



# TOWN POLICY

## COUNCIL POLICY: Policy for Land Sale

**POLICY NUMBER: L-10-2**

**RESOLUTION NUMBER:** 2020-04

**ADOPTED:** January 14, 2020

**REFERENCE:**

**SUPERSEDES:** L-10-1

**PREPARED BY:** Development Officer

**DATE:** January 13, 2020

**UP FOR REVIEW:** January 13, 2025

### Policy Statement:

This policy applies to all land owned by the Town of Cardston

### The purpose of this policy is to:

Define the regulations for sale of Town owned land.

## Definitions

- 1) For the purposes of this policy, the following terms shall be defined generally as follows:
  - a) *Sale Agreement:* An agreement between the Town and the purchaser outlining the financial details, transfer details and obligations, and other items such as closing dates, warranties and other relevant information requisite to meet the legal requirements of the sale and transfer of land.
  - b) *Construction:* The improvement to the property that is agreed upon by Council.
  - c) *Development Agreement:* An agreement pertaining to the development of the parcel of land, which as stated within this policy deals with conditions such as provision of services & utilities including roads and sidewalks, and who is responsible for the costs associated with development of the above mentioned infrastructure. The development agreement can also deal with required time deadlines for building improvements on the property and any required security deposits.

## Residential Lots

- 2) The Sale Agreement is non-transferable. If the development conditions of the lot sale agreement are not complied with within 60 days of notice of breach of the sale agreement, the Town—at its option—may require:





# TOWN POLICY

**TITLE: Policy for Land Sale**

**POLICY NUMBER: L-10-2**

- a) The purchaser to return ownership of land to the Town of Cardston, free of all encumbrances; in which case the Town of Cardston will refund the purchase price of the land minus 10%; or,
  - b) The purchaser to pay the Town of Cardston an annual fee of \$3000.00 until the land is brought into compliance with the development conditions of the lot sale agreement. If construction on the land has commenced but is not completed in accordance with the development conditions of the lot sale agreement, the annual fee shall be \$10,000.00.
- 3) All agreements for sale of non-serviced or partially serviced lots must be accompanied by a Development Agreement which shall include, but not be limited to, details regarding the provision of services (including roads and sidewalks) and responsibility of costs. The Development Agreement shall be registered by way of Caveat on the title until such time as all conditions of the Development Agreement have been met.
  - 4) The purchaser must commence construction within one (1) year of the acquisition of the land. Construction must be completed within two (2) years of acquisition of the land. Construction will be deemed to be complete when all interior and exterior finishes are complete and the lot is leveled to finish grade.
  - 5) The purchaser is responsible to meet all zoning requirements and pay the necessary permits.
  - 6) All regular off site costs, electrical, sanitary sewer, storm sewer and water servicing costs shall apply as per current policy and/or Bylaw.
  - 7) In the case of pavement or sidewalk repair due to construction, the purchaser shall reimburse the Town for the Town's cost to replace the pavement or sidewalk.
  - 8) Terms of Town owned lot sales are:
    - a) A non-refundable deposit equal to \$1,000.00 or, where the purchase price exceeds \$100,000.00, 5% of the purchase price (which will be applied to the final purchase price).
    - b) Balance of payment is due within 90 days.
  - 9) An individual or company may purchase only one (1) lot at a time (unless approved by resolution of Council). At such time as construction has commenced on the lot, a second lot may be purchased.

## Commercial & Industrial Lots

- 10) The Sale Agreement is non-transferable. If the development conditions of the lot sale agreement are not complied with, and are not remedied within 60 days of notice of breach of the sale agreement, the Town—at its option—may require:
  - a) The purchaser to return ownership to the Town of Cardston, free of all encumbrances, in which case the Town of Cardston will refund the purchase price of the land minus 5%; or,
  - b) The purchaser to pay the Town of Cardston an annual fee of \$5,000.00 until the land is brought into compliance with the development conditions of the lot sale policy. If construction on the land has commenced but is not completed in accordance with the development conditions of the lot sales policy, the annual fee shall be \$10,000.00.
- 11) All agreements for sale of non-serviced or partially serviced lots must be accompanied by a Development Agreement which shall include, but not be limited to, details regarding the provision of services (including roads and sidewalks) and responsibility of costs. The Development Agreement shall be registered by way of Caveat on the title until such time as all conditions of the agreement have been met.





# TOWN POLICY

Page 3 of 4

**TITLE: Policy for Land Sale**

**POLICY NUMBER: L-10-2**

- 12)** The purchaser must commence construction and complete construction according to a time line that is approved by the Town Council.
- 13)** The purchaser is responsible to meet all zoning requirements and pay the necessary permits and fees.
- 14)** All regular off site costs, electrical, sanitary sewer, storm sewer and water servicing costs shall apply as per current policy and/or Bylaw.
- 15)** In the case of pavement or sidewalk repair due to construction, the purchaser shall reimburse the Town for the Town's cost to replace the pavement or sidewalk.
- 16)** Terms of Town owned land sales are:
  - a)** A non-refundable deposit equal to 10% of the purchase price (applied to the final purchase price).
  - b)** Balance of payment is due within 90 days.

## Raw Land

- 17)** All sales of Raw Land must be approved by Town Council prior to any agreement being entered into.
- 18)** All sale agreements must have a development time line that is approved by the Town Council.
- 19)** The sale agreement is non-transferable. If the development conditions of the lot sale agreement are not complied with, and are not remedied within 60 days of notice of breach of the agreement, the Town—at its option—may require:
  - a)** The purchaser to return ownership of the land to the Town of Cardston, free of all encumbrances, in which case the Town of Cardston will refund the purchase price of the land minus 5%; or,
  - b)** The purchaser to pay the Town of Cardston an annual fee of \$5,000.00 until the land is brought into compliance with the development condition of the lot sale agreement. If construction on the land has commenced but is not completed in accordance with the development condition of the lot sale agreement, the annual fee shall be \$10,000.00.
- 20)** All agreements for sale of non-serviced or partially serviced land must be accompanied by a Development Agreement which shall include, but not be limited to, details regarding the provision of services (including roads and sidewalks) and responsibility of costs. The Development Agreement shall be registered by way of Caveat on the title until such time as all conditions of the agreement have been met.
- 21)** The purchaser is responsible to meet all zoning requirements and pay the necessary permits and fees.
- 22)** All regular off-site costs, electrical, sanitary sewer, storm sewer and water servicing costs shall apply as per current policy and/or Bylaw.
- 23)** Terms of Town owned land sales are:
  - a)** A non-refundable deposit equal to 10% of the purchase price (applied to the final purchase price).
  - b)** Balance of payment is due within 90 days.





# TOWN POLICY

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## **Non-Refundable Deposit**

- 24) All transactions shall follow current policy with the deposit and balance payable according to the terms of the signed agreements for sale. The Town will not refund deposits placed on lots if the buyer does not complete the terms of the signed sale agreement.

## **Property Trade (Residential)**

- 25) If an owner wishes to trade one residential lot for another of equal value prior to the closing of the transaction, the Town may, in its sole discretion, agree to do so subject to a \$200 transaction fee paid by the owner prior to completing the transfer

## **Infrastructure Constructed by Developer**

- 26) If the developer is constructing any infrastructure that the Town will be taking over, the requirement for a security deposit will be added to the Development Agreement. The amount of the security deposit will be based on the cost of the infrastructure that is being constructed by the developer.



## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT has been entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BETWEEN:

**TOWN OF CARDSTON**  
(the "Vendor")

- and -

\_\_\_\_\_  
(the "Purchaser")

WHEREAS:

- A. The Vendor is the registered and beneficial owner of certain lands located in the Town of Cardston, Alberta, municipally described as \_\_\_\_\_ and legally described as:  
[insert legal description]  
(hereinafter the "Lands");
- B. The Purchaser wishes to purchase and the Vendor wishes to sell the Property for a \_\_\_\_\_ development.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both of the parties hereto, and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows:

### 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

- (a) "**Agreement**" means this agreement, including the recitals and all Schedules to this agreement, as amended or supplemented from time to time in writing, and "hereby", "hereof", "herein", "hereunder", "herewith" and similar terms refer to this Agreement and not to any particular provision of this Agreement;
- (b) "**Business Day**" means a day other than Saturday, Sunday, a statutory or a municipal holiday in the Town of Cardston;
- (c) "**Closing Date**" means the date 90 days after the Execution Date;
- (d) "**Development**" shall have the meaning ascribed thereto in Section 3(a) of this Agreement;
- (e) "**Execution Date**" means the date first written above;
- (f) "**Force Majeure**" means any delay, failure, preventment, or postponement, in the performance of any term, covenant or act required by this Agreement by reason of any cause beyond the control of the party affected including, without limitation, strikes, lockouts or other labour disputes, the enactment, amendment or repeal of any applicable laws, shortages or unavailability of labour or materials, riots, insurrection, sabotage, rebellion, war, acts of terrorism, act of God, health emergency, or any other similar situation, provided always that it shall not include any delay caused by the parties' default or act or omission, any delay avoidable by the exercise of reasonable care by such party or any delay caused by lack of funds of such party;

- (g) “**Lands**” shall have the meaning ascribed thereto in Recital A of this Agreement;
- (h) “**Option to Reacquire**” has the meaning ascribed thereto in Section 3(c) of this Agreement;
- (i) “**Permitted Encumbrances**” shall have the meaning ascribed thereto in Schedule A;
- (j) “**Purchaser’s Solicitor**” shall mean \_\_\_\_\_, Attention: \_\_\_\_\_, Phone: \_\_\_\_\_, E-mail: \_\_\_\_\_;
- (k) “**Vendor’s Deliveries**” shall have the meaning ascribed thereto in Section 7 of this Agreement; and
- (l) “**Vendor’s Solicitor**” shall mean \_\_\_\_\_, Attention: \_\_\_\_\_, Phone: \_\_\_\_\_, E-mail: \_\_\_\_\_.

## 2. PURCHASE OF PROPERTY

- (a) The Purchaser agrees to purchase, and the Vendor agrees to sell, the Lands to the Purchaser free and clear of all liens, charges and encumbrances except the Permitted Encumbrances on the terms and conditions hereinafter set out.
- (b) The Purchase Price for the Property shall be \_\_\_\_\_ (the “**Purchase Price**”), subject to adjustments hereinafter set forth plus applicable GST. The Purchase Price plus GST is payable as calculated in accordance with the terms and conditions as further set forth herein, subject to adjustment as further set forth herein, payable by way of solicitor’s trust cheque, or mortgage proceeds to the Vendor’s Solicitor, as of the Closing Date.
- (c) The Purchaser shall pay to the Vendor, concurrent with the execution of this Agreement a non-refundable deposit of \$ \_\_\_\_\_, which shall be applied in full against the Purchase Price.

## 3. BUILDING COMMITMENT

- (a) The Purchaser agrees that as inducement to the Vendor to sell the Lands to the Purchaser, the Purchaser will complete the construction of \_\_\_\_\_ (the “**Development**”) in compliance with applicable regulations as set out in the Town of Cardston Land Use Bylaw and any development permit issued for the Lands. The Purchaser will comply with the following timelines:
 

[Change if council makes different terms]

  - (i) As long as it does not cause a breach of any conditions or requirements set out in a development or other permits, the Purchaser shall commence the Development (“commence” means at least excavation for the purpose of constructing site services) within one (1) year of the Closing Date; and
  - (ii) The Purchaser shall work diligently to complete the Development as soon as reasonably possible and, in any event, shall complete the Development within two (2) years of the Closing Date.
- (b) The Purchaser covenants and agrees to execute and deliver to the Vendor, on or before the Closing Date, a Development Agreement addressing the Purchaser’s obligations with respect to the construction and installation of municipal infrastructure and servicing required to serve the Development, in a form acceptable to the Vendor, and the Vendor will be entitled to register the Development Agreement at the Land Titles Office.
- (c) The Purchaser grants to the Vendor an option to reacquire the Lands pursuant to the terms of

an Option to Reacquire Agreement substantially in the form set forth in Schedule "B" attached to this Agreement (the "**Option to Reacquire**") as security for performance of the Vendor's obligations set out in Section 3(a) of this Agreement. The Purchaser covenants and agrees to execute and deliver to the Vendor, on or before the Closing Date, the Option to Reacquire and the Vendor will be entitled to register the Option to Reacquire at the Land Titles Office.

[Change % for Residential, Commercial or Raw land rate]

- (d) If the option set out in the Option to Reacquire is exercised, the purchase price payable by the Vendor for the Property shall be the Purchase Price paid by the Purchaser to acquire the Property from the Vendor less 10%.
- (e) For certainty, the option set out in the Option to Reacquire Agreement is to only be exercised by the Vendor once:
  - (i) The Purchaser has defaulted in the performance of one or more of its obligations under Section 3(a) of this Agreement and has failed to remedy such default 60 days after receiving written Notice of such default from the Vendor.
- (f) For further certainty, the Vendor's right to exercise the Option to Reacquire will expire on the date that is ten (10) years from the Closing Date and the Vendor shall remove, or cause to be removed, any registration of the Option to Reacquire from title to the Lands.

[Use one of these paragraphs depending on the developer and type of development.]

- (g) *As security for the performance of the Purchaser's obligations under Section 3(a) of this Agreement, the Purchaser shall pay \$30,000.00 (the "Performance Security") to the Vendor upon the execution of this Agreement. If the Purchaser has defaulted in the performance of one or more of the Purchaser's obligations under Section 3(a) of this Agreement and has failed to remedy such default 60 days after receiving written Notice of such default from the Vendor and the option set out in the Option to Reacquire is not exercised under s. 3(c) of this Agreement by the Vendor, the Vendor shall be entitled to deduct from the Performance Security an annual fee of \$3,000.00 for each year the default continues (the "Delay Fee") for the Vendor's own use, absolutely. Upon the completion of the Purchaser's obligations under Section 3(a) of this Agreement, the Vendors shall return to the Purchaser the balance of the Performance Security remaining.*
- (h) *If the Purchaser has defaulted in the performance of one or more of the Purchaser's obligations under Section 3(a) of this Agreement and has failed to remedy such default 60 days after receiving written Notice of such default from the Vendor and the option set out in the Option to Reacquire is not exercised under s. 3(c) of this Agreement by the Vendor, the Purchaser shall be required to pay the Vendor an annual fee of \$3,000.00 for each year the default continues, which amount shall be due and payable to the Vendor on the first day of each year (the "Delay Fee"). Notwithstanding the foregoing, the Delay Fee shall be \$10,000.00 for each year the default continues if the Purchaser has commenced construction of the Development. The Delay Fee shall be a debt due and owing to the Vendor and shall be a charge and encumbrance against the Lands and the Purchaser does hereby mortgage, charge and encumber the Lands as security for the payment of the Delay Fee, and further, the Vendor shall be entitled to recover the Delay Fee by enforcing the charge and encumbrance against the Lands.*

#### 4. ADJUSTMENTS

- (a) The Vendor will be responsible for and shall pay all municipal property and local improvement taxes, rates, utilities, levies and other charges accrued against the Lands up to the Closing Date and the Purchaser shall be responsible for and shall pay same accruing after the

Closing Date.

- (b) The Purchase Price shall be adjusted on the Closing Date for the following:
  - (i) municipal property and local improvement taxes, rates and levies; and
  - (ii) all other usual adjustments relating to a property of this type.
- (c) The Purchaser and Vendor shall enter into a mutual undertaking to readjust for errors and omissions within one (1) year of the Closing Date.

## **5. LATE CLOSING**

- (a) Provided the Vendor's Deliveries have been delivered in their entirety to the Purchaser in accordance with paragraph 7 herein and in the event that the Purchaser does not pay all of the Purchase Price to the Vendor on or before the Closing Date, then the Vendor may, but is not obligated to, accept late payment; provided, if the Vendor so agrees, the Purchaser shall also pay interest to the Vendor equal to the prime rate of the Royal Bank of Canada plus three (3%) percent, on a per diem basis until the entire balance of the Purchase Price with interest is unconditionally paid and released to the Vendor. Payment received after noon on any day will be payment as of the next Business Day.
- (b) Notwithstanding the foregoing, no interest shall be payable by the Purchaser to the Vendor until delivery of the Vendor's Deliveries as aforesaid and if any part of the Purchase Price is paid by the proceeds of a new mortgage to be arranged by the Purchaser, then payment of such part may be delayed by the time reasonably necessary, from the date of delivery, for registration of the mortgage in the applicable Land Titles Office and for the registration to be subsequently reported to the mortgagee and the proceeds advanced to the Purchaser or their solicitor and such part shall bear interest during this time to the Vendor at the same rate as under the mortgage.

## **6. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- (a) The following representations, warranties and covenants of this Agreement shall not be discharged by or merged on the Closing Date, but shall survive the same for one (1) year as warranties and representations between the Vendor and the Purchaser.
- (b) The Vendor warrants and represents and covenants that as of the Closing Date:
  - (i) it is the legal, beneficial and registered owner of the Lands with good and marketable title thereto, free and clear of all mortgages liens, and all encumbrances and interests of a non-financial nature, except those encumbrances defined herein as Permitted Encumbrances and has good right, full power and absolute authority to transfer title to the Lands to the Purchaser;
  - (ii) it is not now (nor will be on the Closing Date) a non-resident of Canada within the meaning of the Income Tax Act (Canada);
  - (iii) it is not the agent or trustee for anyone with an interest in the Lands who is (or will be on the Closing Date) a non-resident of Canada within the meaning of the Income Tax Act (Canada);
  - (iv) it has not received any notice and is not aware of any expropriation or proposed expropriation of the Lands or any part thereof;
  - (v) all municipal, school and other taxes and assessments, general and special, affecting



the Lands shall have been fully paid to the appropriate taxing authorities up to and including the Closing Date;

- (vi) no person other than the Purchaser will have, as of the Closing Date, any right of first refusal, option or other right to purchase the Lands;
  - (vii) all necessary corporate action, approvals and authorizations have been taken or given to authorize the execution and delivery of this Agreement and the performance of the obligations hereunder by the Vendor;
  - (viii) this Agreement has been validly executed and delivered by the Vendor and is a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms, subject to the limitations with respect to enforcement imposed by applicable laws in connection with bankruptcy, insolvency, liquidation, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available at the discretion of the court from which they are sought;
  - (ix) neither the entering into nor delivery of this Agreement nor the completion by the Vendor of the transactions contemplated by this Agreement will conflict with, constitute a default under, or result in a violation of any of the provisions of a governing document or by-law of the Vendor, any other applicable laws or any contracts or agreements to which the Vendor is a party;
  - (x) neither the execution of this Agreement, or the sale of the Lands nor the performance by the Vendor of its obligations under this Agreement will result in a breach by the Vendor of any term or provision or constitute a default under any indenture, mortgage, deed of trust or any other agreement to which it is bound;
  - (xi) To the best of the Vendor's knowledge there are no ongoing or potential claims, actions, prosecutions, charges, hearings or other proceedings of any kind in any court or tribunal by or against the Vendor that could have an impact on the Lands or the transactions contemplated in this Agreement;
  - (xii) To the best of the Vendor's knowledge, no order, direction, claim, demand, notice or other communication from a government authority or other person related to compliance with environmental laws has been issued to the Vendor with respect to the Lands that has not been complied with.
- (c) The Purchaser acknowledges and agrees that it is purchasing the Property in an "as is where is" physical and environmental condition and that, other than as may be specifically set out herein, the Vendor does not make any representations or warranties to the Purchaser with respect to the physical or environmental condition of the Property.
- (d) The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the Closing Date:
- (i) it is validly registered as a registrant under the Excise Tax Act for the purposes of the goods and services tax;
  - (ii) this Agreement has been validly executed and delivered by the Purchaser and is a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to the limitations with respect to enforcement imposed by applicable laws in connection with bankruptcy, insolvency, liquidation, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction which

are only available at the discretion of the court from which they are sought;

- (iii) it is not insolvent within the meaning of the *Bankruptcy and Insolvency Act* or the *Winding Up and Restructuring Act*; it has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof; has not had any petition for a receiving order presented in respect of it; and has not initiated proceedings with respect to compromise or arrangement with its creditors or for its winding up, liquidation or dissolution;
- (iv) no approval or consent of any governmental authority is required in connection with the execution and delivery of this Agreement by the Purchaser and the consummation of the transactions contemplated by this Agreement by the Purchaser;
- (v) neither the entering into, nor delivery of this Agreement, nor the completion by the Purchaser of the transactions contemplated by this Agreement will conflict with, constitute a default under, or result in a violation of any of the provisions of the constating documents or by-laws of the Purchaser, any other applicable laws or any contracts or agreements to which the Purchaser is a party to; and
- (vi) all necessary corporate action, approvals, and authorizations have been taken or given to authorize the execution and delivery of this Agreement and the performance of the obligations hereunder by the Purchaser.

[if individual replace yellow with the following]

- (i) The Purchaser represents and warrants to the Vendor that it has not been introduced to the Lands by any real estate agent and that no real estate agent fees or similar fees are applicable, and indemnifies the Vendor regarding the payment of any real estate agency or similar fees in regards hereto.
- (ii) The Purchaser represents and warrants to the Vendor that the Purchaser is not prohibited by any law of Canada or the Province of Alberta from acquiring the Lands.

## 7. CLOSING DOCUMENTATION

The closing of the purchase and sale as contemplated herein shall be completed as of 12:00 p.m. Mountain Standard Time on the Closing Date, or such other time and date as the parties hereto may mutually agree.

- (a) At least ten (10) Business Days before the Closing Date, the Vendor's Solicitor shall deliver to the Purchaser's Solicitor, on reasonable trust conditions:
  - (i) a duly executed registrable Transfer of Land conveying the Lands to the Purchaser free and clear of all liens, charges and encumbrances of a nonfinancial nature whatsoever, save and except for the Permitted Encumbrances;
  - (ii) a Statement of Adjustments;
  - (iii) a duly executed Option to Reacquire (in the form set out in Schedule "B");
  - (iv) a duly executed Development Agreement, in a form acceptable to the Vendor (Schedule "C"); and

- (v) such other documents as the Purchaser or its solicitors may reasonably require to give effect to the intent of this Agreement;

(collectively, the "**Vendor's Deliveries**").

The Purchaser shall be responsible for any and all costs incurred by the Vendor associated with the registration of the Transfer of Land.

- (b) On or before the Closing Date, or as otherwise stated in this section, the Purchaser's Solicitor shall deliver to the Vendor's Solicitor, in trust:

[Remove if individual]

- (i) a certificate of the Purchaser executed by a senior officer of the Purchaser confirming that the Purchaser is a registrant for GST purposes under the Excise Tax Act as at the Closing Date, and setting out the registration number of the Purchaser for GST purposes, which if correct shall be conclusive of such GST registration and shall preclude the Vendor from collection of GST on Closing;
- (ii) certified copy of a director's resolution of the Purchaser confirming the authority of the Purchaser to enter into this Agreement and any ancillary documents and being bound to complete the transactions and matters contemplated herein, upon the terms and conditions as set forth herein;
- (iii) the Purchase Price, subject to adjustment as set forth herein, by way of solicitor's trust cheque, mortgage proceeds, bank draft or certified cheque;
- (iv) a duly executed Option to Reacquire (in the form set out in Schedule "B");
- (v) a duly executed Development Agreement, in a form acceptable to the Vendor (Schedule "C"); and
- (vi) such other documents as the Vendor or its solicitors may reasonably require to give effect to the intent of this Agreement.

All documents shall be in a form and substance satisfactory to the Purchaser and Vendor, each acting reasonably and in good faith, provided that none of the above referenced closing documents shall contain covenants, representations or warranties that are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in the Agreement.

## 8. RISK AND POSSESSION

- (a) Until the Closing Date, the Lands shall be and remain at the risk of the Vendor.
- (b) The Vendor shall deliver vacant possession of the Lands to the Purchaser on the Closing Date.

## 9. NOTICES

- (a) Any notices required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given if (i) made by personal delivery or (ii) sent by fax or (iii) sent by email via a PDF scan, in each case to the applicable address as set out below:

to the Vendor at the following address: Town of Cardston

67 3<sup>rd</sup> Avenue West

P.O. Box 280

Cardston, AB T0K 0K0

and to the Purchaser at the following address:

[purchasers address]

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or e-mailing, provided such day is a Business Day and the fax, e-mail or delivery is sent prior to 5:00 p.m. Mountain Standard Time on such day, otherwise it shall be deemed to have been given or made and to have been received on the next Business Day.

#### **10.ASSIGNMENT**

- (a) The Purchaser may not assign this Agreement without the Vendor's consent. This Agreement shall extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

#### **11.TIME**

- (a) Specific times shall be in accordance with the system of standard or daylight saving time in effect where the Lands are located. If the date for making of any payment hereunder or the date for doing any act shall be a Saturday, Sunday or holiday in the Town of Cardston, such date shall be extended to the first Business Day following such date. Time shall be of the essence of this Agreement.

#### **12.COSTS AND EXPENSES**

- (a) The Purchaser shall bear the costs and expenses incurred pursuant to this Agreement and the transactions contemplated herein, including but not limited to surveying, land titles, subdivision and any legal costs associated with those actions.

#### **13.CONFIDENTIALITY**

- (a) Both the Vendor and the Purchaser agree to keep the nature, terms and conditions of this Agreement confidential, though the Vendor and the Purchaser may inform their respective lenders, accountants, lawyers and other similar professional advisors of the contents of this document as needed to give effect to the transaction contemplated herein.

#### **14.GOODS AND SERVICES TAX**

- (a) It is understood that any Goods and Services Taxes (GST) payable on the Purchase Price of the Lands shall be paid by the Purchaser and collectable by the Vendor and are separate and in addition to the Purchase Price. The Purchaser intends to be a registrant for GST purposes on or before the Closing Date. It is understood by the parties hereto that if the Purchaser is a registrant for GST purposes at the Closing Date, then the Purchaser may deliver to the Vendor a statutory declaration stating the Purchaser's GST registration number and confirming the Purchaser's registration in lieu of making the aforesaid payment of GST.

**15. SEVERABILITY**

- (a) If any covenant, obligation or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such portion of the Agreement shall be severed from the rest, and the remainder of this Agreement or the application of such covenant, obligation or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; however it is expressly agreed by the parties hereto that the Purchaser's obligation to pay the Purchase Price shall not at any time be severed from the Vendor's obligation to transmit title to the Lands, and if either such term is deemed unenforceable, then this Agreement shall be at an end.

**16. ENTIRE AGREEMENT**

- (a) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and, except as otherwise stated herein and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations, warranties and agreements of the respective parties with respect to the subject matter hereof. There are no other verbal representations, undertakings or agreements of any kind between the parties.

**17. GOVERNING LAW**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, and the parties hereto agree to attorn to the exclusive jurisdiction of the courts of the Province of Alberta.

**18. SURVIVAL OF TERMS**

- (a) The terms and provisions of this Agreement shall not merge with but shall survive Closing and shall remain in full force and effect thereafter unless otherwise specifically provided in this Agreement.

**19. EXTENDED MEANINGS**

- (a) Grammatical variations of any terms defined herein have similar meanings to such defined terms; words importing gender include the singular and plural; words importing gender include the feminine, neuter and masculine genders.

**20. LEGAL ADVICE**

- (a) The parties to this Agreement each acknowledge and agree that that they have been given the opportunity to obtain independent legal advice from their legal counsel prior to signing this document, and that if they have not done so, they sign at their own risk.

**21. SCHEDULES**

- (a) The parties hereto agree that the Schedules A, B, and C attached to this Agreement form part of this Agreement.

**22. ACCESS TO LANDS**

- (a) The Purchaser shall have reasonable access to the Lands with the prior consent of the Vendor, from time to time prior to the Closing Date for the purpose of making reasonable inspections, surveys, tests and studies, if it so chooses. The Purchaser agrees to indemnify and save harmless the Vendor from and against any claims, demands, expenses, loss, costs

or charges suffered or incurred by the Vendor arising out of the Purchaser's said access to the Lands prior to the Closing Date.

**23.COUNTERPART AND FACSIMILE EXECUTION**

- (a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original but all of which taken together shall constitute one and the same instrument. An executed copy of this Agreement may be delivered by any party hereto by facsimile, .pdf or other electronic format. In such event, such party shall forthwith deliver to the other parties hereto the original copy of this Agreement executed by such party within a reasonable period of time following execution of the counterpart copy.

**24.FORCE MAJEURE**

- (a) If any party is bona fide delayed, or hindered in or prevented from the performance of any term, covenant or act required by this Agreement by reason of Force Majeure, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

***REMAINDER OF PAGE LEFT BLANK INTENTIONALLY***

Remove prior to signing

IN WITNESS WHEREOF this Agreement has been executed as of the date first written above.

**TOWN OF CARDSTON**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

\_\_\_\_\_  
Per: \_\_\_\_\_





**SCHEDULE B****OPTION TO REACQUIRE**

**THIS AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

**TOWN OF CARDSTON**

a municipal corporation in the Province of Alberta  
(hereinafter together referred to as "**Optionee**")

- and -

\_\_\_\_\_  
a corporation in the Province of Alberta  
(hereinafter referred to as "**Grantor**")

**WHEREAS:**

- A.** The Grantor is entitled, by way of the Purchase and Sale Agreement, dated \_\_\_\_\_, 20\_\_ (the "**Purchase Agreement**"), to become the registered owner of those certain lands in the name of the Optionee indicated on **Schedule "1"**, (the "**Purchase Lands**"); and
- [change if council makes different terms]
- B.** The sale of the Purchase Lands to the Grantor proceeded and closed on the basis that the Grantor would commence development of the Purchase Lands within one (1) year of the Closing Date and complete construction within two (2) years of the Closing Date; and
- C.** The Optionee wishes to acquire an option to reacquire the Purchase Lands from the Grantor, to be exercised only in the event such development does not proceed in accordance with the terms contained in the Purchase Agreement, and the Grantor has agreed to grant to the Optionee an option to purchase the Purchase Lands pursuant to the terms, provisions and conditions set forth herein.

**NOW THEREFORE**, this Agreement witnesses that in consideration of the sum of **One (\$1.00) Dollar** (Canadian) now paid by the Optionee and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby grants to the Optionee the sole and exclusive option irrevocable within the time for exercise provided herein to purchase the Purchase Lands (the "**Option**"), free and clear of all encumbrances except those listed in **Schedule "2"** (the "**Permitted Encumbrances**") on the following terms and conditions:

**1. CONDITIONS PRECEDENT**

- 1.1. The Option shall only be available for exercise if the Purchase Lands are transferred by the Optionee to the Grantor and the Grantor defaults in its obligations to develop the Purchase Lands in accordance with the terms set out in Purchase Agreement.

**2. EXERCISE OF OPTION**

- 2.1. This Option may be exercised by the Optionee giving notice in writing (the "**Option Notice**") delivered by registered mail to the Grantor at the following address:

E-mail :  
Attention:

on or before 11:30 a.m. Mountain Time within three (3) years of the Closing Date as defined in the Purchase Agreement (the "**Option Exercise Date**").

- 2.2. In the event that the Option Notice is not delivered to the Grantor by the Option Exercise Date, this Agreement and everything contained herein shall be at an end and no longer binding on the parties hereto.
- 2.3. Upon the delivery of the Option Notice in the manner set out above, this Agreement and the Option Notice shall become a binding contract of sale and purchase of the Purchase Lands, and such sale and purchase will be completed upon the terms provided in Section 2 herein and in **Schedule "3"** (collectively, the "**Reacquisition Agreement**").

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 3.1. The Grantor makes the following representations and warranties in respect of the Purchase Lands effective as of the date hereof and the Closing Date (as defined in Schedule "3"):
  - (a) The Grantor is a resident of Canada for the purposes of Section 116 of the *Income Tax Act* of Canada;
  - (b) There are no claims, actions, prosecutions, charges, hearings or other proceedings of any kind (collectively, "Proceedings") in any court or tribunal by or against the Grantor;
  - (c) Subject to closing the purchase of the Purchase Lands, the Grantor will have good title to the Purchase Lands, and is ready, willing and able to convey title to the Purchase Lands free and clear from any liens and encumbrances apart from the Permitted Encumbrances, and also free and clear from any charges, claims, or obligations of any party claiming by, through, or under the Grantor; and
  - (d) The Grantor has used no real estate agent in connection with this Option Agreement or the Purchase Agreement for which commissions are or may become payable.

Each of the representations and warranties in this Clause 3.1 will expire one (1) year following the Closing Date (as defined in Schedule "3") unless action is commenced by the Optionee in a court of competent jurisdiction with respect to such representation or warranty.

- 3.2. The Grantor hereby agrees to indemnify and save harmless the Optionee from and against any claims, demands, actions, suits, losses, costs, damages and expenses (including, without limitation, legal fees and disbursements on a solicitor and his or her own client indemnity basis) arising from or relating to the breach of any representation or warranty set forth in Clause 3.1, except where such breach or non-compliance is the result of the act or omission of the Optionee.
- 3.3. The Optionee acknowledges and agrees that it is purchasing the Purchase Lands in an "as is where is" physical and environmental condition and that, other than as may be specifically set out herein, the Grantor does not make any representations or warranties to the Optionee with respect to the physical or environmental condition of the Purchase Lands.

**4. MISCELLANEOUS PROVISIONS**

- 4.1. The Grantor and the Optionee shall execute all further deeds, documents and assurances and will do all further things as may be reasonably required for the purpose of carrying out this agreement according to its true meaning and intent.
- 4.2. The Optionee shall have the right to assign any of its rights and obligations under this Agreement.
- 4.3. Time shall be of the essence.
- 4.4. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta. This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 4.5. Except as may be required to perform the terms of this Agreement and the Purchase Agreement or as may otherwise be required by law, the Grantor agrees to maintain the terms of this Agreement and the Purchase Agreement in confidence.
- 4.6. The Optionee shall postpone any caveat registered in respect of this Agreement at the Land Titles Office for the North Alberta Land Registration District to financing arranged by and expended for the development of the Purchase Lands.
- 4.7. Other than the Purchase Agreement, this is the entire agreement between the parties respecting the Option granted by the Grantor to the Optionee to purchase the Purchase Lands. Except as expressly provided herein, there are no representations, warranties, collateral agreements or conditions respecting the purchase and sale of the Purchase Lands. In the event that there is a conflict between the terms of the Purchase Agreement and this Agreement, the terms of the Purchase Agreement shall govern.
- 4.8. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Option Agreement by the hands of their proper officers, as of the day and year first above written.

**TOWN OF CARDSTON**

Per: \_\_\_\_\_ (c/s)

\_\_\_\_\_

\_\_\_\_\_

Per: \_\_\_\_\_ (c/s)

\_\_\_\_\_

**SCHEDULE "1"**

**DESCRIPTION OF THE PURCHASE LANDS**



## **SCHEDULE "3"**

### **TERMS AND CONDITIONS OF REACQUISITION AGREEMENT**

The following provisions apply to, and form part of, the terms and conditions of the Reacquisition Agreement of the Purchase Lands.

[Change % for Residential, Commercial or Raw land rate]

1. If the Option is exercised by the Optionee, the Optionee shall pay to the Grantor the Purchase Price paid by the Purchaser to acquire the Property from the Vendor under the Purchase Agreement less 10%, as the Purchase Price.
2. The Closing Date of the purchase of the Purchase Lands shall be the thirtieth (30<sup>th</sup>) day following delivery of the Option Notice.
3. The Optionee shall be entitled to vacant possession of the Purchase Lands on the Closing Date. The Optionee shall pay the taxes from the Closing Date.
4. On the Closing Date, the Optionee shall pay to the Grantor, by certified cheque, bank draft or solicitor's trust cheque, the Purchase Price, subject to the adjustments described in paragraph 5 herein. Such sum shall be held in trust by the Grantor's solicitor until title to the Purchase Lands has been issued in the name of the Optionee, free and clear from all liens and encumbrances, other than Permitted Encumbrances.
5. All usual adjustments, taxes, interest and other adjustable items shall be made as of 12:00 o'clock noon on the Closing Date. The Optionee shall pay interest, at a rate of one percent (1%) per annum above the Prime Rate on any money owing to the Grantor from the Closing Date to the date such money is paid. In no event shall the Purchase Price be paid later than thirty (30) days after the Closing Date. In this Purchase Agreement, "Prime Rate" means that reference rate of interest determined and announced from time to time by the Royal Bank of Canada as being its "prime rate" of interest for Canadian dollar demand commercial loans made in Canada.
6. The Purchase Lands including all fixtures and other items to be purchased shall remain at the risk of the Grantor until the Closing Date. In the event of loss, destruction or damage (collectively "Purchase Lands Damage") to improvements on the Purchase Lands between the date of this Agreement and the Closing Date, the Grantor shall not be obliged to repair such Purchase Lands Damage and shall be entitled to retain the insurance proceeds, if any, receivable in respect of such Purchase Lands Damage. In the event of contamination of the Purchase Lands between the date of this Agreement and the Closing Date, so long as the Optionee has not caused or contributed to the contamination, the Grantor will have the option either:
  - a) to remediate such contamination at the expense of the Grantor, prior to the Closing Date and if such remediation is not done or completed, the Optionee shall be at liberty to offset the cost (based on the average cost estimate from two (2) independent contractors experienced in their remediation of the contamination in question) to remediate the contamination against the Purchase Price on the Closing Date; or
  - b) to advise the Optionee in writing that the Grantor does not intend to remediate such contamination, in which case the Optionee shall have the option:
    - i. to terminate the Reacquisition Agreement, in which case all payments made by the Optionee to the Grantor under the Option Agreement shall be returned to the Optionee; or

- ii. to complete the Reacquisition Agreement, in which case the Grantor shall assign to the Optionee all rights of the Grantor against third parties in respect of such contamination.

For certainty, any contamination on the Purchase Lands existing before the date of this Agreement is excluded from the application of this Section 6.

7. A transfer of land in registrable form shall be, at the Grantor's expense, prepared and provided (together with any pertinent Certificate of Title) to the Optionee's solicitor within seven (7) days of to the Closing Date. The Grantor shall also be responsible, at its cost, for the preparation and registration of discharges of any liens or encumbrances registered against the Purchase Lands other than Permitted Encumbrances.
8. Time shall be of the essence.
9. This Reacquisition Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta.
10. This Reacquisition Agreement shall ensure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.
11. Except as otherwise expressly provided, the terms and conditions contained within this Reacquisition Agreement shall not merge on closing and shall survive the Closing Date.