

ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE

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ADVISORY

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Easement Agreement
September 20, 2002

Between

MEDICAN DEVELOPMENTS INC.
(the "Grantor")

and

THE TOWN OF CANMORE
(the "Grantee")

Recitals

- A. The Grantor is or is entitled to become the registered owner of the lands legally described as:

Plan 03/0034
Units 3 and 4
(the "Servient Lands").

- B. The Grantee is or is entitled to become the registered owner of the lands legally described as:

Plan 0111272
Block 1
Lot 2ER
(the "Dominant Lands")

- C. The Grantor as a condition of the development approval for the Servient Lands as granted by the Grantor has agreed to grant to the Grantee, to be used as a public, pedestrian thoroughfare, a Right of Way and Easement through and over that portion of the Servient Lands, shown as:

Access Easement on Plan 03/0035
(the "Access Area")

- D. The parties have agreed to enter into this Agreement to govern the relationship of the parties in connection with the Access Area.

The parties agree as follows:

Article 1 Grant of Access Easement by Grantors

- 1.1** Grantor, as grantors and owners of the Servient Lands, hereby grants to Grantee, as grantee and owner of the Dominant Lands the full and free right, liberty and easement for Grantee and its successors, employees, agents and the general public at all times hereafter to enter into and upon the Access Area, for the purposes of pedestrian passage through the Access Area in common with Grantor and all others now and hereafter having the like right for going, returning, passing and repassing over the Access Area; to have and to hold the right, liberty and easement unto Grantee, its successors and assigns, as appurtenant to the Dominant Lands forever.
- 1.2** Grantor shall at its own cost, construct the Access Area, including the surface constructed thereon (to be done in a good and workmanlike manner in accordance with all applicable construction standards and in accordance with the Town of Canmore's Engineering Design Standards and Open Space Guidelines, as amended from time to time) and Grantor covenants and agrees, at its own cost, to repair and maintain the Access Area, including the surface constructed thereon, in a good and proper condition as would any reasonable and prudent owner of property in the area (but only to the standard of such facilities as maintained by the Grantee), having regard to the nature of its use. If Grantor does not so maintain the Access Area, Grantee may do so after reasonable notice (of no less than 60 days), in writing, to Grantor and Grantor will reimburse Grantee for all costs thereby incurred by Grantee.

Article 2 Covenants

- 2.1** The parties covenant and agree with each other that
 - (a) they will not interfere in a significant manner with the rights and easements granted herein during the construction, repair and maintenance of the Access Area;
 - (b) they will not construct or permit to exist any fence, barrier, sign, structure or any other improvements of any kind whatsoever in the Access Area which would prevent or inhibit the use and enjoyment of the rights herein granted or the free and uninterrupted flow of pedestrian traffic along the Access Area;
 - (c) in the event that Grantor fails to comply with any term, covenant or condition herein, the Grantee shall be, after reasonable written notice to the Grantor, entitled to take such steps as are reasonably necessary to ensure compliance with the same with all costs incurred by the Grantee in taking such steps shall be an amount owing by the Grantor to the Grantee and shall be a charge against the Lands and may be added to the tax roll of the same, at the sole discretion of the Grantee; and

- (d) notwithstanding anything to the contrary contained or implied herein the Grantor shall not be liable for any loss or damages whatsoever and howsoever arising in connection with the state of repair or maintenance of the Right of Way Area unless such loss or damages arise:
- i) from the Grantor's negligence in failing to keep the Right of Way Area reasonably safe; or
 - ii) from the Grantor's malfeasance or an intentional act of the Grantor; or
 - iii) from the Grantor's failure to maintain or repair the Right of Way Area, after notice as hereinbefore provided; or,
 - iv) from the conduct of persons for whom the Grantor is legally responsible, arising under subclauses (i) through (iii) above.

Article 3

Interpretation

- 3.1 The burden of all rights, easements and privileges granted by Grantor to Grantee and all covenants made herein shall extend to and run with the Servient Lands so as to bind all successors and assigns of the parties hereto deriving title to Servient Lands or any part thereof or interest therein, and the benefits of all such rights, easements, privileges and covenants shall extend to and run with the Dominant Lands so as to be enforceable by the Grantee and its successors and assigns respectively deriving title therefrom.
- 3.2 The Grantor covenants and agrees to observe and be bound by the covenants contained herein provided that the said covenants shall only be personally binding upon the Grantor for such time that it, individually, remains owner of the Servient Lands, and only to extent of those Servient Lands which from time to time and at such relevant time are owned by the Grantor, and no action shall lie against the Grantor hereunder unless the Grantor, as the case may be, is then and remains the registered owner of the Servient Lands alleged and proven by a court of competent jurisdiction to be in breach of this Restrictive Covenant. The covenant contained in this paragraph 3.2 shall constitute an absolute defence to any such action and may be pleaded as such.

Article 4

Priority

- 4.1 Grantor covenants and agrees to deliver, upon request by Grantee, an agreement granting priority in favour of the easements in this Agreement over any existing financial encumbrance or financial interest registered against the Servient Lands.

Article 5
No Partnership or Joint Venture

- 5.1 Nothing herein contained shall be construed or deemed to constitute or create a partnership or joint venture of or between the parties or to render one of them liable for the debts and obligations of the other.

Article 6
Transfer of Land

- 6.1 Grantor covenants and agrees not to convey or otherwise transfer, lease or otherwise dispose of the Servient Lands or any part thereof unless the grantee, transferee, lessee or other acquiring party, as the case may be, assumes the obligations of Grantor under this Agreement.

Article 7
Severability

- 7.1 The covenants and agreements herein shall be severable and if any of the covenants or agreements herein contained or the application thereof to any person or circumstance is to any extent held to be or rendered invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants or agreements or applications thereof to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.

Article 8
Enurement

- 8.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective administrators, successors and assigns.

Article 9
Gender and Number

- 9.1 Wherever the singular or the masculine is used in this Agreement, they shall be construed as being the plural or feminine or body corporate and vice versa, where the context or the parties thereto so requires.

Executed and delivered.

4700-299800-750

THE TOWN OF CANMORE

Per: [Signature]
Per: [Signature] Seal

MEDICAN DEVELOPMENTS INC.

Per: [Signature] Seal
Per: _____

APPROVED AS TO CONTENT

[Signature]



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