

# THE CITY OF RED DEER

DATE: \_\_\_\_\_

NO: \_\_\_\_\_

Moved by Alderman \_\_\_\_\_

Seconded by Alderman \_\_\_\_\_

Resolved that council of the City of Red Deer hereby approves the Bartz Plaza Ltd, County of Red Deer No. 23 and City of Red Deer Settlement Agreement as presented to Council Feb. 5/92 and authorize the Mayor and City Clerk to execute said agreement on behalf of the City

Pimm

☐

Carried

Moffat

☐

Defeated

Guilbault

☒

Withdrawn

Surkan

☐

McGregor

☐

Lawrence

☐

= For

Statnyk

☐

= Against

Campbell

☐

= Absent

McGhee

☐

A

A

COUNCIL CHECK LIST

MAYOR

R. J. McGHEE *absent*

ALDERMEN:

*Deputy Mayor* J. Campbell ✓  
T. Guilbault ✓  
D. Lawrence ✓  
R. McGregor ✓  
D. Moffat ✓  
L. Pimm ✓  
B. Statnyk ✓  
G. Surkan ✓

BUILDING INSPECTIONS DEPT.

Bylaws & Inspections Manager  
Assistant Development Officer

Ryan Strader  
Peter Holloway

CITY CLERKS DEPT.

City Clerk  
Assistant City Clerk  
Council & Committee Secretary  
Council & Committee Secretary

Charlie Sevcik ✓  
Kelly Kloss ✓  
Wilma Vincent  
Cheryl Adams  
Mike Day ✓

CITY COMMISSIONER

COMMUNITY SERVICES

Director of Community Services

Craig Curtis

COMPUTER SERVICES DEPT.

Computer Services Manager

Dale Smith

ECONOMIC DEVELOPMENT DEPT.

Economic Development Manager

Al Scott

ENGINEERING DEPT.

Director of Engineering Services  
Engineering Services Manager  
Public Works Manager  
MCC Manager

Bryon Jeffers  
Ken Haslop  
Gord Stewart  
P. Grainger

E. L. & P. DEPT.

E. L. & P. Manager  
E. L. & P. Electrical Engineer

Al Roth  
Daryle Sheelar

FIRE DEPARTMENT

Fire Chief  
Deputy Fire Chief - Ambulance

Bob Oscroft  
Dan Osborne

LAND, TAX & ASSESSMENT DEPT.

City Assessor  
Land Supervisor

Al Knight  
Bill Lees

PARKS DEPARTMENT

Parks Manager  
Administrative Planner

Don Batchelor  
Pete Wasylshyn

PERSONNEL DEPT.

Personnel Manager  
Labour Relations Officer  
Safety & Emergency Measures Co-ordinator

Ron Crossley  
Lorne Reynaud  
Neil Garvin

RECREATION DEPT.

Recreation Manager

Lowell Hodgson

R.D.R.P.C.

Senior Planner  
Associate Planner  
Associate Planner  
Director

Djamshid Rouhi  
Gary Klassen  
Paul Meyette  
Bill Shaw

R.C.M.P., CITY DETACHMENT

Inspector

Larry Pearson

SOCIAL PLANNING DEPT.

Social Planning Manager  
Projects Supervisor

Rick Assinger  
Colleen Jensen

SOLICITOR

City Solicitor  
Associate Solicitor  
Associate Solicitor

Tom Chapman  
Don Simpson  
Nick Riebeek ✓

TREASURY SERVICES DEPARTMENT

Director of Financial Services  
Treasury Services Manager

Al Wilcock  
Doug Norris

TRANSIT DEPT.

Transit Manager

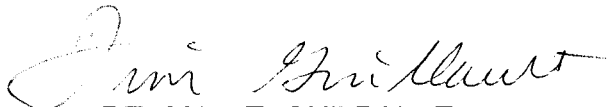
Grant Beattie

**DATE:** February 5, 1992  
**TO:** City Council  
**FROM:** Deputy Mayor Alderman T. Guilbault  
**RE:** NOTICE -  
SPECIAL MEETING OF COUNCIL OF THE CITY OF RED DEER

---

Pursuant to Sections 40 (2) and 43 (5) of the Municipal Government Act, Chapter M-26 RSA 1980, notice is hereby given that a Special Meeting of Council of The City of Red Deer will be held in the Council Chambers of City Hall on Wednesday, February 5, 1992 commencing at 4:30 p.m. to discuss the following business:

1. Southam and Bahen Realty Inc., Gaetz Plaza Ltd.,  
County of Red Deer No. 23, City of Red Deer Settlement Agreement.

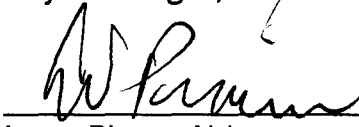
  
ALDERMAN T. GUILBAULT  
Deputy Mayor

CS/jt

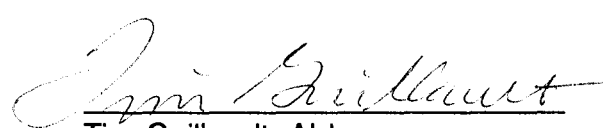
We, the undersigned members of Council of The City of Red Deer, pursuant to Section 43(5) of the Municipal Government Act, Chapter M-26 RSA 1980, hereby give written consent to the holding of the above noted meeting.

  
John Campbell, Alderman

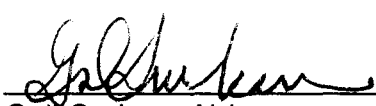
  
Roy McGregor, Alderman

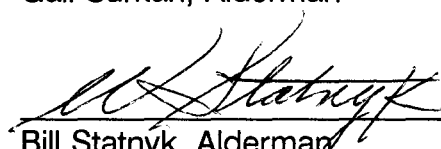
  
Larry Pimm, Alderman

  
Dan Lawrence, Alderman

  
Tim Guilbault, Alderman

  
Dennis Moffat, Alderman

  
Gail Surkan, Alderman

  
Bill Statnyk, Alderman

Mayor McGhee - attempts to contact re:  
Special Meeting Feb 5

Calls made to Mayor McGhee's residence Wed Feb 5/92  
347-4517

3:35 p.m. no answer.

3:40 pm no answer

3:50 pm no answer

4:00 pm no answer

4:10 pm no answer

4:20 pm no answer

4:30 pm no answer

**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: Adviser Publications

ATTENTION: Newsroom

THEIR FAX NO: 347-6620

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):

*a delight  
to discover!*

**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: CFRN TV

ATTENTION: Newsroom

THEIR FAX NO: 343-7191

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):

*a delight  
to discover!*

**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: CKRD Radio

ATTENTION: Newsroom

THEIR FAX NO: 343-2573

FROM: City Clerk's Department

DEPARTMENT:

**MESSAGE AREA (if required):**

NOTE: With regard to our previous FAX sent to you at approximately 6:20 pm Feb. 5, 1992 concerning a City of Red Deer Press Release, I would advise:

Our transmission report indicated a page number miss match in that only 13 of 14 pages were sent. We phoned your office immediately however we were advised that no one was in the newsroom at this time of day (6:20 pm) and as such could not confirm which page was missed. As such we are faxing the attached two pages which we feel one or the other may be the page you did not receive.

Please call Charlie 342-8134 or Kelly 342-8136 at 8:00 am Feb. 6, 1992 if you have any questions.

Thanks.

*The pages sent were the Press Release  
page and page 12 of the agreement.  
Cs.*

*a delight  
to discover!*





# THE CITY OF RED DEER

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: Red Deer Advocate

ATTENTION: Howard D. Janzen, Publisher

THEIR FAX NO: 341-4772

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):



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**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6198

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: RDTV

ATTENTION: Newsroom

THEIR FAX NO: 346-9980

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):

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# THE CITY OF RED DEER

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: CKGY/CIZZ

ATTENTION: Newsroom

THEIR FAX NO: 346-1230

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):



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**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4 FAX: (403) 346-6195

City Clerk's Department 342-8132

DATE: February 5, 1992

OUR FAX NO: (403) 346-6195

NUMBER OF PAGES INCLUDING THIS PAGE: 14

FAX TO: Shaw Cable

ATTENTION: Newsroom

THEIR FAX NO: 342-4080 346-3962

FROM: City Clerk's Department

DEPARTMENT:

MESSAGE AREA (if required):

*a delight  
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**THE CITY OF RED DEER**

P. O. BOX 5008, RED DEER, ALBERTA T4N 3T4

FAX: (403) 346-6195

City Clerk's Department 342-8132

**PRESS RELEASE****NOT FOR PUBLIC RELEASE BEFORE 11:00 A.M., THURSDAY, FEBRUARY 6, 1992.**

Please be advised that a Press Conference will be held at Red Deer City Hall, February 6, 1992 at 9:00 a.m. in Committee Room "B" relative to the Settlement Agreement between The City of Red Deer, County of Red Deer No. 23, and Southam and Bahen (Gaetz Plaza Ltd.) regarding development of the Gaetz Plaza.

**NOTE that all information herein and attached is provided on the condition that it not be released to the public prior to 11:00 a.m., Thursday, February 6, 1992.**

Should you have any questions prior to the above noted press release, please contact Alderman Bill Statnyk at 342-1242 prior to 8:00 pm February 5, 1992 and 342-4997 after 8:00 pm February 5, 1992.

*a delight  
to discover!*

1st  
copy

THIS AGREEMENT MADE EFFECTIVE THE 31ST DAY OF JANUARY, A.D., 1992

BETWEEN:

**THE CITY OF RED DEER**  
(herein called "the City")

OF THE FIRST PART

-and-

**THE COUNTY OF RED DEER NO. 23**  
(herein called "the County")

OF THE SECOND PART

-and-

**GAETZ PLAZA LTD., AN ALBERTA CORPORATION**  
(herein called "Gaetz")

OF THE THIRD PART

(the "Parties")

WHEREAS the Parties are desirous of entering into an agreement to:

- (a) facilitate and govern the immediate development of those certain lands presently within the County and more specifically described in Schedule "A" hereto (the Gaetz Lands);
- (b) permit the orderly annexation by the City of the lands (including the "Gaetz Lands") outlined in red on Schedule "B" hereto (herein called "the Lands");
- (c) to accommodate the servicing of the Gaetz Lands by the City;

AND WHEREAS the Parties have been parties to certain legal proceedings involving the use and development of the Lands and the Parties are desirous of terminating their respective participation in all such proceedings with respect to the Lands; save and except with respect to the City's Petition to annex the Lands;

AND WHEREAS the County has issued a Development Permit No. D-282-91 (the Development Permit) to Gaetz dated November 8, 1991, with respect to the development of the Gaetz Lands, a copy of which is attached as Schedule "C" hereto, including uses therein which are included in the C2 Land Use Classification of the City Land Use Bylaw;

AND WHEREAS the County and Gaetz have entered into a Development Agreement dated December 12, 1991, (the Development Agreement) a copy of which is attached as Schedule "D" hereto;

AND WHEREAS the Parties are desirous that the Gaetz Lands be developed as stipulated and authorized by the Development Permit and the Development Agreement and, in the normal course, without interruption or delay by or on behalf of any of the Parties;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) the Parties hereto do mutually covenant and agree with one another as follows:

1. (1) The City shall, with the exception of the Petition which it has filed with the Local Authorities Board to annex the Lands, forthwith upon execution of this agreement by all Parties abandon, withdraw and discontinue any action and do all acts and things necessary to absolutely discontinue all legal proceedings which it has commenced or with respect to which it is a party concerning the County Bylaw No. 2C/91, the Development Permit and all uses specified therein, the development by Gaetz of the Gaetz Lands in accordance with the Development Permit, and all matters related thereto. In furtherance thereof, but without restricting the generality of the foregoing, the City shall:
  - (a) file a Discontinuance of Action in the Court of Appeal of Alberta in the matter of the *Planning Act*, R.S.A., 1980, Chapter P-9 and amendments thereto, between the Parties hereto and the Alberta Planning Board;
  - (b) file a Discontinuance of Action in the Court of Queen's Bench of Alberta, Judicial District of Red Deer, in the action among the Parties hereto.
- (2) The City hereby waives any rights to and covenants that it shall not appeal the Decision of the Development Appeal Board, a copy of which is attached as Schedule "E" hereto.
- (3) None of the Parties hereto shall be liable to any other Party hereto for any costs, or

- for any damages of any nature or kind which any Party hereto may allege to have suffered as a result of or in connection with the legal proceedings which are herein provided to be discontinued or with the proposed development of the Gaetz Lands and each of the Parties hereto hereby specifically and absolutely release and discharge each other, of and against any and all liability therefore.
2. Gaetz agrees to comply with the terms and conditions of the Development Permit, and the Development Agreement and all provisions contained in this agreement with respect to the development of the Gaetz Lands. The Parties agree that the provisions of this agreement with respect to servicing of the Gaetz Lands shall prevail over the provisions of the Development Agreement respecting servicing.
  3. The City agrees not to commence, continue, join or otherwise participate in any legal proceedings or otherwise act in any manner in opposition to or which could delay or otherwise interfere with the development of the Gaetz Lands in compliance with the terms and conditions of the Development Agreement, the Development Permit and this agreement.
  4. The City agrees that, if the Lands are annexed to the City, the Development Agreement and the Development Permit and this agreement shall continue to govern the development of the Gaetz Lands and the City shall cooperate fully with and provide its assistance to Gaetz to enable the expeditious development of the Gaetz Lands in accordance with the Development Permit, and in furtherance thereof, to complete all inspections and grant all required approvals without undue delay. Subject to its obligation to give due process to any bona fide third party application for re-zoning, the City shall not re-zone or re-designate the Gaetz Lands.
  5. The City acknowledges and agrees that the County shall be entitled to continue to, and in good faith, (and without interference by the City) grant approvals and otherwise deal with the development of the Gaetz Lands pursuant to the Development Agreement and the Development Permit, in the normal course, including without limiting the generality of the foregoing, granting development permits with respect to signs and landscaping. Provided, however, that it is agreed that:

- (a) with respect to pylon signs, such approval be restricted to 3 pylon signs of not over 40 feet in height, not exceeding 400 square feet of signing on each side of each two-sided sign; and
  - (b) landscaping plans shall be submitted to the City for information and comment before approval.
- 6. (1) Gaetz agrees that the uses permitted and which may be permitted by the County for the Gaetz Lands, shall be deemed to require compliance with the City's current C2 uses provided in the City Land Use Bylaw.
- (2) Provided that, Gaetz shall be entitled to apply to the County for a variance of City C2 uses at any time prior to Annexation of the lands to the City. Any such variation by the County to be subject to the approval of the City.
  - (3) Provided that, Gaetz shall be entitled to apply to the City for a variance thereof at any time after the effective date upon which the Lands are annexed to the City.
- 7. The County acknowledges and agrees that, subject to the County's obligation to act in good faith with respect to any development application, it shall not enter into any development agreement or grant any development permit with respect to that portion of the Lands not included in the Gaetz Lands until the City's Petition for Annexation of the Lands has been decided by the Local Authorities Board and all appeals of that decision have been decided by the appropriate Court or other body and, if applicable, the Governor in Council has dealt therewith.
- 8. Subject to the payments herein required, the City shall, on a timely basis following receipt of the necessary plans and specifications, provide electric power, water, sanitary sewer and storm sewer services.
- 9. (1) The City shall:
  - (a) construct that portion of roadway specifically identified on Schedule "F" hereto from 22nd Street to the northern boundary of the Gaetz Lands;
  - (b) in the first instance, be responsible for and pay the cost of such roadway.



- ( 2 ) Gaetz shall, upon completion of construction of the roadway by the City, at its option, make payment in full to the City of such costs or, alternately, execute and deliver to the City a form of mortgage security (the "City Mortgage") for the repayment thereof to be registered as a first charge on the Gaetz Lands, and providing for repayment of the cost of such roadway, together with interest thereon at the City current debenture borrowing rate imposed by the Alberta Municipal Finance Corporation, amortized and payable in ten equal installments over a period of ten years commencing from the date of completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable mortgage upon the title to the Gaetz Lands in favour of the City. Provided, however, that the City Mortgage shall, at the request of Gaetz, be postponed by the City to and in favour of any construction or long term financing, refinancing, replacement or substitute financing and any renewals thereof. The City agrees to execute and deliver on a timely basis all documentation ( in registerable form) necessary to postpone the City Mortgage as aforesaid.
- ( 3 ) If the service roadway terminates at the north boundary of the Gaetz Lands, Gaetz shall provide a mutual access or easement agreement to provide public access from the service road to the access point to Gaetz Avenue on the east boundary of the Gaetz Lands.
10. In consideration of the City agreeing to supply the Gaetz Lands with utilities outside of the Corporate boundaries of the City, Gaetz shall pay to the City in association with its development of the Gaetz Lands the following amounts at the times and in the manner that is consistent with and usual to a development in the nature of the proposed development of the Gaetz Lands, namely:
- (a) off-site levies of \$310,000.00;
  - (b) a one time area contribution charge towards storm sewer costs in the sum of \$60,000.00.

Gaetz shall enter into an agreement with the Electric Light and Power Department of the City for the construction and supply of electrical services and make payment of

all Electric Light and Power connection costs and charges for service to the Gaetz Lands.

11. Gaetz shall design and construct such sewer and water services as deemed necessary by the City, as shown on Schedule "F", to and on the Gaetz land in compliance with City standards and in a manner acceptable to the City. The design shall be submitted to the City for review and approval prior to commencement of construction. Gaetz shall grant unto the City an easement or utility right-of-way for any portion of the water main situate upon the Gaetz Lands.
12. ( 1 ) The City represents that sanitary services can be provided to the Gaetz Lands and that water services can be provided to the Gaetz Lands, although there may be inadequate pressure to serve for fire protection purposes. The City further represents that it shall, in due course, upgrade its water services and will endeavor to provide adequate water pressure for fire protection purposes for the Gaetz Lands, such upgrading to be associated with the orderly expansion of the City services. In the meantime, should a booster pump be required to provide adequate water pressure for fire protection purposes, such pump will be provided by Gaetz, who shall be responsible for the maintenance, repair and replacement of such pump until such time as the City completes an upgrade of its water services, whereupon, if there is sufficient water pressure, Gaetz shall no longer be required to provide, maintain, repair or replace such pump.
- ( 2 ) The City agrees to complete, in a timely basis, the connection of the water and sanitary sewer services to the Gaetz Lands.
- ( 3 ) With respect to the connection of the proposed water main to the existing City water system, the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.
- ( 4 ) The connection of the Gaetz sanitary sewer main to the City system may be undertaken by Gaetz at its expense, or the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.

- ( 5 ) Service connections to the water main will be undertaken by the City and Gaetz shall make payment for such service at the rate then current in the City Unit Rate Bylaw, on demand.
  - ( 6 ) The City shall make every effort to ensure that storm sewer services are completed for the Gaetz Lands concurrently with the development of the Gaetz Lands.
13. In consideration of the City agreeing to provide utilities outside of its municipal boundaries:
- ( a ) Gaetz acknowledges and agrees that it shall be subject to and be bound by all of the provisions of the City Utility Bylaws in the same manner as if the said Lands were within the boundaries of the City;
  - ( b ) The County will cooperate with and assist the City in the recovery of its charges for utilities, from time to time, until such time as the Lands are annexed within the boundaries of the City and, if requested, shall authorize the provisions of the City of Red Deer Utility Bylaws to be enforceable within the County of Red Deer with respect to the Gaetz Lands.

#### **ANNEXATION**

14. ( 1 ) If an Order for Annexation is issued which has the effect of including the Lands within the boundaries of the City, then the City shall, as compensation for lost tax revenues which the County would otherwise derive from the development of the Gaetz Lands by Gaetz as herein contemplated, and provided that the main components (the anchor tenants) of the proposed development are substantially completed (meaning exterior structures in place), pay to the County, without deduction or set-off, the amount of \$155,000.00 on or before the 1st day of July, 1993.
- ( 2 ) In the event that the Petition by the City to include the Lands within the boundaries of the City is not successful, the City shall have no liability to make payment of the aforesaid sum to the County.
- ( 3 ) Should the development not proceed within the time provided in the development

permit (plus any reasonable extension for completion), the City shall have no liability to pay the aforesaid sum to the County.

- ( 4 ) It is not intended that the payment of \$155,000.00 provided for in this section be in addition to any amount which may be awarded on a tax sharing basis or otherwise by the Local Authorities Board upon Annexation.
- 15. ( 1 ) The County and Gaetz shall consent to the City's Petition for Annexation of the Lands pursuant to the Petition for Annexation dated August 15, 1991.
- ( 2 ) Gaetz undertakes to deliver to the City a letter signed by James Arthur Bower and addressed to the Local Authorities Board of the Province of Alberta, requesting and consenting to the annexation of the Lands by the City within 10 days from the date of execution of this Agreement.
- 16. The County and Gaetz agree to consent to a request by the City to the Local Authorities Board that the annexation of County Lands, if granted, be effective on the 31st day of December, 1992. The City agrees that the effective date for the purposes of assessment and taxation is established as December 31st, 1992.
- 17. The City and the County acknowledge and agree that nothing in this agreement shall restrict the County in exercising its unfettered discretion to oppose the annexation of any other Lands referred to in the said Petition for Annexation.
- 18. Time shall be of the essence of this Agreement.
- 19. This agreement (including the preambles hereto) and all schedules, documents and agreements furnished or to be furnished pursuant to the requirements of this agreement, contain the entire understanding of the Parties with respect to the subject matter hereof, and any modification or amendment hereto must be made in writing and signed by the Parties hereto.
- 20. This agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta.

21. Where the context so requires, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
22. Except as otherwise specifically provided for in this agreement, any waiver of any provision of this agreement must be in writing and signed by the Party waiving such provision. No waiver in any one or more instances shall be deemed or construed as a further or continuing waiver of any such provision.
23. If any provision of this agreement, or the application thereof to any of the Parties hereto or any person or circumstance, shall to any extent be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision to the Parties or to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such remaining provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Each Party agrees to carry out all such actions and to deliver such further documents and assurances as may be reasonably required to give full force and effect to the intent hereof.
25. This agreement may be executed by the Parties hereto in any number of separate counterparts and each of which when so executed and delivered shall be an original, but all of such counterparts shall together constitute one and the same instrument.
26. If any Party should institute any legal or other proceedings to enforce or interpret this agreement, then the prevailing Party or Parties shall be entitled to recover all reasonable legal fees and all costs incurred in connection with such proceedings, in addition to the amount of the judgment or order made in such proceedings. Such legal fees and costs shall be subject to review by taxation.
27. Notwithstanding any other provisions of this agreement, all notices, consents, approvals, requests, communications or other documentation to be given, made or

obtained under this agreement shall be in writing and shall be delivered personally, sent by electronic mail or mailed by prepaid registered mail as follows:

If to the City:

City of Red Deer  
P.O. Box 5008  
Red Deer, Alberta  
T4N 3T4  
Attention: Charles Sevcik - City Clerk  
Facsimile: (403) 346-6195

If to the County:

County of Red Deer No. 23  
P.O. Box 920  
Red Deer, Alberta  
T4N 5H3  
Attention: County Commissioner  
Facsimile: (403) 346-9840

If to Gaetz:

260-530 Kenaston Blvd.  
Winnipeg, Manitoba  
R3N 1Z4  
Facsimile: (204) 488-4669

With a copy to:

Mr. Frank P. Layton, Q.C.  
1200 Metropolitan Place  
10303 Jasper Avenue  
Edmonton, Alberta  
T5J 3N6  
Facsimile: (403) 421-4151

28. Either Party may change the address for notice by sending notice to that effect to the other party in the manner provided for in clause 27.

29. Any such notice, consent, approval, request, communications or other documentation

shall be deemed to have been received on the date of delivery if personally delivered or sent by electronic mail, and on the third business day following the registered mailing thereof provided, however, that in the event of a disruption of normal postal service, personal delivery or electronic mail shall be required.

30. If any Party is delayed in the completion of any work by labour disputes, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or by any cause of any kind whatsoever beyond the Party's control, then the time of completion of such work shall be extended for a period of time equal to the time lost due to such delays.
31. This agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this agreement has been duly executed by the respective authorized officials, officers or representatives of the Parties effective as of the day and year first above written.

**THE CITY OF RED DEER**

**THE COUNTY OF RED DEER NO. 23**

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

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

Per: \_\_\_\_\_  
City Clerk

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

**GAETZ PLAZA LTD.**

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

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

DATED:

\*\*\*\*\*

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")  
OF THE FIRST PART

-and-

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")  
OF THE SECOND PART

-and-

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")  
OF THE THIRD PART

(the "Parties")

\*\*\*\*\*

## AGREEMENT

\*\*\*\*\*

CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS  
Barristers & Solicitors  
#208, 4808 Ross Street  
Red Deer, Alberta  
T4N 1X5

File No. 18,697 THC/vjh





No. 23

OFFICE OF THE SECRETARY-TREASURER

BOX 920

RED DEER, ALBERTA T4N 5H3

Phone 347-3364  
Fax 346-9840

FEBRUARY 05, 1992

Chapman Riebeek Simpson Chapman Wanless  
Barristers and Solicitors  
208 Professional Building  
4808 - Ross Street  
Red Deer, Alberta, T4N 1X5

**ATTENTION: NICK P.W. RIEBEEK**

Dear Sir:

**RE: AGREEMENT BETWEEN - CITY OF RED DEER, COUNTY  
OF RED DEER AND GAETZ PLAZA LTD., AN ALBERTA CORPORATION**

As requested, please be advised that the authorized signing officers of the County of Red Deer No. 23, have today signed the above mentioned Agreement. The Agreement was given to Alderman Statnyk when signed.

We trust this letter meets your requirements.

Yours truly  
COUNTY OF RED DEER NO. 23

R.J. STONEHOUSE, C.L.G.M.  
COUNTY COMMISSIONER

/gg

c.o. H. Michael C. Day, City Commissioner, City of Red Deer

1st  
Copy  
goes  
here



No. 23

OFFICE OF THE SECRETARY-TREASURER

BOX 920

RED DEER, ALBERTA T4N 5H3

Phone 347-3364  
Fax 346-9840

FEBRUARY 05, 1992

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As requested, please be advised that the authorized signing officers of the County of Red Deer No. 23, have today signed the above mentioned Agreement. The Agreement was given to Alderman Statnyk when signed.

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R.J. STONEHOUSE, C.L.G.M.  
COUNTY COMMISSIONER

/gg

c.c. H. Michael C. Day, City Commissioner, City of Red Deer

**SUMMARY OF AGREEMENT BETWEEN  
THE CITY OF RED DEER  
THE COUNTY OF RED DEER #23  
GAETZ PLAZA LTD., AN ALBERTA CORPORATION**

The essence of this agreement is that The City of Red Deer will discontinue all further legal action with respect to a proposed shopping centre to be located in the County of Red Deer; the development will proceed essentially in accordance with the C2 Section of the City's Land Use Bylaw; the site will be serviced by the City on terms and conditions similar to any other developers; all parties will consent to annexation of the lands to the City; and in compensation to the County for lost taxes, the City will pay the County \$155,000.

To assist in following the details of the agreement, following the preamble, the agreement is as follows:

**Clause 1**

This clause agrees that all parties to the agreement will discontinue any and all legal action against each other with respect to the County bylaw and the development, and relieves all parties from any liabilities arising therefrom.

**Clauses 2, 3 & 4**

In these clauses the parties agree to be bound by the terms of the Development Permit and the Development Agreement with the County, except with respect to services, and the City agrees not to rezone the site if it is annexed to the City.

**Clauses 5 & 6**

In these clauses the developer agrees that the uses on the site will generally conform to the C2 uses in the City Land Use Bylaw, unless otherwise approved by the City, and the City agrees that the County may continue to grant approvals in this context while the site remains in the County, and specifically will grant approvals for signage and landscaping as outlined.

**Clause 7**

In this clause, the County agrees not to permit any further developments on the balance of the subdivided lands until the question of annexation has been dealt with.

**Clauses 8, 9, 10, 11 & 12**

These clauses deal with the servicing of the site. The City agrees to provide sanitary sewer, storm sewer, water, and some road works currently within City limits, and the developer agrees to pay for the construction of these services, including the payment of appropriate offsite levies. The terms and conditions of these clauses, while not identical, are in general conformance with the normal development agreement the City executes with any other developer.

**Clause 13**

In this clause the developer agrees to abide by the terms and conditions of the City Utility Bylaws which have no force or effect outside the City limits. The County agrees to enact similar bylaws for this site should it prove necessary.

**Clauses 14, 15 & 16**

These clauses all deal with annexation of the lands in question. The County, the developer, and the landowners consent to the annexation of the lands, with a recommended effective date of 31 December, 1992. In compensation for lost tax revenue, the City agrees to pay to the County, \$155,000. In the event that the Local Authorities Board were to order a tax-sharing agreement, the \$155,000 would not be in addition. The City would not be liable for the \$155,000 in the event that the development did not proceed, or if the lands were not annexed to the City.

**Clause 17**

In this clause the City specifically recognizes that the County is not restricted from taking any position it feels appropriate, with respect to all the other lands proposed for annexation in the current annexation application by the City.

**Clauses 18 - 31**

These clauses are boiler plate.

**DATE: February 5, 1992**

**TO: City Council**

**FROM: Deputy Mayor Alderman T. Guilbault**

**RE: NOTICE -  
SPECIAL MEETING OF COUNCIL OF THE CITY OF RED DEER**

---

Pursuant to Sections 40 (2) and 43 (5) of the Municipal Government Act, Chapter M-26 RSA 1980, notice is hereby given that a Special Meeting of Council of The City of Red Deer will be held in the Council Chambers of City Hall on Wednesday, February 5, 1992 commencing at 4:30 p.m. to discuss the following business:

1. Southam and Bahen Realty Inc., Gaetz Plaza Ltd.,  
County of Red Deer No. 23, City of Red Deer Settlement Agreement.

ALDERMAN T. GUILBAULT  
Deputy Mayor

CS/jt

We, the undersigned members of Council of The City of Red Deer, pursuant to Section 43(5) of the Municipal Government Act, Chapter M-26 RSA 1980, hereby give written consent to the holding of the above noted meeting.

---

John Campbell, Alderman

---

Tim Guilbault, Alderman

---

Roy McGregor, Alderman

---

Dennis Moffat, Alderman

---

Larry Pimm, Alderman

---

Gail Surkan, Alderman

---

Dan Lawrence, Alderman

---

Bill Statnyk, Alderman

2nd  
Copy

THIS AGREEMENT MADE EFFECTIVE THE 31ST DAY OF JANUARY, A.D., 1992

BETWEEN:

**THE CITY OF RED DEER**  
(herein called "the City")

OF THE FIRST PART

-and-

**THE COUNTY OF RED DEER NO. 23**  
(herein called "the County")

OF THE SECOND PART

-and-

**GAETZ PLAZA LTD., AN ALBERTA CORPORATION**  
(herein called "Gaetz")

OF THE THIRD PART

(the "Parties")

WHEREAS the Parties are desirous of entering into an agreement to:

- (a) facilitate and govern the immediate development of those certain lands presently within the County and more specifically described in Schedule "A" hereto (the Gaetz Lands);
- (b) permit the orderly annexation by the City of the lands (including the "Gaetz Lands") outlined in red on Schedule "B" hereto (herein called "the Lands");
- (c) to accommodate the servicing of the Gaetz Lands by the City;

AND WHEREAS the Parties have been parties to certain legal proceedings involving the use and development of the Lands and the Parties are desirous of terminating their respective participation in all such proceedings with respect to the Lands; save and except with respect to the City's Petition to annex the Lands;

AND WHEREAS the County has issued a Development Permit No. D-282-91 (the Development Permit) to Gaetz dated November 8, 1991, with respect to the development of the Gaetz Lands, a copy of which is attached as Schedule "C" hereto, including uses therein which are included in the C2 Land Use Classification of the City Land Use Bylaw;

AND WHEREAS the County and Gaetz have entered into a Development Agreement dated December 12, 1991, (the Development Agreement) a copy of which is attached as Schedule "D" hereto;

AND WHEREAS the Parties are desirous that the Gaetz Lands be developed as stipulated and authorized by the Development Permit and the Development Agreement and, in the normal course, without interruption or delay by or on behalf of any of the Parties;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) the Parties hereto do mutually covenant and agree with one another as follows:

1. (1) The City shall, with the exception of the Petition which it has filed with the Local Authorities Board to annex the Lands, forthwith upon execution of this agreement by all Parties abandon, withdraw and discontinue any action and do all acts and things necessary to absolutely discontinue all legal proceedings which it has commenced or with respect to which it is a party concerning the County Bylaw No. 2C/91, the Development Permit and all uses specified therein, the development by Gaetz of the Gaetz Lands in accordance with the Development Permit, and all matters related thereto. In furtherance thereof, but without restricting the generality of the foregoing, the City shall:
  - (a) file a Discontinuance of Action in the Court of Appeal of Alberta in the matter of the *Planning Act*, R.S.A., 1980, Chapter P-9 and amendments thereto, between the Parties hereto and the Alberta Planning Board;
  - (b) file a Discontinuance of Action in the Court of Queen's Bench of Alberta, Judicial District of Red Deer, in the action among the Parties hereto.
- (2) The City hereby waives any rights to and covenants that it shall not appeal the Decision of the Development Appeal Board, a copy of which is attached as Schedule "E" hereto.
- (3) None of the Parties hereto shall be liable to any other Party hereto for any costs, or

for any damages of any nature or kind which any Party hereto may allege to have suffered as a result of or in connection with the legal proceedings which are herein provided to be discontinued or with the proposed development of the Gaetz Lands and each of the Parties hereto hereby specifically and absolutely release and discharge each other, of and against any and all liability therefore.

2. Gaetz agrees to comply with the terms and conditions of the Development Permit, and the Development Agreement and all provisions contained in this agreement with respect to the development of the Gaetz Lands. The Parties agree that the provisions of this agreement with respect to servicing of the Gaetz Lands shall prevail over the provisions of the Development Agreement respecting servicing.
3. The City agrees not to commence, continue, join or otherwise participate in any legal proceedings or otherwise act in any manner in opposition to or which could delay or otherwise interfere with the development of the Gaetz Lands in compliance with the terms and conditions of the Development Agreement, the Development Permit and this agreement.
4. The City agrees that, if the Lands are annexed to the City, the Development Agreement and the Development Permit and this agreement shall continue to govern the development of the Gaetz Lands and the City shall cooperate fully with and provide its assistance to Gaetz to enable the expeditious development of the Gaetz Lands in accordance with the Development Permit, and in furtherance thereof, to complete all inspections and grant all required approvals without undue delay. Subject to its obligation to give due process to any bona fide third party application for re-zoning, the City shall not re-zone or re-designate the Gaetz Lands.
5. The City acknowledges and agrees that the County shall be entitled to continue to, and in good faith, (and without interference by the City) grant approvals and otherwise deal with the development of the Gaetz Lands pursuant to the Development Agreement and the Development Permit, in the normal course, including without limiting the generality of the foregoing, granting development permits with respect to signs and landscaping. Provided, however, that it is agreed that:



- (a) with respect to pylon signs, such approval be restricted to 3 pylon signs of not over 40 feet in height, not exceeding 400 square feet of signing on each side of each two-sided sign; and
  - (b) landscaping plans shall be submitted to the City for information and comment before approval.
- 6. (1) Gaetz agrees that the uses permitted and which may be permitted by the County for the Gaetz Lands, shall be deemed to require compliance with the City's current C2 uses provided in the City Land Use Bylaw.
- (2) Provided that, Gaetz shall be entitled to apply to the County for a variance of City C2 uses at any time prior to Annexation of the lands to the City. Any such variation by the County to be subject to the approval of the City.
  - (3) Provided that, Gaetz shall be entitled to apply to the City for a variance thereof at any time after the effective date upon which the Lands are annexed to the City.
- 7. The County acknowledges and agrees that, subject to the County's obligation to act in good faith with respect to any development application, it shall not enter into any development agreement or grant any development permit with respect to that portion of the Lands not included in the Gaetz Lands until the City's Petition for Annexation of the Lands has been decided by the Local Authorities Board and all appeals of that decision have been decided by the appropriate Court or other body and, if applicable, the Governor in Council has dealt therewith.
- 8. Subject to the payments herein required, the City shall, on a timely basis following receipt of the necessary plans and specifications, provide electric power, water, sanitary sewer and storm sewer services.
- 9. (1) The City shall:
  - (a) construct that portion of roadway specifically identified on Schedule "F" hereto from 22nd Street to the northern boundary of the Gaetz Lands;
  - (b) in the first instance, be responsible for and pay the cost of such roadway.

( 2 ) Gaetz shall, upon completion of construction of the roadway by the City, at its option, make payment in full to the City of such costs or, alternately, execute and deliver to the City a form of mortgage security (the "City Mortgage") for the repayment thereof to be registered as a first charge on the Gaetz Lands, and providing for repayment of the cost of such roadway, together with interest thereon at the City current debenture borrowing rate imposed by the Alberta Municipal Finance Corporation, amortized and payable in ten equal installments over a period of ten years commencing from the date of completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable mortgage upon the title to the Gaetz Lands in favour of the City. Provided, however, that the City Mortgage shall, at the request of Gaetz, be postponed by the City to and in favour of any construction or long term financing, refinancing, replacement or substitute financing and any renewals thereof. The City agrees to execute and deliver on a timely basis all documentation ( in registerable form) necessary to postpone the City Mortgage as aforesaid.

( 3 ) If the service roadway terminates at the north boundary of the Gaetz Lands, Gaetz shall provide a mutual access or easement agreement to provide public access from the service road to the access point to Gaetz Avenue on the east boundary of the Gaetz Lands.

10. In consideration of the City agreeing to supply the Gaetz Lands with utilities outside of the Corporate boundaries of the City, Gaetz shall pay to the City in association with its development of the Gaetz Lands the following amounts at the times and in the manner that is consistent with and usual to a development in the nature of the proposed development of the Gaetz Lands, namely:

- (a) off-site levies of \$310,000.00;
- (b) a one time area contribution charge towards storm sewer costs in the sum of \$60,000.00.

Gaetz shall enter into an agreement with the Electric Light and Power Department of the City for the construction and supply of electrical services and make payment of

all Electric Light and Power connection costs and charges for service to the Gaetz Lands.

11. Gaetz shall design and construct such sewer and water services as deemed necessary by the City, as shown on Schedule "F", to and on the Gaetz land in compliance with City standards and in a manner acceptable to the City. The design shall be submitted to the City for review and approval prior to commencement of construction. Gaetz shall grant unto the City an easement or utility right-of-way for any portion of the water main situate upon the Gaetz Lands.
12. ( 1 ) The City represents that sanitary services can be provided to the Gaetz Lands and that water services can be provided to the Gaetz Lands, although there may be inadequate pressure to serve for fire protection purposes. The City further represents that it shall, in due course, upgrade its water services and will endeavor to provide adequate water pressure for fire protection purposes for the Gaetz Lands, such upgrading to be associated with the orderly expansion of the City services. In the meantime, should a booster pump be required to provide adequate water pressure for fire protection purposes, such pump will be provided by Gaetz, who shall be responsible for the maintenance, repair and replacement of such pump until such time as the City completes an upgrade of its water services, whereupon, if there is sufficient water pressure, Gaetz shall no longer be required to provide, maintain, repair or replace such pump.
- ( 2 ) The City agrees to complete, in a timely basis, the connection of the water and sanitary sewer services to the Gaetz Lands.
- ( 3 ) With respect to the connection of the proposed water main to the existing City water system, the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.
- ( 4 ) The connection of the Gaetz sanitary sewer main to the City system may be undertaken by Gaetz at its expense, or the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.

- ( 5 ) Service connections to the water main will be undertaken by the City and Gaetz shall make payment for such service at the rate then current in the City Unit Rate Bylaw, on demand.
  - ( 6 ) The City shall make every effort to ensure that storm sewer services are completed for the Gaetz Lands concurrently with the development of the Gaetz Lands.
13. In consideration of the City agreeing to provide utilities outside of its municipal boundaries:
- ( a ) Gaetz acknowledges and agrees that it shall be subject to and be bound by all of the provisions of the City Utility Bylaws in the same manner as if the said Lands were within the boundaries of the City;
  - ( b ) The County will cooperate with and assist the City in the recovery of its charges for utilities, from time to time, until such time as the Lands are annexed within the boundaries of the City and, if requested, shall authorize the provisions of the City of Red Deer Utility Bylaws to be enforceable within the County of Red Deer with respect to the Gaetz Lands.

#### **ANNEXATION**

14. ( 1 ) If an Order for Annexation is issued which has the effect of including the Lands within the boundaries of the City, then the City shall, as compensation for lost tax revenues which the County would otherwise derive from the development of the Gaetz Lands by Gaetz as herein contemplated, and provided that the main components (the anchor tenants) of the proposed development are substantially completed (meaning exterior structures in place), pay to the County, without deduction or set-off, the amount of \$155,000.00 on or before the 1st day of July, 1993.
- ( 2 ) In the event that the Petition by the City to include the Lands within the boundaries of the City is not successful, the City shall have no liability to make payment of the aforesaid sum to the County.
- ( 3 ) Should the development not proceed within the time provided in the development

permit (plus any reasonable extension for completion), the City shall have no liability to pay the aforesaid sum to the County.

- ( 4 ) It is not intended that the payment of \$155,000.00 provided for in this section be in addition to any amount which may be awarded on a tax sharing basis or otherwise by the Local Authorities Board upon Annexation.

15. ( 1 ) The County and Gaetz shall consent to the City's Petition for Annexation of the Lands pursuant to the Petition for Annexation dated August 15, 1991.

- ( 2 ) Gaetz undertakes to deliver to the City a letter signed by James Arthur Bower and addressed to the Local Authorities Board of the Province of Alberta, requesting and consenting to the annexation of the Lands by the City within 10 days from the date of execution of this Agreement.

16. The County and Gaetz agree to consent to a request by the City to the Local Authorities Board that the annexation of County Lands, if granted, be effective on the 31st day of December, 1992. The City agrees that the effective date for the purposes of assessment and taxation is established as December 31st, 1992.

17. The City and the County acknowledge and agree that nothing in this agreement shall restrict the County in exercising its unfettered discretion to oppose the annexation of any other Lands referred to in the said Petition for Annexation.

18. Time shall be of the essence of this Agreement.

19. This agreement (including the preambles hereto) and all schedules, documents and agreements furnished or to be furnished pursuant to the requirements of this agreement, contain the entire understanding of the Parties with respect to the subject matter hereof, and any modification or amendment hereto must be made in writing and signed by the Parties hereto.

20. This agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta.

21. Where the context so requires, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
22. Except as otherwise specifically provided for in this agreement, any waiver of any provision of this agreement must be in writing and signed by the Party waiving such provision. No waiver in any one or more instances shall be deemed or construed as a further or continuing waiver of any such provision.
23. If any provision of this agreement, or the application thereof to any of the Parties hereto or any person or circumstance, shall to any extent be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision to the Parties or to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such remaining provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Each Party agrees to carry out all such actions and to deliver such further documents and assurances as may be reasonably required to give full force and effect to the intent hereof.
25. This agreement may be executed by the Parties hereto in any number of separate counterparts and each of which when so executed and delivered shall by an original, but all of such counterparts shall together constitute one and the same instrument.
26. If any Party should institute any legal or other proceedings to enforce or interpret this agreement, then the prevailing Party or Parties shall be entitled to recover all reasonable legal fees and all costs incurred in connection with such proceedings, in addition to the amount of the judgment or order made in such proceedings. Such legal fees and costs shall be subject to review by taxation.
27. Notwithstanding any other provisions of this agreement, all notices, consents, approvals, requests, communications or other documentation to be given, made or

obtained under this agreement shall be in writing and shall be delivered personally, sent by electronic mail or mailed by prepaid registered mail as follows:

If to the City:

City of Red Deer  
P.O. Box 5008  
Red Deer, Alberta  
T4N 3T4  
Attention: Charles Sevcik - City Clerk  
Facsimile: (403) 346-6195

If to the County:

County of Red Deer No. 23  
P.O. Box 920  
Red Deer, Alberta  
T4N 5H3  
Attention: County Commissioner  
Facsimile: (403) 346-9840

If to Gaetz:

260-530 Kenaston Blvd.  
Winnipeg, Manitoba  
R3N 1Z4  
Facsimile: (204) 488-4669

With a copy to:

Mr. Frank P. Layton, Q.C.  
1200 Metropolitan Place  
10303 Jasper Avenue  
Edmonton, Alberta  
T5J 3N6  
Facsimile: (403) 421-4151

28. Either Party may change the address for notice by sending notice to that effect to the other party in the manner provided for in clause 27.
29. Any such notice, consent, approval, request, communications or other documentation

shall be deemed to have been received on the date of delivery if personally delivered or sent by electronic mail, and on the third business day following the registered mailing thereof provided, however, that in the event of a disruption of normal postal service, personal delivery or electronic mail shall be required.

30. If any Party is delayed in the completion of any work by labour disputes, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or by any cause of any kind whatsoever beyond the Party's control, then the time of completion of such work shall be extended for a period of time equal to the time lost due to such delays.
31. This agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this agreement has been duly executed by the respective authorized officials, officers or representatives of the Parties effective as of the day and year first above written.

**THE CITY OF RED DEER**

**THE COUNTY OF RED DEER NO. 23**

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

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

Per: \_\_\_\_\_  
City Clerk

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

**GAETZ PLAZA LTD.**

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

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



DATED:

\*\*\*\*\*

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")  
OF THE FIRST PART

- and -

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")  
OF THE SECOND PART

- and -

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")  
OF THE THIRD PART

(the "Parties")

\*\*\*\*\*

**AGREEMENT**

\*\*\*\*\*

CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS  
Barristers & Solicitors  
#208, 4808 Ross Street  
Red Deer, Alberta  
T4N 1X5

File No. 18,697 THC/vjh

THIS AGREEMENT MADE EFFECTIVE THE 31ST DAY OF JANUARY, A.D., 1992

BETWEEN:

**THE CITY OF RED DEER**  
(herein called "the City")

OF THE FIRST PART

-and-

**THE COUNTY OF RED DEER NO. 23**  
(herein called "the County")

OF THE SECOND PART

-and-

**GAETZ PLAZA LTD., AN ALBERTA CORPORATION**  
(herein called "Gaetz")

OF THE THIRD PART

(the "Parties")

WHEREAS the Parties are desirous of entering into an agreement to:

- (a) facilitate and govern the immediate development of those certain lands presently within the County and more specifically described in Schedule "A" hereto (the Gaetz Lands);
- (b) permit the orderly annexation by the City of the lands (including the "Gaetz Lands") outlined in red on Schedule "B" hereto (herein called "the Lands");
- (c) to accommodate the servicing of the Gaetz Lands by the City;

AND WHEREAS the Parties have been parties to certain legal proceedings involving the use and development of the Lands and the Parties are desirous of terminating their respective participation in all such proceedings with respect to the Lands; save and except with respect to the City's Petition to annex the Lands;

AND WHEREAS the County has issued a Development Permit No. D-282-91 (the Development Permit) to Gaetz dated November 8, 1991, with respect to the development of the Gaetz Lands, a copy of which is attached as Schedule "C" hereto, including uses therein which are included in the C2 Land Use Classification of the City Land Use Bylaw;

2nd  
copy  
goes  
here

3rd  
copy

AND WHEREAS the County and Gaetz have entered into a Development Agreement dated December 12, 1991, (the Development Agreement) a copy of which is attached as Schedule "D" hereto;

AND WHEREAS the Parties are desirous that the Gaetz Lands be developed as stipulated and authorized by the Development Permit and the Development Agreement and, in the normal course, without interruption or delay by or on behalf of any of the Parties;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) the Parties hereto do mutually covenant and agree with one another as follows:

1. (1) The City shall, with the exception of the Petition which it has filed with the Local Authorities Board to annex the Lands, forthwith upon execution of this agreement by all Parties abandon, withdraw and discontinue any action and do all acts and things necessary to absolutely discontinue all legal proceedings which it has commenced or with respect to which it is a party concerning the County Bylaw No. 2C/91, the Development Permit and all uses specified therein, the development by Gaetz of the Gaetz Lands in accordance with the Development Permit, and all matters related thereto. In furtherance thereof, but without restricting the generality of the foregoing, the City shall:
  - (a) file a Discontinuance of Action in the Court of Appeal of Alberta in the matter of the *Planning Act*, R.S.A., 1980, Chapter P-9 and amendments thereto, between the Parties hereto and the Alberta Planning Board;
  - (b) file a Discontinuance of Action in the Court of Queen's Bench of Alberta, Judicial District of Red Deer, in the action among the Parties hereto.
- (2) The City hereby waives any rights to and covenants that it shall not appeal the Decision of the Development Appeal Board, a copy of which is attached as Schedule "E" hereto.
- (3) None of the Parties hereto shall be liable to any other Party hereto for any costs, or

for any damages of any nature or kind which any Party hereto may allege to have suffered as a result of or in connection with the legal proceedings which are herein provided to be discontinued or with the proposed development of the Gaetz Lands and each of the Parties hereto hereby specifically and absolutely release and discharge each other, of and against any and all liability therefore.

2. Gaetz agrees to comply with the terms and conditions of the Development Permit, and the Development Agreement and all provisions contained in this agreement with respect to the development of the Gaetz Lands. The Parties agree that the provisions of this agreement with respect to servicing of the Gaetz Lands shall prevail over the provisions of the Development Agreement respecting servicing.
3. The City agrees not to commence, continue, join or otherwise participate in any legal proceedings or otherwise act in any manner in opposition to or which could delay or otherwise interfere with the development of the Gaetz Lands in compliance with the terms and conditions of the Development Agreement, the Development Permit and this agreement.
4. The City agrees that, if the Lands are annexed to the City, the Development Agreement and the Development Permit and this agreement shall continue to govern the development of the Gaetz Lands and the City shall cooperate fully with and provide its assistance to Gaetz to enable the expeditious development of the Gaetz Lands in accordance with the Development Permit, and in furtherance thereof, to complete all inspections and grant all required approvals without undue delay. Subject to its obligation to give due process to any bona fide third party application for re-zoning, the City shall not re-zone or re-designate the Gaetz Lands.
5. The City acknowledges and agrees that the County shall be entitled to continue to, and in good faith, (and without interference by the City) grant approvals and otherwise deal with the development of the Gaetz Lands pursuant to the Development Agreement and the Development Permit, in the normal course, including without limiting the generality of the foregoing, granting development permits with respect to signs and landscaping. Provided, however, that it is agreed that:

- (a) with respect to pylon signs, such approval be restricted to 3 pylon signs of not over 40 feet in height, not exceeding 400 square feet of signing on each side of each two-sided sign; and
  - (b) landscaping plans shall be submitted to the City for information and comment before approval.
- 6. (1) Gaetz agrees that the uses permitted and which may be permitted by the County for the Gaetz Lands, shall be deemed to require compliance with the City's current C2 uses provided in the City Land Use Bylaw.
- (2) Provided that, Gaetz shall be entitled to apply to the County for a variance of City C2 uses at any time prior to Annexation of the lands to the City. Any such variation by the County to be subject to the approval of the City.
  - (3) Provided that, Gaetz shall be entitled to apply to the City for a variance thereof at any time after the effective date upon which the Lands are annexed to the City.
- 7. The County acknowledges and agrees that, subject to the County's obligation to act in good faith with respect to any development application, it shall not enter into any development agreement or grant any development permit with respect to that portion of the Lands not included in the Gaetz Lands until the City's Petition for Annexation of the Lands has been decided by the Local Authorities Board and all appeals of that decision have been decided by the appropriate Court or other body and, if applicable, the Governor in Council has dealt therewith.
- 8. Subject to the payments herein required, the City shall, on a timely basis following receipt of the necessary plans and specifications, provide electric power, water, sanitary sewer and storm sewer services.
- 9. (1) The City shall:
  - (a) construct that portion of roadway specifically identified on Schedule "F" hereto from 22nd Street to the northern boundary of the Gaetz Lands;
  - (b) in the first instance, be responsible for and pay the cost of such roadway.

- ( 2 ) Gaetz shall, upon completion of construction of the roadway by the City, at its option, make payment in full to the City of such costs or, alternately, execute and deliver to the City a form of mortgage security (the "City Mortgage") for the repayment thereof to be registered as a first charge on the Gaetz Lands, and providing for repayment of the cost of such roadway, together with interest thereon at the City current debenture borrowing rate imposed by the Alberta Municipal Finance Corporation, amortized and payable in ten equal installments over a period of ten years commencing from the date of completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable mortgage upon the title to the Gaetz Lands in favour of the City. Provided, however, that the City Mortgage shall, at the request of Gaetz, be postponed by the City to and in favour of any construction or long term financing, refinancing, replacement or substitute financing and any renewals thereof. The City agrees to execute and deliver on a timely basis all documentation ( in registerable form) necessary to postpone the City Mortgage as aforesaid.
- ( 3 ) If the service roadway terminates at the north boundary of the Gaetz Lands, Gaetz shall provide a mutual access or easement agreement to provide public access from the service road to the access point to Gaetz Avenue on the east boundary of the Gaetz Lands.
10. In consideration of the City agreeing to supply the Gaetz Lands with utilities outside of the Corporate boundaries of the City, Gaetz shall pay to the City in association with its development of the Gaetz Lands the following amounts at the times and in the manner that is consistent with and usual to a development in the nature of the proposed development of the Gaetz Lands, namely:
- (a) off-site levies of \$310,000.00;
  - (b) a one time area contribution charge towards storm sewer costs in the sum of \$60,000.00.

Gaetz shall enter into an agreement with the Electric Light and Power Department of the City for the construction and supply of electrical services and make payment of

all Electric Light and Power connection costs and charges for service to the Gaetz Lands.

11. Gaetz shall design and construct such sewer and water services as deemed necessary by the City, as shown on Schedule "F", to and on the Gaetz land in compliance with City standards and in a manner acceptable to the City. The design shall be submitted to the City for review and approval prior to commencement of construction. Gaetz shall grant unto the City an easement or utility right-of-way for any portion of the water main situate upon the Gaetz Lands.
12. ( 1 ) The City represents that sanitary services can be provided to the Gaetz Lands and that water services can be provided to the Gaetz Lands, although there may be inadequate pressure to serve for fire protection purposes. The City further represents that it shall, in due course, upgrade its water services and will endeavor to provide adequate water pressure for fire protection purposes for the Gaetz Lands, such upgrading to be associated with the orderly expansion of the City services. In the meantime, should a booster pump be required to provide adequate water pressure for fire protection purposes, such pump will be provided by Gaetz, who shall be responsible for the maintenance, repair and replacement of such pump until such time as the City completes an upgrade of its water services, whereupon, if there is sufficient water pressure, Gaetz shall no longer be required to provide, maintain, repair or replace such pump.
- ( 2 ) The City agrees to complete, in a timely basis, the connection of the water and sanitary sewer services to the Gaetz Lands.
- ( 3 ) With respect to the connection of the proposed water main to the existing City water system, the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.
- ( 4 ) The connection of the Gaetz sanitary sewer main to the City system may be undertaken by Gaetz at its expense, or the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.

- ( 5 ) Service connections to the water main will be undertaken by the City and Gaetz shall make payment for such service at the rate then current in the City Unit Rate Bylaw, on demand.
  - ( 6 ) The City shall make every effort to ensure that storm sewer services are completed for the Gaetz Lands concurrently with the development of the Gaetz Lands.
13. In consideration of the City agreeing to provide utilities outside of its municipal boundaries:
- ( a ) Gaetz acknowledges and agrees that it shall be subject to and be bound by all of the provisions of the City Utility Bylaws in the same manner as if the said Lands were within the boundaries of the City;
  - ( b ) The County will cooperate with and assist the City in the recovery of its charges for utilities, from time to time, until such time as the Lands are annexed within the boundaries of the City and, if requested, shall authorize the provisions of the City of Red Deer Utility Bylaws to be enforceable within the County of Red Deer with respect to the Gaetz Lands.

#### **ANNEXATION**

14. ( 1 ) If an Order for Annexation is issued which has the effect of including the Lands within the boundaries of the City, then the City shall, as compensation for lost tax revenues which the County would otherwise derive from the development of the Gaetz Lands by Gaetz as herein contemplated, and provided that the main components (the anchor tenants) of the proposed development are substantially completed (meaning exterior structures in place), pay to the County, without deduction or set-off, the amount of \$155,000.00 on or before the 1st day of July, 1993.
- ( 2 ) In the event that the Petition by the City to include the Lands within the boundaries of the City is not successful, the City shall have no liability to make payment of the aforesaid sum to the County.
- ( 3 ) Should the development not proceed within the time provided in the development



permit (plus any reasonable extension for completion), the City shall have no liability to pay the aforesaid sum to the County.

- ( 4 ) It is not intended that the payment of \$155,000.00 provided for in this section be in addition to any amount which may be awarded on a tax sharing basis or otherwise by the Local Authorities Board upon Annexation.
- 15. ( 1 ) The County and Gaetz shall consent to the City's Petition for Annexation of the Lands pursuant to the Petition for Annexation dated August 15, 1991.
- ( 2 ) Gaetz undertakes to deliver to the City a letter signed by James Arthur Bower and addressed to the Local Authorities Board of the Province of Alberta, requesting and consenting to the annexation of the Lands by the City within 10 days from the date of execution of this Agreement.
- 16. The County and Gaetz agree to consent to a request by the City to the Local Authorities Board that the annexation of County Lands, if granted, be effective on the 31st day of December, 1992. The City agrees that the effective date for the purposes of assessment and taxation is established as December 31st, 1992.
- 17. The City and the County acknowledge and agree that nothing in this agreement shall restrict the County in exercising its unfettered discretion to oppose the annexation of any other Lands referred to in the said Petition for Annexation.
- 18. Time shall be of the essence of this Agreement.
- 19. This agreement (including the preambles hereto) and all schedules, documents and agreements furnished or to be furnished pursuant to the requirements of this agreement, contain the entire understanding of the Parties with respect to the subject matter hereof, and any modification or amendment hereto must be made in writing and signed by the Parties hereto.
- 20. This agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta.

21. Where the context so requires, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
22. Except as otherwise specifically provided for in this agreement, any waiver of any provision of this agreement must be in writing and signed by the Party waiving such provision. No waiver in any one or more instances shall be deemed or construed as a further or continuing waiver of any such provision.
23. If any provision of this agreement, or the application thereof to any of the Parties hereto or any person or circumstance, shall to any extent be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision to the Parties or to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such remaining provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Each Party agrees to carry out all such actions and to deliver such further documents and assurances as may be reasonably required to give full force and effect to the intent hereof.
25. This agreement may be executed by the Parties hereto in any number of separate counterparts and each of which when so executed and delivered shall be an original, but all of such counterparts shall together constitute one and the same instrument.
26. If any Party should institute any legal or other proceedings to enforce or interpret this agreement, then the prevailing Party or Parties shall be entitled to recover all reasonable legal fees and all costs incurred in connection with such proceedings, in addition to the amount of the judgment or order made in such proceedings. Such legal fees and costs shall be subject to review by taxation.
27. Notwithstanding any other provisions of this agreement, all notices, consents, approvals, requests, communications or other documentation to be given, made or

obtained under this agreement shall be in writing and shall be delivered personally, sent by electronic mail or mailed by prepaid registered mail as follows:

If to the City:

City of Red Deer  
P.O. Box 5008  
Red Deer, Alberta  
T4N 3T4  
Attention: Charles Sevcik - City Clerk  
Facsimile: (403) 346-6195

If to the County:

County of Red Deer No. 23  
P.O. Box 920  
Red Deer, Alberta  
T4N 5H3  
Attention: County Commissioner  
Facsimile: (403) 346-9840

If to Gaetz:

260-530 Kenaston Blvd.  
Winnipeg, Manitoba  
R3N 1Z4  
Facsimile: (204) 488-4669

With a copy to:

Mr. Frank P. Layton, Q.C.  
1200 Metropolitan Place  
10303 Jasper Avenue  
Edmonton, Alberta  
T5J 3N6  
Facsimile: (403) 421-4151

28. Either Party may change the address for notice by sending notice to that effect to the other party in the manner provided for in clause 27.

29. Any such notice, consent, approval, request, communications or other documentation

shall be deemed to have been received on the date of delivery if personally delivered or sent by electronic mail, and on the third business day following the registered mailing thereof provided, however, that in the event of a disruption of normal postal service, personal delivery or electronic mail shall be required.

30. If any Party is delayed in the completion of any work by labour disputes, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or by any cause of any kind whatsoever beyond the Party's control, then the time of completion of such work shall be extended for a period of time equal to the time lost due to such delays.
31. This agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this agreement has been duly executed by the respective authorized officials, officers or representatives of the Parties effective as of the day and year first above written.

**THE CITY OF RED DEER**

**THE COUNTY OF RED DEER NO. 23**

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

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

Per: \_\_\_\_\_  
City Clerk

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

**GAETZ PLAZA LTD.**

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

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

DATED:

\*\*\*\*\*

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")  
OF THE FIRST PART

-and-

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")  
OF THE SECOND PART

-and-

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")  
OF THE THIRD PART

(the "Parties")

\*\*\*\*\*

## AGREEMENT

\*\*\*\*\*

CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS  
Barristers & Solicitors  
#208, 4808 Ross Street  
Red Deer, Alberta  
T4N 1X5

File No. 18,697 THC/vjh

# FRANK P. LAYTON, Q.C.\*

— BARRISTER • SOLICITOR —

3rd  
copy  
goes  
here

OUR FILE: 20,216.FPL

YOUR FILE:

February 3, 1992

VIA FAX# (403) - 340 - 1280

CHAPMAN, RIEBEEK & COMPANY  
BARRISTERS & SOLICITORS  
208, 4808 ROSS STREET  
RED DEER, ALBERTA

Attention: Mr. Tom Chapman

Dear Sir:

RE: SOUTHAM & BAHEN REALTY INC.  
GAETZ PLAZA LTD. ("GAETZ")/THE COUNTY OF RED DEER  
NO. 23 (THE "COUNTY")/THE CITY OF RED DEER (THE  
"CITY")/SETTLEMENT AGREEMENT

-----

I refer to your letters of January 31, 1992 and the revised draft proposed Settlement Agreement which you provided to me. My clients have now had an opportunity to review the proposed Agreement and have instructed me to respond to you as follows, namely:

General Comment:

It is our understanding that the City does desire in good faith to resolve this matter for the mutual benefit of all Parties.

Simply stated, some of the revisions contained in the draft Settlement Agreement prepared by you, provide the clear impression that the City's position is not one of conciliation and cooperation. For example, your Agreement contained a release by Gaetz and the County in favour of the City but made no mention of a mutual release whereby the City also released Gaetz and the County. Similarly, a force majeure clause was included in the Agreement which provided protection to the City but no provision was made to include a force majeure clause in favour of the County and Gaetz. There were a number of other similar amendments made which we trust were by way of oversight, rather than intentionally trying to put any Party at a disadvantage.

IN ASSOCIATION WITH  
BARR, WENSEL, NESSBITT, REESON  
1200 METROPOLITAN PLACE  
10303 JASPER AVENUE  
EDMONTON, ALBERTA  
CANADA T5J 3N6

TELEPHONE (403) 421-9900

FAX (403) 421-4151

As you can appreciate, it is of paramount importance to all of the Parties that if this matter is to be resolved, open communication and cooperation must be attained.

It is with the desire to enter into a satisfactory Agreement that fairly addresses the concerns of all Parties that I have been instructed to provide you with the enclosed revised Settlement Agreement and to provide you with the following commentary concerning certain specific provisions. You will note that the enclosed revised Settlement Agreement has been marked in handwriting to indicate those amendments which are requested. I have also set forth below certain further additional amendments which could not be accommodated by simply inserting them into the Agreement. Please also amend the following clauses as set forth below:

1. Clause 6 should be amended to read:

6. Gaetz agrees that notwithstanding that Bylaw 2C/91 (including DCD zoning); the Development Agreement; the Development Permit and the provisions of this Agreement, including, in particular, the developments which are authorized to be approved pursuant to Clause 5 hereof (eg. signs, landscaping, and movie theatre) shall govern the development of the Gaetz Lands, the zoning for the Gaetz Lands shall be deemed to require compliance with the City's current C2 zoning with respect to personal service uses only. Provided further, that:

1. Until the City's Petition for Annexation has been finally dealt with as contemplated in Clause 7 hereof, the uses applicable to the Gaetz Lands shall be as stipulated in this Clause 6;
2. After annexation of the Gaetz Lands by the City, Gaetz shall be entitled to apply to the City, from time to time, for a variance of the provisions set forth in this Clause 6; and
3. If the Gaetz Lands are not annexed to the City and upon the completion or abandonment of all Appeals available to the City with respect to its Petition for Annexation, then Gaetz shall be entitled to, from time to time, apply to the County for a variance of the provisions of this Clause 6.

- 3 -

2. Clause 9(2) should be amended to read:

9(2) ... completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable mortgage upon the title to the Gaetz Lands in favour of the City. Provided however, that the City Mortgage shall, at the request of Gaetz, be postponed by the City to and in favour of any construction or long term financing, refinancing, replacement or substitute financing and any renewals thereof. The City agrees to execute and deliver on a timely basis all documentation (in registerable form) necessary to postpone the City Mortgage as aforesaid.

3. Clause 12 (1) shall read:

12(1) The City represents that sanitary services can be provided to the Gaetz Lands and that water services can be provided to the Gaetz Lands, although there may be inadequate pressure to serve for fire protection purposes. The City further represents that it shall in due course, upgrade its water services to provide adequate water pressure for fire protection purposes for the Gaetz Lands, such upgrading to be associated and completed upon the orderly expansion of City services. In the meantime, should a booster pump be required to provide adequate water pressure for fire protection purposes, such pump will be provided by Gaetz, who shall be responsible for the maintenance, repair and replacement of such pump until such time as the City completes an upgrade of it's water services to provide adequate pressure for fire protection purposes, whereupon Gaetz shall no longer be required to provide, maintain, repair or replace such pump.

4. Schedule "F" should be amended to delete any reference to "number "2" proposed detention pond". This pond is the responsibility of the City to its residents generally and is not specific to this development.

I have also been advised by Mr. Leo Burgess that the County will be speaking directly to you concerning certain amendments. Mr. Burgess did ask that I also raise the following amendments with you. They include:



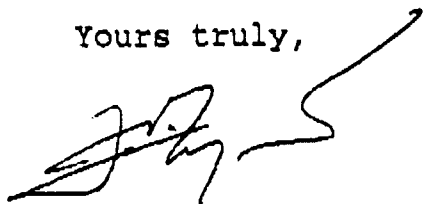
- 4 -

1. The deletion of Clause 16 which refers to the date of annexation; and
2. The amendment of the Settlement Agreement to stipulate that the amount of \$155,000.00 is payable by the City to the County in any event.

I trust your client will find the enclosed amendments satisfactory and look forward to receipt of your confirmation of the same. Of course, should you wish to discuss the clarification of any amendment contained herein, please do not hesitate to give me a call.

I am advised that a copy of the Development Agreement was provided to the City earlier today.

Yours truly,



FRANK P. LAYTON, Q.C.

FPL:gj

cc: Southam & Bahen Realty Inc./Gaetz Plaza Ltd.  
Lloyd Southam/Bob Bahen

cc: Brownlee Fryett  
Attention: Leo Burgess

01/31/92 15:18

☎ 340 1280 CHAPMAN RIEBEEK

03

THIS AGREEMENT MADE EFFECTIVE THE 31ST DAY OF JANUARY, A.D., 1992

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")

OF THE FIRST PART

-and-

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")

OF THE SECOND PART

-and-

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")

OF THE THIRD PART

(the "Parties")

WHEREAS the Parties are desirous of entering into an agreement to:

- (a) facilitate and govern the immediate development of those certain lands presently within the County and more specifically described in Schedule "A" hereto (the Gaetz Lands);
- (b) permit the orderly annexation by the City of the lands (including the "Gaetz Lands") outlined in red on Schedule "B" hereto (herein called "the Lands");
- (c) to accommodate the servicing of the Gaetz Lands by the City;

AND WHEREAS the Parties have been parties to certain legal proceedings involving the use and development of the Lands and the Parties are desirous of terminating their respective participation in all such proceedings with respect to the Lands; save and except with respect to the City's Petition to annex the Lands;

AND WHEREAS the County has issued a Development Permit No. D-282-91 (the Development Permit) to Gaetz dated November 8, 1991, with respect to the development of the Gaetz Lands, a copy of which is attached as Schedule "C" hereto; including as an exhibit thereto

- 2 -

AND WHEREAS the County and Gaetz have entered into a Development Agreement dated December 12, 1991, (the Development Agreement) a copy of which is attached as Schedule "D" hereto;

AND WHEREAS ~~Gaetz desires to develop~~ <sup>THE PARTIES ARE DESIROUS that</sup> the Gaetz Lands as stipulated and <sup>to be developed</sup> authorized by the Development Permit and the Development Agreement and, in the normal course, without interruption or delay by or on behalf of any of the Parties;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) the Parties hereto do mutually covenant and agree with one another as follows:

1. (1) The City shall, with the exception of the Petition which it has filed with the Local Authorities Board to annex the Lands, forthwith upon execution of this agreement by all Parties abandon, withdraw and discontinue any action and do all acts and things necessary to absolutely discontinue all legal proceedings which it has commenced or with respect to which it is <sup>is</sup> a party concerning the County Bylaw No. 2C/91, <sup>the</sup> Development Permit and all uses specified therein, the development by Gaetz of the Gaetz Lands in accordance with the Development Permit, and all matters related thereto. In furtherance thereof, but without restricting the generality of the foregoing, the City shall:

(a) file a Discontinuance of Action in the Court of Appeal of Alberta in the matter of the *Planning Act*, R.S.A., 1980, Chapter P-9 and amendments thereto, between the Parties hereto and the Alberta Planning Board;

(b) file a Discontinuance of Action in the Court of Queen's Bench of Alberta, Judicial District of Red Deer, in the action among the Parties hereto.

(2) The City hereby waives any rights to and covenants that it shall not appeal the Decision of the Development Appeal Board, a copy of which is attached as Schedule "E" hereto.

(3) <sup>No Party</sup> ~~The City~~ shall ~~not~~ be liable to any <sup>other</sup> Party hereto for any costs, or for any damages of

IMEND  
TO BE  
MUTUAL  
RELEASE

- 3 -

*or with the proposed development of the Gaetz Lands*  
~~any nature or kind which any Party hereto may allege to have suffered as a result of~~  
*n in connection with* ~~the legal proceedings which are herein provided to be discontinued and the County and~~  
~~Gaetz hereby specifically and absolutely releases and discharges the City from, of and~~  
~~against any and all liability therefore.~~ *each other Party*

2. Gaetz agrees to comply with the terms and conditions of the Development Permit, and the Development Agreement and all provisions contained in this agreement with respect to the development of the Gaetz Lands. The Parties agree that the provisions of this agreement with respect to servicing of the Gaetz Lands shall prevail over the provisions of the Development Agreement respecting servicing.

3. The City agrees not to commence, continue, join or otherwise participate in any legal proceedings or otherwise act in any manner in opposition to or which could delay or otherwise interfere with the development of the Gaetz Lands in compliance with the terms and conditions of the Development Agreement, the Development Permit and this agreement.

4. The City agrees that, if the Lands are annexed to the City, the Development Agreement and the Development Permit and this agreement shall continue to govern the development of the Gaetz Lands and the City shall cooperate fully with and provide its assistance to Gaetz to enable the expeditious development of the Gaetz Lands in accordance with the Development Permit, and in furtherance thereof, to complete all inspections and grant all required approvals without undue delay. *Subject to its obligation to give due process to any bona fide third party application for rezoning, the City shall not re-zone or re-designate the Gaetz Lands.*

5. The City acknowledges and agrees that the County shall be entitled to continue to, and in good faith, (and without interference by the City) grant approvals and otherwise deal with the development of the Gaetz Lands pursuant to the Development Agreement and the Development Permit, in the normal course, including without limiting the generality of the foregoing, granting development permits with respect to signs, landscaping, and a movie theatre. Provided, however, that it is agreed that:

- (a) with respect to pylon signs, such approval be restricted to 3 pylon signs of not over ~~40~~<sup>45</sup> feet in height, not exceeding 400 square feet of signing on each side of each two-sided sign; and

- 4 -

(b) landscaping plans shall be submitted to the City for information and comment before approval by the County, in its unfettered discretion.

6. ~~Gaetz agrees that the uses permitted and which may be permitted by the County for the Gaetz Lands, shall be deemed to require compliance with the City's current C2 uses provided in the City Land Use Bylaw; provided that, Gaetz shall be entitled to apply to the City for a variance thereof at any time after the effective date upon which the Lands are annexed to the City. (SEE ATTACHED)~~

7. The County acknowledges and agrees that, subject to the County's obligation to act in good faith with respect to any development application, it shall not enter into any development agreement or grant any development permit with respect to that portion of the Lands not included in the Gaetz Lands until the City's Petition for Annexation of the Lands has been decided by the Local Authorities Board and all appeals of that decision have been decided by the appropriate Court or other body and, if applicable, the Governor in Council has dealt therewith.

8. Subject to the payments herein required, the City shall, on a timely basis following receipt of the necessary plans and specifications, provide electric power, water, sanitary sewer and storm sewer services.

9. (1) The City shall:

(a) construct that portion of roadway specifically identified on Schedule "F" hereto from 22nd Street to the northern boundary of the Gaetz Lands;

(b) In the first instance, be responsible for and pay the cost of such roadway.

(2) Gaetz shall, upon completion of construction of the roadway by the City, at its option, make payment in full to the City of such costs or, alternately, execute and deliver to the City a form of mortgage security for the repayment thereof to be registered as a first charge on the Gaetz Lands, and providing for repayment of the cost of such roadway, together with interest thereon at the City current debenture borrowing rate imposed by the Alberta Municipal Finance Corporation, amortized and payable in ten equal installments over a period of ten years commencing from the date of

(the "City Mortgage")

- 5 -

completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable charge upon the title to the Gaetz Lands in favour of the City. Provided However — (see commentary)

Subject to the requirements of any permits granted by Alberta  
 (3) All the service roadway terminates at the north boundary of the Gaetz Lands, Gaetz Transportation

shall provide a mutual access or easement agreement to provide public access for the service road to the access point to Gaetz Avenue on the east boundary of the Gaetz Lands. It is not intended that there shall be any duplication with respect to such access and the City agrees that the requirements of Alberta Transportation shall govern.

10. In consideration of the City agreeing to supply the Gaetz Lands with utilities outside of the Corporate boundaries of the City, Gaetz shall pay to the City in association with its development of the Gaetz Lands the following amounts at the times and in the manner that is consistent with and usual to a development in the nature of the proposed development of the Gaetz Lands, namely:

\$310,000.

(a) off-site levies of \$21,000.00 per hectare,

(b) a one time area contribution charge towards storm sewer costs in the sum of \$60,000.00.

Gaetz shall enter into an agreement with the Electric Light and Power Department of the City for the construction and supply of electrical services and make payment of all Electric Light and Power connection costs and charges for service to the Gaetz Lands.

11. Gaetz shall design and construct such sewer and water services as deemed necessary by the City, as shown on Schedule "F", to and on the Gaetz land in compliance with City standards and in a manner acceptable to the City. The design shall be submitted to the City for review and approval prior to commencement of construction. Gaetz shall grant unto the City ~~an easement~~ a utility right of way for any portion of the water main situate upon the Gaetz Lands.

12. (1) The City represents that water, sewer and storm services can be provided to the Gaetz Lands, although there may be inadequate provision for fire protection purposes. [See attached]

- 6 -

(2) The City agrees to complete, in a timely basis, the connection of the water and sanitary sewer services to the Gaetz Lands.

(3) With respect to the connection of the proposed water main to the existing City water system, the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.

(4) The connection of the Gaetz sanitary sewer main to the City system may be undertaken by Gaetz at its expense, or the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.

(5) Service connections to the water main will be undertaken by the City and Gaetz shall make payment for such service at the rate then current in the City Unit Rate Bylaw, on demand.

(6) The City shall ensure that storm sewer services are completed for the Gaetz lands concurrently with the development of the Gaetz lands  
~~(a) Should a booster pump be required to provide adequate waste pressure for fire protection purposes, such pump will be provided by the developer, who shall continue thereafter to be responsible for the maintenance, repair and replacement of such pump as required from time to time.~~

(7) Gaetz shall be entitled to (at its own cost) connect all such service lines as outlined on Schedule "F" to lines servicing the Gaetz Lands  
~~12. (1) In consideration of the City agreeing to provide utilities outside of its municipal boundaries~~ as the lands are developed

~~(a) Gaetz acknowledges and agrees that it shall be subject to and be bound by all of the provisions of the City Utility Bylaws in the same manner as if the said Lands were within the boundaries of the City.~~

~~(b) The County will cooperate with and assist the City in the recovery of its charges for utilities, from time to time, until such time as the lands are annexed within the boundaries of the City and, if requested, shall authorize the provisions of the City of Red Deer Utility Bylaws to be enforceable within the County of Red Deer with respect to the Gaetz Lands.~~

ANNEXATION

14. (1) If an Order for Annexation is issued which has the effect of including the Lands within the boundaries of the City, then the City shall, as compensation for lost tax revenues which the County would otherwise derive from the development of the Gaetz Lands by Gaetz as herein contemplated, and provided that the two main components of the proposed development, namely, the K-Mart Store and the Save On Foods Store are substantially completed prior to December 31, 1992, pay to the County, without deduction or set-off, the amount of \$155,000.00 on or before the 1st day of July, 1993.

(2) In the event that the Petition by the City to include the Lands within the boundaries of the City is not successful, the City shall have no liability to make payment of the aforesaid sum to the County.

~~(3) For the purpose of this agreement, substantial completion shall mean that possession of the two main components aforesaid has been given to the tenants for installation of trade fixtures~~

~~(4) Should the development not proceed within the time provided in the development permit, the City shall have no liability to pay the aforesaid sum to the County.~~

~~(5) Should the development not be substantially complete until after December 31, 1992, then payment of the sum of \$155,000.00 shall be deferred to July 1, 1994.~~

not oppose  
15. (1) The County and Gaetz ~~shall support~~ the City's Petition for Annexation of the Lands pursuant to the Petition for Annexation dated August 15, 1991. Provided however, that annexation shall not be effective until on or after July 1, 1992.

~~(2) Prior to execution of this agreement, Gaetz shall deliver to the City a letter signed by James Arthur Bower and addressed to the Local Authorities Board of the Province of Alberta, requesting and supporting the annexation of the Lands by the City.~~

not to oppose  
16. The County and Gaetz agree to support a request by the City to the Local Authorities Board that the annexation of County Lands, if granted, be effective on the 1st day of



- 8 -

July, 1992; <sup>provided that</sup> ~~Notwithstanding the foregoing, the City agrees that~~ the effective date for the purposes of assessment and taxation <sup>must</sup> ~~may~~ be established as January 1, 1993.

17. The City and the County acknowledge and agree that nothing in this agreement shall restrict the County in exercising its unfettered discretion to oppose the annexation of any other Lands referred to in the said Petition for Annexation.
18. Time shall be of the essence of this Agreement.
19. This agreement (including the preambles hereto) and all schedules, documents and agreements furnished or to be furnished pursuant to the requirements of this agreement, contain the entire understanding of the parties with respect to the subject matter hereof, and any modification or amendment hereto must be made in writing and signed by the parties hereto.
20. This agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta.
21. Where the context so requires, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
22. Except as otherwise specifically provided for in this agreement, any waiver of any provision of this agreement must be in writing and signed by the party waiving such provision. No waiver in any one or more instances shall be deemed or construed as a further or continuing waiver of any such provision.
23. If any provision of this agreement, or the application thereof to any of the parties hereto or any person or circumstance, shall to any extent be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision to the parties or to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such remaining provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

- 9 -

24. Each Party agrees to carry out all such actions and to deliver such further documents and assurances as may be reasonably required to give full force and effect to the intent hereof.
25. This agreement may be executed by the Parties hereto in any number of separate counterparts and each of which when so executed and delivered shall be an original, but all of such counterparts shall together constitute one and the same instrument.
26. If any Party should institute any legal or other proceedings to enforce or interpret this agreement, then the prevailing Party or Parties shall be entitled to recover all reasonable legal fees and all costs incurred in connection with such proceedings, in addition to the amount of the judgment or order made in such proceedings. Such legal fees and costs shall be subject to review by taxation.
27. Notwithstanding any other provisions of this agreement, all notices, consents, approvals, requests, communications or other documentation to be given, made or obtained under this agreement shall be in writing and shall be delivered personally, sent by electronic mail or mailed by prepaid registered mail as follows:

If to the City:

City of Red Deer  
P.O. Box 5008  
Red Deer, Alberta  
T4N 3T4  
Attention: Charles Sevdik - City Clerk  
Facsimile: (403) 346-6195

If to the County:

County of Red Deer No. 23  
P.O. Box 920  
Red Deer, Alberta  
T4N 5H3  
Attention: County Commissioner  
Facsimile: (403) 346-9840

- 10 -

If to Gaetz:

260-530 Kenaston Blvd.  
Winnipeg, Manitoba  
R3N 1Z4  
Facsimile: (204) 488-4669

With a copy to:

Mr. Frank P. Layton, Q.C.  
1200 Metropolitan Place  
10303 Jasper Avenue  
Edmonton, Alberta  
T5J 3N6  
Facsimile: (403) 421-4151

28. Either Party may change the address for notice by sending notice to that effect to the other party in the manner provided for in clause 27.
29. Any such notice, consent, approval, request, communications or other documentation shall be deemed to have been received on the date of delivery if personally delivered or sent by electronic mail, and on the third business day following the registered mailing thereof provided, however, that in the event of a disruption of normal postal service, personal delivery or electronic mail shall be required.
30. If ~~any Party~~ is delayed in the completion of any work by labour disputes, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or by any cause of any kind whatsoever beyond the ~~contractor's~~ control, then the time of completion of such work shall be extended for a period of time equal to the time lost due to such delays.
31. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

01/31/92 15:24

340 1280 CHAPMAN RIEBEEK

13

- 11 -

IN WITNESS WHEREOF this agreement has been duly executed by the respective authorized officials, officers or representatives of the Parties effective as of the day and year first above written.

THE CITY OF RED DEER

THE COUNTY OF RED DEER NO. 23

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

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

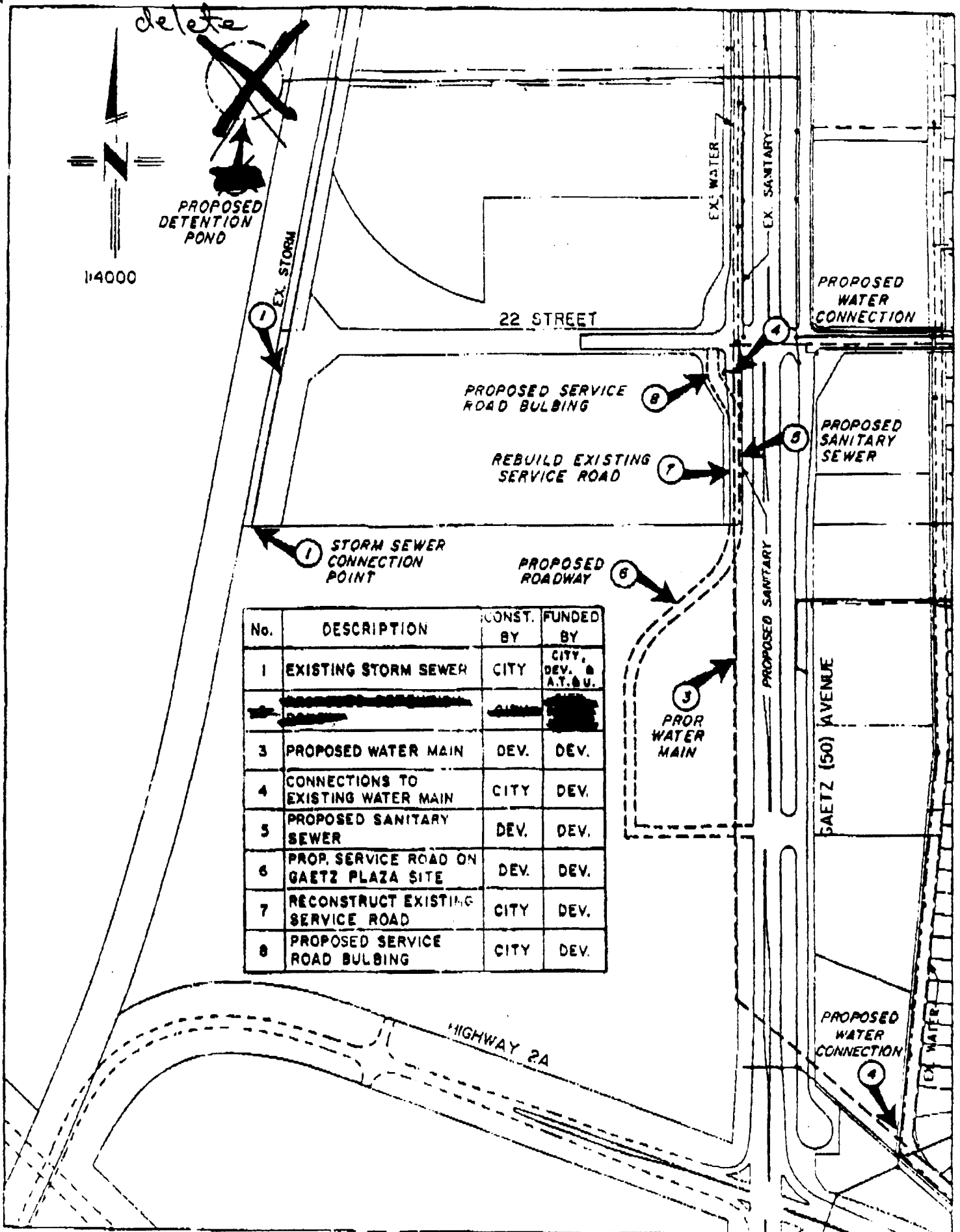
Per: \_\_\_\_\_  
City Clerk

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

GAETZ PLAZA LTD.

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

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



GAETZ PLAZA SOUTH  
SERVICES & ROADWAYS

- 12 -

DATED:

.....

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")  
OF THE FIRST PART

- and -

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")  
OF THE SECOND PART

- and -

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")  
OF THE THIRD PART

(the "Parties")

.....

## AGREEMENT

.....

CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS  
Barristers & Solicitors  
#208, 4808 Ross Street  
Red Deer, Alberta  
T4N 1X5

File No. 18,697 THC/vjh

*Copy delivered to Council Feb 5  
10:30 am at Advocate by  
Ald. Statnyk B.*

**CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS**

Barristers & Solicitors

*File*

THOMAS H. CHAPMAN, Q.C.\*  
NICK P. W. RIEBEEK\*  
DONALD J. SIMPSON  
T. KENT CHAPMAN\*  
GARY W. WANLESS\*  
LORNE E. GODDARD  
GERI M. CHRISTMAN

208 Professional Building  
4808 Ross Street  
Red Deer, Alberta T4N 1X5  
TELEPHONE (403) 346-6603  
TELECOPIER (403) 340-1280

\* Denotes Professional Corporation

Your file:

Our file:

**THE CITY OF RED DEER**  
CLERK'S DEPARTMENT

RECEIVED	
TIME	4:00
DATE	Feb. 4/92
BY	RP

February 4th, 1992

The Mayor and Members of Council  
City Hall  
Red Deer, Alberta

Your Worship and Members of Council:

Re: Southam & Bahen Realty Inc., Gaetz Plaza Ltd.,  
County of Red Deer No. 23, City of Red Deer  
Settlement Agreement

Please find attached hereto the final draft of the proposed Agreement between the various parties.

In accordance with the wishes of Council, we have removed from the Agreement in Section 5 the reference to movie theatre, we have throughout the Agreement maintained the principle that C-2 standards are to apply to the development in keeping with Council's directions and accordingly, this reference is to be found at the bottom of the front page as well as in paragraph #6.

In addition to the above, we have again reduced the height of the signage in keeping with the initial understanding and have clarified servicing concerns raised by the Engineering Department and insured that the City of Red Deer Utilities Bylaw provisions will apply. These concerns can be found in paragraphs 12 and 13.

Relative to off-site levies, the City agrees to the blanket sum of \$310,000.00 on the advice of City Engineering and this is to be found in paragraph 10.

With respect to the payment of \$155,000.00, this is to be found in Section 14, 1 through 4 and has been revised so as to clarify that such payment is to be made only upon annexation in fact

The Mayor and Members of Council  
February 4th, 1992  
Page 2

occurring and the development proceeding and that additionally, such payment represents compensation for lost tax revenue and will not be duplicated or added to through a Local Authorities Board assessment upon annexation. This is to be found specifically in Section 14 (4).

It is my opinion that the attached Agreement represents both in spirit and intent as well as in a legal sense the instructions and intention expressed by Council at the last Council Meeting.

Yours truly,

A handwritten signature in black ink, appearing to read 'NICK P.W. RIEBEEK', enclosed within a large, loopy oval shape.

NICK P.W. RIEBEEK  
NPR/tlw  
Enclosure



THIS AGREEMENT MADE EFFECTIVE THE 31ST DAY OF JANUARY, A.D., 1992

BETWEEN:

**THE CITY OF RED DEER**  
(herein called "the City")

OF THE FIRST PART

-and-

**THE COUNTY OF RED DEER NO. 23**  
(herein called "the County")

OF THE SECOND PART

-and-

**GAETZ PLAZA LTD., AN ALBERTA CORPORATION**  
(herein called "Gaetz")

OF THE THIRD PART

(the "Parties")

WHEREAS the Parties are desirous of entering into an agreement to:

- (a) facilitate and govern the immediate development of those certain lands presently within the County and more specifically described in Schedule "A" hereto (the Gaetz Lands);
- (b) permit the orderly annexation by the City of the lands (including the "Gaetz Lands") outlined in red on Schedule "B" hereto (herein called "the Lands");
- (c) to accommodate the servicing of the Gaetz Lands by the City;

AND WHEREAS the Parties have been parties to certain legal proceedings involving the use and development of the Lands and the Parties are desirous of terminating their respective participation in all such proceedings with respect to the Lands; save and except with respect to the City's Petition to annex the Lands;

AND WHEREAS the County has issued a Development Permit No. D-282-91 (the Development Permit) to Gaetz dated November 8, 1991, with respect to the development of the Gaetz Lands, a copy of which is attached as Schedule "C" hereto, including uses therein which are included in the C2 Land Use Classification of the City Land Use Bylaw;

AND WHEREAS the County and Gaetz have entered into a Development Agreement dated December 12, 1991, (the Development Agreement) a copy of which is attached as Schedule "D" hereto;

AND WHEREAS the Parties are desirous that the Gaetz Lands be developed as stipulated and authorized by the Development Permit and the Development Agreement and, in the normal course, without interruption or delay by or on behalf of any of the Parties;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) the Parties hereto do mutually covenant and agree with one another as follows:

1. (1) The City shall, with the exception of the Petition which it has filed with the Local Authorities Board to annex the Lands, forthwith upon execution of this agreement by all Parties abandon, withdraw and discontinue any action and do all acts and things necessary to absolutely discontinue all legal proceedings which it has commenced or with respect to which it is a party concerning the County Bylaw No. 2C/91, the Development Permit and all uses specified therein, the development by Gaetz of the Gaetz Lands in accordance with the Development Permit, and all matters related thereto. In furtherance thereof, but without restricting the generality of the foregoing, the City shall:
  - (a) file a Discontinuance of Action in the Court of Appeal of Alberta in the matter of the *Planning Act*, R.S.A., 1980, Chapter P-9 and amendments thereto, between the Parties hereto and the Alberta Planning Board;
  - (b) file a Discontinuance of Action in the Court of Queen's Bench of Alberta, Judicial District of Red Deer, in the action among the Parties hereto.
- (2) The City hereby waives any rights to and covenants that it shall not appeal the Decision of the Development Appeal Board, a copy of which is attached as Schedule "E" hereto.
- (3) None of the Parties hereto shall be liable to any other Party hereto for any costs, or

for any damages of any nature or kind which any Party hereto may allege to have suffered as a result of or in connection with the legal proceedings which are herein provided to be discontinued or with the proposed development of the Gaetz Lands and each of the Parties hereto hereby specifically and absolutely release and discharge each other, of and against any and all liability therefore.

2. Gaetz agrees to comply with the terms and conditions of the Development Permit, and the Development Agreement and all provisions contained in this agreement with respect to the development of the Gaetz Lands. The Parties agree that the provisions of this agreement with respect to servicing of the Gaetz Lands shall prevail over the provisions of the Development Agreement respecting servicing.
3. The City agrees not to commence, continue, join or otherwise participate in any legal proceedings or otherwise act in any manner in opposition to or which could delay or otherwise interfere with the development of the Gaetz Lands in compliance with the terms and conditions of the Development Agreement, the Development Permit and this agreement.
4. The City agrees that, if the Lands are annexed to the City, the Development Agreement and the Development Permit and this agreement shall continue to govern the development of the Gaetz Lands and the City shall cooperate fully with and provide its assistance to Gaetz to enable the expeditious development of the Gaetz Lands in accordance with the Development Permit, and in furtherance thereof, to complete all inspections and grant all required approvals without undue delay. Subject to its obligation to give due process to any bona fide third party application for re-zoning, the City shall not re-zone or re-designate the Gaetz Lands.
5. The City acknowledges and agrees that the County shall be entitled to continue to, and in good faith, (and without interference by the City) grant approvals and otherwise deal with the development of the Gaetz Lands pursuant to the Development Agreement and the Development Permit, in the normal course, including without limiting the generality of the foregoing, granting development permits with respect to signs and landscaping. Provided, however, that it is agreed that:

- (a) with respect to pylon signs, such approval be restricted to 3 pylon signs of not over 40 feet in height, not exceeding 400 square feet of signing on each side of each two-sided sign; and
  - (b) landscaping plans shall be submitted to the City for information and comment before approval.
- 6. Gaetz agrees that the uses permitted and which may be permitted by the County for the Gaetz Lands, shall be deemed to require compliance with the City's current C2 uses provided in the City Land Use Bylaw; provided that, Gaetz shall be entitled to apply to the City for a variance thereof at any time after the effective date upon which the Lands are annexed to the City.
- 7. The County acknowledges and agrees that, subject to the County's obligation to act in good faith with respect to any development application, it shall not enter into any development agreement or grant any development permit with respect to that portion of the Lands not included in the Gaetz Lands until the City's Petition for Annexation of the Lands has been decided by the Local Authorities Board and all appeals of that decision have been decided by the appropriate Court or other body and, if applicable, the Governor in Council has dealt therewith.
- 8. Subject to the payments herein required, the City shall, on a timely basis following receipt of the necessary plans and specifications, provide electric power, water, sanitary sewer and storm sewer services.
- 9. (1) The City shall:
  - (a) construct that portion of roadway specifically identified on Schedule "F" hereto from 22nd Street to the northern boundary of the Gaetz Lands;
  - (b) in the first instance, be responsible for and pay the cost of such roadway.
- (2) Gaetz shall, upon completion of construction of the roadway by the City, at its option, make payment in full to the City of such costs or, alternately, execute and deliver to the City a form of mortgage security (the "City Mortgage") for the repayment thereof to be registered as a first charge on the Gaetz Lands, and providing for repayment of

the cost of such roadway, together with interest thereon at the City current debenture borrowing rate imposed by the Alberta Municipal Finance Corporation, amortized and payable in ten equal installments over a period of ten years commencing from the date of completion of construction. The obligation to grant such mortgage security shall be deemed for all purposes to be an equitable mortgage upon the title to the Gaetz Lands in favour of the City. Provided, however, that the City Mortgage shall, at the request of Gaetz, be postponed by the City to and in favour of any construction or long term financing, refinancing, replacement or substitute financing and any renewals thereof. The City agrees to execute and deliver on a timely basis all documentation ( in registerable form) necessary to postpone the City Mortgage as aforesaid.

- ( 3 ) If the service roadway terminates at the north boundary of the Gaetz Lands, Gaetz shall provide a mutual access or easement agreement to provide public access from the service road to the access point to Gaetz Avenue on the east boundary of the Gaetz Lands.

- 10. In consideration of the City agreeing to supply the Gaetz Lands with utilities outside of the Corporate boundaries of the City, Gaetz shall pay to the City in association with its development of the Gaetz Lands the following amounts at the times and in the manner that is consistent with and usual to a development in the nature of the proposed development of the Gaetz Lands, namely:

- (a) off-site levies of \$310,000.00;
- (b) a one time area contribution charge towards storm sewer costs in the sum of \$60,000.00.

Gaetz shall enter into an agreement with the Electric Light and Power Department of the City for the construction and supply of electrical services and make payment of all Electric Light and Power connection costs and charges for service to the Gaetz Lands.

- 11. Gaetz shall design and construct such sewer and water services as deemed necessary by the City, as shown on Schedule "F", to and on the Gaetz land in compliance with

City standards and in a manner acceptable to the City. The design shall be submitted to the City for review and approval prior to commencement of construction. Gaetz shall grant unto the City an easement or utility right-of-way for any portion of the water main situate upon the Gaetz Lands.

12. ( 1 ) The City represents that sanitary services can be provided to the Gaetz Lands and that water services can be provided to the Gaetz Lands, although there may be inadequate pressure to serve for fire protection purposes. The City further represents that it shall, in due course, upgrade its water services and will endeavor to provide adequate water pressure for fire protection purposes for the Gaetz Lands, such upgrading to be associated with the orderly expansion of the City services. In the meantime, should a booster pump be required to provide adequate water pressure for fire protection purposes, such pump will be provided by Gaetz, who shall be responsible for the maintenance, repair and replacement of such pump until such time as the City completes an upgrade of its water services, whereupon, if there is sufficient water pressure, Gaetz shall no longer be required to provide, maintain, repair or replace such pump.
- ( 2 ) The City agrees to complete, in a timely basis, the connection of the water and sanitary sewer services to the Gaetz Lands.
- ( 3 ) With respect to the connection of the proposed water main to the existing City water system, the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.
- ( 4 ) The connection of the Gaetz sanitary sewer main to the City system may be undertaken by Gaetz at its expense, or the work will be undertaken by the City with the actual cost to be charged to and paid by Gaetz.
- ( 5 ) Service connections to the water main will be undertaken by the City and Gaetz shall make payment for such service at the rate then current in the City Unit Rate Bylaw, on demand.
- ( 6 ) The City shall make every effort to ensure that storm sewer services are completed

for the Gaetz Lands concurrently with the development of the Gaetz Lands.

13. In consideration of the City agreeing to provide utilities outside of its municipal boundaries:

- (a) Gaetz acknowledges and agrees that it shall be subject to and be bound by all of the provisions of the City Utility Bylaws in the same manner as if the said Lands were within the boundaries of the City;
- (b) The County will cooperate with and assist the City in the recovery of its charges for utilities, from time to time, until such time as the Lands are annexed within the boundaries of the City and, if requested, shall authorize the provisions of the City of Red Deer Utility Bylaws to be enforceable within the County of Red Deer with respect to the Gaetz Lands.

#### ANNEXATION

14. (1) If an Order for Annexation is issued which has the effect of including the Lands within the boundaries of the City, then the City shall, as compensation for lost tax revenues which the County would otherwise derive from the development of the Gaetz Lands by Gaetz as herein contemplated, and provided that the main components of the proposed development are substantially completed, pay to the County, without deduction or set-off, the amount of \$155,000.00 on or before the 1st day of July, 1993.
- (2) In the event that the Petition by the City to include the Lands within the boundaries of the City is not successful, the City shall have no liability to make payment of the aforesaid sum to the County.
- (3) Should the development not proceed within the time provided in the development permit, the City shall have no liability to pay the aforesaid sum to the County.
- (4) It is not intended that the payment of \$155,000.00 provided for in this section be in addition to any amount which may be awarded on a tax sharing basis or otherwise by the Local Authorities Board upon Annexation.

15. ( 1 ) The County and Gaetz shall support the City's Petition for Annexation of the Lands pursuant to the Petition for Annexation dated August 15, 1991.
- ( 2 ) Prior to execution of this agreement, Gaetz shall deliver to the City a letter signed by James Arthur Bower and addressed to the Local Authorities Board of the Province of Alberta, requesting and supporting the annexation of the Lands by the City.
16. The County and Gaetz agree to support a request by the City to the Local Authorities Board that the annexation of County Lands, if granted, be effective on the 1st day of January, 1993. The City agrees that the effective date for the purposes of assessment and taxation is established as January 1, 1993.
17. The City and the County acknowledge and agree that nothing in this agreement shall restrict the County in exercising its unfettered discretion to oppose the annexation of any other Lands referred to in the said Petition for Annexation.
18. Time shall be of the essence of this Agreement.
19. This agreement (including the preambles hereto) and all schedules, documents and agreements furnished or to be furnished pursuant to the requirements of this agreement, contain the entire understanding of the Parties with respect to the subject matter hereof, and any modification or amendment hereto must be made in writing and signed by the Parties hereto.
20. This agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Alberta.
21. Where the context so requires, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
22. Except as otherwise specifically provided for in this agreement, any waiver of any provision of this agreement must be in writing and signed by the Party waiving such provision. No waiver in any one or more instances shall be deemed or construed as a



further or continuing waiver of any such provision.

23. If any provision of this agreement, or the application thereof to any of the Parties hereto or any person or circumstance, shall to any extent be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement, or the application of such provision to the Parties or to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such remaining provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Each Party agrees to carry out all such actions and to deliver such further documents and assurances as may be reasonably required to give full force and effect to the intent hereof.
25. This agreement may be executed by the Parties hereto in any number of separate counterparts and each of which when so executed and delivered shall by an original, but all of such counterparts shall together constitute one and the same instrument.
26. If any Party should institute any legal or other proceedings to enforce or interpret this agreement, then the prevailing Party or Parties shall be entitled to recover all reasonable legal fees and all costs incurred in connection with such proceedings, in addition to the amount of the judgment or order made in such proceedings. Such legal fees and costs shall be subject to review by taxation.
27. Notwithstanding any other provisions of this agreement, all notices, consents, approvals, requests, communications or other documentation to be given, made or obtained under this agreement shall be in writing and shall be delivered personally, sent by electronic mail or mailed by prepaid registered mail as follows:

If to the City:

City of Red Deer  
P.O. Box 5008  
Red Deer, Alberta  
T4N 3T4  
Attention: Charles Sevcik - City Clerk  
Facsimile: (403) 346-6195

If to the County:

County of Red Deer No. 23  
P.O. Box 920  
Red Deer, Alberta  
T4N 5H3  
Attention: County Commissioner  
Facsimile: (403) 346-9840

If to Gaetz:

260-530 Kenaston Blvd.  
Winnipeg, Manitoba  
R3N 1Z4  
Facsimile: (204) 488-4669

With a copy to:

Mr. Frank P. Layton, Q.C.  
1200 Metropolitan Place  
10303 Jasper Avenue  
Edmonton, Alberta  
T5J 3N6  
Facsimile: (403) 421-4151

28. Either Party may change the address for notice by sending notice to that effect to the other party in the manner provided for in clause 27.
29. Any such notice, consent, approval, request, communications or other documentation shall be deemed to have been received on the date of delivery if personally delivered or sent by electronic mail, and on the third business day following the registered mailing thereof provided, however, that in the event of a disruption of normal postal service, personal delivery or electronic mail shall be required.

30. If any Party is delayed in the completion of any work by labour disputes, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or by any cause of any kind whatsoever beyond the Party's control, then the time of completion of such work shall be extended for a period of time equal to the time lost due to such delays.
31. This agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF this agreement has been duly executed by the respective authorized officials, officers or representatives of the Parties effective as of the day and year first above written.

THE CITY OF RED DEER

THE COUNTY OF RED DEER NO. 23

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

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

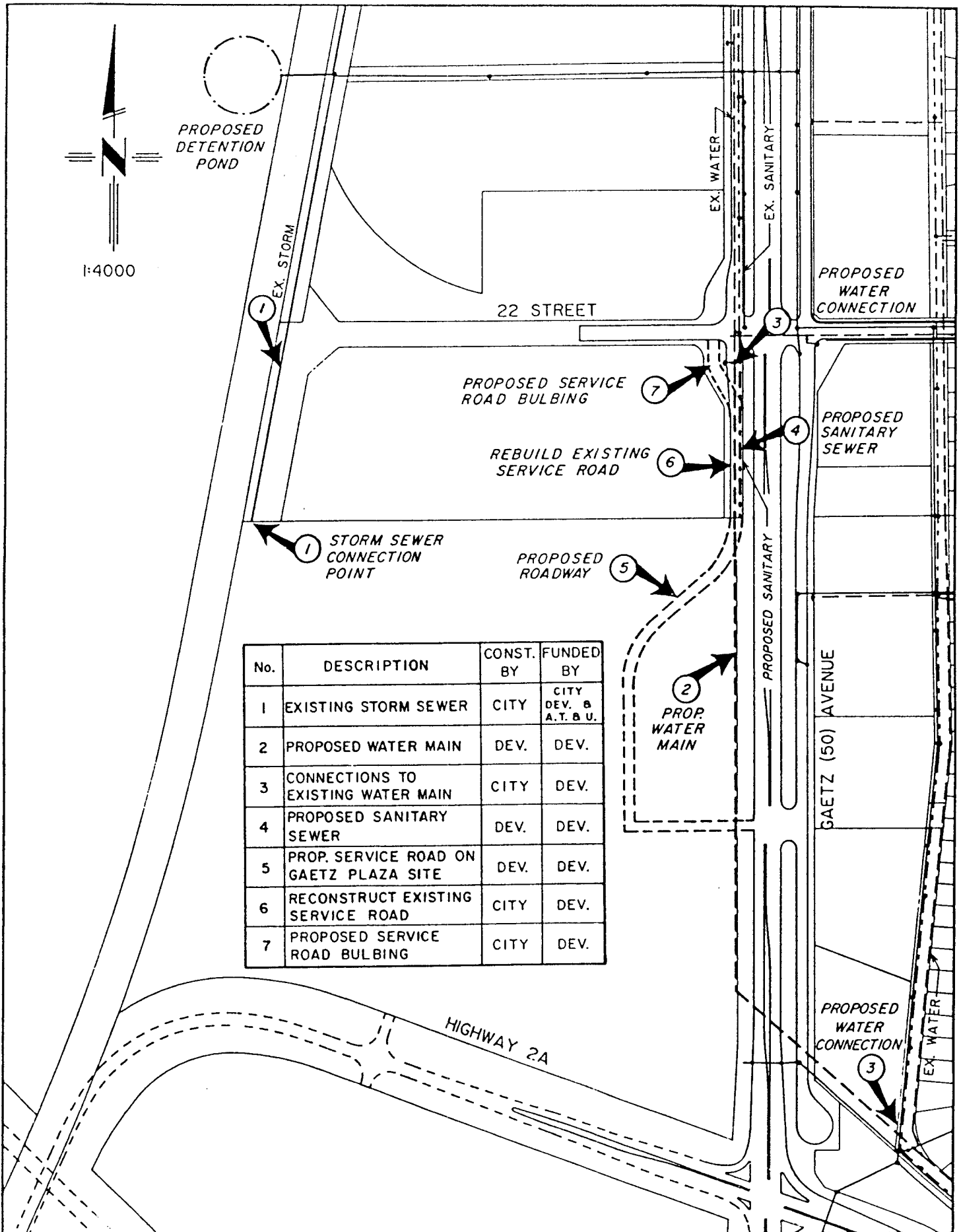
Per: \_\_\_\_\_  
City Clerk

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

GAETZ PLAZA LTD.

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

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



# GAETZ PLAZA SOUTH SERVICES & ROADWAYS

DATED:

\*\*\*\*\*

BETWEEN:

THE CITY OF RED DEER  
(herein called "the City")  
OF THE FIRST PART

-and-

THE COUNTY OF RED DEER NO. 23  
(herein called "the County")  
OF THE SECOND PART

-and-

GAETZ PLAZA LTD., AN ALBERTA CORPORATION  
(herein called "Gaetz")  
OF THE THIRD PART

(the "Parties")

\*\*\*\*\*

**AGREEMENT**

\*\*\*\*\*

CHAPMAN RIEBEEK SIMPSON CHAPMAN WANLESS  
Barristers & Solicitors  
#208, 4808 Ross Street  
Red Deer, Alberta  
T4N 1X5

File No. 18,697 THC/vjh