchase Price and any adjustments for taxes or outgoings as defined in section 5.2, shall be paid and adjusted at 12:00 noon on the Buy Back Option Closing Date;
- (e) On or before the Buy Back Option Closing Date, the Purchaser shall discharge any mortgages, liens or other encumbrances that the Purchaser has caused to be registered against the title to the Property. The City shall take title to the Property subject only to utility rights-of-way and encumbrances registered by the City;

- (f) Vacant possession of the Property shall be given at 12:00 noon on the Buy Back Option Closing Date; and
- (g) Time shall in all respects be of the essence in the Buy Back Option.

13.4 In the event that the City exercises the Buy Back Option, the Purchaser shall not be entitled to any compensation or damages in respect of buildings, fixtures or other improvements which may be constructed or situated on the Property, and the Purchaser agrees and covenants to indemnify the City for all costs in relation to removing any or all buildings, fixtures or other improvements constructed or partially constructed on the Property by the Purchaser, its officers, servants, employees, agents, contractors or sub-contractors. The Purchaser agrees to further indemnify the City for all costs in respect of returning the Property, as far as practicable, to the same condition as the Property was in prior to the execution of this Contract.

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:

[Insert Purchaser's name and fax no.]

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 Contract, "business day" shall not include Saturdays, Sundays or statutory holidays.

15. Real Estate Commissions

15.1 Upon closing of this transaction and the City receiving the full Purchase Price (plus any interest and any other amounts, if applicable), the City agrees to pay a real estate commission to _____ in the amount of _____ plus GST in the amount of _____ for a total amount of _____.

[Note: A commission will not necessarily be payable by the City. Any commission must be requested at the time the Purchaser's Application is made and is subject to the approval of the City prior to the parties executing the Contract.]

15.2 Subject to section 15.1, the Purchaser hereby represents and warrants to the City that the Purchaser is not aware of any other party that may be entitled to any commission from this transaction, and that the Purchaser has not done any act or thing whereby any other 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 of Contract by Purchaser

16.1 The Purchaser covenants and warrants that it is not purchasing the Property for the purpose of land speculation. Prior to the completion of the commence construction requirement for the Purchaser's Development on the Property set out in section 13.1, the Purchaser shall not re-sell, transfer, subdivide, 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. 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 Contract 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 Contract.

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

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- 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 Contract shall not affect the remaining provisions.
- 17.4 This Contract 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 Contract and any Records or Personal Information in relation to this Contract are subject to the *Freedom of Information and Protection of Privacy Act* (Alberta).
- 17.6 This Contract may be executed by facsimile and in counterpart. When a counterpart has been executed by each of the parties hereto, all counterparts together shall constitute one agreement.
- 17.7 In reading and interpreting this Contract:
- (a) the headings used throughout this Contract 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 Contract and the attached Schedules form part of this Contract;
 - (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 Contract 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 Contract, 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 Contract have been inserted for emphasis only and are not to be construed as affecting the interpretation or construction of this Contract.

THE **PURCHASER** HAS EXECUTED THIS CONTRACT ON THE ____ OF _____, 2010

THE **CITY** HAS EXECUTED THIS CONTRACT ON THE ____ OF _____, 2010

CITY OF MEDICINE HAT

NAME OF CORPORATION

MAYOR NORM BOUCHER

Per: _____
Title: _____

DAVID S. LEFLAR, CITY CLERK

Per: _____
Title: _____

[**NOTE:** If Purchaser is an individual, the signature must be witnessed and the witness must complete an Affidavit of Execution]

SCHEDULE "A"

PURCHASER'S CONDITIONS

Further to subsection 2.1(d) of this Contract and subject to article 3, the obligation of the Purchaser to complete the transaction contemplated in this Contract shall be subject to the following conditions:

1. The Purchaser, at its expense, reviewing the environmental reports referenced in subsection 7.2(a) and completing any environmental or geotechnical assessments, testing or analysis in relation to the Property with results satisfactory to the Purchaser, acting reasonably;
2. **[Note: Add any additional Purchaser's Conditions accepted by the City.]**

on or before the date set out in subsection 2.1(d).

[Note: The City may require that separate dates be set out for the Purchaser's Conditions.]