

REAL ESTATE PURCHASE CONTRACT

BETWEEN:

CITY OF MEDICINE HAT

(the "City")

-and-

(the "Purchaser")

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

**PLAN
BLOCK
LOT
EXCEPTING THEREOUT ALL MINES AND MINERALS
Certificate of Title No.**

Municipal Address: _____, Medicine Hat, Alberta,

(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 (\$ _____)** (the "Purchase Price") in accordance with the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the mutual promises set out below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the City and the Purchaser agree as follows:

1. Definitions and Interpretation

1.1 In this Agreement, including the recitals hereto and the schedules:

- (a) "**Administrative Fee**" has the meaning ascribed thereto in section 2.2 of this Agreement;
- (b) "**AEPEA**" means the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12;
- (c) "**Applicable Law**" means all applicable statutes, common laws, ordinances, rules, orders, licenses, permits, directives, by-laws or other instruments having the force of law and whether promulgated by a Governmental Authority or otherwise;
- (d) "**Approved Development**" means the Purchaser's Development for which the Purchaser has obtained the Development Permit;

- (e) **"Business Day"** means Monday to Friday, 8:30 am to 4:30 pm MST, excluding statutory holidays observed by the Province of Alberta;
- (f) **"Buy Back Option"** has the meaning ascribed thereto in section 14.3 of this Agreement;
- (g) **"Buy Back Option Closing Date"** has the meaning ascribed thereto in section 14.3 of this Agreement;
- (h) **"City's Caveats"** has the meaning ascribed thereto in section 10.3 of this Agreement;
- (i) **"Claims"** any lawsuit, action, dispute, investigation, claim, arbitration, order, summons, citation, directive, charge, notice of non-compliance or violation, demand or proceeding, whether legal or administrative, at law or in equity, or before or by, any government authority;
- (j) **"Closing"** means the closing of the purchase and sale of the Property on the basis provided for in this Agreement;
- (k) **"Closing Date"** has the meaning ascribed thereto in section 2.1(b) of this Agreement;
- (l) **"Commence Construction"** or any variation thereof means that the Purchaser has completed construction of all footings and foundations required for the construction of the Approved Development;
- (m) **"Council"** means the Municipal Council of the City of Medicine Hat;
- (n) **"Deposit"** has the meaning ascribed thereto in section 2.1(a) of this Agreement;
- (o) **"Development Authority"** has the meaning given to it at section 4.4 of the Land Use Bylaw;
- (p) **"Development Permit"** means a development permit, as defined at section 4.4 of the Land Use Bylaw, authorizing the Purchaser's Development, which is in force and effect pursuant to sections 2.3(i) and 2.4 of the Land Use Bylaw;
- (q) **"Due Diligence Activities"** means the assessments, testing and analysis, surveys, inspections, including environmental and geotechnical, conducted by or on behalf of the Purchaser, in relation to the Property;
- (r) **"Environment"** has the meaning ascribed thereto in AEPEA and **"Environmental"** shall have a derivative meaning;
- (s) **"Environmental Contaminants"** means any contaminants, pollutants, hazardous, corrosive or toxic Substances, flammable materials, explosive

materials, radioactive materials, dangerous goods, hazardous waste, petroleum products and by-products, dangerous Substances, hauled liquid wastes, industrial wastes, urea formaldehyde, asbestos, noxious Substances, compounds known as chlorobiphenyls, mould, and any other Substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or Release of which into the Environment is or may in the future be prohibited, regulated, controlled, or licensed under Environmental Laws;

- (t) **“Environmental Laws”** means any Applicable Laws pertaining to the Environment issued by any Government Authority with respect to Environmental protection, or the regulating, controlling, licensing, or prohibiting of Environmental Contaminants;
- (u) **“Environmental Liabilities”** means any and all Environmental damage, contamination, or other adverse Environmental conditions pertaining or related to, existing within, upon, under or over, or caused by, the Property, or any part or parts thereof, or operations thereon or related thereto, however, whenever, and by whomsoever caused, and whether caused by a breach of Applicable Laws in effect from time to time or otherwise, which occur or arise in whole or in part prior to, at, or subsequent to the Closing Date, and regardless of whether or not a reclamation certificate has been issued. Without limiting the generality of the foregoing, such Environmental damage, contamination, or other adverse Environmental conditions shall include those arising from or relating to: (i) surface, underground, air, ground water, surface water or marine Environment contamination; (ii) abandonment and reclamation obligations; (iii) the breach of Applicable Laws in effect at any time; (iv) the removal of or failure to remove foundations, structures or equipment; (v) the Release, spill, escape or emission of Environmental Contaminants; and (vi) Losses and Liabilities suffered by Third Parties as a result of any of the occurrences described in items (i) through (v) inclusive of this defined term;
- (v) **“Environmental Reports”** has the meaning ascribed thereto in section 8.3 of this Agreement;
- (w) **“Extension”** means an extension of the deadline for any of the conditions precedent set out in section 3.1 or an extension of the Closing Date;
- (x) **“Extension Fee”** means 0.5% of the Purchase Price per month (\$ /month) payable by cheque or electronic funds transfer as consideration for each month or portion of a month of an Extension granted by the City;
- (y) **“Governmental Authority”** means any government or any governmental department, agency, commission or other regulatory authority, including the courts, having jurisdiction under any Applicable Law in respect of the

Parties, or either of them, the Property, or otherwise in respect of the subject matter hereof;

- (z) “**GST**” means the Goods and Services Tax as provided for in Part IX of the *Excise Tax Act* (Canada);
- (aa) “**Land Use Bylaw**” means the City’s Land Use Bylaw, Bylaw No. 4168;
- (bb) “**Losses and Liabilities**” means: (i) any and all losses, penalties, fines, damages, awards, costs (including legal costs on a solicitor and client basis) expenses and charges suffered, sustained, paid, commenced, threatened or incurred, including interest and taxes payable on any settlement or indemnity payment or damage award as a result of, relating to, or arising from any Claim; and (ii) any and all liabilities and obligations, whether under Applicable Law or otherwise, and whether tortious, equitable, contractual, vicarious, statutory or otherwise, absolute or contingent, or based on fault, strict liability or otherwise;
- (cc) “**Manager**” means the City’s Manager of Economic Development and Land or their delegate;
- (dd) “**MGA**” means the *Municipal Government Act*, RSA 2000, Chapter M-26;
- (ee) “**Municipal Services and Infrastructure**” means utility services and other municipal improvements and infrastructure ,and includes but is not limited to berms, gas, electric, water, sanitary sewers, storm sewers, roads, sidewalks, boulevards, street lighting, telephone and cable television;
- (ff) “**Nearest Point of Service**” means the closest point to the Property at which the utility service connections can be hooked up to the utility service mains;
- (gg) “**Parties**” means the Parties to this Agreement, and “**Party**” means either one of them;
- (hh) “**Person**” means any individual, corporation, firm, body corporate, partnership, limited partnership, Governmental Authority, trust, or other entity capable of entering into legally binding contracts;
- (ii) “**Property**” has the meaning ascribed thereto in recital “**A**” of this Agreement;
- (jj) “**Purchaser’s Development**” means the Purchaser’s development of a with a floor area of not less than sq. ft. on the Property;
- (kk) “**Purchase Price**” has the meaning ascribed thereto in recital “**B**” of this Agreement;
- (ll) “**Release**” has the meanings ascribed thereto in AEPEA;

- (mm) **"Representatives"** means directors, elected officials, officers, servants, agents, employees, contractors, and subcontractors;
- (nn) **"Substance"** has the meanings ascribed thereto in AEPEA; and
- (oo) **"Third Party"** means a Person other than the Parties;
- 1.2 All references to currency in this Agreement shall be deemed to be references to Canadian dollars unless otherwise expressly set forth herein.
- 1.3 The headings used throughout this Agreement are inserted for convenience of reference purposes only and are not to be considered or taken into account in construing or interpreting the provisions of any section hereof, or be deemed in any way to qualify, modify or explain the effects or application of such provisions.
- 1.4 Any bolding or capitalization (other than the definitions in section 1.1) 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.
- 1.5 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 and severally.
- 1.6 The recitals set out at the beginning of this Agreement and the attached schedules form part of this Agreement.
- 1.7 In this Agreement, any word importing gender includes all genders.
- 1.8 In this Agreement, the word "shall" is to be read and interpreted as mandatory and the word "may" is to be read and interpreted as permissive.
- 1.9 The words "includes" and "including", where used in this Agreement, are not intended to be exclusive and in all cases mean "includes without limitation" and "including without limitation", respectively. The words "herein", "hereby", "hereto", "hereunder" (and similar formulations) refer to this Agreement in its entirety and not to any particular part, article, or section of this Agreement.
- 1.10 Where this Agreement refers to any act, statute, legislation, regulation, code or bylaw, it includes such statute, legislation, regulation or bylaw as amended, supplemented, or replaced from time to time. Where this Agreement refers to an agency it includes reference to any agency that may be substituted therefore.
- 2. Payment of Purchase Price and Closing Date**
- 2.1 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 10.3 of this Agreement and upon the terms and conditions set out in this Agreement. The Purchase Price shall be paid in the following manner:

- (a) A deposit in the amount of **DOLLARS (\$**), payable to the City by cheque or electronic funds transfer, to 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 the Agreement 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; and
- (b) The balance of the Purchase Price in the amount of **DOLLARS (\$**), payable to the City by cheque or electronic funds transfer, to be delivered to the City on or before 12:00 noon on , or such other date as the Parties may mutually agree to in writing, subject to article 5 of this Agreement (the “**Closing Date**”).
- 2.2 **TWO THOUSAND DOLLARS (\$2,000) of the Deposit and all interest earned on the Deposit shall immediately become non-refundable and the property of the City, upon approval by the City of the sale of the Property as outlined in subsection 3.1(a) (the “Administrative Fee”).**
- 2.3 For greater certainty the Parties acknowledge that notwithstanding any other provision of this Agreement, the Purchase Price is exclusive of GST. The Purchaser shall be responsible for paying any GST in relation to this transaction, as more fully set out in article 12.

3. Conditions Precedent

- 3.1 This Agreement is expressly subject to and conditional upon:
- (a) the approval of Council at a public meeting of the sale of the Property to the Purchaser on the general terms and conditions set out in this Agreement, at Council’s absolute discretion, on or before . This condition is for the sole benefit of the City;
- [or, * The City approving the sale of the Property to the Purchaser on the general terms and conditions set out in this Contract in accordance with the MGA, on or before . This condition is for the sole benefit of the City;]**
- (b) the Purchaser, at its expense, submitting plans for the Purchaser’s Development and obtaining the Development Permit, at the absolute discretion of the Development Authority, on terms and conditions satisfactory to the Purchaser and the City, acting reasonably, on or before . This condition is for the mutual benefit of the Purchaser and the City;
- (c) the Purchaser, at its expense, arranging sufficient financing to be in place for the completion of construction of the Approved Development, satisfactory to the Purchaser, at its absolute discretion, on or before . This condition is for the sole benefit of the Purchaser;
- (d) the Purchaser, at its expense, providing documentation to the City evidencing that the Purchaser has sufficient financing in place for the completion of construction of the Approved Development, satisfactory to

- the City, at its absolute discretion, on or before . This condition is for the sole benefit of the City;
- (e) the Purchaser, at its expense, completing any environmental or geotechnical assessments, testing or analysis in relation to the Property with results satisfactory to the Purchaser, acting reasonably, on or before . This condition is for the sole benefit of the Purchaser; and
- (f) the Purchaser, at its expense, completing a review of the title to the Property with results satisfactory to the Purchaser, acting reasonably, on or before . This condition is for the sole benefit of the Purchaser.
- 3.2 A Party having the benefit of a condition set forth in section 3.1 may waive, or confirm satisfied, in either case at such Party's absolute discretion, the condition by notice in writing to the other Party on or before the time by which the condition is to be satisfied or waived. If such written notice does not occur, this Agreement for the purchase of the Property shall terminate, in accordance with section 3.4, upon expiry of the time by which such condition is to be satisfied or waived.
- 3.3 If, prior to the time by which a condition is to be satisfied or waived, a Party having the benefit of a condition set forth in section 3.1 provides written notice the other Party that the condition will not be waived or satisfied, this Agreement for the purchase of the Property shall terminate, in accordance with section 3.4, upon such notice.
- 3.4 If the conditions precedent set out in section 3.1 are not waived or confirmed satisfied by the dates set out therein (or such other dates as the Purchaser and City may mutually agree to in writing subject to article 5), this Agreement for the purchase of the Property shall terminate (except for the Purchaser's obligations contained in article 9) **and the Deposit will be returned to the Purchaser less the Administrative Fee**, if applicable. Upon receipt of such sums by the Purchaser, all rights and obligations of the City and the Purchaser pursuant to this Agreement (except for the Purchaser's obligations contained in article 9) will cease and will be of no further force or effect and this Agreement shall terminate without any legal proceedings being taken or other act being performed by the City, and the Property shall revert to and re-vest 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 or that was registered against the Property by a person claiming by, through, from, or under the Purchaser.
- 3.5 If after the satisfaction or waiver of the conditions precedent set out in section 3.1 the Purchaser fails to complete the purchase of the Property in accordance with the terms and conditions of this Agreement, otherwise than as a result of the City's default, the Deposit, plus any and all interest earned thereon, will be immediately forfeited to and retained by 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 immediately terminate without any legal proceedings being taken or other act being performed by the City, and the Property shall revert to and re-vest 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.

4. Paramountcy of Municipal Discretion

4.1 It is understood and agreed by the Parties that nothing contained in this Agreement 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 with respect to the approval of the sale of the Property, the issuance of a development permit in relation to the Property or any terms and conditions set out in this Agreement.

4.2 It is understood and agreed by the parties that nothing contained in this Agreement will be interpreted or deemed to fetter or limit the duties, rights or responsibilities that the City may have as a Municipal Corporation in the Province of Alberta.

5. Extension of Deadlines

5.1 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 from the other Party, either Party may, at its absolute discretion, agree to grant an Extension, but neither Party shall be obligated to grant any Extension or Extensions whatsoever.

5.2 Any request for an Extension by the Purchaser shall be in writing and received by the City prior to the expiry date of the applicable deadline(s), or such other date as may be approved in writing by the City. The City reserves the right to refuse any Extension requested by the Purchaser and nothing in this article 5 limits or affects any rights or remedies of the City set out in this Agreement or at law or in equity. Any Extension granted by the City shall only be binding if:

- (a) delivered in writing to the Purchaser; and
- (b) the Purchaser pays the City the Extension Fee prior to the Extension taking effect, unless otherwise agreed to in writing by the City.

5.3 Any and all Extension Fees paid to the City 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.

6. Possession, Adjustments and Interest

6.1 Subject to the Purchaser complying with the terms and conditions of this Agreement including without limitation, payment of the Purchase Price and any interest and Extension Fees payable to the City, vacant possession of the Property shall be available to the Purchaser on the Closing Date.

6.2 All outgoings, including 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 Applicable Law, Governmental 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.

6.3 The balance of the Purchase Price owing to the City shall be paid to the City or the City's agent on or before the Closing Date. If the City agrees to accept monies after the Closing Date, the Purchaser shall pay interest at the rate of ten percent (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.

7. Utility Services and Other Municipal Improvements and Infrastructure

7.1 Gas, electric, water and sanitary sewer utility services for the Property will be available from the Nearest Point of Service.

7.2 The Purchaser shall be solely responsible for paying any and all costs, charges, levies, payments and other amounts whatsoever associated with providing Municipal Services and Infrastructure in relation to the Property, including 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 Development Authority.

7.3 Without limiting the generality of section 7.2, the Purchaser acknowledges and agrees that:

- (a) 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;
- (b) the Property is considered to be an "infill site" and Municipal Services and Infrastructure in relation to the Property may not meet the City's municipal servicing standards;

- (c) 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, as well as for the payment of all costs associated with all such work and requirements and standards;
 - (d) 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;
 - (e) all proposed vehicular access points to the Property shall be approved by the Development Authority 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, including the Approved Development, shall be at the expense of the Purchaser.
 - (f) the Purchaser is responsible for verifying the size and dimensions of the Property, as well as 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 to the Property.
- 7.4 The Purchaser is responsible for paying any and all off-site levies payable in relation to the Property from time to time.

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

- 8.1 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 as stated in this article 8;
 - (b) except as provided in this article 8, the City does not represent or warrant:
 - (i) the quality, condition or sufficiency of the Property for any use or purpose,
 - (ii) the adequacy of any or all Municipal Services and Infrastructure either to or on the Property, or
 - (iii) the absence or presence of Environmental Contaminants 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 the presence of all

Environmental Contaminants (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 the presence or absence of Environmental Contaminants) and the fitness and suitability of the Property for the Purchaser's intended use.

8.2 For the purposes of section 8.1, the City represents and warrants that, to the actual knowledge of the Manager, the City, its employees and agents have not deposited, placed or brought onto the Property any Environmental Contaminants in contravention of Environmental Laws.

8.3 Without limiting the generality of section 8.1, the Purchaser expressly acknowledges and agrees that:

- (a) the City has provided the Purchaser copies of the following environmental report(s) that review environmental issues with respect to the Property:

- (i) [or N/A]]

(collectively, the "**Environmental Reports**");

- (b) the City does not represent or warrant, expressly or impliedly, the accuracy, fitness, completeness, or usefulness of the Environmental Reports or any portion or portions thereof for any purpose whatsoever. Any reliance the Purchaser chooses to place on the Environmental Reports or any portion or portions thereof shall be entirely at the Purchaser's own risk;
 - (c) the City has provided the Purchaser a full and fair opportunity for inspection of the Property and performance of the Due Diligence Activities, including such environmental, soil, hydrological, groundwater, geotechnical or other tests or assessments as the Purchaser may reasonably desire; and
 - (d) the Purchaser shall make its own independent inspections and investigations of all elements of the Property, including the presence and absence of Environmental Contaminants, or will have knowingly waived its right to do so. The Purchaser shall rely solely on its own independent inspections, investigations, evaluation and assessment of the Property and all matters relating thereto, including the presence of Environmental Contaminants in, on, under, and/or over, the Property.

8.4 The Purchaser shall retain the Environmental Reports and the results of the Due Diligence Activities in strict confidence until such time as Closing has occurred (or if Closing does not occur, for a period of five (5) years following the scheduled Closing Date) and until such time the Purchaser may only disclose the existence or contents of the Environmental Reports and the results of the Due Diligence Activities:

- (a) pursuant to a requirement under Applicable Law and only to the extent required to comply with such Applicable Law as determined by written opinion of Purchaser's legal counsel; and

- (b) to the Purchaser's officers, employees, agents, professional consultants and lenders:
 - (i) who have a need to know for the purpose of evaluating the Property and its suitability for the Purchaser's purposes,
 - (ii) who are made aware that they must be kept confidential according to, and may not be distributed except in accordance with, this Agreement;
 - (iii) have an enforceable legal or fiduciary obligation to keep them confidential; and
 - (iv) have an enforceable legal or fiduciary obligation to return the Environmental Reports and all copies notes and extracts thereof to the Purchaser upon request within five (5) Business Days of the Purchaser making such request.

8.5 If the conditions precedent set out in section 3.1 are not waived or confirmed satisfied in accordance with this Agreement, or for any other reason Closing does not occur, the Purchaser shall immediately return the Environmental Reports and any and all copies, notes and extracts thereof to the City, along with a copy of the results of the Due Diligence Activities.

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

9.1 Upon execution of this Agreement by 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 temporary sign in accordance with section 9.2 and carrying out Due Diligence Activities in accordance with Applicable Law including soil, geotechnical and engineering tests, legal 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 each of the City and its Representatives from and against any and all Losses and Liabilities suffered, sustained, paid, or incurred by any one or more of the City and its Representatives arising out of or in any way connected with the entry upon the Property by the Purchaser or its Representatives including the acts, omissions, negligence or willful misconduct of any one or more of the Purchaser or its Representatives;
- (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 the entry on the Property by the Purchaser or any of its Representatives or by virtue of the exercise of any rights granted to or fulfillment of any obligations imposed on the Purchaser pursuant to this section; 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.
- 9.2 Upon execution of this Agreement by both the City and the Purchaser and satisfaction of the condition precedent set out in subsection 3.1(a), the Purchaser may erect one temporary sign on the Property subject to:
- (a) the prior written approval of the Manager 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 forty-eight (48) hours of receiving any such direction from the Manager.

10. Transfer of the Property and Encumbrances

- 10.1 A Transfer of Land in registrable form will be prepared at the expense of the City and delivered to the Purchaser's lawyer in trust on standard conditions, 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.
- 10.2 Prior to the Purchaser's submission of the Transfer of Land to the Land Titles Office, the Purchaser shall execute a Transfer of Land back (the "**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 14.
- 10.3 The City and Purchaser agree that the purchase and transfer of the Property to the Purchaser shall be expressly subject to:
- (a) any reservations, exceptions, notes, and memoranda stated on the Certificate of Title, non-financial obligations now on title such as easements, utility rights of way, covenants, and conditions normally found registered against property of the Property's nature, including:
 - (i) a utility right-of-way registered against the certificate of title for Property on _____, as registration number _____;
 - (ii) a utility right-of-way registered against the certificate of title for the Property on _____, as registration number _____;

- (b) any other utility rights-of-way, easements or other encumbrances in relation to the Property as may be required by the City for utility services and other municipal improvements and infrastructure or for any municipal purpose; and
- (c) one or more Caveats to be registered by the City pursuant to this Agreement, including caveats relating to a vendor's lien, Transfer of Land back to the City, and the Buy Back Option, as provided for in article 14 (the "**City's Caveats**"). 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 14.1 to the satisfaction of the City, the City agrees to discharge the City's Caveats.

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 and nor will the City become an agent or a trustee of any such Person within sixty (60) days after the Closing Date.
- 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 transaction.
- 12.2 If the Purchaser is a GST registrant, it shall remit any GST payable to the Canada Revenue Agency, 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.
- 12.4 The Purchaser agrees to indemnify and save harmless each of the City and its Representatives against any Losses and Liabilities suffered, sustained, paid, or incurred by any one or more of the City and its Representatives as a result of or relating to the Purchaser's failure to pay 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. Buy Back Option

- 14.1 Notwithstanding any other provision contained in this Agreement, 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, the Purchaser shall Commence Construction, in accordance with the Development Permit and Applicable Law, on or before the date that is eighteen (18) months after the Closing Date.

- 14.2 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 **DOLLARS(\$)** (“**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 a penalty, without prejudice to the City’s right to pursue such other remedies against the Purchaser as the City may have at law or in equity. The Parties each agree that the difference between the original Purchase Price for the Property and the purchase price contained in this Buy Back Option represents a genuine, reasonable, and proportionate pre-estimate of the damages the City is likely to suffer if the City reacquires the Property under the Buy Back Option. The Buy Back Option granted in this Agreement may be exercised by the City, at its sole discretion, upon the Purchaser failing to Commence Construction within the time limit stipulated in section 14.1.

- 14.3 The Buy Back Option granted in this Agreement 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 14.1, 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 Agreement, 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, 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 Agreement;
- (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 14.3(a);

- (c) pursuant to subsection 10.2(b), the Purchaser shall, at its expense, deliver or cause to be delivered the Transfer Back to the City within a reasonable period of time prior to the Buy Back Option Closing Date. If the Transfer Back is not available for any reason, the Purchaser shall execute a fresh Transfer of Land in registrable form and deliver it to City within a reasonable time prior to the Buy Back Option Closing Date;
- (d) the City shall pay to the Purchaser the Buy Back Option purchase price on or before the Buy Back Option Closing Date;
- (e) any adjustments for taxes or outgoings as defined in section 6.2, shall be paid and adjusted at the Buy Back Option Closing Date;
- (f) 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 or that were registered against the title to the Property by a person claiming by, through, from, or under the Purchaser. The City shall take title to the Property subject only to utility rights-of-way and encumbrances registered by the City;
- (g) the Purchaser shall deliver vacant possession of the Property to the City at 12:00 noon on the Buy Back Option Closing Date; and
- (h) time shall in all respects be of the essence in the Buy Back Option.

14.4 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 to be liable for and to indemnify each of the City and its Representatives for all costs and expenses suffered, sustained, paid, or incurred by any one or more of the City and its Representatives 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 each of the City and its Representatives for all costs and expenses suffered, sustained, paid, or incurred by any one or more of the City and its Representatives 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 Agreement.

15. Notices

15.1 Whenever it shall be required or permitted that notice, demand, or other correspondence be given or served by either Party on the other Party, such notice demand, or other correspondence 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 indicated below or by facsimile transmission to the facsimile number indicated below (if any) or by e-mail transmission to the e-mail address indicated below, or to such other address or facsimile number or e-mail address as may be substituted therefor from time to time by proper notice:

Address of City: Manager of Economic Development and Land
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; and if transmitted by e-mail, shall be e-mailed to land_properties@medicinehat.ca.

Address of Purchaser:

and if transmitted by e-mail, shall be e-mailed to .

- 15.2 Any notice, demand, or other 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, demand or other correspondence sent during or within five (5) Business Days prior to or after the postal strike or disruption and any notice or correspondence shall be couriered or hand delivered or sent by facsimile or e-mail during such periods. Any notice, demand, or other correspondence sent by facsimile or e-mail 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.

16. Real Estate Commissions

- 16.1 The Purchaser hereby 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 sale of the Property to the Purchaser by the City. The Purchaser agrees to indemnify and save harmless each of the City and its Representatives from and against all Losses and Liabilities suffered, sustained, paid, or incurred by any one or more of the City and its Representatives relating to Claims for commissions whatsoever which may arise from any act or thing done by the Purchaser in relation to the Purchaser's purchase of the Property from the City.

17. Assignment of Contract by Purchaser

- 17.1 The Purchaser covenants and warrants that it is not purchasing the Property for the purpose of land speculation. Prior to Commence Construction 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 Agreement.

18. Indemnification

- 18.1 Purchaser agrees that it shall be liable to each of the City and its Representatives for, and indemnify, save and hold harmless each of the City and its Representatives from and against, all Losses and Liabilities suffered, sustained, paid, or incurred by any one or more of the City and its Representatives directly or indirectly resulting from any matter or thing pertaining to any Environmental Liabilities however, whenever and by whomever caused and Purchaser shall assume, perform, pay and discharge all Environmental Liabilities. Purchaser hereby releases the City and its Representatives from any Claim and waives any rights or remedies that the Purchaser may now or in the future have against any one or more of the City and its Representatives with respect to Environmental Liabilities, whether such Claims, rights and remedies are pursuant to common law or statute or otherwise, including the right to name the City or any of its Representatives as a third party to any action commenced against the Purchaser. The Purchaser's indemnity, release, and waiver under this section shall survive this Agreement indefinitely.
- 18.2 Without limiting the forgoing, the Purchaser agrees that it shall be liable to each of the City and its Representatives for, and indemnify, save and hold harmless each of the City and its Representatives from and against, all Losses and Liabilities suffered, sustained, paid, or incurred by any one or more of the City and its Representatives pertaining to the Property or operations on or in respect of the Property which occur or accrue on or after the earlier of the date that the Purchaser first occupies the Property and Closing, except to the extent that any such Losses and Liabilities are caused by the gross negligence or willful misconduct of the City or its Representatives. Purchaser's indemnity under this section shall survive this Agreement indefinitely.

19. Limit on City's Responsibilities

- 19.1 In the absence of fraud, no Claim against the City in respect of a breach of a representation and/or warranty shall be made or be enforceable, whether by legal proceedings or otherwise, unless notice describing such Claim in reasonable detail is given by the Purchaser to the City within one (1) year of the Closing Date.
- 19.2 Without limiting section 19.1, the City's total liabilities to the Purchaser under this Agreement, including for any Claims relating to the City's representations and warranties, will not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) except in the event of fraud on the part of the City.

20. Notice of Claims

- 20.1 If, after the Closing Date, a Claim is asserted in circumstances which do or may give rise to an obligation of the Purchaser to indemnify the City under this Agreement, the City shall give notice thereof to the Purchaser as soon as is reasonably practicable, and the Parties shall consult and cooperate in respect thereof and in determining whether the Claim and any legal proceedings related thereto should be resisted, compromised or settled. Each Party shall make commercially reasonable efforts to make available to the other all information in its

possession or to which it has access which is or may be relevant to the particular Claim excluding any privileged or confidential information, communications or correspondence. Purchaser shall provide the City with access to the Property to the extent reasonably necessary in connection with the Claim. No such Claim shall be settled or compromised without the written consent of the Purchaser, which consent shall not be unreasonably withheld, delayed, or conditioned.

21. Remedies Cumulative

21.1 No reference to or exercise of any specific right or remedy under this Agreement by a Party shall prejudice or preclude such Party from exercising or invoking any other remedy in respect of the matter giving rise to such rights or remedies, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy shall be exclusive of or dependent upon any other such remedy but each Party may exercise any one or more of such remedies independently or in combination.

22. General

22.1 The Parties each agree to act cooperatively, reasonably and in good faith and to perform, execute, acknowledge, and deliver or cause to be performed, executed, acknowledged, and delivered all such further and other acts, instruments, and assurances as may reasonably be required by the other Party for the carrying out or performing of the provisions of this Agreement and the consummation of the transaction contemplated hereunder.

22.2 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.

22.3 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.

22.4 Waiver by the City of the strict performance of any condition, covenant or agreement contained in this Agreement 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. No waiver by the City shall take effect or be binding upon the City unless the waiver is expressed in writing. The invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions.

22.5 This Agreement constitutes the entire agreement between the Parties and no representations, warranties or promises have been made as between the Parties save where contained in this Agreement.

22.6 The recitals set out at the beginning of this Agreement and the attached Schedules form part of this Agreement.

22.7 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).

22.8 This Agreement may be executed in counterpart and by facsimile or electronic PDF delivered by electronic mail. When a counterpart has been executed by each of the Parties, all counterparts together shall constitute one agreement.

The City has executed this Agreement on the ___ of _____, 2019.

The Purchaser has executed this Agreement on the ___ of _____, 2019.

CITY OF MEDICINE HAT

MAYOR:

Per: _____

Name/Title: _____

CITY CLERK:

Witness: _____

Per: _____

Name/Title: _____

Witness: _____

(affix corporate seal OR sign in front of a witness and complete attached affidavits in front of a Commissioner for Oaths)

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

CANADA)
PROVINCE OF ALBERTA)
TO WIT)

I, _____, of the City of Medicine Hat, in the Province of Alberta MAKE OATH AND SAY:

- 1. **THAT** I am an officer or director of _____ named in the within or annexed instrument.
- 2. **THAT** I am authorized by the corporation to execute the instrument without affixing a corporate seal.

SWORN before me at the City of Medicine Hat,)
in the Province of Alberta, this ____ day of)
_____, 2019.)

_____)
A COMMISSIONER FOR OATHS in and for the)
Province of Alberta)

(signing officer signature)

AFFIDAVIT OF ATTESTATION OF AN INSTRUMENT

CANADA)
PROVINCE OF ALBERTA)
TO WIT)

I, _____, of the City of Medicine Hat, in the Province of Alberta MAKE OATH AND SAY:

- 1. **THAT** I was personally present and did see _____ named in the within Instrument, who is personally known to me to be the person named in the therein, duly sign and execute the same for the purpose named therein.
- 2. **THAT** the instrument was signed at the City of Medicine Hat, in the Province of Alberta, and that I am the subscribing witness thereto.
- 3. **THAT** I believe the person whose signature I witnessed is in my belief of the full age of eighteen years.

SWORN before me at the City of Medicine Hat,)
in the Province of Alberta, this ____ day of)
_____, 2019.)

_____)
A COMMISSIONER FOR OATHS in and for)
the Province of Alberta)

(witness signature)