

Land Sales Policy

Policy Number: 69/501
Adopted: Oct. 20/03
Amended: Oct. 2/06

Purpose:

As provided within the Town of Lacombe Corporate Plan, the Town "will continue to provide directly industrial development sites of flexible design and areas at the cost of developing the lands." As well the "Town will ensure that new industrial areas are of a higher development standard than earlier parks."

The Town sells land in order to facilitate industrial and commercial development within the Town. Land is not to be sold for the purposes of speculation or resale by others and as such, it is a fundamental objective of the Town to ensure that land is developed for commercial or industrial use in a timely and substantive manner.

Provisions:

1. In this policy
 - a) "Chief Administrative Officer" shall mean that person appointed by Council under Bylaw 58 of the Town.
 - b) "Council" shall mean the municipal Council of the Town.
 - c) "Developable Area" shall mean that area of Land
 - d) "Land" shall mean any land which is developed or can be developed for industrial or commercial land use to which the Town has title or is entitled to acquire.
 - e) "Town" shall mean the Town of Lacombe
2. The prices for the sale of lands held by the Town are established in Schedule A of this Policy.
3. Sale of Land shall be subject to the following conditions:
 - a) Land shall only be sold to Purchasers who agree to construct a building on the Land;
 - b) Land shall not be sold to Purchasers who do not commit to build on the land;
 - c) It will be a condition precedent of any sale of Land that the Purchaser will build within the time set out in subparagraph (e) hereof;

d) The Purchaser shall construct a building on the Land complying in all respects with the provisions of the Development Permit issued by the Town, but in any event being of a size of not less than 3,000 sq ft (280 square meters).

e) The Purchaser shall commence the construction of an approved building within 9 months of the date of execution of a Land Sale Agreement or the exercise of an Option under an Option to Purchase Agreement entered into with the Town and shall complete the approved building within 18 months of the date of execution of a Land Sale Agreement or the exercise of an Option under an Option to Purchase Agreement entered into with the Town.

f) The Purchaser shall enter into a Land Sales Agreement satisfactory to the Town.

4. The Purchase of Land may be made in any of the following ways:

a) A 10% non-refundable deposit with the Offer to Purchase with the balance including adjustments on closing. Prior to closing, the Purchaser shall enter into a Land Sale Agreement.

b) A partially refundable 10% deposit to secure the land for up to 60 days with the balance including adjustments to be paid no later than 60 days from the time of deposit. Prior to closing the Purchaser shall enter into a Land Sale Agreement. Should the Purchaser fail to pay the balance owing, the Town shall be entitled to retain a \$1,000.00 administration fee, returning the balance of the deposit to the Purchaser.

c) A partially refundable 10% deposit upon execution of an Option to Purchase Agreement satisfactory to the Town. The maximum option period is to be 90 days. If the Option is not exercised, the Town shall be entitled to retain \$2,000.00 as an administration fee, returning the balance of the Option Fee to the Purchaser. If the Option is exercised, the balance of the purchase price is may be paid in two equal installments, the first such installment being paid at the time the Option is exercised, at which time the Purchaser shall enter into a Land Sale Agreement, the second and final payment including adjustments is to be made on closing;

d) The Town shall pay a 5% commission to any realtor arranging the sale of Land, but only if the sale is completed.

5. Prior to completing a Land Sales Agreement, the Purchaser shall satisfy the Town that the Purchaser is aware and understands:

- a) the conditions of the lands and the improvements and services that are provided as part of the sale of the lands
 - b) the improvements to the lands that may be required by the proposed development of the lands by the Purchaser
6. Offers to Purchase or Lease that contain conditions or terms other than required by this policy, shall be referred to Council. However, notwithstanding the provisions of this Policy, the Chief Administrative Officer or the Economic Development Board may recommend to Council or Council may consider on its own initiative the terms and conditions of any sale or lease.
7. The Chief Administrative Officer, in the exercise of his or her discretion and acting reasonably, may:
- a) relax or adjust the payment schedule set out in this Policy when he or she deems this advisable to promote a sale.
 - b) extend the date to commence or complete construction of a building when he or she considers there is good reason to do so.
 - c) lease land for periods of up to 2 years without condition, at an annual rate of 10% of the sales price for Land set out in Schedule A hereto or at such rates as Council may direct from time to time.
8. All deposits for the sale of land shall be held by the Town and shall be kept in an interest bearing account with interest to accrue to the benefit of the Purchaser. Any overdue funds payable to the Town shall bear interest to the benefit of the Town at the rate of 10% per annum.

Mayor

DATE: October 20, 2003
October 2, 2006

Chief Administrative Officer

RES: 03-353
06-295

**Town of Lacombe
Land Sales Policy 69/501 Schedule A**

The Sales price for serviced industrial land within the Wolf Creek Industrial Park shall be calculated based on a price of \$80,000 per acre for the period October 2, 2006 to December 31, 2006.

Price per acre shall rise to \$110,000 effective January 1, 2007

Land Sale Agreement

This Agreement made this _____ day of _____, 20 ;

BETWEEN:

THE TOWN OF LACOMBE
(the "Town")

-and-

(the "Purchaser")

Background

A. The Town is the owner of industrial land in Lacombe, Alberta, which is legally described as:

(the "Lands")

B. The Purchaser wishes to purchase the Lands at a price and upon such terms and conditions as hereinafter set forth;

C. The Town is willing to sell the Lands to the Purchaser but only on the basis that the Purchaser agrees to develop the Lands, including the construction of a building on the Lands;

NOW THEREFORE the parties agree as follows:

Definitions

1. In this agreement the following words shall have the meanings shown:

a) "Adjustments" means all normal adjustments, including municipal taxes, utility charges, rents and damage deposits, and interest ;

b) "Architectural and Development Standards" means the guidelines respecting the development standards and criteria for the Development as set out in the Town of Lacombe Land Use Bylaw or as directed, from time to time by Town of Lacombe Council and which are hereby incorporated into this agreement by reference or, alternatively, attached hereto as Schedule "A".

c) "Closing Date" means _____;

- d) "Commence Construction" means that the Site Engineering Plans for site development, including grading and foundation, of an approved building has been completed to the satisfaction of the Town and that work is ready to begin on the erection of the building;
- e) "Complete Construction" means substantial completion of the development ready for occupancy as determined by the Development Officer acting reasonably;
- f) "Development" means the development of the Lands including the construction of a building as set out in Schedule "B" hereto, subject to such changes as the parties may subsequently agree to in writing.

Sale of Land

2. (1) The Town agrees to sell the Lands to the Purchaser at the Purchase Price and on the terms in this agreement.
- (2) The Purchase Price is \$_____ plus applicable GST and shall be paid as follows:
 - a) \$_____ being a 10% nonrefundable deposit;
 - b) A final payment of \$_____ (subject to adjustments) to be paid on the closing Date.

OR

- a) \$_____ being a 10% partially refundable deposit to secure the lands for up to 60 days. Should the Purchaser fail to complete the transaction, the Town will be entitled to retain \$1,000.00 as an administrative fee;
 - b) A final payment of \$_____ (subject to adjustments) within 60 days or, in any event, no later than _____.
- (3) The Purchaser shall pay all applicable GST or, if the Purchaser is a GST registrant, shall provide the Town with its GST number and a duly executed copy of the GST undertaking set forth in Schedule "C" hereto.
 - (4) All monies shall be paid to the solicitors for the Town to be held in trust and to be applied as set out in this agreement.

Deposit

3. All deposits shall be kept invested in an interest bearing account with interest to accrue to the benefit of the Purchaser.

Conveyancing Matters

4. Vacant possession of the Lands shall be given to the Purchaser at 12:00 o'clock noon on the Closing Date.
5. The Town is not obliged to accept payment of the Purchase Price after the Closing Date, but the Town may agree to accept late payment, subject to reasonable trust conditions.
6. (1) The Town shall provide a registrable Transfer of Land to the Purchaser when the following requirements have been met:
 - (a) the Purchase Price has been paid in full;
 - (b) development of the Lands has been substantially completed to the reasonable satisfaction of the Development Officer.

Title and Encumbrances

7. (1) The Town warrants that the title to the lands shall be free and clear of all encumbrances except such utility easements to the Town or other parties to protect utilities necessary to serve the Lands.

Condition of the Lands

8. (1) For the purpose of this agreement, the parties agree that the Lands are sold in an “as is condition” and the Town makes no warranty or representation as to the environmental condition of the Lands or the land’s suitability for any particular purpose.
 - (2) The Purchaser acknowledges that the Town has not made any representation, warranty, collateral agreement or condition regarding the Lands, this Agreement, any land adjacent to in close proximity to the Lands or otherwise which may in any way directly or indirectly affect the Lands, other than what is written in this Agreement.

Improvements to Lands

- 9.(1) The parties agree that the Purchase Price for the Lands includes the following:
 - a) Sanitary sewer and water services adjacent to the lands;
 - b) Natural gas and primary electrical power utilities adjacent to the lands;
 - c) The construction of a road and storm drainage ditch adjacent to the lands. The Town’s obligation is limited to a road of a minimum gravel standard without curb, gutter or sidewalk;
 - d) The site is stripped, filled and graded to subgrade.

- (2) The Purchase Price does not include the following:
- a) The cost of sewer, water or natural gas service connections, or secondary electric power supply or service connections from the location of the service lines adjacent to the property to the proposed building site;
 - b) The cost of sewer, water, back flow preventers for water service, natural gas or electrical service from the property line to any construction on site;
 - c) Any cost associated with stripping, grading, drainage, landscaping or site finishing from subgrade to final grade, including parking lot development of the lands, that the Town may require the Purchaser to do or that the Purchaser may determine to be necessary to facilitate its development or that may be required to comply with any flood risk provisions or other provisions under the Town's Land Use Bylaw.
 - d) The cost of entrances onto the site from the road and the cost of any culverts required by the Town.

Development Requirements – Conditions Precedent

10. (1) The Purchaser acknowledges that the Town has only agreed to sell the lands because of the Purchaser's expressed intention to construct its development thereon. Without a commitment to construct, the Town would not sell the lands to the Purchaser. It is, therefore, a condition precedent of this agreement and a fundamental obligation of the Purchaser to ensure that the development is built within the time stated and in compliance with the conditions of this agreement and with the development standards, policies and Bylaws of the Town. The covenant of the Purchaser to so develop is a fundamental term of this agreement running with the Lands in favour of the Town and shall not merge on transfer of title.
- (2) The Purchaser covenants to commence construction on the lands of a building approved by the Town and having an area of not less than _____ square feet within 9 months of the date of this agreement and shall complete construction within 18 months of the date of this agreement.
- (3) Notwithstanding anything contained in this agreement, if the Purchaser is not able to obtain approval of its intended development plans (provided that such plans are *bona fide* plans suitable to the site), this agreement shall be terminated and all money paid by the Purchaser to the Town shall be refunded, less the sum of \$1,000.00, any legal fees and costs paid by the Town to its solicitors, and any sum paid or required to be paid by the Town as commission to any realtor.

Security for Development Requirements

11. (1) On closing, the Purchaser will deliver to the Town a Transfer Back of the Lands into the name of the Town to be held in trust for use in accordance with the terms of this agreement.

- (2) The Town shall be entitled to register and maintain a caveat against the title to the Lands to protect the Town's interest therein and covenants contained in this agreement to be performed by the Purchaser until completion of the development and payment of all monies required to be paid hereunder.
- (3) Upon substantial completion of the development to the reasonable satisfaction of the Development Officer and upon the Purchaser complying with the terms and conditions of this agreement, the Town shall discharge any caveat it has filed under this agreement and return to the Purchaser the unregistered Transfer Back of the Lands.

Default of Construction Obligations

12. (1) If the Purchaser fails to complete the commence construction stage of the development within the time provided, the Town may declare the Purchaser to be in default of its fundamental obligations under this agreement. In that event, the Town will have the right to:
 - a) take immediate possession of the Lands;
 - b) register the Transfer Back of the Lands into the name of the Town;
 - c) refund to the Purchaser all amounts paid by it, less:
 - i) all Deposits;
 - ii) an amount equal to interest on the Purchase Price calculated at 12% per annum from the Closing Date to the date the Town declares the Purchaser to be in default;
 - iii) any expenses incurred by the Town in clearing and restoring the Lands to their original condition, including all costs necessary to remove any foundations or debris or other material;
 - iv) any sum required to obtain the discharge of a mortgage, lien or security interest registered on the title;
 - v) any sum paid or required to be paid as commission to any realtor for the sale of the Lands;
 - vi) the cost of registering the Transfer back;
 - vii) any legal fees or expenses paid by the Town to its solicitors as to enforce its rights under this agreement; and
 - d) recover from the Purchaser any expenses or amounts paid by the Town under the provisions of this paragraph which are in excess of the amounts previously received from the Purchaser by the Town.

- (2) If the Town exercises its remedies under this paragraph, then all improvements erected on the Lands shall become the property of the Town and the Town shall not have any obligation to compensate the Purchaser for them.
- (3) The remedies set out in this paragraph shall be in addition to any other remedies which the Town may have available.
- (4) If the Purchaser has completed the Commence Construction stage of the Development and thereafter fails to Complete Construction as required, then, in addition to any the remedies available to it at law or under this paragraph, the Town may declare the Purchaser to be in default of its fundamental obligations and may require that the Purchaser pay to the Town on demand in each calendar year after the date for Completion of Construction, an amount equal to the difference between municipal taxes actually levied against the Lands and any improvements thereon, and the taxes which the Town would have been entitled to levy against the Lands and any improvements thereon had construction of the Development been completed as contemplated hereunder ("Tax Shortfall"). For the purposes of this paragraph, the fair market value of the Development on the Lands shall be deemed to be \$_____ and the assessed value of the Lands and the Development thereon shall be determined in accordance with the Municipal Government Act and regulations thereunder, as if the Development had been completed.
- (5) If the Purchaser is in default of its obligations to construct and fails to pay the amounts owing to the Town as a result of that default on demand to do so, then the Town may, at its option, proceed to sell the lands so as to obtain reimbursement.
- (6) If the Town retains solicitors to commence action to obtain payment of amounts that may be owing hereunder, the Purchaser shall pay the Town's full legal costs as between solicitor and client.
- (7) The monetary remedies of the Town hereunder shall be considered to be liquidated damages having regard to the fundamental obligation of the Purchaser to develop the Lands, and not as a penalty or forfeiture.

Development Permit

13. (1) The Town is not obliged to issue any development or building permits for any construction which does not comply with the approved development and, in any event, not unless:
 - a) the full Purchase Price has been paid; and
 - b) the Purchaser has entered into servicing agreements with the Town and paid to the Town any charges required to be paid with respect to the supply of any utilities necessary to serve the development, including sewer or water service connections.

- (2) Should the Purchaser permit excavated dirt or construction debris or material to encroach on Town lands adjacent to the lands, or fail to remove such dirt debris or material, the Town may remove such dirt debris or material without notice to the Purchaser and the Purchaser shall make payment to the Town of the costs of such removal on demand.

Right of Entry for Inspection

- 14. The Development Officer or any employee of his department may enter upon the Lands at all reasonable times for inspection purposes.

Additional Development/Landscaping Requirements

- 15. The Purchaser agrees to comply and develop in accordance with the additional architectural development or landscaping standards as set out and attached hereto as Schedule "A" hereto.

No Assignment

- 16. (1) The Purchaser shall not without the prior written consent of the Town assign this agreement, nor transfer, further subdivide, convey, or otherwise dispose of any interest in the Lands, impose any restrictions thereon, or part with possession of the Lands until such time as the Purchaser has completed the construction of the Development, and no such purported assignment shall be binding upon the Town.
- (2) For the purpose of this provision, if the Purchaser is a corporation, "assignment" shall include the transfer of the majority control of the Purchaser from the shareholders of record.
- (3) The Town agrees that it shall not unreasonably withhold its consent to an assignment.
- (4) Despite the foregoing, the Purchaser may register a mortgage on the title to the Lands to provide financing for the purchase of the Lands and/or construction of the Development.

Notices

- 17. Any notice given by one party to another shall be in writing personally delivered or sent by mail addressed to such party at the following address:

As to the Town:

Town of Lacombe
5432-56 Avenue

Lacombe, Alberta T4L 1E9
Attention: Development Officer

Telephone: (403) 782-6666
Fax: (403) 782-5655

As to the Purchaser:

Telephone: _____

Fax: _____

or at such other address as either of the parties may from time to time advise the other by notice in writing. Any such notice, communication or request if mailed shall be deemed to have been received on the 7th business day next following the date it is so mailed.

General

18. (1) The obligations of the parties shall not merge in but shall survive any closing, transfer of title, or other completion of this transaction.

(2) There are no other terms, conditions, representations or collateral agreements relating to the Lands which are not contained in this agreement.

(3) Time is of the essence of this agreement and every part hereof.

(4) Notwithstanding anything herein, the Chief Administrative Officer for the Town may grant indulgences and a failure on the part of the Town to insist on prompt performance by the Purchaser of a particular obligation shall not be deemed to be a waiver of the right of the Town to insist on timely performance of any subsequent obligation.

(5) If a Court decides that any provision of this Agreement is invalid, that provision shall be deemed to be struck out but the remaining provisions shall remain in effect.

(6) This Agreement is binding upon the parties their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement effective the day and year first above written.

TOWN OF LACOMBE

***** *NAME OF PURCHASER*

Per: _____

Per: _____

Per: _____
(c/s)

Per: _____
(c/s)

Schedule "C"

UNDERTAKING

TO: THE TOWN OF LACOMBE (VENDOR)

**RE: PURCHASE PART OF LOT ___, BLOCK ___, PLAN _____ (the Lands)
ADDRESS: _____**

The undersigned Purchaser of the above noted property acknowledges that the Purchase Price does not include Goods and Services Tax and that the Vendor has not collected the Goods and Services Tax with respect to the sale of the Lands.

The Undersigned confirm that it is registered under Part IX (Goods and Services Tax) Division V, Subdivision "D" of the Excise Tax Act (Canada) and our registration number is _____ and hereby covenants and agrees that it will be responsible for any Goods and Services Tax ("GST") that may be imposed on the sale of the Lands, and that it will, as required by law:

1. Register and/or file any documentation required pursuant to any GST legislation;
2. If any GST becomes payable respecting the said sale of the Lands, we shall pay the same to the Government of Canada and we shall indemnify and save harmless the Town of and from any liability for or payment of applicable GST

These undertakings shall survive the close and completion of the sale.

DATED at Lacombe, Alberta, this _____ day of _____, 2003.

Per: _____

Per: _____

(c/s)

DATED:

BETWEEN:

THE TOWN OF LACOMBE
(the "Town")

-and-

(the "Purchaser")

Land Sale Agreement

Chapman Riebeek
Barristers & Solicitors
208, 4808 Ross Street
Red Deer, Alberta
T4N 1X5

Nick P. Riebeek
Solicitor for the Town of Lacombe

Telephone: (403) 346-6603
Fax: (403) 340-1280

OPTION TO PURCHASE

THIS AGREEMENT made this ____ day of _____, 2003.

BETWEEN:

THE TOWN OF LACOMBE
(the "Optionor")

- and -

(the "Optionee")

Background

A. The Optionor is the registered owner of the following lands:

Plan
Block
Lot
Excepting thereout all mines and minerals;
(the "Lands");

B. The Optionee wishes to obtain an option to purchase the Lands and the Optionor has agreed to grant the same upon the terms and conditions hereinafter set forth.

The parties agree as follows:

Option to Purchase

1. In consideration of the Optionee paying the sum of \$_____, (the "Deposit") the Optionor hereby grants to the Optionee an irrevocable Option to Purchase the Lands at a price of \$_____, free and clear of all encumbrances, liens, interest or claims whatsoever excepting _____ (the "Permitted Encumbrance").
2. The Option may be exercised by the Optionee delivering a written notice of Exercise of Option to the Optionor at any time from the date hereof until Noon on the _____, together with the sum of \$_____, payable to the Optionor.
3. The balance of the purchase price and adjustments shall be payable on the date of closing. If this Option is exercised and accepted, the Deposit shall then be applied on the total purchase price.

4. If the Optionee fails to exercise this Option within the time limited for exercise and acceptance, then \$2,000.00 shall be absolutely forfeited to the Optionor, the balance shall be returned to the Optionee, and the Optionee shall have no further interest in or claim against the title of the Lands.
5. If this Option is exercised by the Optionee, then the date for adjustment and possession (the "Closing Date") shall be _____. All normal adjustments for the land, including but not limited to taxes, shall be adjusted as at Noon on the Closing Date.
6. Forthwith upon exercise of this Option by the Optionee, the Optionee shall enter into a Land Sale Agreement in the Optionor's standard form.
7. Subject to the Optionee complying with all of the provisions hereof and the aforesaid Land Sale Agreement, the Optionor shall deliver vacant possession of the Lands to the Optionee on the Closing Date.
8. The Optionor covenants and agrees with the Optionee to do nothing to encumber the Lands or any portion thereof after the execution of this Agreement and for so long as the Option herein contained remains capable of exercise.
9. The Optionee shall not transfer or assign its interests in this agreement or in the Lands without the consent in writing of the Optionor, such consent not to be unreasonably or arbitrarily withheld.
10. The cost of preparation of transfer of land and of discharging all non-permitted encumbrances shall be borne by the Optionor. The cost of registration of transfer of land and of preparation and registration of any new mortgage being placed upon the Lands by the Optionee shall be borne by the Optionee.
11. During the term that the Option herein is capable of exercise, the Optionee shall be and is hereby given the right and authority to enter upon the Lands or any portion thereof for the purposes of conducting such surveys, soil and other tests as the Optionee shall deem necessary or advisable.
12. The parties agree to execute promptly when required all conveyances and documentation necessary to complete and carry out the provisions of this agreement.
13. The provisions contained herein comprise the entire agreement between the Optionor and the Optionee and there are no agreements, understandings, representations or conditions other than as expressed herein.

Notices

14. Any notice given by one party to another shall be in writing personally delivered or sent by mail addressed to such party at the following address:

As to the Optionor:

Town of Lacombe
5432-56 Avenue
Lacombe, Alberta T4L 1E9
Attention: Development Officer

Telephone: (403) 782-6666
Fax: (403) 782-5655

As to the Optionee:

Telephone: _____
Fax: _____

or at such other address as either of the parties may from time to time advise the other by notice in writing. Any such notice, communication or request if mailed shall be deemed to have been received on the 7th business day next following the date it is so mailed.

General

- 15. Time shall be of the essence of this agreement.
- 16. This agreement shall be governed by, and construed and enforced under the laws of the Province of Alberta.
- 17. This agreement may be modified only by an instrument in writing executed by the parties hereto.
- 18. If any terms or provisions of this agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this agreement shall be valid and enforced to the fullest extent permitted by law.
- 19. As used herein the words "this agreement", "this Agreement", "herein", "hereby", "hereunder", "hereof", and similar expressions refer to this agreement as a whole and not to any particular paragraph or other portion hereof, unless the context otherwise clearly requires and words importing the singular number only shall include the plus and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa, where the context so requires. Headings appearing herein are inserted for convenience of

reference only and shall not be considered in an interpretation hereof. The provisions hereof embrace the entire understanding of the parties hereto with respect to the subject matter hereof and there are no understandings or arrangements between the parties with respect to such subject matters which are not set forth herein. No supplement, waiver, modification of any part hereof shall be effective unless set forth in writing and executed by the parties hereto.

- 20. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the Optionor and the Optionee have executed this Option Agreement on the day and year first above written.

THE TOWN OF LACOMBE

Per: _____

Per: _____

Per: _____

Per: _____

(c/s)

(c/s)

DATED: 200

BETWEEN:

THE TOWN OF LACOMBE
(the "Optionor")

-and-

(the "Optionee")

OPTION TO PURCHASE

Chapman Riebeek
Barristers & Solicitors
208, 4808 Ross Street
Red Deer, Alberta
T4N 1X5

Nick P. Riebeek
Solicitor for the Town of Lacombe

Telephone: (403) 346-6603
Fax: (403) 340-1280

File No. 28,614 NPR