

Guidelines for  
**Residential and  
Commercial  
Clauses**

March 1, 2010

# RESIDENTIAL AND COMMERCIAL CLAUSES

## INTRODUCTION

The Ontario Real Estate Association can best fulfil its responsibility and role in organized real estate by ensuring that all persons engaged in real estate brokerage business, either as brokers or salespersons, have an opportunity to be properly trained and well informed, and thereby better serve the public in a professional manner. To this end, this series of clauses is provided to complement the growing list of educational programs, reference materials, standard forms, and video instruction available to the general membership.

### **General Disclaimer and Caution to User:**

The Ontario Real Estate Association has developed these clauses for the use of its members in drafting Agreements of Purchase and Sale. The clauses which are contained herein are provided solely for the purpose of guidance and do not in any way constitute required wording.

**TAKE NOTE THAT EVERY REAL ESTATE TRANSACTION IS UNIQUE AND THE ONTARIO REAL ESTATE ASSOCIATION DOES NOT WARRANT AND IS NOT RESPONSIBLE IN ANY WAY FOR THE ADEQUACY, SUFFICIENCY, APPLICABILITY, ACCURACY OR SUITABILITY OF ANY OF THE CLAUSES OR PROVISIONS HEREINAFTER SET OUT. FURTHER, THE ONTARIO REAL ESTATE ASSOCIATION ASSUMES NO LIABILITY FOR THE UTILIZATION OF ANY OF THE CLAUSES OR PROVISIONS HEREINAFTER SET OUT.**

The real estate professional is encouraged to seek expert advice in the drafting of agreements.

### **IMPORTANT INSTRUCTIONS TO USERS:**

**(a) Typed Supersedes Printed:** Any clauses added to the body of the Offer will supersede any information in the pre-printed form. Care must, therefore, be taken with any inclusions.

**(b) Conditions versus Warranties/Representations:** The decision to utilize a condition, warranty, or other representation will depend largely on circumstances. The vast majority of clauses are presented in “condition” format, however, various warranty examples have been included. The reader should note that most warranties included in the handbook are made “to the best knowledge and belief”, survive the closing, and do not extend beyond completion of the transaction. Many variations exist in the marketplace and caution is advised when using warranties and representations. A limited number of such clauses has been included for information purposes only.

**(c) Alternative Wordings:** In select instances, alternative wordings are provided for the same general topic area (i.e. road access to a recreational property might address rights-of-way, unregistered easements, public road access, privately maintained road, etc.). Users should carefully read all possibilities and revise as required to meet individual circumstances.

**(d) Capitalized Words:** The first letter of selected words has been capitalized for emphasis only (i.e. Buyer, Seller, Agreement of Purchase and Sale, Lease) and should not be viewed as a required format.

**(e) Use of Pronouns:** This text should be read with all changes of gender and number as the reader may feel are required.

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## ACCESS

### **ACC - 1 Condition – Obtaining Right-of-way**

This Offer is conditional upon the Buyer obtaining an Agreement to create an easement with (name of persons), for the purpose of (insert specific use), located and more particularly described as (outline planned location). Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE: This condition must be used with caution, as further approvals will be required for the right-of-way to be legal i.e. Committee of Adjustments.**

### **ACC- 2 Condition – Road Access by Open Public Road**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that access by automobile to the property is by a public road which is maintained at public expense throughout the year. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **ACC - 3 Condition – Road Access to Public Highways**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that all vehicular entrances to and exits from the property onto public highways have been approved under the Public Transportation and Highways Improvement Act or any predecessor thereof. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that his condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **ACC - 4 Road Access – Alternatives**

The Seller represents and warrants, to the best of the Seller's knowledge and belief, that the property fronts on [choose appropriate statement]

- (a) a road which is maintained on a year round basis at public expense;  
OR
- (b) a road which is maintained on a seasonal basis at public expense;  
OR
- (c) a road which is not maintained at public expense.

The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

### **ACC – 5 Road Access – Privately Maintained Road**

The Buyer acknowledges that the private road accessing the said property is maintained by the [insert appropriate local cottage association or other relevant group], at an annual cost of \$\_\_\_\_\_ for each property.

### **ACC – 6 Road Access – Unregistered Easement (Trespass Access)**

The Buyer acknowledges that the [road/path/lane], to the said property may be an unregistered easement. The Seller shall provide to the Buyer, on or before completion, a statutory declaration or declarations establishing that the existing [road/path/lane], has been used by the Seller and/or predecessors in title to gain access to the said property for a period of \_\_\_\_\_ years.

**NOTE: In situations involving unregistered easements, legal advice should be sought.**

### **ACC - 7 Water Access**

The Buyer acknowledges that the property is only accessible by water.

## **ASSIGNMENT OF AGREEMENT**

### **ASSIGN - 1 Assignment of Prior Agreement**

The Buyer acknowledges that the Seller has purchased the property by way of a prior accepted Agreement of Purchase and Sale, a copy of which is attached as Schedule “\_\_\_\_\_” hereto, and the Seller is assigning the Seller’s rights thereunder to the Buyer. Upon acceptance of this Offer, the Seller shall give written notice of Assignment to any other parties affected by this Agreement. If the Seller is unable to complete the transaction by reason of default of the party from whom the Seller has purchased the property, the Seller shall not be liable for any damage or loss incurred by the Buyer, and this Agreement of Purchase and Sale shall become null and void and the deposit shall be returned to the Buyer in full without deduction.

### **ASSIGN - 2 Assignment of Prior Agreement – Condo**

The Buyer acknowledges that the Seller has purchased the property by way of a prior accepted Agreement of Purchase and Sale, a copy of which is attached as Schedule “A” hereto, and the Seller is assigning his rights thereunder to the Buyer. Upon acceptance of this Offer, the Seller shall give written notice of Assignment to any other parties affected by this Agreement. If the Seller is unable to complete the transaction by reason of default of the party from whom he has purchased the property, the Seller shall not be liable for any damage or loss incurred by the Buyer, and this Agreement of Purchase and Sale shall become null and void and the deposit shall be returned to the Buyer in full without interest.

The Buyer agrees to abide by all proposed or registered By-laws, Rules and Regulations applying to this property and which have been agreed to by the Seller in the prior transaction. The Buyer also acknowledges that, under the terms of this Agreement of Purchase and Sale, the price and terms agreed upon may not be the same as agreed in the prior Agreement.

### **ASSIGN - 3 Right to Assign Agreement**

The Buyer shall have the right at any time prior to closing, to assign the within Offer to any person, persons or corporation, either existing or to be incorporated, and upon delivery to the Seller of notice of such assignment, together with the assignee’s covenant in favour of the Seller to be bound hereby as Buyer, the Buyer hereinbefore named shall stand released from all further liability hereunder.

**NOTE: Do not use when the Agreement includes a STB Charge/Mortgage.**

### **ASSIGN - 4 Right to Assign - Seller’s Consent**

The Buyer covenants and agrees that the Buyer will in no way directly or indirectly assign, rent, lease, convey, list or in any way advertise for sale, sell, or otherwise transfer the Buyer’s rights under this Agreement prior to completion to any other person without the express written consent of the Seller. Such consent may be granted or withheld at the Seller’s sole option.

## **BUILDINGS/CONSTRUCTION**

### **BUILD/CONST - 1 Condition – Obtaining Building Permit**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that a building permit for the structure indicated on Schedule "\_\_\_\_\_" attached hereto is available with respect to the property. Unless the Buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

## **CHATTELS/EQUIPMENT/FIXTURES**

### **CHATT - 1 Chattels and Fixtures – All Chattels and Fixtures Included**

Unless otherwise stated in this Agreement or an schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

### **CHATT - 2 Chattels and Fixtures – Good Working Order**

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in good working order and free from all liens and encumbrances on completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

### **CHATT - 3 Chattels – No Warranty**

The Buyer acknowledges that there is no express or implied warranty by the Seller on the chattels included in this Agreement of Purchase and Sale.

### **CHATT - 4 Equipment – Good Working Order**

The Seller warrants that all the mechanical, electrical, heating, ventilation, air conditioning systems, air compressors, elevators, conveyor systems, sprinkler systems, boilers, and all other equipment on the real property shall be in good working order on completion. The Parties agree that this warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at the completion of this transaction.

### **CHATT - 5 Equipment – Purchase of Additional**

The Seller agrees to give the Buyer the first right to negotiate for the purchase of any equipment to be sold by the Seller upon a price to be mutually agreed upon. In the event that the parties cannot agree to a price at least \_\_\_\_\_ days prior to the date of completion, then said first right shall become null and void.

### **CHATT - 6 Equipment – Removal**

The Seller agrees to remove, at the expense of the Seller, any machinery or equipment, including mountings protruding from walls and floors, and to repair any damage caused by said removal.

### **CHATT - 7 Lighting Fixtures**

All lighting fixtures on the premises are included in the purchase price and are to be in good working order on completion.

**CHATT - 8 Rental Items**

The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if assumable:

\_\_\_\_\_ (item)  
having a payment of \$ \_\_\_\_\_, \_\_\_\_\_  
(monthly, quarterly etc.)

**NOTE: A variety of items may be rentals, e.g. hot water tank, air conditioner, water softener, furnace, furnace burner, etc. Care must be taken to ensure all rentals are documented.**

**COMPLETION DATE**

**COMP – 1 Change of Completion Date by Buyer**

Notwithstanding the completion date set out in this Offer, the Buyer may \_\_\_\_\_ (advance/postpone) the completion date of the transaction by not more than \_\_\_\_\_ days, by giving written notice of the amended completion date to the Seller or the Seller’s Solicitor at least \_\_\_\_\_ days in advance of the earlier of the completion date set out herein and the amended completion date.

**COMP – 2 Change of Completion Date by Seller**

Notwithstanding the completion date set out in this Offer, the Seller may \_\_\_\_\_ (advance/postpone) the completion date of the transaction by not more than \_\_\_\_\_ days, by giving written notice of the amended completion date to the Buyer or the Buyer’s Solicitor at least \_\_\_\_\_ days in advance of the earlier of the completion date set out herein and the amended completion date.

**COMP – 3 Change of Completion Date – Mutual Agreement**

Notwithstanding the completion date set out in this Agreement, the Buyer and Seller may, by mutual agreement in writing, advance or extend the date of completion of this transaction.

**COMP – 4 Change of Completion Date – Probate Trustee**

The Buyer and Seller agree that the Seller, upon giving a minimum of \_\_\_\_\_ days written notice to the Buyer (excluding, Saturday, Sunday or Statutory Holidays), may unilaterally extend the date set for completion, one or more times, not to exceed \_\_\_\_\_ days in total, for the purpose of obtaining a Certificate of Appointment of Estate Trustee.

**CONDOMINIUM**

**CONDO - 1 Condition – Review of Condominium Documents – By Specific Date**

This offer is conditional upon the Buyer’s lawyer reviewing the Status Certificate and Attachments and finding the Status Certificate and Attachments satisfactory in the Buyer’s Lawyer’s sole and absolute discretion. The \_\_\_\_\_ (Buyer/Seller) agrees to request at the

\_\_\_\_\_ expense, the Status Certificate and

Attachments within \_\_\_\_\_ days after acceptance of this Offer.

Unless the buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5:00 p.m. on the \_\_\_\_\_ day of \_\_\_\_\_ 20, \_\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.

This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**CONDO - 2 Condition – Review of Condominium Documents – Within \_\_\_\_ Days**

This offer is conditional upon the Buyer’s lawyer reviewing the Status Certificate and Attachments and finding the Status Certificate and Attachments satisfactory in the Buyer’s Lawyer’s sole and absolute discretion. The \_\_\_\_\_ (Buyer/Seller) agrees to request at the

\_\_\_\_\_ expense, the Status Certificate and (Buyer’s/Seller’s)

Attachments within \_\_\_\_\_ days after acceptance of this Offer. Unless the buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5:00 p.m. on the fifth day (Excluding Saturdays, Sundays and Statutory Holidays) following receipt by the buyer of the Status Certificate and attachments, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.

This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**CONDO - 3 Alterations By Owner**

The Seller represents and warrants that, with respect to the unit, the Condominium Act, Declaration, By-laws and Rules of the Condominium Corporation have been complied with, and that no improvements, additions, alterations or repairs that require the consent of the Condominium Corporation have been carried out in the said unit, the exclusive use areas or the common elements, unless the required consent has been obtained from the Condominium Corporation. This warranty shall survive and not merge on the completion of this transaction.

**CONDO - 4 Alterations/Changes to Unit During Interim Occupancy**

The Buyer covenants and agrees that no alterations will be made to the unit during the term of interim occupancy. Upon completion of the transaction, the Buyer agrees to abide by the By-laws and Rules relating to alterations and changes within the unit.

**CONDO - 5 Compliance by Buyers, Guests and Family Members**

The Buyer hereby covenants with the Seller and with the Condominium Corporation that the Buyer, members of the household, and guests, will comply with the Condominium Act, the Declaration, the By-laws and all Rules and Regulations, in using the unit and the common elements, and will be subject to the same duties imposed by the above as those applicable to other individual unit owners.

**CONDO - 6 Default by New Buyers During Interim Occupancy**

The Buyer acknowledges that any default in payment of occupancy fees shall be deemed to be a default under the terms and conditions of the Agreement of Purchase and Sale, and subject to the remedies provided herein for the Seller.

**CONDO - 7 Occupancy by Buyer Prior to Completion of Construction**

The Buyer acknowledges that the unit being acquired is currently under construction. The Buyer shall take occupancy of the unit provided that the interior of the unit has been substantially completed, notwithstanding that the common areas have not been substantially finished. The Seller agrees to complete same in a good and workmanlike manner in a reasonable period of time. The Buyer further acknowledges that failure to complete either the unit or the common areas by the occupancy date in no way relieves the Buyer from completing the transaction.

**CONDO - 8 Occupancy by Buyer Prior to Completion – Payment of Occupancy Fee**

The Buyer shall be entitled to occupy the property from the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, until the date of completion at a monthly fee hereinafter referred to as an occupancy fee. The occupancy fee shall be calculated based on the proportionate share of the common expenses, the estimated realty taxes, and mortgage interest as detailed herein (or designated as Schedule “\_\_\_\_” attached to and forming part of this Agreement). Said occupancy fee shall be due and payable on a monthly basis, in advance, commencing on the 1st day of each month following the date of occupancy. Partial charges prior to the 1st day of the initial month shall be pro-rated accordingly. The Buyer further agrees to provide the Seller with post-dated cheques to cover the occupancy cost for a period of twelve months, or such period to be established by the Seller whichever is the lesser.



**CONDO - 9 Permission to Access Unit**

The Buyer agrees to allow the Seller access to the unit for the purpose of inspection, maintenance, or completion of uncompleted work for a period of six (6) months following the date of completion, provided that reasonable notice is given to the Buyer. Any subsequent access shall be pursuant to the By-laws, Rules and Regulations as established by the Board of Directors of the Condominium Corporation.

**CONDO - 10 Tenant to Occupy Property**

The Buyer agrees to abide by the Declaration, By-laws, Rules and Regulations of the Condominium Corporation and, if the property is to be rented, the Buyer agrees to inform all tenants of the Rules and Regulations and receive written acknowledgement of the tenants regarding their willingness to abide by same within the rental document. It is clearly understood that all rental agreements shall conform with the Rules and Regulations as passed from time to time by the Board of Directors of the Condominium Corporation.

**CONDO/POTL SCHEDULE "B" - Common Elements Condominium (POTL)**

**NOTE:** To be used with the standard Agreement of Purchase and Sale (Form 100) for the sale of a freehold property that also includes an interest in a Common Elements Condominium.

**PROPERTY:** The property shall be deemed to include a common interest in the Condominium Corporation being \_\_\_\_\_ Condominium Plan No. \_\_\_\_\_ as more particularly set out on the Declaration and Description.

**COMMON EXPENSES:** Seller warrants to Buyer that the common expenses presently payable to the Condominium Corporation in respect of the Property are approximately \$ \_\_\_\_\_ per month.

**STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM:** Seller represents and warrants to Buyer that there are no special assessments contemplated by the Condominium Corporation, and there are no legal actions pending by or against or contemplated by the Condominium Corporation. The Seller consents to a request by the Buyer or the Buyer's authorized representative for a Status Certificate from the Condominium Corporation. Buyer acknowledges that the Condominium Corporation may have entered into a Management Agreement for the management of the condominium property.

**MEETINGS:** Seller represents and warrants to Buyer that at the time of the acceptance of this Offer the Seller has not received a notice convening a special or general meeting of the Condominium Corporation respecting (a) the termination of the government of the condominium property; (b) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR (c) any substantial change in the assets or liabilities of the Condominium Corporation; and Seller covenants that if the Seller receives any such notice prior to the date of completion Seller shall forthwith notify the Buyer in writing and Buyer may thereupon at the Buyer's option declare the Agreement null and void and all monies paid by the Buyer shall be refunded without interest or deduction.

**TITLE:** Buyer agrees to accept title to the Property subject to the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and By-laws, Occupancy Standards By-laws, including the Common Element Rules and other Rules and Regulations.

## DEPOSITS/PAYMENTS

### DEP/PAY - 1 A Further Sum of

The Buyer agrees to pay a further sum of \_\_\_\_\_ (\$\_\_\_\_\_), subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.

### DEP/PAY - 2 Balance of Purchase Price

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

### DEP/PAY - 3 Deposit Increase - Additional Payment

The Buyer agrees to pay a further sum of \_\_\_\_\_ (\$\_\_\_\_\_), to \_\_\_\_\_, by negotiable cheque, not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.

### DEP/PAY - 4 Deposit Increase - Multiple Payments

The Buyer agrees to pay the following supplementary deposits in the amounts stated not later than: [List Appropriate Times, Dates and Amounts] to \_\_\_\_\_, by negotiable cheque, to be held in trust pending completion or other termination of this Agreement. Such payments are to be credited towards the purchase price on completion of this transaction.

### DEP/PAY - 5 Deposit Increase - On Removal of Condition(s)

The Buyer agrees to pay a further sum of \_\_\_\_\_ (\$\_\_\_\_\_), to \_\_\_\_\_, by negotiable cheque, at the time of notification of fulfilment or removal of the condition pertaining to \_\_\_\_\_, as an additional deposit to be held in trust pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.

### DEP/PAY - 6 Deposit Interest - Payment of All Interest Earned

The parties to this Agreement hereby acknowledge that the Deposit Holder shall place the deposit in trust in the Deposit Holder's interest bearing real estate trust account, which earns interest at \_\_\_\_\_, and the Deposit Holder shall pay any interest it earns or receives on the deposit to \_\_\_\_\_ at the same rate of interest the Deposit Holder earns or receives on the Deposit Holder's real estate trust account.

**NOTE: The Listing Brokerage is required to have Social Insurance Number(s) before paying interest on deposits.**

### DEP/PAY - 7 Deposit Interest - Payment of Interest at a Rate Less Than Earned

The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall place the deposit in the Deposit Holder's interest bearing real estate trust account, which earns interest at \_\_\_\_\_, and the Deposit Holder shall pay interest at a rate of \_\_\_\_\_ on the deposit to \_\_\_\_\_. The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall be entitled to retain the difference between the interest earned on the deposit and the agreed rate of interest payable.

**DEP/PAY - 8 Deposit Interest - Payment of Interest Earned Provided Minimum Amount Earned**

The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall place the deposit in the Deposit Holder's interest bearing real estate trust account, which earns interest at \_\_\_\_\_, and the Deposit Holder shall pay any interest it earns or receives on the deposit to \_\_\_\_\_, provided the amount of the interest that the Deposit Holder earns or receives on the deposit is equal to or greater than \_\_\_\_\_. The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall be entitled to retain any interest earned or retained on the deposit, which is less than \_\_\_\_\_.

**DEP/PAY – 9 Deposit Interest - Term Deposit Bearing Interest**

The parties to this Agreement hereby acknowledge that the Deposit Holder shall place all deposit monies in an interest bearing security with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. The deposit holder will immediately inform the person depositing the trust money as to the interest rate received on the deposit. In the event that the closing date is advanced or the transaction is terminated, the party receiving the interest agrees to accept the short-term rate for deposits withdrawn before maturity.

**DEVELOPMENT/SEVERANCE/SUBDIVISION**

**NOTE: The sale of large parcels of land and vacant land can be subject to capital gains and/or G.S.T. This can depend upon: present and future use; who is selling; and who is buying. Expert advice should be sought.**

**DEV - 1 Condition – Services - Hydro/Telephone**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that the provision of service by hydro and telephone to the said property shall not exceed a cost of \_\_\_\_\_ (\$\_\_\_\_\_). Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**DEV - 2 Condition – Severance – Seller Undertakes Expense and Completion**

This Offer is conditional upon the Buyer obtaining, at the Seller's expense, a consent to sever the property as follows: (provide description of proposed severance). Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to sign any requisite documents required for the above condition and do all things reasonably necessary in support of the satisfaction of the condition.

The Seller understands and acknowledges that the Seller shall be responsible for satisfying any conditions imposed for approval of the severance, and if such conditions give the Seller options in the manner of compliance, the Buyer shall determine which option will be selected. The Seller shall obtain a reference plan prepared by an Ontario Land Surveyor suitable for registration purposes in the Land Registry Office in which the said property is located.

**NOTE: Additional wording may be inserted concerning the extension of the completion date if the severance is not completed and limits of cost relating to obtaining said severance.**

**DEV - 3 Condition – Suitability for Roads/Services**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, the cost of constructing roads, installing necessary services, and generally ascertaining if the terrain will permit development at a reasonable price. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**DEV - 4 Intention of Buyer to Develop**

The Seller acknowledges that it is the intention of the Buyer to develop and/or renovate and resell the property.

**DEV - 5 No Site Plan Development Agreement**

The Seller warrants that the lands are not subject to a Site Plan Development Agreement.

**DEV - 6 Price Based Upon Acreage**

The Seller acknowledges that the Buyer is acquiring the property for development, and the purchase price is calculated on the basis of \_\_\_\_\_ (\$\_\_\_\_\_) per acre. In the event of a discrepancy in area, the purchase price will be adjusted accordingly at time of completion.

**NOTE: Survey or other acceptable confirmation of exact acreage is required.**

**DEV - 7 Seller Consents to Subdivide**

The Seller agrees to co-operate with the Buyer in the application for and registration of any plan or plans of subdivision on the said property and the Seller agrees to execute any requisite documents for the application and registration of any plan of subdivision, provided that the Buyer pay all costs for the application, requirements for approval and registration of the plan of subdivision.

**DEV - 8 Seller Permitted to Remain on Property**

The Seller shall be permitted the right to remain upon and continue the Seller's use of the real property, free of any payment of rent for a period of \_\_\_\_\_ after the date of completion, provided that the Seller agrees to vacate the property at the end of the period and provided that the Seller shall, during the period, maintain the lands and buildings in good repair and not permit waste upon the property. The Seller shall pay taxes, insurance and utilities during this period. The Buyer shall have free access to the lands during this period and reasonable access to the buildings. The Seller shall be permitted to remove all personal property from the said property either during this period or upon vacating the property. These provisions, where applicable, shall not lapse or merge on completion of this transaction.

**DEV - 9 Services – Warranty**

The Seller warrants that municipal services to the subject property include \_\_\_\_\_ and are available for use by the Buyer, Buyer to pay any usual connection charges.

## DOCKS/BOATHOUSES

### **DOCKS - 1 Condition – Docks/Boathouses (Including Reference to Conservation and/or Canal Authorities)**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that the [boathouse, dock, pier, etc.], used in conjunction with the property, and passing to the Buyer on completion, [has/have] received all necessary approvals and permits from the Ministry of Natural Resources, the Federal Government under the Navigable Waters Protection Act, Canada, from [insert appropriate conservation or canal authority as required], and from all other relevant authorities. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **DOCKS - 2 Docks/Boathouses – Warranty (Including Reference to Conservation and/or Canal Authorities)**

The Seller represents and warrants to the best of his knowledge and belief that the [boathouse, dock, pier, etc.], used in conjunction with the property, and passing to the Buyer on completion, [has/have] received all necessary approvals and permits from the Ministry of Natural Resources, the Federal Government under the Navigable Waters Protection Act, Canada, from [insert appropriate conservation or canal authority as required], and from all other relevant authorities. The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at completion of this transaction.

## ENVIRONMENTAL

### **ENV - 1 Condition – All Environmental Laws Complied With**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that: all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the land, no limitations or restrictions affecting the continued use of the property exist, other than those specifically provided for herein, no pending litigation respecting Environmental matters, no outstanding Ministry of Environment Orders, investigation, charges or prosecutions respecting Environmental matters exist, there has been no prior use as a waste disposal site, and all applicable licenses are in force. The Seller agrees to provide to the Buyer upon request, all documents, records, and reports relating to environmental matters in possession of the Seller. The Seller further authorizes (insert appropriate Ministry), to release to the Buyer, the Buyer's Representative or Solicitor, any and all information that may be on record in the Ministry office with respect to the said property.

Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the preceding condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**ENV - 2 Condition – Environmental Legislation – Lawyer’s Approval and Acknowledgement**

This Offer is conditional upon the approval of the terms hereof by the Buyer’s Solicitor. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein. The Buyer and Seller hereby acknowledge that enactments and proposed enactments by the Federal, Provincial and Municipal Governments may have an impact on the use of land. The Buyer and Seller hereby acknowledge that the foregoing condition is inserted specifically to allow the Buyer to obtain legal advice as to the potential impact of Federal, Provincial and Municipal laws and enactments and Regulations made thereto that may affect the subject property, presently or in the immediate future. The Buyer and Seller further acknowledge that such opinions fall outside the qualifications and ability of the Brokerage and accordingly, the Buyer and Seller hereby agree that they shall hold harmless and indemnify the Brokerage from any claims, actions or causes of action that may be the result of such Legislation or future enactments.

**ENV - 3 Condition – Environmentally Protected Zone, Flood Plain, Hazard Land**

This Offer is conditional upon the Buyer determining, at the Buyer’s own expense, that no portion of the property has been designated as hazard land, flood plain, or an environmentally protected zone. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**ENV - 4 Condition – Oil Tank – Aboveground or Underground**

This Agreement is conditional upon the Buyer obtaining a report from a fuel oil distributor registered under the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time stating the tank system in, on or about the property is in a safe operating condition and complies with the requirements of the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time. Seller agrees to allow access to the property by the fuel oil distributor for purpose of obtaining a report. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, that this condition has been fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**ENV - 5 Agricultural Activities Acknowledgement**

The Buyer acknowledges that the property lies within, partially within, adjacent to or within two kilometres of an area zoned, used or identified for agricultural and food production activities and that such activities occur in the area. These activities may include intensive operations that cause discomfort and inconveniences that involve, but not limited to dust, noise, flies, light, odour, smoke, traffic, vibration, operating of machinery during any 24 hour period, storage and utilization of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of these inconveniences have protection in Ontario under the *Farming and Food Production Protection Act*.

**ENV - 6 Environmental Issues - Release of Documents from Appropriate Ministries**

The Seller authorizes the [insert appropriate Ministry], to release to the Buyer, or the Buyer's Representative or Solicitor, any and all information that may be on record in the Ministry's office with respect to the said property.

**ENV - 7 Environmental Warranty – All Laws Complied With**

The Seller represents and warrants to the best of the Seller's knowledge and belief that during the period of his ownership of the property, that: all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the land, no limitations or restrictions affecting the continued use of the property exist, other than those specifically provided for herein, no pending litigation respecting Environmental matters; no outstanding Ministry of Environment Orders, investigations, charges or prosecutions regarding Environmental matters exist, there has been no prior use as a waste disposal site, and all applicable licenses are in force. The Seller agrees to provide to the Buyer upon request, all documents, records, and reports relating to environmental matters that are in the possession of the Seller. The Seller further authorizes (insert appropriate Ministry), to release to the Buyer, the Buyer's Agent or Solicitor, any and all information that may be on record in the Ministry office with respect to the said property.

The Parties agree that this representation and warranty shall form an integral part of this Agreement and survive the completion of this transaction, but apply only to circumstances existing at completion of this transaction.

**ENV - 8 Growth or Manufacture of Illegal Substances- Acknowledgment**

The Buyer acknowledges that the use of the property and buildings and structures thereon may have been for the growth or manufacture of illegal substances and acknowledges that the Seller makes no representations and/or warranties with respect to the state of repair of the premises and the Buyer accepts the property and the buildings and structures thereon in their present state and in an "as is" condition.

**ENV - 9 No Growth or Manufacture of Illegal Substances- Warranty**

The Seller represents and warrants that during the time the Seller has owned the property, the use of the property and the buildings and structures thereon has not been for the growth or manufacture of any illegal substances, and that to the best of the Seller's knowledge and belief, the use of the property and the buildings and structures thereon has never been for the growth or manufacture of illegal substances. This warranty shall survive and not merge on the completion of this transaction.

**ENV - 10 Underground Tank – Compliance Warranty**

The Seller represents and warrants that the fuel oil tank in, on or about the property is in compliance with the requirements of the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time and has been registered with the Technical Standards and Safety Authority and does not have to be removed, upgraded or replaced before October 1, 2006. Seller agrees to provide Buyer with the Registration number and all relevant documents prior to closing. This warranty shall survive and not merge upon the completion of this transaction.

**ENV - 11 Underground Tank – Seller Has Removed**

The Buyer acknowledges that there was an underground fuel tank on the property that has been removed and the Seller agrees to provide to the Buyer at the Seller's own expense by no later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, evidence that a contractor registered under the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time, has removed the said fuel oil tank, assessed the soil surrounding the underground fuel oil tank for contamination and cleaned and removed any contamination.

## **ENV - 12 Underground Tank – Seller to Remove**

The Seller agrees that the Seller will, at the Seller's expense, have the underground fuel oil tank on the property removed from the property by a contractor registered under the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time by no later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and thereafter to have the soil surrounding the underground fuel oil tank assessed for contamination and any contamination cleaned and removed by a contractor registered under the Technical Standards and Safety Act, 2002 and any Regulations thereto as amended from time to time, and on or before closing to provide evidence of the said testing, cleaning and removal from the said contractor and to restore the grading and landscaping on the property to the existing or a comparable condition to which it was prior to the removal of the said fuel oil tank.

## **FACSIMILE/NOTICES**

### **FAX - 1 Delivery of Documents**

Any notice relating hereto or provided for herein shall be in writing. This Offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided herein or, where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

**NOTE: This Facsimile Clause may not be required as it appears as a Clause on the Agreement of Purchase and Sale.**

## **GST/HST**

**NOTE 1: GST/HST. is applicable to: new properties; substantially renovated properties; properties where input tax credits have been claimed.**

**NOTE 2: The sale of large parcels of land and vacant land can be subject to capital gains and/or GST/HST. This can depend upon: present and future use; who is selling and who is buying. EXPERT ADVICE SHOULD BE SOUGHT.**

### **GST/HST - 1 GST/HST Buyer is Registrant (Commercial Component)**

The Buyer shall deliver to the Seller on closing:

1. a statutory declaration that the Buyer is a registrant within the meaning of Part IX of the Excise Tax Act of Canada (the "Act") and that the Buyer's registration is in full force and effect;
2. reasonable evidence of the Buyer's registration under the Act; and
3. an undertaking by the Buyer to remit any tax eligible under the Act in respect of this transaction and to indemnify the Seller against all loss, costs and damages resulting from the Buyer's failure to do so.

## **HERITAGE**

### **HERIT - 1 Ontario Heritage Act Designation**

The parties hereto acknowledge that the subject property is/may be designated as a Heritage Property and is subject to the provisions of The Ontario Heritage Act, 1974. The Buyer acknowledges that the Seller has made this disclosure. The Buyer accepts the property with this designation and agrees to continue with this transaction.



## INSPECTION OF PROPERTY

### **INSP - 1 Condition – Inspection of Property by a Home Inspector - General Inspection**

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **INSP - 2 Condition – Inspection of Property by a Home Inspector - General Inspection – Condo**

This Offer is conditional upon the inspection of the unit and common elements by a home inspector at the Buyer's own expense and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the unit for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **INSP - 3 Condition – Inspection of Property - Limited Inspection**

This Offer is conditional upon the Buyer, at the Buyer's own expense, having the relevant building(s) inspected by a bona fide home inspection firm to determine that the building(s) are in sound structural and mechanical condition and that the electrical system is safe and adequate, and that, in the written opinion of the home inspection firm, all deficiencies can be remedied at a cost not greater than \_\_\_\_\_ (\$\_\_\_\_\_). Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. The Seller agrees this condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **INSP - 4 Condition – Inspection of Property – Seller Allowed to Remedy**

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense and the obtaining of a report satisfactory to the Buyer and, if not satisfactory to the Buyer, a report revealing deficiencies in the property which the Seller is willing and able to remedy. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 5 Condition – Inspection - Seller Allowed to Remedy – Condo**

This Offer is conditional upon the inspection of the subject unit by a home inspector at the Buyer's own expense and the obtaining of a report satisfactory to the Buyer and, if not satisfactory to the Buyer, a report revealing deficiencies in the unit which the Seller is willing and able to remedy. Unless the Buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees this condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 6 Condition – Inspection of Property - Termites**

This Offer is conditional upon the Buyer or the Buyer's appointed representative inspecting the subject property for termites and obtaining a report satisfactory to the Buyer at the Buyer's own expense. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 7 Condition – Inspection of Property – Third Party**

This Offer is conditional upon the inspection of the subject property by \_\_\_\_\_ and the obtaining of a report satisfactory to the Buyer at the Buyer's own expense. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 8 Condition – Upon Inspection of Property by a Third Party – Condo**

This Offer is conditional upon the inspection of the unit and common elements by \_\_\_\_\_ and the obtaining of a report satisfactory to the Buyer at the Buyer's own expense. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the unit for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 9 Condition — Retrofit Inspection of Property Fire — General Inspection**

This Offer is conditional upon the inspection of the subject property at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion respecting retrofitting pursuant to and in compliance with the Fire Protection and Prevention Act, 1997 and its regulations as amended from time to time. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of

\_\_\_\_\_, 20 \_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 10 Condition — Retrofit Inspection of Property Electricity — General Inspection**

This Offer is conditional upon the inspection of the subject property at the Buyer’s own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer’s sole and absolute discretion respecting retrofitting pursuant to and in compliance with the Electricity Act, 1998 and its regulations as amended from time to time. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE: Both conditions, INSP - 9 and INSP - 10, are required to be fulfilled for a Retrofit Certificate of Compliance.**

**INSP - 11 Condition — WETT Inspection**

This offer is conditional upon the Buyer obtaining at the Buyer’s expense a Wood Energy Technology Transfer (WETT) inspection, and obtaining a report satisfactory to the Buyer in the Buyer’s sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**INSP - 12 Delivery of Report**

In the event the foregoing condition is not fulfilled or waived by the Buyer, the Buyer agrees to provide the Seller with a true copy of the Inspection Report and all estimates related thereto prior to the return of the deposit herein.

**INSP - 13 Inspection of Systems**

Upon acceptance of this Offer, the Buyer shall be allowed to enter the premises, from time to time, after permission from the Seller, for the purpose of obtaining information about heating and electrical systems, maintenance, and any other related utility service for the building.

**INSP - 14 Right of inspection Prior to Completion**

The Buyer shall have the right to inspect the property prior to completion for the purpose of inspection for \_\_\_\_\_

(e.g. financing, insurance, estimate(s) from contractor(s) etc.)

to a maximum of \_\_\_\_\_ time(s), at a mutually agreed upon time(s). The Seller agrees to provide access to the property for the purpose of the inspection(s).

**INSP - 15 Right of Re-inspection Prior to Completion**

The Buyer shall have the right to inspect the property one further time prior to completion, at a mutually agreed upon time, provided that written notice is given to the Seller. The Seller agrees to provide access to the property for the purpose of this inspection.

## INSURANCE

### **INSUR – 1 Condition – Arranging Insurance**

This offer is conditional on the Buyer arranging insurance for the property satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE: Due to the nature of this clause, a short time frame should be chosen for this condition.**

### **INSUR – 2 Condition – Arranging Insurance – Cost Not to Exceed**

This offer is conditional upon the Buyer arranging insurance on the property for the following named perils: \_\_\_\_\_, at a yearly cost not to exceed \_\_\_\_\_, excluding applicable taxes. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

## LANDLEASE

### **LAND/LSE- 1 Condition – Landlease – Landlord's Approval**

This Offer is conditional upon the Landlord consenting to the assignment of the landlease to the Buyer. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. The Buyer hereby agrees to proceed immediately to make an application and provide such material as may be required by the Landlord for approval of the Buyer as Tenant.

**NOTE: This clause is a true Condition Precedent and neither a Seller nor a Buyer is entitled to waive this condition.**

### **LAND/LSE – 2 Landlease – Buyer to Assume**

The Seller agrees to assign, and the Buyer agrees to assume, the existing landlease on the property, with [insert name of Tenant], a copy of which is attached as Schedule "\_\_\_\_\_".

**NOTE: See also LAND/LSE - 3 Option to Purchase and LAND/LSE - 1 Condition – Landlease – Landlord's Approval.**

### **LAND/LSE – 3 Landlease – Option to Purchase**

During the currency of this landlease, the Buyer shall have the option of purchasing the land for a sum of \_\_\_\_\_ (\$ \_\_\_\_\_), which is not included in the above purchase price.

**NOTE: See also LAND/LSE - 2 Buyer to Assume and LAND/LSE - 1 Condition – Landlease – Landlord’s Approval.**

## **LAWYER'S APPROVAL**

### **LAW - 1 Condition – Lawyer's Approval – Buyer**

This Offer is conditional upon the approval of the terms hereof by the Buyer’s Solicitor. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **LAW - 2 Condition – Lawyer's Approval – Seller**

This Offer is conditional upon the approval of the terms hereof by the Seller’s Solicitor. Unless the Seller gives notice in writing delivered to the Buyer or to the Buyer’s address as hereinafter indicated personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

### **LAW - 3 Legal, Accounting or Environmental Advice**

The Parties to this Agreement acknowledge that the real estate Broker(s) so named in this Agreement has recommended that the Parties obtain independent professional advice prior to signing this document. The Parties further acknowledge that no information provided by such real estate Broker(s) is to be construed as legal, tax or environmental advice.

## LEASE APPROVAL

### **LEASE/APP - 1 Condition – Buyer’s Right to Review Leases (Condition Subsequent)**

Upon acceptance of this Offer, the Seller agrees to provide the Buyer with copies of all leases on the property. Upon review by the Buyer, if the terms of said leases are unacceptable to the Buyer, in the Buyer’s sole and absolute discretion, the Buyer shall have the right to terminate this Agreement by notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the deposit shall be returned to the Buyer in full without deduction.

### **LEASE /APP - 2 Condition – Inspection of Leases and Real Property (Condition Subsequent)**

This Agreement is conditional upon the Buyer inspecting and approving the real property, the Leases (or Offers to Lease if no Leases are available), and improvements. Unless the Buyer notifies the Seller in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the Buyer is not satisfied with any of the above inspections, the Buyer shall be deemed to have waived this condition and this Agreement shall remain valid and binding.

The Seller agrees to:

- a) Supply the Buyer not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with all Leases and/or Offers to Lease which are in force at the time of acceptance of this Offer and a set of “as built” building plans for the development of the site (if such are in its possession);
- b) Allow the Buyer, its agents and employees, to inspect the land and improvements at mutually convenient time or times; and
- c) Authorize all governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property.

Should the Buyer hire agents, the cost and responsibility of such work shall be for the account of the Buyer. The Buyer covenants and agrees to restore the property forthwith after inspection to its pre-existing physical condition prior to the time of the first such inspection.

If the Buyer is not satisfied with the results of the Buyer’s inspection, the Buyer shall so notify the Seller, who may elect to remedy such results. If the Seller does not remedy such results to the satisfaction of the Buyer, the Buyer may terminate this Agreement by notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the deposit shall be returned to the Buyer in full without deduction.

The Buyer agrees to treat the results of such inspections in a strictly confidential manner and not to disclose the results to a third party except where required by law. There shall be no compulsory requirement to disclose the result to the Seller.

## LEASE/COMMERCIAL

### **LEASE/COMM - 1 Condition – Approval from Board of Directors – Landlord**

This Offer is conditional upon the approval of the terms hereof by the Landlord's Board of Directors. Unless the Landlord gives notice in writing delivered to the Tenant personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Tenant in full without deduction.

**NOTE: This Clause is a true condition precedent and neither Landlord or Tenant is entitled to waive this condition.**

### **LEASE/COMM - 2 Condition – Approval from Board of Directors – Tenant**

This Offer is conditional upon the approval of the terms hereof by the Tenant's Board of Directors. Unless the Tenant gives notice in writing delivered to the Landlord personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Tenant in full without deduction.

**NOTE: This Clause is a true condition precedent and neither Landlord or Tenant is entitled to waive this condition.**

### **LEASE/COMM - 3 Condition – Financial Covenant of Tenant (Condition Subsequent)**

The Landlord shall have until not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to verify that the financial covenant of the Tenant is satisfactory to the Landlord. If the Tenant's covenant is not acceptable to the Landlord, the Landlord may terminate this Agreement by notice in writing delivered to the Tenant personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto within the time period stated above and the Tenant's deposit shall be returned in full without deduction.

### **LEASE/COMM - 4 Condition – Lawyer's Approval – Landlord**

This Offer is conditional upon the approval of the terms hereof by the Landlord's Solicitor. Unless the Landlord gives notice in writing delivered to the Tenant personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Tenant in full without deduction. This condition is included for the benefit of the Landlord and may be waived at the Landlord's sole option by notice in writing to the Tenant as aforesaid within the time period stated herein.

### **LEASE/COMM - 5 Condition – Lawyer's Approval – Tenant**

This Offer is conditional upon the approval of the terms hereof by the Tenant's Solicitor. Unless the Tenant gives notice in writing delivered to the Landlord personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Tenant in full without deduction. This condition is included for the benefit of the Tenant and may be waived at the Tenant's sole option by notice in writing to the Landlord as aforesaid within the time period stated herein.

**LEASE/COMM - 6 Condition – Occupancy Permit (Condition Subsequent)**

The Tenant shall obtain an occupancy permit from the relevant municipality prior to taking occupancy. If the Tenant gives notice in writing delivered to the Landlord personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that an occupancy permit is not obtainable prior to the date set for occupancy, this Agreement, and the Lease, if signed, shall be terminated and the Tenant's deposit shall be returned in full without deduction. The Landlord agrees to provide the Tenant with all of the plans and drawings required for said permit, at the Landlord's expense.

**LEASE/COMM - 7 Condition – Zoning Satisfaction (Condition Subsequent)**

The Tenant shall have until not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to satisfy itself that the property is zoned in final and binding form under the relevant zoning by-laws and official plan to permit it to develop or use the property for the purpose of \_\_\_\_\_. If the Tenant is not so satisfied at the Tenant's sole and arbitrary discretion, the Tenant may terminate this Agreement by notice in writing delivered to the Landlord personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto within the time period stated above and the deposit shall be returned to the Tenant in full without deduction.

**LEASE/COMM - 8 Agreement to Sign Lease**

Prior to the Tenant taking possession of the demised premises, the parties shall execute the Lease in the form attached hereto, as Schedule "\_\_\_\_\_" of the Agreement to Lease.

**LEASE/COMM - 9 Alterations and Improvements**

The Tenant may make any necessary alterations and improvements to said premises, at the Tenant's own expense, subject to the Landlord's written consent, and such consent shall not be unreasonably withheld. The Tenant may, however, make any necessary minor internal improvements to said premises, at the Tenant's own expense, without the Landlord's consent and in compliance with all applicable governmental by-laws and codes governing the use of the demised premises.

**LEASE/COMM - 10 Arbitration**

All disputes or differences arising in regard to the contract shall be settled by arbitration in accordance with the Arbitration Act of Ontario 1991 or any subsequent legislation in effect at the date of commencement of such arbitration.

**NOTE: Care must be taken not to create a conflict with this clause and clauses providing for settlement of disputes or differences by alternate means.**

**LEASE/COMM - 11 Area Defined**

The Landlord and Tenant agree that the rentable area of the leased premises is about \_\_\_\_\_ square feet, with the actual area to be adjusted accordingly, should the actual measurement differ. The area shall be measured by using the current Building Owners and Managers Association Standards.

**LEASE/COMM - 12 Area Measurement**

The Landlord and the Tenant agree that, should the actual square footage differ from the area stated herein, the annual rental rate shall be adjusted to reflect the actual square footage of the demised premises.



**LEASE/COMM - 13 Assign or Sub-lease**

The Lease shall contain a clause permitting the Tenant to assign or sub-lease the demised premises, in whole or part, at any time or times, with consent of the Landlord, and such consent shall not be unreasonably withheld or delayed. Provided that consent as aforesaid shall be required if the Tenant is a corporation and there has been a change of control in the corporation, notwithstanding, the Tenant shall remain on covenant.

**LEASE/COMM - 14 Assignment – Approval by Landlord**

The Tenant shall have the right to assign its interests under this Lease to a limited company, partnership, or person. The Tenant agrees to send written notice to the Landlord of its intention to assign to the Landlord and obtain the Landlord's written approval prior to any assignment. Such approval shall not be arbitrarily or unreasonably withheld or delayed.

**LEASE/COMM - 15 Assignment Without Approval**

It is understood and agreed between the Parties that the Tenant may assign the Lease to an individual, company, partnership or joint venture in which it has a financial interest without consent of the Landlord, provided that the Tenant shall not be relieved of any liability under this Agreement.

**LEASE/COMM - 16 Chemicals - Compliance with Regulations**

The Tenant's use of the premises is to comply with all requirements of the municipal zoning by-laws, the requirements of the Ministry of the Environment and the rules and regulations of the Environmental Protection Act and any amendments thereto.

The Tenant agrees to indemnify and hold harmless the Landlord from and against any claims, demands, losses, costs, damages, actions, suits or proceedings which may be brought or commenced by anyone or any group including any environmental agency or group as a result of the Tenant's use of the premises or any breach by the Tenant of any rules, by-laws, and regulations.

The Tenant warrants that no noxious or environmentally unfriendly chemicals or products shall be allowed to enter the drains throughout the lease term, and upon vacating the premises, no such chemicals or products shall be left on the premises.

**LEASE/COMM - 17 Compliance with By-laws and Codes**

The Tenant covenants to comply with all applicable governmental by-laws and codes governing the use of the demised premises.

**LEASE/COMM - 18 Confidentiality**

The Tenant hereby covenants and agrees that the contents, terms and conditions of this Agreement and the Lease to be executed shall be kept strictly confidential. It is understood that the Tenant will not, without written permission of the Landlord, discuss or reveal the terms of this Agreement with other Parties including, but not limited to other tenants, prospective tenants, real estate agents, suppliers or customers, save and except for the legal and financial advisors of the Tenant.

**LEASE/COMM - 19 Contractors to be Used**

The Landlord may require that all mechanical, electrical, roofing and structural work to be done with respect to the leased premises, by the Tenant at any time, be carried out by the Landlord's contractors and employees at the Tenant's costs, such costs to be competitive with the prices obtained by the Tenant from its contractors.

**LEASE/COMM - 20 Demolition Clause**

At any time after the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, should the Landlord undertake to proceed with full or partial demolition of the building, then upon \_\_\_\_\_ full calendar months written notice from the Landlord to the Tenant, of the Landlord's undertaking to demolish, the Tenant agrees to vacate the premises, and surrender the unexpired portion of the term, at the expiry of the above notice period. Upon surrender of the premises, the Landlord shall pay to the Tenant by way of compensation for improvements an amount standing in the same proportion to the cost to the Tenant of leasehold improvements made by the Tenant pursuant to the provisions of the Lease or with the consent of the Landlord as the unexpired portion of the term stands to the period of time from the Tenant's payment of such cost to the end of the unexpired portion of the term.

**LEASE/COMM - 21 Early Occupancy – Gross Rent Free**

It is understood and agreed that, provided a formal lease has been executed by both the Landlord and the Tenant, and upon Tenant providing evidence of Tenant's insurance satisfactory to the Landlord, the Tenant shall be granted possession of the demised premises on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, gross rent free to the Lease Commencement Date, in order to prepare the premises for the operation of its business, provided that, during the said rent-free period, the Tenant shall comply with all the terms and conditions of the lease.

**NOTE: This Clause should be used in conjunction with an Insurance Clause specifically outlining insurance requirements.**

**LEASE/COMM - 22 Early Occupancy – Net Rent Free**

It is understood and agreed that, provided a formal lease has been executed by both the Landlord and the Tenant, and upon Tenant providing evidence of Tenant's insurance satisfactory to the Landlord, the Tenant shall be granted possession of the demised premises on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, net rent free to the Lease Commencement Date, in order to prepare the premises for the operation of its business, provided that, during the said rent-free period, the Tenant shall comply with all the terms and conditions of the lease, and be responsible for the Tenant's proportionate share of all expenses of the property, save and except for payment of minimum rent.

**LEASE/COMM - 23 Electrical and Mechanical Equipment in Good Working Order**

The Landlord warrants that all mechanical, heating, ventilating, air conditioning equipment (HVAC), and electrical equipment will be in good working order, normal wear and tear excepted, on or before the occupancy date set herein.

**LEASE/COMM - 24 Entire Agreement**

It is understood and agreed that the contract resulting from the acceptance of this Offer shall be as expressly set out herein and in the schedules attached hereto and, except as expressly set out herein and in the attached schedules hereto, there are no collateral or other representations, warranties, conditions or agreements between the Landlord and Tenant, and none shall be implied.

**LEASE/COMM - 25 Escalation Clause for Property Taxes**

The Tenant shall pay its proportionate share of any increase in property taxes and local improvement levies over the base year of 20\_\_\_\_\_.

**LEASE/COMM - 26 First Right of Refusal on Vacant Space –Lease**

The Tenant shall have the first right of refusal on adjacent space if and when such space becomes available. In the event that the Landlord receives an Offer which it finds acceptable, it shall so notify the Tenant in writing, and the Tenant shall have 72 hours to match the Offer, by notice in writing delivered to the Landlord, failing which the Tenant shall have lost its first right of refusal. For purposes herein, adjacent space shall be deemed to be space on the first floor above, the first floor below, and/or adjoining space on the same floor as the subject unit.

**LEASE/COMM - 27 First Right of Refusal to Purchase**

The Landlord covenants and agrees with the Tenant that, during the term of the lease or any renewal thereof, the Landlord will give the Tenant three (3) business days to submit an Offer upon the same terms and conditions as any bona fide Offer to purchase the leased property that the Landlord has received and is willing to accept, and any Lease executed by the Landlord and Tenant shall include this first right of refusal.

The Landlord shall give the Tenant written notice of such bona fide Offer and a copy of such Offer to the Tenant. In the event that the Tenant submits to the Landlord, within the time period described above, a written and signed Offer to purchase the property upon the same terms and conditions as the Offer initially received by the Landlord, the Landlord shall accept the Offer submitted by the Tenant. In the event that the Tenant fails to deliver to the Landlord, within the time limit described above, a written and signed Offer to purchase the property on the same terms and conditions as the initial Offer, the Landlord shall be at liberty to sell the property to the Buyer who submitted the initial Offer. Should the Tenant exercise the said first right of refusal, the Landlord agrees to pay the Agents so named in this Agreement, (or their successor companies) a fee of \_\_\_\_\_.

**LEASE/COMM - 28 Gross Lease**

It is agreed that the lease arising from this Offer shall be based on a rental rate which includes the Landlord paying realty taxes, outside maintenance, building insurance, heat, hydro and water rates that pertain to the subject leased premises.

**LEASE/COMM - 29 Gross Lease with Escalations**

It is understood and agreed that any lease arising from this Offer shall be based on a rental rate which shall include the Tenant's proportionate share of realty taxes, outside maintenance, building insurance, heat, hydro, water rates, and management fees, if any. All inclusions have a base year of 20\_\_\_\_\_, and are subject to yearly adjustments according to actual increases. Such increases above the base year shall be paid proportionately by the Tenant.

**LEASE/COMM - 30 GST/HST – Lease**

The Tenant acknowledges that GST/HST will be collectable by the Landlord on the rent paid and on common area expenses as defined herein.

**LEASE/COMM - 31 Guarantor**

The obligations created by the Tenant so named herein shall be jointly and severally assumed by the guarantor, whose name is identified at the end of this Agreement, and the guarantor agrees to be bound by the terms herein. In the enforcement of its rights under this guarantee, the Landlord may proceed against the guarantor as if the guarantor were named as Tenant under this Lease.

**LEASE/COMM - 32 Insurance – Tenant to Obtain**

The Lease shall contain a clause requiring the Tenant to obtain insurance, at the expense of the Tenant, as required by the Landlord and which may include insurance on the property and operations of the Tenant, including insurance for fire and such additional perils as are normally insured against, liability insurance, boiler and machinery insurance, plate glass insurance and any other insurance as may be reasonably required by the Landlord.

**LEASE/COMM - 33 Lease Cancellation Privilege**

The Tenant shall have the option to cancel the Lease at any time during the Lease, provided that the Tenant gives the Landlord at least \_\_\_\_\_ days written notice of the Tenant's intention to cancel, and provided that the Tenant is not in default at the time of giving of such notice, or at the time of termination itself. The payment for this option shall be a cancellation fee of \_\_\_\_\_, payable at the time of giving notice of intention to cancel.

**LEASE/COMM - 34 Lease Form**

Attached hereto as Schedule “\_\_\_\_\_” is a copy of the Landlord’s standard Lease form, which the Landlord will alter to reflect the business terms defined herein, and the Tenant agrees to sign same subject to minor adjustments as negotiated between the Landlord’s and the Tenant’s Solicitors, both acting reasonably. In the event of a difference or contradiction between this Offer and the standard Lease form, the terms of the Lease as so negotiated shall prevail, save for manifest error.

**LEASE/COMM - 35 Net Lease**

The rent is to be on an absolutely net basis to the Landlord, and the Tenant agrees to pay as additional rent, its proportionate share of the cost of operation and maintenance for the site, to include but not limited to water, heat, hydro, administrative costs, garbage disposal, realty taxes, outside maintenance and building insurance, (except for structural repairs and items of a capital nature) including all costs of maintaining, repairing, replacing, upkeep, servicing and including, without limiting the generality of the foregoing, other costs and expenses which are defined in the Landlord’s lease. These common area costs are currently estimated to be \$\_\_\_\_\_ per square foot per year, and will be adjusted annually according to actual costs. At the end of the calendar year the Landlord will itemize the common area costs, should the Tenant so request.

**LEASE/COMM - 36 Option to Purchase**

In consideration of the sum of \_\_\_\_\_ (\$\_\_\_\_\_) paid by the Tenant to the Landlord, the receipt of which is hereby acknowledged, and in consideration of the terms and conditions herein recited, the Landlord gives to the Tenant an option irrevocable within the time limit herein for acceptance, to purchase, free and clear of all encumbrances, the lands and premises situated at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_. The option shall be open for acceptance by notice in writing delivered to the Landlord not later than \_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The terms of the purchase shall be the following:\_\_\_\_\_.

**LEASE/COMM - 37 Option to Renew – Appraisal**

Provided that the Tenant is not in default under the terms of the lease, the Tenant shall have the option to renew said Lease for a further term of \_\_\_\_\_ (\_\_) years, on the same terms and conditions, save and except for a further renewal, and the rental rate, which shall be the then current rent for similar location, and on similar lease terms at the time of renewal, provided that the Tenant advises the Landlord in writing \_\_\_\_\_ (\_\_) months prior to the end of the term that the Tenant wishes to exercise the Tenant’s option to renew. If the Landlord and Tenant do not agree by one month prior to the end of the term on the rental rate for the renewal term, the matter shall be determined by appraisal. The cost of these appraisals shall be shared equally by Landlord and Tenant. Either the Landlord or the Tenant (the “Notifying Party”) may by notice (the “First Notice”) to the other (the “Other Party”) designate an appraiser. The Other Party may within 10 days following the giving of the First Notice designate a second appraiser by notice (the “Second Notice”) to the Notifying Party, failing which the first appraiser shall be the sole appraiser. Within 10 days following the giving of the Second Notice (if given), the two appraisers shall appoint a third appraiser, failing which either party may apply to a judge of the Ontario Court (General Division) as persona designata to appoint the third appraiser. The sole appraiser, or if there are three appraisers, the three appraisers, independently of each other, shall proceed to determine the fair market rental rate for the renewal term. If there is a sole appraiser, the rate determined by the sole appraiser shall be the rate for the renewal term. If there are three appraisers, the two rental rates determined by the appraisers which are closest to each other in amount shall be averaged, or, if the highest and lowest rate differ from the other rate by the same amount, all three rates shall be averaged, and the average rate shall be the rate for the renewal term. Any appraiser appointed pursuant hereto shall be a person with the qualifications and experience requisite to appraise property of the type and location of the demised premises.

**LEASE/COMM - 38 Option to Renew – Arbitration**

Provided that the Tenant is not at any time in default of any covenants within the lease, the Tenant shall be entitled to renew this lease for \_\_\_\_\_ additional term(s) of \_\_\_\_\_ ( ) year(s) \_\_\_\_\_ ( ) month(s) (each) on written notice to the Landlord given not less than \_\_\_\_\_ months prior to the expiry of the current term at a rental rate to be negotiated. In the event the Landlord and Tenant cannot agree on the fixed minimum rent at least two months prior to expiry of the current lease, the fixed minimum rent for the renewal period shall be determined by arbitration in accordance with the Arbitration Act or any successor or replacement act.

**LEASE/COMM - 39 Parking**

The Landlord will provide the Tenant with a minimum of \_\_\_\_\_ ( ) parking spaces, included in the rent, during the term of the Lease, and the Tenant and the customers, representatives and agents of the Tenant shall have the sole and exclusive right to use these parking spaces set out in Schedule “\_\_\_\_\_” attached.

**LEASE/COMM - 40 Partitions**

It is understood and agreed that the Tenant may utilize the existing partitions in the demised premises and may re-locate such partitions and build additional partitions, as required by the Tenant.

**LEASE/COMM - 41 Partitions with Approval**

The Tenant may build additional partitions, as required, subject to approval by the Landlord, provided that such approval shall not be unreasonably withheld.

**LEASE/COMM - 42 Proportionate Share**

The Tenant’s proportionate share of such common area shall be defined as the Tenant’s area defined herein, divided by the total rentable area, expressed as a percentage. For purposes herein, the rentable area is defined as \_\_\_\_\_ and the Tenant’s area shall be defined as \_\_\_\_\_.

**LEASE/COMM - 43 Rent Free Period**

Notwithstanding the Lease Commencement Date, the Tenant shall not be obliged to pay minimum rent during the first \_\_\_\_\_ month(s) of the term, provided, however, that the Tenant shall be responsible to pay for all additional rent from the Lease Commencement Date.

**LEASE/COMM - 44 Rental Amount**

The rent paid by the Tenant to the Landlord shall be \_\_\_\_\_ per annum, paid 1/12 monthly in advance. This rate shall be on a \_\_\_\_\_ basis to the Landlord.

**NOTE: For use when the Clause is not included in the pre-printed Agreement to Lease.**

**LEASE/COMM - 45 Restoring Premises to Original Condition**

The Tenant may, at the Tenant’s own expense, subject to the written approval of the Landlord, install any fittings, fixtures, and partitions that may be necessary for the operation of the Tenant’s business, from time to time during the lease term, provided that upon termination of the lease term or renewal thereof, the Tenant shall, at the option of the Landlord, restore the premises to its original condition, at no cost to the Landlord.

**LEASE/COMM - 46 Shipping and Receiving Access**

The Lease shall contain a clause providing that the Tenant shall have full access at all times from \_\_\_\_\_ for the purpose of shipping and receiving.

**LEASE/COMM - 47 Signs**

The Tenant may install in, upon, or about the said premises any signs and advertising material which shall remain the property of the Tenant, which the Tenant may remove upon the expiration of the Lease, provided that all damage caused is repaired and the premises left in good repair. All signs and location(s) are to be approved beforehand in writing by the Landlord (such consent not to be unreasonably withheld) and must conform with all applicable governmental by-laws and codes.

**LEASE/COMM - 48 Space Layout Sketch**

The Tenant shall provide the Landlord, within three (3) days of acceptance of this Offer, a layout sketch showing the area that the Landlord is to improve for the Tenant.

**LEASE/COMM - 49 Structural Penetration**

It is agreed and understood that no openings may be made in the floors, walls and roof of the demised premises without the prior written consent of the Landlord. Should the Landlord consent to such work, it shall be done and maintained in a professional manner, at the sole cost of the Tenant.

**LEASE/COMM - 50 Use of Common Areas**

It is understood and agreed that the Tenant shall have the right to use, in common with all others entitled thereto, the common areas of the property, including lobbies, hallways, common rooms, entrances, driveways, parking lots and common lands appurtenant to the building containing the demised premises, and the Tenant covenants that the Tenant will not obstruct these common areas.

**LEASE/COMM - 51 Work by Landlord**

As an inducement for the Tenant to enter into a Lease contract with the Landlord, the Landlord covenants that it will carry out the following work prior to the Tenant taking possession, at no cost to the Tenant: [insert as needed].

**LEASE/COMM - 52 Workmanlike Manner**

Any work carried out by the Landlord, or the Tenant, their employees, agents or contractors shall be done in a workmanlike and professional manner and in compliance with all applicable governmental by-laws and codes governing the use of the demised premises.

## LEASE/RESIDENTIAL

**NOTE:** For the purpose of these clauses “Tenant” and “Landlord” have been used.  
Tenant = Lessee and Landlord = Lessor. Either term may be used.

**NOTE:** In all cases please refer to the Tenant Protection Act.

**NOTE:** It is not lawful for a Landlord to “demand” post dated cheques for rent as a requirement when leasing residential premises.

### LEASE/RES - 1 Condition – Credit Check

This Offer to Lease is conditional upon the Landlord satisfying the Landlord concerning the personal and/or credit worthiness of the Tenant. The Tenant hereby consents to having the Landlord conduct or cause to be conducted a personal and/or credit investigation in respect to the Tenant. Unless the Landlord gives notice in writing delivered to the Tenant personally or in accordance with any other provisions for the delivery of notice in this Agreement to Lease or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Tenant in full without deduction. This condition is included for the benefit of the Landlord and may be waived at the Landlord’s sole option by notice in writing to the Tenant as aforesaid within the time period stated herein.

**NOTE:** To comply with the Consumer Reporting Act, if the Landlord refuses to grant a lease due to information contained in a Consumer Report, the Landlord must give Notice that:

- a) Refusal was due to information received from a consumer reporting agency or other person; and
- b) Upon written request of the Tenant (within 60 days of notice) the Landlord is obligated to inform the Tenant of the nature and source of the information.

### LEASE/RES - 2 Agreement to Lease Only/No Lease to be Signed

Tenant and Landlord agree that an accepted Agreement to Lease shall form a completed lease and no other lease will be signed between the Parties.

**NOTE:** If using this clause, delete the reference to a lease being drawn from the Agreement to Lease.

### LEASE/RES - 3 Alterations/Improvements

Landlord shall provide alterations and improvements as detailed on Schedule “\_\_\_\_\_” attached hereto, at the Landlord’s own expense, in a good and workmanlike manner prior to the commencement of the lease.

### LEASE/RES - 4 Appliances Included

The following appliances belonging to the Landlord are to remain on the premises for the Tenant’s use: (include itemized list with description: make, model, and serial number).

### LEASE/RES - 5 Appliances and Landlord /Tenant Responsibilities

Landlord represents and warrants that the appliances as listed in this Agreement to Lease will be in good working order at the commencement of the lease term. Tenant agrees to maintain said appliances in a state of ordinary cleanliness at the Tenant’s cost.

**LEASE/RES - 6 Chattels Left by Owner**

Tenant agrees that any chattels left on the rented premises, and not specifically mentioned herein, may remain and be stored on the premises at no cost to, and shall remain at the risk of, the Landlord.

**LEASE/RES - 7 Cleaning of Carpets**

Landlord agrees to have the carpets professionally cleaned prior to the commencement of the lease at the Landlord’s cost, and Tenant shall have the carpets professionally cleaned at end of lease term at Tenant’s cost.

**LEASE/RES - 8 Condo By-law Compliance**

Tenant shall comply with all the By-laws of the Condominium Corporation.

**LEASE/RES - 9 Consent to Decorate**

Tenant agrees not to make any decorating changes to the premises without the express written consent of the Landlord or his authorized agent.

**LEASE/RES - 10 Increase in Rent**

Tenant agrees that an increase of \_\_\_\_\_% will be in effect on the second year of this lease, in accordance with the guidelines established under the applicable rent review legislation.

**NOTE: The increase inserted must not take the rent above the legal maximum.**

**LEASE/RES - 11 Maintenance of Grounds**

The Tenant shall keep the lawns in good condition and shall not injure or remove the shade trees, shrubbery, hedges or any other tree or plant which may be in, upon or about the premises, and shall keep the sidewalks in front and at the sides of the premises free of snow and ice.

**LEASE/RES - 12 Maintenance of Swimming Pool**

Tenant agrees to provide general maintenance for the swimming pool located on the premises, including cleaning, use of chemicals, opening and winterizing of pool. The Landlord shall be responsible for the upkeep of the equipment, including both chattels and fixtures associated with the operation of the pool.

**NOTE: The Landlord may wish to reserve the right to open and/or winterize the pool.**

**LEASE/RES - 13 Option to Purchase**

In consideration of the sum of \_\_\_\_\_ (\$\_\_\_\_\_ ) paid by the Tenant to the Landlord, the receipt of which is hereby acknowledged, and in consideration of the terms and conditions herein recited, the Landlord gives to the Tenant an option irrevocable within the time limit herein for acceptance, to purchase, free and clear of all encumbrances, the lands and premises situated at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_. The option shall be open for acceptance by notice in writing delivered to the Landlord not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The terms of the purchase shall be the following:

\_\_\_\_\_.

**LEASE/RES - 14 Permission to Sublet - Subject to Landlord’s Approval**

Landlord shall permit Tenant to sublet during the lease term, subject to approval of the Landlord, which shall not be unreasonably withheld.



**LEASE/RES - 15 Pets**

Tenant agrees to be responsible for any repair or replacement cost due to the presence of any pets on the premises. Tenant further agrees that if pets are kept on the premises, Tenant shall, at lease termination, have the carpets professionally cleaned and make any repairs that may be necessary to restore any damages caused by pets.

**LEASE/RES - 16 Renewal Options**

Tenant, if not in default hereunder, shall have the option, by written notice, given to the Landlord at least \_\_\_\_\_ days before the end of the lease term, to renew the lease for a further year term on the following terms and conditions: (Itemize tenancy particulars as agreed by the Parties.).

**LEASE/RES - 17 Showing of Rental Property**

The Tenant agrees to allow the Landlord or his agent to show the property at all reasonable hours to prospective Buyers or Tenants, after giving the Tenant at least twenty four (24) hours written notice of such showing, and to allow the Landlord to affix a For Sale or For Rent sign on the property.

**LEASE/RES - 18 Taxes/Fire Insurance**

Landlord shall pay real estate taxes, [condominium fees and parking *if applicable*] and maintain fire insurance on the premises. Tenant acknowledges the Landlord's fire insurance on the premises provides no coverage on Tenant's personal property.

**LEASE/RES - 19 Tenant Pays Utilities**

Tenant agrees to pay the cost of all utilities required on the premises during the term of the lease and any extension thereof, including but not limited to electricity, water, sewer and gas or other fuel. Tenant further agrees to provide proof to the Landlord on or before the date of possession that the services have been transferred to the Tenant's name.

**LEASE/RES – 20 Tenant's First Right of Refusal**

The Landlord covenants and agrees with the Tenant that, during the term of the lease or any renewal thereof, the Landlord will give the Tenant three (3) business days to submit an Offer upon the same terms and conditions as any bona fide Offer to purchase the leased property that the Landlord has received and is willing to accept, and any Lease executed by the Landlord and Tenant shall include this first right of refusal.

The Landlord shall give the Tenant written notice of such bona fide Offer and a copy of such Offer to the Tenant. In the event that the Tenant submits to the Landlord, within the time period described above, a written and signed Offer to purchase the property upon the same terms and conditions as the Offer initially received by the Landlord, the Landlord shall accept the Offer submitted by the Tenant. In the event that the Tenant fails to deliver to the Landlord, within the time limit described above, a written and signed Offer to purchase the property on the same terms and conditions as the initial Offer, the Landlord shall be at liberty to sell the property to the Buyer who submitted the initial Offer. Should the Tenant exercise the said first right of refusal, the Landlord agrees to pay the Agents so named in this Agreement, (or their successor companies) a fee of \_\_\_\_\_.

## MAINTENANCE

### MAINT - 1 Cleaning

The Seller agrees to leave the premises, including the floors, in a clean and broom swept condition.

### MAINT - 2 Equipment – Seller to Repair Damage on Removal

The Seller agrees to repair at the expense of the Seller, prior to the date of completion, any openings or holes in walls, floors, ceilings or window areas resulting from the removal of equipment, as requested after discussion with the Buyer and more particularly as hereinafter set out:

\_\_\_\_\_ (list where) \_\_\_\_\_ and permit the Buyer the right to inspect the premises to ensure that said repairs have been completed.

### MAINT - 3 Floors

The Seller agrees to clean, repair or replace any damaged floor covering in the sections of the building as indicated by the Buyer and more particularly as hereinafter set out:

\_\_\_\_\_ (list where) \_\_\_\_\_ and permit the Buyer the right to inspect the premises to ensure that said cleaning, repairing or replacing has been completed.

## MORTGAGES

### MORT - 1 Condition – Approval to Assume Existing Mortgage (Condition Precedent)

The Buyer agrees to assume the existing \_\_\_\_\_ Charge/Mortgage held by \_\_\_\_\_ for approximately \_\_\_\_\_, (\$ \_\_\_\_\_), bearing interest at the rate of \_\_\_\_\_% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of \_\_\_\_\_ (\$ \_\_\_\_\_), including both principal and interest, and due on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_. This Offer is conditional upon the Buyer obtaining the approval of the Chargee/Mortgagee to assume the existing Charge/Mortgage. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Buyer hereby agrees to proceed immediately to make an application and provide such material as may be required by the Chargee/Mortgagee for approval of the Buyer as the Chargor/Mortgagor.

**NOTE: This clause is a true Condition Precedent and neither a Seller nor a Buyer is entitled to waive this condition.**

### MORT – 2 Condition – Arranging a New Mortgage

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new \_\_\_\_\_ Charge/Mortgage for not less than \_\_\_\_\_ (\$ \_\_\_\_\_), bearing interest at a rate of not more than \_\_\_\_\_% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of about \_\_\_\_\_ (\$ \_\_\_\_\_), including principal and interest, and to run for a term of not less than \_\_\_\_\_ years from the date of completion of this transaction. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE 1: A waiver for the Buyer is included unless the Charge/Mortgage is to be arranged with specific Chargee/Mortgagee; i.e. if it is to be arranged through the Seller's Chargee/Mortgagee then so state in the description and DO NOT provide a waiver, otherwise the Seller could suffer a substantial monetary penalty to discharge an existing Charge/Mortgage (or see MORT - 11 below).**

**NOTE 2: If a Seller Take Back Charge/Mortgage is also being arranged, include MORT – 15 with MORT – 14 to prevent an Oklahoma offer (otherwise the property could be over financed to the detriment of the Seller’s security).**

**NOTE 3: In the event a Finder’s Fee is received from a lending institution or Mortgage Broker, it is wise to include an acknowledgement such as the following:**

**“The Seller acknowledges that the agent will receive a Finder’s Fee of \$ \_\_\_\_\_ in connection with the arranging of financing for the Buyer”.**

**MORT - 3 Condition – Arranging a New Mortgage as Percentage of Purchase Price**

This Offer is conditional upon the Buyer arranging, at the Buyer’s own expense, a new \_\_\_\_\_ Charge/Mortgage for not less than \_\_\_\_\_% of the purchase price, bearing interest at a rate of not more than \_\_\_\_\_% per annum, calculated semi-annually not in advance, repayable in equal blended monthly payments, amortized over a period of not less than \_\_\_ years and to run for a term of not less than \_\_\_ years from the date of completion of this transaction. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_ p.m. on the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**MORT - 4 Condition – Arranging New Mortgage Satisfactory to Buyer**

This Offer is conditional upon the Buyer arranging, at the Buyer’s own expense, a new \_\_\_\_\_ Charge/Mortgage satisfactory to the Buyer in the Buyer’s sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE: Sellers should be aware that this condition does not contain any specific terms of the proposed financing Buyers wish to arrange and thus provides Buyers with more latitude in declining financing.**

**Buyers using this clause should be advised they have an obligation to make a “good faith” effort to arrange the necessary financing, and should not use this clause inappropriately as a means to cancel the transaction.**

**MORT - 5 Condition – Arranging New Mortgage (Condition Subsequent)**

The Buyer may terminate this Agreement through written notice delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, if a new first Charge/Mortgage cannot be arranged by the Buyer, at the Buyer’s expense. This Charge/Mortgage is to be for a sum of not less than \_\_\_\_\_, (\$ \_\_\_\_\_) bearing interest at a rate of not more than \_\_\_\_\_% per annum, calculated semi-annually, not in advance, repayable in blended monthly payments of about \_\_\_\_\_, (\$ \_\_\_\_\_), including both principal and interest, and to run for a term of not less than \_\_\_\_\_ year(s) from the date of completion of this transaction. Upon receipt of the above notice, this Agreement shall be null and void and the deposit shall be returned to the Buyer in full without deduction. If no such notice is received within the above time limit, then this term of contract shall be deemed waived by the Buyer and this Agreement shall remain valid and binding whether or not such Charge/Mortgage has been arranged.

**MORT - 6 Condition – Credit Check**

This Offer is conditional upon the Seller being satisfied concerning the personal and/or credit worthiness of the Buyer. Unless the Seller gives notice in writing to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

**MORT - 7 Condition – Discharge of Mortgage(s) - Cost**

This Offer is conditional upon the Seller being satisfied that the cost to discharge the \_\_\_\_\_ Charge(s)/Mortgage(s) shall not exceed the sum of \_\_\_\_\_, (\$ \_\_\_\_\_). Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

**NOTE: Most discharges are covered in the printed Agreement.**

**MORT - 8 Condition – Over-leveraged Property**

The Seller hereby acknowledges that the real property is subject to registered encumbrances that may, given the Seller’s obligation to pay commissions and other related closing costs, exceed the available proceeds of sale from this transaction. This Offer shall, therefore, be conditional upon the Seller obtaining the written approval of all Chargees/Mortgagees and other registered encumbrancers as to the final acceptance of this Offer and their agreement to discharge their encumbrances without payment in the aggregate of more than the available proceeds from this transaction. Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

**MORT - 9 Condition – Paydown of Existing Mortgage by Seller**

The Seller agrees to pay the existing \_\_\_\_\_ Chargee/Mortgagee the sum required to reduce the interest rate by \_\_\_\_\_% for the term of \_\_\_\_\_ year(s) of this Charge/Mortgage. This Offer is conditional upon the Seller being satisfied that the cost to reduce the interest rate to \_\_\_\_\_% shall not exceed the sum of \_\_\_\_\_ (\$ \_\_\_\_\_). Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

**MORT - 10 Condition – Sale of Mortgage by Seller**

This Offer is conditional upon the Seller obtaining at the Seller’s own expense, a commitment for the sale of the aforementioned \_\_\_\_\_ Charge/Mortgage [for an amount of not less than \_\_\_\_\_ (\$ \_\_\_\_\_)] OR [at a discount of not more than \_\_\_\_\_% of the amount of said Charge/Mortgage]. Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller’s sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

**MORT - 11 Discharge of Existing Mortgage – Buyer to pay Prepayment Charges**

If the Charge/Mortgage being arranged by the Buyer is not obtained through the existing Chargee/Mortgagee, \_\_\_\_\_, the Buyer will pay to the Seller, in addition to the purchase price, all prepayment and bonus charges which the existing Chargee/Mortgagee lawfully charges the Seller.

**MORT - 12 Discharge of Existing Mortgage – Seller to Pay Prepayment Charges**

The Seller acknowledges that there may be a penalty to discharge the existing Charge/Mortgage and agrees to pay any costs, expenses or penalties incurred in discharging the existing Charge/Mortgage.

**MORT - 13 Existing Mortgage – Buyer to Assume (No Approval)**

The Buyer agrees to assume the existing \_\_\_\_\_ Charge/Mortgage held by \_\_\_\_\_ for approximately \_\_\_\_\_, \$ \_\_\_\_\_), bearing interest at the rate of \_\_\_\_\_% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of \_\_\_\_\_ (\$ \_\_\_\_\_), including both principal and interest, and due on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTE: The personal covenant of the original Chargor/Mortgagor still applies following the assumption of the Charge/Mortgage by the Buyer.**

**MORT - 14 Seller Take Back Mortgage**

The Seller agrees to take back a \_\_\_\_\_ Charge/Mortgage in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), bearing interest at the rate of \_\_\_\_\_% per annum, calculated semi-annually not in advance, repayable in blended monthly payments of \_\_\_\_\_ (\$ \_\_\_\_\_), including both principal and interest, and to run for a term of \_\_\_\_\_ years from the date of completion of this transaction. (See Prepayment Privileges, Clauses MORT - 23, MORT - 24, MORT - 25 & MORT - 26.)

**NOTE: Without a prepayment privilege, the borrower does not have any automatic right to early discharge of the Charge/Mortgage or prepayment of principal.**

**MORT - 15 Seller Take Back Mortgage – Second Mortgage Clause to Prevent Overfinancing (Oklahoma)**

In the event that the first mortgage arranged by the Buyer has a principal amount in excess of \_\_\_\_\_ (\$ \_\_\_\_\_), the principal amount of the second mortgage will be reduced by the excess amount, with a corresponding reduction in the payment for the second mortgage. The Buyer agrees to provide the Seller or the Seller’s lawyer with a confirmation of the principal amount of the first mortgage to be registered.

**NOTE: To be used with MORT - 14 when the offer is conditional on arranging a prior mortgage.**

**MORT - 16 Seller Take Back Mortgage – Simple Interest Only**

The Seller agrees to take back a \_\_\_\_\_ Charge/Mortgage [for the balance of the Purchase price] OR [in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_)] bearing interest at the rate of \_\_\_\_\_% per annum, repayable interest only \_\_\_\_\_ [state payment interval, e.g., monthly, quarterly, etc.] and maturing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (See Prepayment Privileges, Clauses MORT - 23, MORT - 24, MORT - 25 & MORT - 26.)

**NOTE: Without a prepayment privilege, the borrower does not have any automatic right to early discharge of the Charge/Mortgage or prepayment of principal.**

**MORT - 17 Seller Take Back – To Be Sold By Seller Prior to Closing (Buyer to Co-operate)**

The Buyer acknowledges that the Charge/Mortgage being taken back by the Seller may be sold. The Buyer agrees to co-operate fully with the Seller in connection with the sale of this Charge/Mortgage, and shall provide such personal and financial information, together with such documents as the Assignee of the Charge/Mortgage may reasonably require, forthwith upon request by the Seller, in order that the sale of the Charge/Mortgage may be completed.

The Buyer warrants that the down payment stated in this transaction shall be at least \_\_\_\_\_% of the purchase price and does not incur any payment obligations or indebtedness.

**MORT - 19 Term – Post Dated Cheque Requirement**

The Buyer shall deliver to the Chargee/Mortgagee on the closing of this transaction, and on each anniversary of the closing, a series of post-dated cheques to cover all Charge/Mortgage payments due during the next twelve months.

**MORT - 20 Term – Postponement – 1**

This Charge/Mortgage shall contain a clause permitting the renewal or replacement of the existing first Charge/Mortgage at any time, provided that any increase in the principal amount of the new first Charge/ Mortgage over the amount of principal owing under the first Charge/Mortgage at the time of renewal or replacement shall be applied in reduction of the principal amount of this Charge/Mortgage; and the Chargee/Mortgagee hereunder shall execute and deliver to the Chargor/Mortgagor such postponement agreement, Charge/Mortgage Statement, or other documents as the new first Chargee/Mortgagee may reasonably require, forthwith upon request.

**NOTE: If Charge/Mortgage being arranged is a third, etc., change clause to read: “replacement of the first and/or second Charge(s)/Mortgage(s)” and “principal owing under the first and/or second Charge(s)/Mortgage(s)”.**

**MORT - 21 Term – Postponement – 2**

The Chargor/Mortgagor shall have the privilege of renewing or replacing the existing first Charge/Mortgage at any time provided that any increase in the principal of the new first Charge/Mortgage over the amount of principal owing under the first Charge/Mortgage at the time of renewal or replacement shall be applied without penalty in reduction of the principal amount of this Charge/Mortgage and the Chargee/Mortgagee will execute and deliver to the Chargor/Mortgagor a postponement agreement in favour of the new first Chargee/Mortgagee.

**MORT - 22 Term – Postponement – 3**

The Chargee/Mortgagee will execute and deliver to the Chargor/Mortgagor a postponement agreement in favour of the new first Chargee/Mortgagee, provided that such replacement Charge/Mortgage shall not bear interest in excess of \_\_\_\_\_% per annum and if such financing is for an amount greater than the outstanding principal balance of the existing first Charge/Mortgage at the date of registration of the new first Charge/Mortgage, such increase shall be paid towards the reduction of the principal balance outstanding on this Charge/Mortgage.

**MORT - 23 Term – Prepayment – Fully Open**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of prepaying all or part of the principal sum outstanding at any time or times without notice or bonus.

**MORT - 24 Term – Prepayment – Open in Accordance with Principal Amounts Falling Due**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of prepaying all or part of the principal sum on any payment date or dates without notice or bonus, provided that any partial prepayment shall equal the sum of the principal amounts of the payment(s) next falling due under the Charge/Mortgage.

**MORT - 25 Term – Prepayment – Open on Anniversary Date**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of prepaying on each anniversary date a sum not to exceed \_\_\_\_\_% of the original principal amount, without notice or bonus.

**MORT - 26 Term – Prepayment – Subject to Bonus**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of prepaying on any payment date a sum not to exceed \_\_\_\_\_% of the original principal amount, subject to a bonus of \_\_\_\_\_ month's interest on the amount of principal being repaid.

**MORT - 27 Term – Renewal – Same Terms Except for Further Renewal**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of renewing this Charge/Mortgage on its maturity, for a further term of \_\_\_\_\_ year(s) on the same terms and conditions save and except for the right to any further renewal.

**MORT - 28 Term – Renewal – At Current Rate of Interest**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor, when not in default, the privilege of renewing this Charge/Mortgage upon its maturity, for a further term of \_\_\_\_\_ year(s) at the rate of interest charged by \_\_\_\_\_, on the date thirty days preceding the maturity date of the Charge/Mortgage, to credit worthy borrowers for \_\_\_\_\_ year Charge/Mortgage loans, and otherwise on the same terms and conditions save and except for the right of a further renewal.

**MORT - 29 Term – Right to Demolish**

This Charge/Mortgage shall contain a clause providing that the Chargor/Mortgagor shall have the right to alter or demolish any or all of the existing buildings now on the property without such activity constituting waste under the terms of this Charge/Mortgage, provided that such alteration or demolition shall comply with all applicable by-laws, building codes or other applicable laws or regulations.

**MORT - 30 Term – Transfer/Acceleration Provision – At Option of Mortgagee**

This Charge/Mortgage shall contain a clause providing that if the Chargor/Mortgagor sells, assigns, or otherwise transfers title to the property or places a Charge/Mortgage on the property without the express consent of the Chargee/Mortgagee then, at the sole option of the Chargee/Mortgagee, all monies secured thereby shall become due and payable immediately, together with interest accrued to the date thereof.

## **MORTGAGES/DEVELOPMENT**

### **MORT/DEV - 1 Mortgagee's Consent – Dedication of Road**

This Charge/Mortgage shall contain a clause permitting the dedication of all roads and other lands required by municipal and provincial authorities on any proposed plan or plans of sub-division and providing for a discharge of such lands, as may be required for such purposes, from the Charge/Mortgage, without additional payment by the Chargor/Mortgagor other than the normal legal costs of the Chargee/Mortgagee.

### **MORT/DEV - 2 Mortgagee's Consent – Granting of Easements**

This Charge/Mortgage shall contain a clause requiring the Chargee/Mortgagee to postpone the Charge/Mortgage in favour of the granting of any easements to municipal or other governmental authorities or Public Utilities Commission or Corporation, required for the supply and/or installation of gas, telephone, electricity, water, sewer, railroad, or other similar services, without additional payment by the Chargor/Mortgagor other than the normal legal costs of the Chargee/Mortgagee.

### **MORT/DEV - 3 Mortgagee's Consent – Registration in Land Titles**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor to apply to register the lands, or any part or parts, under the Land Titles System, and the Chargee/Mortgagee agrees to execute any and all documents required by the Chargor/Mortgagor with respect thereto, provided that the Chargor/Mortgagor pay all costs of said registration.

### **MORT/DEV - 4 Mortgagee's Consent – Re-zoning**

This Charge/Mortgage shall contain a clause requiring the Chargee/Mortgagee, upon written notice, to execute applications and all other documents required for the Chargor/Mortgagor to change the Official Plan, if necessary, and to re-zone the lands to a zoning suitable to the Chargor/Mortgagor, or to amend any by-laws, and to support such application or applications for re-zoning or amending of by-laws and to co-operate with the Chargor/Mortgagor in all reasonable respects, provided that the Chargor/Mortgagor pay all costs of said re-zoning.

### **MORT/DEV - 5 Mortgagee's Consent – Subdivide**

This Charge/Mortgage shall contain a clause permitting the Chargor/Mortgagor to register a plan or plans of sub-division on the Charged/Mortgaged lands and the Chargee/Mortgagee agrees to co-operate with the Chargor/Mortgagor and execute any required documents for the application and registration of any plan of sub-division, provided that the Chargor/Mortgagor pay all costs for the application, requirements for approval and registration of the plan of sub-division.



## **MORTGAGES/POWER OF SALE**

### **MORT/POS – 1 Power of Sale (General Provision)**

It is further understood that on the date of acceptance of this Offer there is default under the terms of the Charge/Mortgage which entitles the Seller to exercise the Power of Sale. The only evidence of the default which the Buyer may require shall be a statutory declaration by the Seller setting forth the facts entitling the Seller to sell under the Power of Sale, including the particulars of the notice of exercising the Power of Sale, the names of the persons upon whom service of the notice has been effected, and declaring that default under the Charge/Mortgage entitling the Seller to exercise the Power of Sale has continued up to and including the date of acceptance of this Offer and to the time of closing. The Buyer understands and agrees that the Chargor/Mortgagor has the right to redeem the property up to the time of waiver or expiration of all rights of termination or fulfillment of all conditions and this Agreement is subject to that right. In the event of redemption by the Chargor/Mortgagor, this Agreement shall be null and void and any deposit monies paid will be refunded in full without deduction.

Where a court of competent jurisdiction prevents the completion of the within sale by an interim, interlocutory or permanent injunction or otherwise, then the Seller (Chargee/Mortgagee) is not obliged to complete the said transaction and the Agreement shall be terminated and the deposit shall be returned to the Buyer in full without deduction. In no event shall the Seller be responsible for any costs, expenses, loss or damages incurred or suffered by the Buyer and the Seller shall not have any further liability to the Buyer whatsoever.

Notwithstanding other provisions of this Agreement, the Seller shall not be required either on or before closing to discharge its own Charge/Mortgage or any existing Charges/Mortgages, liens or other encumbrances subsequent in priority to the Seller's Charge/Mortgage, which may be registered against the Property.

The Buyer also acknowledges that the Seller makes no representation and/or warranties with respect to the state of repair of the premises, inclusions of chattels or fixtures, or ownership of fixtures or appliances, and the Buyer agrees to accept the property "as is". Chattels and fixtures on the premises may or may not be included with the premises but the Seller shall not be obliged to remove any chattels or fixtures. All the provisions of the Mortgages Act shall supersede any part of this Agreement which may be in variance thereof or in conflict therewith.

**NOTE: Most Chargee(s)/Mortgagee(s) have their own specific clauses concerning Power of Sale. Each situation should be carefully analyzed prior to the drafting of an Agreement of Purchase and Sale.**

## **NEW HOMES**

### **NEW - 1 Builder Registered**

The Seller represents and warrants, to the best of the Seller's knowledge and belief, that the said home and its builder are both registered under the Ontario New Home Warranty Program. The Parties agree that this representation and warranty shall form an integral part of this Agreement and survive the completion of this transaction. Documents attesting to these registrations are attached as Schedule "\_\_\_\_\_" and form part of this Agreement of Purchase and Sale.

### **NEW - 2 Completion of Construction**

The Seller agrees to complete the house, the (itemize any other structures), and grounds in a good and workmanlike manner, in accordance with all the specifications outlined in Schedule "\_\_\_\_\_" attached hereto and forming part of this Agreement of Purchase and Sale.

### **NEW - 3 GST/HST – New Homes**

The Buyer and the Seller acknowledge and agree that the GST/HST payable in connection with the purchase and sale transaction contemplated by this Agreement of Purchase and Sale is included in the purchase price subject to the provisions hereinafter set out.

Notwithstanding that the purchase price payable by the Buyer includes GST/HST, the Buyer hereby assigns and transfers to the Seller all of the Buyer's rights, title and interest in any rebates, refunds or credits available, including Federal Sales Tax rebates and GST/HST rebates to which the Buyer is entitled in connection with the payment of GST/HST payable on the transfer to the Buyer of ownership or possession of the property. The Buyer further appoints and authorizes the Seller or the Seller's agents to be the Buyer's authorized representative and attorney for the purposes of applying for and collecting such tax rebates. The Buyer agrees to execute, at no cost to the Seller, any and all documents required to give effect to this provision.

The Buyer represents and warrants to the Seller that the Buyer shall personally occupy the property or cause one or more of the Buyer's relations to occupy the property as the Buyer's or the Buyer's relation's primary place of residence upon completion and agrees to deliver to the Seller on closing a Statutory Declaration in the Seller's form in which the Buyer declares that the property being purchased by the Buyer is for use as the Buyer's or the Buyer's relation's primary place of residence and will be so occupied forthwith upon completion.

In the event that the Buyer breaches the warranty or any of the provisions referred to above which results in the Buyer being ineligible or the Seller being unable to obtain the rebates referred to herein then the Buyer shall pay to the Seller forthwith an amount equal to the amount which the Buyer would have been eligible to obtain were it not for such breach or failure to carry out the Buyer's obligations.

**NOTE: Definition of Relation as set out in the Excise Tax Act.**

**Relation – A relation means an individual related to you by blood, marriage, common-law partnership, or adoption within the meaning of the Income Tax Act. “Blood relation” is limited to parents, children, or other descendants or siblings. “Marriage relation” includes your spouse or a person who is connected to your spouse by blood or adoption. A relation includes a common-law partner, a former spouse or a former common-law partner.**

### **NEW - 4 Link to TARION Schedules**

**NOTE:** In Ontario, Tarion requires that when a new home is sold, the Agreement must include the standard Tarion form of Addendum, exactly as published by Tarion and complete the form without any revisions or deletions. The required Addendum (Schedule) is statutorily deemed to be part of the Agreement of Purchase and Sale. To obtain the Tarion forms, go to [www.Tarion.com](http://www.Tarion.com) and select the **Policies and Guidelines** option under the **New Home Buyers** tab.  
(<http://www.tarion.com/HOME/New+Home+Builders/Policies+and+Guidelines/>).

## **PARKING**

### **PARK - 1 Parking Area**

The Seller agrees to remove all equipment, storage containers and any other materials, including refuse and debris, from the property and to leave the parking area in a clean and vacant condition.

## **RENT/SALE OF PROPERTY**

**NOTE: The following rental clauses have been developed for the sale of small rental properties (e.g. duplexes and triplexes etc.). For large multi-unit complexes special conditions will apply and expert assistance should be sought.**

**NOTE: Since rental properties fall within the definition of a “business” in the Real Estate and Business Brokers Act, the appropriate financial statements or Form 503 must be delivered to the Buyer.**

### **RENT - 1 Adjustment of Purchase Price Due to Shortfall in Rental Income**

The Parties agree that if the actual rent, including any planned increases as declared in this Agreement, is less than the rent warranted, including any planned increases by the Seller, then the Parties agree that the Seller shall pay the Buyer as liquidated damages, the amount of the difference times a factor of \_\_\_\_\_, as either an adjustment on the purchase price of the property or as a separate payment at the sole discretion of the Buyer.

**NOTE: The factor is negotiable between the Parties, but is often based on the ratio between the overall purchase price and gross rent (gross rental multiplier).**

### **RENT - 2 Confidentiality of Disclosed Rental Information**

The Buyer will hold in strict confidence any knowledge about the rent review situations of the property, financial documents, leases, and such other records of the property which the Buyer obtains from this Agreement or any other source, subject only to the use of such information in order to obtain professional advice and in the application or appeal process concerning rent review.

### **RENT - 3 Increase of Rent with Notices Prior to Completion of Sale**

The Seller shall, at the earliest legally permitted time to completion, give notices of rent increases, at the statutory rate or as otherwise agreed between the Buyer and the Seller, and provide the Buyer with proof of proper service thereof.

### **RENT - 4 No Rent Increases Pending Completion of Sale**

Pending completion, the Seller shall not give any notices of rent increases.

### **RENT - 5 Notices to Tenants of New Owner**

Upon completion, the Seller shall provide the Buyer with a notice to all tenants advising them of the new owner and requiring all future rents to be paid as the Buyer directs. The Seller will pay to the Buyer any rent paid to the Seller in error or in violation of the direction for a period of \_\_\_\_\_ months following completion, after which period the Seller may refuse to accept rent from tenants or return it to them.

**NOTE: Lawyers for parties will treat rent deposits and interest thereon as part of the adjustment process.**

**RENT - 6 Rent - No Warranty Re Legality of Rents**

The Seller represents and warrants, to the best of the Seller’s knowledge and belief, that the current actual rents are:

Unit	Current Rent	Last Increase (Date/Amount)
_____	_____	_____
_____	_____	_____
_____	_____	_____

The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at completion of this transaction. The Parties also agree that the warranty given is as to actual rents only, and does not extend to the legality of the rents.

**NOTE: Additional categories may be used to expand tenancy information: Apartment #, Tenant Name, Type of Tenancy, Expiry Date, Rent Due Date, Prepaid Rent, and Tenancy Particulars (Items included in Rent).**

**NOTE: The actual lease documents should be attached as a Schedule to the Agreement. If too many documents, consider making Offer conditional upon inspection of tenancy agreement.**

**RENT - 7 Rent - General Warranty by Seller**

The Seller represents and warrants, to the best of the Seller’s knowledge and belief that, during the period of the Seller’s ownership, the property has been rented in accordance with Landlord and Tenant legislation and that any rent increase has been effected in accordance with relevant rent review legislation. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at completion of this transaction.

**RENT - 8 Rent – Seller Warranty Regarding Disputes**

The Seller represents and warrants, to the best of the Seller’s knowledge and belief, that there are no disputes between the Seller as landlord and any tenant as to the state of repair of the leased premises, the payment of rents, contravention of applicable rent review legislation for residential tenancies, or other material items concerning the tenants’ lease agreements other than as specifically set out in this Agreement of Purchase and Sale. The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at completion of this transaction.

**RENT - 9 Seller Not to Renegotiate Leases Prior to Completion without Buyer Instruction**

Unless otherwise agreed between the Buyer and the Seller, the Seller shall not renegotiate any leases after this Agreement becomes unconditional.

**RENT - 10 Seller to Renegotiate Leases**

The Seller shall make reasonable attempts to renegotiate leases with current tenants [for terms not to exceed \_\_\_\_\_ years] as agreed between the Buyer and Seller.

## RENT REVIEW

### **RENT/REV - 1 Rent Review Application Pending – Buyer to Pay/Buyer to Control**

The Parties agree that the Seller will allow the pending rent review application, and any appeal thereof, to be continued in the Seller's name, in the control of the Buyer and at the expense of the Buyer including the payment of any liability for costs in the Divisional Court or a higher court. Provided further, that if an appeal is brought to, or defended in, the Divisional Court or a higher court the Buyer shall provide the Seller's Solicitor with the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), at each level of court to which the appeal is taken, to a maximum amount of \_\_\_\_\_, (\$ \_\_\_\_\_), to be held in trust as security for the Seller's liability for costs.

**NOTE: Buyers using this clause should seek legal advice as to potential amounts involved.**

### **RENT/REV - 2 Rent Review Application Pending – Seller to Pay/Buyer to Control**

The Parties agree that the Seller will co-operate with the Buyer in completing all pending rent review applications and appeals thereof which shall be at the expense of the Seller up to a maximum of \_\_\_\_\_ (\$ \_\_\_\_\_), until the completion of any appeal whether to the Ontario Rental Housing Tribunal or to the Divisional Court, provided further that such application and appeals shall be in the control of the Buyer throughout.

**NOTE: Buyers and Sellers using this clause should seek legal advice as to potential amounts involved.**

### **RENT/REV – 3 Rent Review Application - Seller to Provide Financial Information and Documentation Necessary for Rent Review Application**

The Seller shall provide the Buyer with any and all financial information and/or documents in the Seller's possession and control, which the Buyer requires to effect or defend any rent review application or appeal.

**NOTE: See confidentiality clause RENT - 2**

## REPRESENTATIONS/WARRANTIES

**NOTE 1: Various warranty clauses are provided. Care must be taken to ensure that the correct wording is utilized to reflect the agreement of the parties.**

**NOTE 2: When drafting these clauses, you may wish to provide a specific time limit for the Buyer to notify the Seller. (See Warranties - Specific Time Period)**

### **REP/WARR - 1 Seller Representations – General**

The Seller represents and warrants that on completion: \_\_\_\_\_  
e.g. There is no known damage to the basement, roof, or elsewhere caused by water seepage or flooding.

The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

## **REP/WARR - 2 Seller Representations – Termination Remedy**

The Seller represents and warrants that on completion: \_\_\_\_\_

e.g. There is no known damage to the basement, roof, or elsewhere caused by water seepage or flooding.

The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction. The Buyer, at the Buyer's sole option, may terminate this Agreement at any time prior to completion in the event any of the representations and warranties contained herein are incorrect, and the deposit shall be returned to the Buyer in full without deduction.

## **REP/WARR - 3 Warranties - Specific Time Period**

The Parties agree that the representations and warranties stated herein shall survive and not merge on completion, but shall expire at \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and be of no further force and effect unless the Buyer, prior to such expiry, has given written notice of a claim under the warranty to the Seller.

## **REP/WARR - 4 Warranties - Survive Completion**

The Parties agree that the representations and warranties stated herein shall survive and not merge on completion of this transaction.

## **REP/WARR - 5 Warranties - Survive Completion – Limited to Current Transaction**

The Parties agree that the representations and warranties stated herein shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

## **SALE OF BUYER'S PROPERTY**

### **SBP - 1 Condition – Buyer's Property**

This Offer is conditional upon the sale of the Buyer's property known as \_\_\_\_\_. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### **SBP - 2 Condition – Removal of All Conditions – Buyer's Property**

This Offer is conditional upon the Buyer receiving notification of the removal of all conditions in an existing Agreement of Purchase and Sale for the property known as \_\_\_\_\_. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**SBP - 3 Condition – Seller’s Release from Previous Agreement**

This Offer is conditional upon the Seller obtaining a release from a prior Agreement of Purchase and Sale. Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.

**NOTE: This clause is a true Condition Precedent and neither a Seller nor a Buyer is entitled to waive this condition.**

**SBP - 4 Escape Clause – Buyer’s Property**

Provided further that the Seller may continue to offer the property for sale and, in the event the Seller receives another Offer satisfactory to the Seller, the Seller may so notify the Buyer in writing by delivery to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto. The Buyer shall have \_\_\_\_\_ hours from the giving of such notice to waive this condition by notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto, failing which this Offer shall be null and void, and the Buyer’s deposit shall be returned in full without deduction.

**NOTE: The Escape Clause only requires the removal of one specific condition.**

**SBP – 5 Escape Clause – Notices Re Multiple Representation**

If the Listing Brokerage represents both the Seller and the Buyer in this transaction in multiple representation, the Brokerage is not authorized to receive the Notice to Remove Condition on behalf of the Buyer and the Brokerage is not authorized to receive the Notice of Waiver of Condition on behalf of the Seller. Said notices will be delivered by the Brokerage either to the parties to the transaction, the address of the parties, the lawyers representing the parties, or transmitted to the fax number designated by the parties other than the Brokerage’s fax number.

**NOTE: This clause to be used with escape clause only.**

**SBP - 6 Escape Clause – Removal of All Conditions**

Provided further that the Seller may continue to offer the property for sale and, in the event the Seller receives another Offer satisfactory to the Seller, the Seller may so notify the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto. The Buyer shall have \_\_\_\_\_ hours from the giving of such notice to waive any and all conditions by notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto, failing which this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.

## SEWER/WATER

**NOTE: Sale of Property with a well and/or septic system involves specific knowledge of the system. (e.g. There is a difference in a well's performance depending on many variables, e.g. the amount of available water, the delivery capacity of the well system, the amount of water that can be delivered over a certain period of time, and seasonable variables. The type of well, drilled, bored, or dug can also affect performance). Expert advice should be sought.**

### **SEWER/WATER - 1 Condition – Sewage Systems – Approvals**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that at the time of installation:

- (1) all sewage systems serving the property are wholly within the setback requirements of the said property and had received all required Certificates of Installation and Approval pursuant to the Environmental Protection Act;
- (2) all sewage systems serving the property had been constructed in accordance with the said Certificates of Installation and Approval;
- (3) all sewage systems serving the property had received all required use permits under the said Act or any other legislation; and further, that on inspection, the septic bed is in good working order.

The Buyer shall be allowed to retain at the Buyer's own expense, a professional in the septic business to make an examination of the septic system.

Seller agrees to allow access to the property for the purposes of a septic inspection and agrees to allow the Buyer to request information as outlined above from the appropriate authorities having jurisdiction.

Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that these conditions have been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. These conditions are included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

**NOTE: SEWER/WATER - 1 does not speak to the working order of the Septic System and therefore, should be used in conjunction with SEWER/WATER - 4.**

### **SEWER/WATER - 2 Condition – Water Supply – All Well Types**

This Offer is conditional upon the Buyer determining, at the Buyer's own expense, that:

- (1) there is an adequate water supply to meet the Buyer's household needs;
- (2) the pump and all related equipment serving the property are in proper operating condition; and
- (3) the Buyer can obtain a Bacteriological Analysis of Drinking Water from the authority having jurisdiction indicating that there is no significant evidence of bacterial contamination.

Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ that these conditions have been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. These conditions are included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein. The Seller agrees to allow access to the subject property to the Buyer or the Buyer's agent for the purpose of satisfying this condition.



### **SEWER/WATER - 3 Sewage Systems – Approvals – Warranty**

The Seller represents and warrants, to the best of the Seller's knowledge and belief, that at the time of installation:

- (1) all sewage systems serving the property are wholly within the setback requirements of the said property, and had received all required Certificates of Installation and Approval pursuant to the Environmental Protection Act;
- (2) all sewage systems serving the property had been constructed in accordance with the said Certificates of Installation and Approval;
- (3) all sewage systems serving the property had received all required Use permits under the said Act or any other legislation; and

further, all sewage systems serving the property have been maintained in good working order during the Seller's occupancy and will be in good working order on closing.

Further, the Seller agrees to provide any and all documentation relating to the sewage system, within the Seller's possession, or which may be made available to the Seller by the appropriate authorities, and given to the Buyer prior to the last date set for examining title. The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at the completion of this transaction.

### **SEWER/WATER - 4 Sewage System – Good Working Order – Warranty**

The Seller represents and warrants, to the best of the Seller's knowledge and belief, that, during the Seller's occupancy of the building, the sewage system has been and will be in good working order on closing. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

### **SEWER/WATER - 5 Water Supply – Seller to Provide Bacteriological Analysis**

The Seller agrees to supply to the Buyer, prior to the last date set for examining title, a current Bacteriological Analysis of Drinking Water from the local health authority having jurisdiction over the area, with a rating indicating that there is no significant evidence of bacterial contamination.

**NOTE: This clause should only be used where the Seller knows that the Seller can provide a safe report, a recent report would be a good indicator. To determine the stability of the water supply, 3 samples should be taken, 1 to 3 weeks apart. If no recent knowledge of the water quality is available, use SEWER/WATER - 2 Condition – Water Supply – All Well Types**

**NOTE: In addition to the Bacteriological Analysis, the buyer may want to include additional warranties/conditions concerning water quality. e.g. nitrates, chemicals or other contaminants. (Such testing may be available through private water testing companies).**

### **SEWER/WATER - 6 Water Supply – All Well Types – Warranty**

The Seller represents and warrants, to the best of the Seller's knowledge and belief, that, during the Seller's occupancy of the property, the pump and all related equipment serving the said property have performed adequately, and will be in good working order on closing and are currently capable of delivering not less than \_\_\_ gallons per minute (GPM) on the continuous basis of not less than \_\_\_\_\_ hours. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

**NOTE: If the Seller does not know the current status of the well, the Seller should be advised to verify through a professional well inspection as the current water supply can vary from the original well record. The supply of water is contingent on many variables, e.g. the actual amount of water in the well, the capacity of the well system to deliver the water and over what length of time will the GPM be sustained.**

## SHORE ROAD ALLOWANCES

### SHORE - 1 Condition – Water Frontage – Shore Road Allowance – Unregistered Easements

This Offer is conditional upon the Buyer determining at the Buyer's own expense that:

- (1) the property being purchased has at least [insert appropriate frontage dimension], [metres/feet], of frontage on [name of lake or river];
- (2) no road allowance, open or unopened, or other public or private lands exist which will interfere with the right of the Buyer to use and enjoy the said water frontage; and
- (3) that there are no unregistered rights or easements.

Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that these conditions have been fulfilled, this offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. These conditions are included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### SHORE - 2 Shore Road Allowance – Acknowledgement

The Buyer acknowledges that the original shore road allowance is not closed and consequently is not part of the property being sold under this Agreement of Purchase and Sale.

### SHORE - 3 Shore Road Allowance – With Encroachments

The Buyer acknowledges that the original shore road allowance is not closed and consequently is not part of the property being sold under this Agreement of Purchase and Sale, and that the improvements apparently on the said property may encroach on said unowned shore road allowance.

## SOIL TEST

### SOIL - 1 Condition – Satisfactory Soil Test

This Offer is conditional upon the Buyer obtaining at the Buyer's own expense, soil tests verifying the land is satisfactory to the Buyer, in the Buyer's sole and absolute discretion, for the construction of a \_\_\_\_\_ on the land. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the land for the purpose of the soil tests. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein. If the Buyer fails to provide a notice of fulfilment of the condition or fails to waive the condition as provided above, the Buyer agrees to reasonably restore any alterations to the condition of the property caused by the soil tests.

### SOIL - 2 Preliminary Work – Access to Property

The Seller agrees to grant the Buyer and the Buyer's authorized agent the right to enter the property for the purpose of surveying and conducting soil tests prior to the completion of this transaction. Such permission does not extend to any alteration of the lands, servicing work, removal of trees, soil, or any other activity which would alter the current state of the property.

## SPIS

### **SPIS - 1 Condition- Buyer's Acceptance of SPIS**

This Offer is conditional upon the Buyer receiving a Seller Property Information Statement completed by the Seller and the Buyer accepting the information on the form as satisfactory in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

The Seller hereby agrees to deliver to the Buyer upon acceptance of this Agreement a Seller Property Information Statement for the property with complete and accurate answers, to the best of the Seller's knowledge and belief, to the questions contained therein.

### **SPIS - 2 SPIS- Buyer's Acknowledgement**

The Buyer acknowledges that the Buyer has received a completed Seller Property Information Statement from the Seller and has had an opportunity to read the information provided by the Seller on the Seller Property Information Statement prior to submitting this offer.

## SURVEYS

**NOTE 1: See Form 100, Clause - Documents and Discharge.**

**NOTE 2: Buyer should acknowledge, in the Offer, any known easements. See Form 100, Clause - Title.**

**NOTE 3: Allow adequate time and ensure deadline is prior to end of requisition period. Alternatively, the requirement for a survey could be "within \_\_\_\_\_ days after waiver of all conditions (and prior to end of requisition period)".**

**NOTE 4: Do not use the phrase "up-to-date". This expression is subject to different interpretation by individual Buyers, Sellers and their respective Solicitors.**

### **SURVEY - 1 Buyer Acknowledges Possible Survey Requirement**

The Buyer acknowledges that a new survey may be required for purposes of financing and also to satisfy the requirements of the Buyer's Solicitor, and agrees to obtain said survey at the Buyer's expense.

### **SURVEY - 2 Seller to Provide Existing Survey with Declaration**

The Seller agrees to provide, at the Seller's own expense, not later than \_\_\_ p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, an existing survey of said property showing the current location of all structures, buildings, fences, improvements, easements, rights-of-way, and encroachments affecting said property. The Seller will further deliver, on completion, a declaration confirming that there have been no additions to the structures, buildings, fences, and improvements on the property since the date of this survey.

### **SURVEY - 3 Seller to Provide New Survey**

The Seller agrees to provide, at the Seller's own expense, not later than \_\_\_p.m. on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a new survey of said property showing the current location of all structures, buildings, fences, improvements, easements, rights-of-way, and encroachments affecting said property.

### **SURVEY - 4 Survey, Building Plans, Mechanical Drawings, Warranties**

The Seller agrees to provide, at the expense of the Seller, a survey of the property, completed by an Ontario Land Surveyor, showing the current location of all buildings, structures, additions, fences, improvements, easements, rights-of-way and encroachments affecting the property. The Seller also agrees to supply all building plans, mechanical drawings, and any other plans, and all warranties and service manuals, if available, applicable to any equipment or chattels included in the purchase price.

## **SWIMMING POOL**

### **SWIM - 1 By-Law Compliance**

The Seller represents and warrants to the best of the Seller's knowledge and belief that the swimming pool, its equipment, and the fencing of the said pool, comply with all applicable by-laws, regulations, and legislation. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

### **SWIM - 2 Good Working Order – Warranty**

The Seller represents and warrants that the swimming pool and equipment are now, and on the completion date shall be, in good working order. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

### **SWIM -3 Winterization**

The Seller agrees to winterize the swimming pool and equipment prior to completion, and shall provide a written undertaking on completion that the Seller shall be responsible for any costs or expenses incurred by the Buyer if the swimming pool and equipment are not properly winterized, provided only that the Buyer gives written notice of any claim to the Seller not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, failing which the Seller accepts no responsibility for costs.

## **TAX/PROPERTY**

### **TAX - 1 Farm Tax – Buyer's Acknowledgement**

The Buyer understands and acknowledges that the Buyer is taking title to the real property knowing that the Seller's tax rate is based on a calculation of a property class that will not apply to the Buyer on completion. The Buyer further acknowledges that the Buyer will have to make application to qualify for the Farmland Class tax rate defined under the Assessment Act of Ontario, Regulation 282, 1998 Ontario Fair Assessment System and if the property does not qualify for the Farmland Class tax rate, the Buyer's property tax rate may be substantially higher than the Seller's.

### **TAX - 2 Local Improvement Charges**

The Seller warrants that the lands are free and clear of any local improvement charges and will be free and clear of local improvement charges on completion and that Seller has not received any notification of future local improvement charges for the property. If local improvement charges are not paid as of completion, they will be adjusted as a benefit to the Buyer on completion.

### **TAX - 3 Tax Holdback – Completion of Building Increases Assessment**

The Buyer and Seller acknowledge that the property taxes have not been finally assessed prior to completion of the building(s) on the property. The Buyer and Seller agree that the Seller's solicitor shall hold back the amount of \$ \_\_\_\_\_ for the payment of property taxes for the period prior to completion of this transaction. The Buyer or the Buyer's solicitor shall forthwith after notification by the municipality notify the Seller's solicitor of the amount of finally assessed property taxes. The Seller's solicitor shall immediately after notification pay the hold back or the amount thereof necessary to be paid in payment of the taxes accruing or owing prior to date of completion. If there has been no notification to the Seller's solicitor as aforesaid within three years after the completion of this transaction, the Seller's solicitor may release the holdback to the Seller. The Seller's solicitor shall supply a personal undertaking on completion to the Buyer to evidence the foregoing.

**NOTE: This clause applies to the resale of nearly new construction, where the initial assessment was based only on land value.**

## **TENANCY/ASSUMPTION**

### **TEN - 1 Assume Single Tenancy – No Lease**

The Seller represents and warrants that the \_\_\_\_\_ [property, basement, or \_\_\_\_\_ floor apartment] is occupied by \_\_\_\_\_ as a monthly tenant at the rate of \_\_\_\_\_ (\$ \_\_\_\_\_) per month, payable on the \_\_\_\_ day of each month. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances at completion of this transaction.

### **TEN - 2 Assume Single Tenancy – With Lease**

The \_\_\_\_\_ [property, basement, or \_\_\_\_\_ floor apartment] is occupied by \_\_\_\_\_ pursuant to a lease expiring on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The Seller represents and warrants that the copy of the said lease attached hereto as Appendix \_\_\_\_\_ is a true and complete copy of the said lease. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at completion of this transaction.

### **TEN - 3 Assumption of Tenancies – Multiple Units**

Buyer agrees to assume the existing tenancies, as set out in the attached Schedule “\_\_\_\_\_”, which the Seller warrants are the only tenancies affecting the property.

**NOTE: Schedule should itemize categories such as: Apartment #, Tenant Name, Tenancy, Expiry Date, Rent Due Date, Prepaid Rent, and Tenancy Particulars (Items included in Rent).**

**NOTE: The actual lease documents should be attached as a Schedule to the Agreement. If too many documents, consider making Offer conditional upon inspection of tenancy agreement.**

## TITLE

### **TITLE – 1 Agreement Not To Be Registered**

The Buyer acknowledges that it has no legal or equitable interest in the Property as a result of entering into this Agreement until such time as the Buyer has completed the transaction. The Buyer covenants and agrees that the Buyer shall not cause or permit the registration of this Agreement or any memorandum or any notice (including a certificate of pending litigation or caution) thereof or with respect thereto at any time at the Land Registry Office or the Land Titles Office for \_\_\_\_\_ or in any other office of public record. If the Buyer shall be in breach of this covenant, the Seller shall, in addition to all other rights and remedies in law or in equity, be entitled to:

- a) Cancel this Agreement and retain the deposit and any earned interest, free of all claims by the Buyer; and
- b) A decree of order restraining or removing such registration and the Buyer shall not plead in defence thereto that there would be an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from such breach would be impossible to measure monetarily.

In case of any such registration, the Buyer, on behalf of the Buyer and the Buyer's successors and assigns and on behalf of anyone claiming under the Buyer, hereby irrevocably appoints, nominates and constitutes the Seller as the Buyer's true and lawful attorney for the Buyer and in the Buyer's name and on the Buyer's behalf to execute all documents, releases, agreements and things as may be necessary or desirable to ensure that title to the Property is free of all claims of the Buyer.

### **TITLE - 2 Crown Restrictions**

The Seller hereby declares to the Buyer, and the Buyer acknowledges, understands, and accepts that this property is subject to certain reservations of the Crown, specifically but not limited to the fact that the [describe specific limitations and reservations] have been reserved.

### **TITLE - 3 Easement – Acknowledgement**

The Buyer agrees to accept title to the property subject to an easement in favour of \_\_\_\_\_.

### **TITLE - 4 In Trust for Undisclosed Principal**

The Seller acknowledges and agrees that the Buyer has entered into this Agreement as Trustee for an unnamed Principal (the "Principal") and that upon the Buyer delivering written notice to the Seller of the name of the Principal, the Seller will complete the transaction with the Principal as if the Principal had been the party who originally signed the Agreement, and the Buyer who signed the Agreement shall have no personal liability for the Agreement.

### **TITLE - 5 Seller's Consent for Registration in Land Titles**

The Seller agrees that the Buyer shall have the right to apply to register the lands or any part or parts under the Land Titles System, and Seller agrees to execute all documents required by the Buyer with respect thereto, provided that the Buyer pay all costs of said application and registration.

## UFFI

### UFFI - 1 Acknowledgement – UFFI Present in Building

The Seller discloses and the Buyer acknowledges that the building contains urea formaldehyde foam insulation. The Buyer accepts the property in that state and further acknowledges that the Seller does not warrant the quality or quantity of the insulation or the quality of its installation.

### UFFI – 2 Seller has No Knowledge of UFFI

The Seller has no knowledge as to whether the property has been insulated with urea formaldehyde foam insulation and specifically makes no warranty in that regard. This paragraph supersedes any other term or condition or warranty in relation to urea formaldehyde foam insulation.

**NOTE: Use where Seller has no personal knowledge of UFFI (i.e. a corporation handling a company transfer, Seller selling under Power of Sale, etc.). The Buyer may consider making the Offer conditional on an inspection for UFFI.**

### UFFI - 3 UFFI Found But Corrective Action Taken

The Seller represents and warrants that the building was insulated with urea formaldehyde foam insulation but has undergone the following corrective actions: \_\_\_\_\_.  
The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

**NOTE: Details of all corrective action should be inserted in the space provided or supporting documentation attached as a Schedule.**

### UFFI - 4 UFFI Removed from Building

The Seller represents and warrants that, although urea formaldehyde foam insulation (UFFI) was installed in the building, such UFFI was removed in \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, and the Seller further warrants that, to the best of his knowledge, no UFFI has been installed in the building since such removal. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction. As evidence of the removal, the Seller attaches the following documents as Schedule “\_\_\_\_\_” which shall form part of this Agreement of Purchase and Sale.

### UFFI - 5 UFFI Test Performed with Negative Result

The Seller represents and warrants that the building was tested for the presence of urea formaldehyde foam insulation (UFFI) on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, and the result of such testing indicated that no UFFI was present in the building, and on the basis of such results the Seller provides this warranty. This clause applies only to UFFI and does not, in any way, include the testing of urea formaldehyde emissions from sources other than UFFI. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction. As evidence of such testing, the Seller attaches the following documents as Schedule “\_\_\_\_\_” which shall form part of this Agreement of Purchase and Sale: \_\_\_\_\_.

(itemize documents)

### UFFI - 6 UFFI Test Performed with Positive Result But Within Acceptable Limits

The Seller acknowledges that the building contains urea formaldehyde foam insulation (UFFI) and was tested for the presence of emissions from UFFI on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, and the results of such testing indicated that emission from UFFI are within the acceptable limits and no further actions have been taken. As evidence of such testing, the Seller attaches the following documents as Schedule “\_\_\_\_\_” which shall form part of this Agreement of Purchase and Sale: \_\_\_\_\_.

## VACANT POSSESSION/NOTICES

### VAC - 1 Vacant Possession/Notices

The Buyer hereby authorizes and directs the Seller, and the Seller agrees, when this Agreement becomes unconditional, to give to the tenant(s) the requisite notices under the Residential Tenancies Act, requiring vacant possession of the property for use by the Buyer or the Buyer's immediate family, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the seller agrees to deliver copies of the requisite notices to the Buyer immediately after service of the notices upon the tenant.

The Buyer and the Seller hereby agree in the event that the tenant fails to vacate the property prior to completion of the transaction, the Buyer agrees to assume the existing tenant upon completion of this transaction.

Upon vacant possession being provided to the Buyer, the Buyer or the Buyer's immediate family agrees to take possession of and occupy the property forthwith thereafter. The Buyer agrees to provide the Seller with a written indemnity on completion, indemnifying the Seller from all actions, causes of action, claims and demands of any kind whatsoever, that may occur in the event that the Buyer does not take possession of and occupy the property as aforesaid.

**NOTE: Due to the current state of Landlord and Tenant Law, the Seller will not be able to "guarantee" vacant possession on completion if a tenant refuses to vacate.**

## VERMICULITE

### VER - 1 Condition – Testing of Property for Vermiculite

This Offer is conditional upon the Buyer testing the subject property for the presence of asbestos within the vermiculite insulation located upon property at the Buyer's own expense, and the obtaining of a report, respecting the said test satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

### VER - 2 No Knowledge of Vermiculite

The Seller has no knowledge as to whether the property has been insulated with insulation containing vermiculite and specifically makes no warranty in that regard. This paragraph supersedes any other term or condition or warranty in relation to vermiculite insulation.

### VER - 3 Vermiculite - Asbestos Test Performed with Negative Result

The Seller represents and warrants that the building was tested for the presence of asbestos within the vermiculite insulation located upon the property on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, and the result of such testing indicated that no asbestos was present in the vermiculite insulation in the building, and on the basis of such results the Seller provides this warranty. This clause applies only to vermiculite insulation and does not, in any way, include the testing of the presence of asbestos from sources other than the vermiculite insulation. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction. As evidence of such testing, the Seller attaches the following documents as Schedule "\_\_\_\_\_" which shall form part of this Agreement of Purchase and Sale: \_\_\_\_\_.



#### **VER - 4 Vermiculite Corrective Action**

The Seller represents and warrants that the building was insulated with vermiculite insulation but has undergone the following corrective actions: \_\_\_\_\_.

The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

**NOTE: Details of all corrective action should be inserted in the space provided or supporting documentation attached as a Schedule.**

#### **VER - 5 Vermiculite Removed from the Building**

The Seller represents and warrants that, although vermiculite insulation was installed in the building, such vermiculite insulation was removed in \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, and the Seller further warrants that, to the best of his knowledge, no vermiculite insulation has been installed in the building since such removal. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction. As evidence of the removal, the Seller attaches the following documents as Schedule "\_\_\_\_" which shall form part of this Agreement of Purchase and Sale.

#### **VER - 6 Vermiculite Warranty**

The Seller represents and warrants to the Buyer that during the time the Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing vermiculite, and to the best of the Seller's knowledge no building on the property contains or has ever contained insulation containing vermiculite. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.

## **WINDMILLS**

#### **WIND - 1 Windmill Warranty**

The Seller represents and warrants to the Buyer that to the best of the Seller's knowledge and belief there are no wind turbine(s) installed or proposed to be installed within \_\_\_\_\_ of the boundaries of the subject property. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction.

## **ZONING**

#### **ZONING - 1 Condition – Re-zoning/Minor Variance**

This Offer is conditional upon the [Buyer/Seller] obtaining at the [Buyer's/Seller's] expense, a [re-zoning/minor variance], to allow for [specify exact variance/use] for said property. Both Buyer and Seller agree to proceed in a diligent manner to acquire the [re-zoning/minor variance]. Unless the [Buyer/Seller] gives notice in writing delivered to the [Seller/Buyer] personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction.

**NOTE: If the Buyer wishes to retain the right to purchase the property, even though the re-zoning or minor variance is not approved, then a "Waiver" should be included.**

**ZONING - 2 Condition – Re-zoning with Seller’s Consent**

This Offer is conditional upon the Buyer obtaining at the Buyer’s expense, a re-zoning of the property to permit \_\_\_\_\_ for the said property. Both Buyer and Seller agree to proceed in a diligent manner to obtain the re-zoning. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition has been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

The Seller agrees, upon written notice, to execute applications and all other documents required for the Buyer to change the official plan, if necessary, and to re-zone the lands to a zoning suitable to the Buyer, or to amend any by-laws, and to support such application or applications for re-zoning or amending of by-laws, and to co-operate with the Buyer, in all reasonable respects, provided that the Buyer pay all costs of said re-zoning.

**ZONING - 3 Condition – Zoning Satisfaction (Condition Subsequent)**

The Buyer shall have until not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to satisfy the Buyer that the property is zoned in final and binding form under the relevant zoning by-laws and official plan to permit it to develop or use the property for the purpose of \_\_\_\_\_. If the Buyer is not so satisfied at the Buyer’s sole and arbitrary discretion, the Buyer may terminate this Agreement by notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto prior to the expiry of such period and the deposit shall be returned to the Buyer in full without deduction.

**ZONING - 4 Location of Buildings/Driveways**

The Seller represents and warrants, to the best of his knowledge and belief, that:

- (1) the buildings now located on the property are located wholly on the property and comply with all zoning and building by-laws; and
- (2) the driveways serving the property are located wholly within the limits of the property, and entrance relating to such driveways have been approved by the appropriate road authority.

The Parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

**ZONING - 5 Zoning – Warranty**

The Seller warrants that the lands are zoned as \_\_\_\_\_ under by-law \_\_\_\_\_ for the municipality of \_\_\_\_\_.