

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT OF PURCHASE AND SALE** is made as of the • day of •, 2018 between:

•

(hereinafter referred to as the “Purchaser”)

-and-

### **THE CORPORATION OF THE CITY OF CLARENCE-ROCKLAND**

(hereinafter referred to as the “Vendor”)

**IN CONSIDERATION** of the mutual agreements herein contained, the sufficiency of which is hereby acknowledged by each of the Purchaser and the Vendor, the Purchaser and the Vendor hereby covenant and agree as follows:

#### **1. Definitions**

- 1.1. **“Acceptance”** means the date upon which this Agreement is executed and delivered by both parties.
- 1.2. **“Agreement”** means this Agreement and all Schedules referred to herein.
- 1.3. **“Business Day”** means those days of the year excluding Saturdays, Sundays and statutory holidays.
- 1.4. **“Closing Date”** means the 30<sup>th</sup> day following the satisfaction or waiver of the Purchaser’s Conditions.
- 1.5. **“Deposit”** means the Deposit as such term is defined in Section 2.2.1.
- 1.6. **“Due Diligence Date”** means the 60<sup>th</sup> day following Acceptance.
- 1.7. **“Option to Re-Purchase Agreement”** means the Option to Re-Purchase Agreement attached as Schedule “D” to this Agreement.
- 1.8. **“Permitted Encumbrances”** means the encumbrances listed on Schedule “C” to this Agreement.
- 1.9. **“Property”** means those lands and premises in the City of Clarence-Rockland, Province of Ontario, legally described on Schedule “A” to this Agreement and shown in heavy outline on the attached Schedule “B” to this Agreement consisting of approximately • acres.
- 1.10. **“Purchaser’s Conditions”** means the conditions in favour of the Purchaser as set forth in Section 6.

- 1.11. **“Purchase Price”** means the sum referred to in Section 2.2.
- 1.12. **“Purchaser’s Solicitors”** means •.
- 1.13. **“Vendor’s Deliveries”** has the meaning ascribed thereto in Section 6.
- 1.14. **“Vendor’s Solicitors”** means Vice & Hunter LLP.
- 1.15. All references to a Section number are to a Section number in this Agreement.

## 2. Purchase and Sale

- 2.1. The Vendor agrees to sell and the Purchaser agrees to purchase the Property subject to the terms and conditions herein contained.
- 2.2. The Purchase Price for the Property shall be the sum of • Dollars (\$) payable in lawful money of Canada as follows:
  - 2.2.1. by the Purchaser delivering by certified cheque or bank draft on the 2<sup>nd</sup> Business Day following Acceptance the sum of • Dollars (\$) payable to the Vendor’s Solicitors, in trust to be held by the Vendor’s Solicitors in an non-interest bearing account as a deposit (the **“Deposit”**) pending the completion or other termination of this Agreement and, subject to the terms of this Agreement, to be applied as a credit towards the Purchase Price upon completion of the transaction contemplated in this Agreement. Should the Purchaser’s Conditions not be waived or satisfied, save for the payment, if any, to be made to the Vendor from the Deposit pursuant to Section 7.1, the Deposit shall be returned to the Purchaser in full without interest or deduction and the parties shall have no further liability to each other save and except for the Purchaser’s obligations and indemnity under Section 7.1 hereof which shall survive.
  - 2.2.2. the balance of the Purchase Price, subject to the adjustments as contained in this Agreement, by payment by certified cheque, bank draft or wire transfer on the Closing Date to the Vendor or as the Vendor may otherwise direct.
- 2.3. In the event that the Purchaser’s Conditions are waived or satisfied and thereafter the transaction contemplated by this Agreement is not completed for any reason other than the Vendor’s default, then the Deposit shall be forfeited to the Vendor in addition to any and all other rights the Vendor may have pursuant to this Agreement or at law. In the event that the transaction contemplated by this Agreement is not completed as a result of the Vendor’s default, then, in addition to any and all other rights the Purchaser may have pursuant to this Agreement or at law, the Vendor shall return the Deposit to the Purchaser forthwith without interest or deduction save for the payment, if any, to be made to the Vendor from the Deposit pursuant to Section 7.1.

### 3. HST

- 3.1. The Purchaser acknowledges that HST is in addition to the Purchase Price. Subject to Section 3.2, the Purchaser shall pay to the Vendor on Closing by certified cheque or bank draft any and all goods and services tax ("**HST**") payable as a result of this transaction in accordance with the Excise Tax Act (the "**Act**"), and the Vendor shall remit such HST to the Receiver General for Canada when and to the extent required by the Act.
- 3.2. Notwithstanding Section 3.1, in the event that the Purchaser is a registrant under the Act, the Purchaser hereby agrees to indemnify the Vendor with respect to payment of the HST, to provide the Vendor prior to the Closing Date with a valid registration number, and to execute and provide to the Vendor on the Closing Date a declaration and indemnity in a form acceptable to the Vendor's Solicitor's, acting reasonably, and the Vendor shall not then collect HST from the Purchaser.

### 4. Adjustments

- 4.1. All taxes, local improvement charges, utilities and other similar items ordinarily adjusted for shall be adjusted as of the Closing Date (the Closing Date itself to be apportioned to the Purchaser). The Vendor shall, not less than three (3) Business Days prior to the Closing Date, prepare and deliver to the Purchaser, for the Purchaser's review and approval, a statement of adjustments adjusting for the items listed in this Section 4.1. If the final cost or amount of any item which is to be adjusted for cannot be determined prior to the Closing Date, then the initial adjustment for such item shall be made as of the Closing Date based on the estimate of the Vendor, acting reasonably and in good faith, subject to re-adjustment when such cost or amount is determined.

### 5. Vendor's Deliveries

- 5.1. Within 5 Business Days of Acceptance, the Vendor shall deliver such of the following items as are in the Vendor's possession or control to the Purchaser at no cost to the Purchaser: copies of all plans, archeological studies/reports, soil/environmental reports, servicing plans/reports and traffic/transportation studies pertaining to the Property ("**Vendor's Deliveries**").
- 5.2. The Purchaser acknowledges that the Vendor's Deliveries are being provided for the Purchaser's information only and cannot be relied upon by the Purchaser in the absence of the Purchaser obtaining reliance letters from the creators or authors of such documents at the Purchaser's expense. The Purchaser should consult its own legal and other professionals for advice on the matters disclosed in any such documents.

## 6. Purchaser's Conditions

6.1. This Agreement is conditional until 5:00 p.m. on the Due Diligence Date upon:

6.1.1. the Purchaser conducting at its sole expense its own due diligence investigations with respect to the Property and being satisfied, in its sole and unfettered discretion, with the results thereof, including, but not limited to, its evaluation of the condition of the Property (including the environmental, compaction, topographic and geotechnical conditions thereof), the zoning of the Property, the availability of all required municipal, environmental and other permits required for its intended use of the Property, the availability and location of services, and all building permit, site plan and site plan agreement conditions and requirements (including application fees, development charges and required security);

6.1.2. the Purchaser satisfying itself, at its sole expense and in its sole and unfettered discretion, with its examination and review of the Vendor's Deliveries;

6.1.3. the Purchaser satisfying itself, at its sole expense and in its sole and unfettered discretion, with its investigations of the Vendor's title to the Property provided that title may be subject to the permitted encumbrances set out in Schedule "D" attached hereto.

6.2. These conditions are for the sole benefit of the Purchaser and may be waived by the Purchaser in whole or in part. If by 5:00 p.m. on the Due Diligence Date, the Vendor or Vendor's solicitor is not in receipt of written notice from Purchaser or the Purchaser's solicitor of the Purchaser's satisfaction or waiver of such conditions, then this Agreement shall be at an end and, save for the payment, if any, to be made to the Vendor from the Deposit pursuant to Section 7.1, the Deposit shall be forthwith returned to the Purchaser without interest or deduction and the parties shall have no further liability to each other save and except for the Purchaser's obligations and indemnity under Section 7.1 which shall survive.

## 7. Access to Property

7.1. Until the Due Diligence Date, the Purchaser, its employees and agents, shall be allowed to enter upon the Property during normal business hours to conduct such reasonable, non-destructive investigations, studies, surveys and tests as the Purchaser may require in order to assess the suitability of the Property for the Purchaser's intended use thereof. The Purchaser will make such investigations, studies, surveys and tests upon reasonable notice and with the minimum possible interruption to the Vendor. The Purchaser shall be responsible for all damages caused by all such investigations, studies, surveys and tests performed by or on its behalf as contemplated by this Section and agrees to restore and repair the Property forthwith to the condition in which the Property existed prior to the Purchaser's investigations, studies, surveys and tests at the Purchaser's expense. In the event the Purchaser fails to make good any damages within a reasonable period of time after receiving notice of same from the Vendor, the reasonable cost of same shall be deducted from the

Deposit before the return of same to the Purchaser, without prejudice to any other rights the Vendor may have at law or in equity. The Purchaser hereby agrees to indemnify and save the Vendor harmless with respect to all claims, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or kind whatsoever sustained or incurred by the Vendor as a result of the Purchaser exercising its rights under this Section. The Purchaser's obligations under this Section shall not merge on and shall survive the closing or termination of this Agreement for any reason.

7.2. The Purchaser covenants and agrees to treat the results of all its investigations, surveys, studies and tests in a strict and confidential manner and not to disclose the results to a third party except where required by law or to its advisors. If the Purchaser is not satisfied with the results of the Purchaser's investigations, studies, surveys and tests, the Purchaser will share the results thereof with the Vendor and provide copies of any test results, reports or studies obtained.

## **8. Survey and Servicing**

- 8.1. The Vendor shall not be required to provide a new or up-to-date survey of the Property. If not already registered, the Vendor shall cause to be registered prior to the Closing Date a reference plan prepared by an Ontario Land Surveyor depicting the boundaries of the Property and assigning it a Part number or Part numbers as applicable for legal description purposes.
- 8.2. The Purchaser acknowledges that municipal services are available from • Street. The Purchaser shall be solely responsible for connecting to any required municipal services at the Purchaser's sole expense. The Purchaser shall also be solely responsible for connecting to any other required non-municipal services at its sole expense.

## **9. Option to Re-Purchase**

- 9.1. The Purchaser shall have 12 months following the Closing Date to commence construction of • (the "Project") and 24 months following the Closing Date to complete its construction of the Project, failing which the Vendor shall have the option to re-purchase the Property for 90% of the Purchase Price all as more particularly set out in the Option to Re-Purchase Agreement attached as Schedule "D" hereto which the parties shall sign and deliver on the Closing Date. In addition, the Purchaser shall not dispose of the Property within 4 years from the Closing Date in full or in part without first obtaining the consent of the Vendor who may give its consent or elect to re-purchase the Property also as more particularly described in the Option to Re-Purchase Agreement. The Purchaser agrees to register the Option to Re-Purchase Agreement on the title to the Property on the Closing Date at the Purchaser's expense immediately following the Transfer and prior to any mortgage, charge or other encumbrance.

- 9.2. The Purchaser acknowledges that in order to commence construction of the Project, in addition to any other required approvals and permits, it will have to have entered into a site plan agreement with the municipality in accordance with its standard approval process. The Purchaser further acknowledges that various studies at the cost of the applicant (Purchaser) may be required by the municipality as part of the site plan approval process and that a letter of credit or other security will be required as a condition of site plan approval in an amount to be determined by the municipality in accordance with its standard approval process.

## 10. Title

- 10.1. Provided that the title to the Property is good and marketable and free from all registered restrictions, charges, liens and encumbrances except for the Permitted Encumbrances, the Purchaser shall have until 5:00 p.m. on the Due Diligence Date within which to examine the title of the Vendor to the Property and to submit requisitions with respect thereto. If the Vendor is unable (or unwilling) to remove or remedy any such requisition, and the Purchaser will not waive it, then this Agreement, notwithstanding any intermediate acts or negotiations in respect of any such objections, shall be at an end and, save for the payment, if any, to be made to the Vendor from the Deposit pursuant to Section 7.1, the Deposit shall be returned to the Purchaser without interest or deduction, and the parties shall have no further liability to each other save and except for the Purchaser's obligations and indemnity under Section 7.1 hereof which shall survive. Save as to any valid objection made within the times above limited, and except for any objection going to the root of the title of the Vendor, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Property. Nothing herein shall prevent the Purchaser from determining the Property is not suitable for its proposed development during its due diligence period as a result of any document registered on title.

## 11. Representations and Warranties

- 11.1. The Vendor hereby represents and warrants to and in favour of the Purchaser that:
- 11.1.1. the Vendor owns the Property and has the power and authority to sell and convey the Property to the Purchaser pursuant to this Agreement;
  - 11.1.2. the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada);
  - 11.1.3. the Vendor has not received written notice from any government authority nor is it aware of any matter relating to:
    - 11.1.3.1. any expropriation proceedings relating to the Property; or
    - 11.1.3.2. any changes, actual, impending or proposed, to the current zoning of the Property or other land use or building by-laws relating to or otherwise affecting the Property;

- 11.1.4. the Vendor has received no notice of any proceedings (either pending or threatened) pursuant to the Environmental Assessment Act (Ontario), the Environmental Protection Act (Ontario) or any other statute or regulation affecting the Property;
  - 11.1.5. The Vendor has no knowledge of any pending actions or suits threatened against the Vendor in relation to the Property which could affect the validity of this Agreement;
  - 11.1.6. Neither the execution of this Agreement nor its performance by the Vendor will result in a breach of any term or provision or constitute a default under any agreement or instrument affecting the Property or any indenture, mortgage, deed of trust or any other agreement to which the Vendor is a party or by which it is bound;
  - 11.1.7. No bankruptcy, insolvency or receivership proceedings are pending against the Vendor; and
  - 11.1.8. The Vendor is a duly created municipal corporation organized and validly existing under the laws of Ontario and has all requisite power, authority and capacity to execute, deliver and perform each of its obligations pursuant to this Agreement and to hold, sell, convey and transfer registered and beneficial title to the Property to the Purchaser in accordance with the terms of this Agreement. The Vendor has duly taken, or caused to be taken, all requisite action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder.
- 11.2. The Purchaser acknowledges that, subject to the representations and warranties of the Vendor set out in Section 11.1, it is acquiring the Property on an "as is, where is" basis and must rely entirely upon its own due diligence investigations relating to the Property. The term "as is, where is" shall include the condition of the Property, title to the Property and the status and nature of the Permitted Encumbrances, in each case without any agreement, representation or warranty, excepting those expressly stated in this Agreement, of any kind, either express or implied (whether herein, at law or otherwise) on the part of the Vendor, including as to the condition of the soil, the subsoil, the ground and surface water or any other environmental matters. The parties acknowledge and agree that this Section shall survive indefinitely, and shall not merge on the closing of this transaction. The Purchaser acknowledges that the Vendor does not warrant the accuracy of any third party investigation or report provided by the Vendor to the Purchaser relating to the Property and the Purchaser relies on same at their own risk.
- 11.3. The Purchaser hereby represents and warrants to and in favour of the Vendor that:
- 11.3.1. The Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of Ontario and has all requisite corporate power, authority and capacity to execute and deliver this Agreement and to perform each of its obligations pursuant to this Agreement. The Purchaser has duly taken, or caused to be taken, all requisite corporate action required to be taken by it to authorize the

execution and delivery of this Agreement and the performance of each of its obligations hereunder; and

11.3.2. The Purchaser is not a “non-Canadian” as defined in the *Investment Canada Act* (Canada).

11.4. The representations and warranties set out in this Section 11 shall survive and not merge on the closing of this transaction.

## 12. Risk

12.1. The Property shall be and remain at the risk of the Vendor until the day immediately preceding the Closing Date.

## 13. Closing

13.1. The transaction contemplated hereunder shall be completed on the Closing Date. The Vendor and Purchaser acknowledge and agree that this transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, c.L4, as amended. The Vendor and Purchaser further acknowledge and agree that the delivery of documents and monies and the release thereof to the Vendor and Purchaser shall be governed by a Document Registration Agreement to be entered into between the Purchaser's solicitors and the Vendor's solicitors substantially in the form of the agreement then in effect on the web site of the Law Society of Upper Canada.

13.2. All obligations of the Purchaser under this Agreement are subject to the fulfillment on or before the Closing Date of each of the following conditions, all of which are for the sole benefit of the Purchaser and may be waived by it in writing in whole or in part at any time or times on or before closing (and shall be deemed to have been waived on the completion of the transaction):

13.2.1. that all of the representations and warranties of the Vendor contained in Section 11.1 shall continue to be true and accurate at the Closing Date;

13.2.2. that the Vendor shall deliver to the Purchaser all of the documents and materials referred to in Section 13.4;

13.2.3. except as otherwise provided herein, that the Vendor shall, on the Closing Date, deliver to the Purchaser vacant possession of the Property;

13.2.4. that no part of the Property shall have been appropriated, expropriated or seized by any government authority or through due process of law;



- 13.2.5. that the Purchaser is satisfied that there have been no intervening registrations on title to the Property between the date the Purchaser waived its Purchaser's Conditions and the Closing Date, save and except as to Permitted Encumbrances;
  - 13.2.6. the discharge of all encumbrances validly requisitioned by the Purchaser further to its due diligence review of title to the Property, provided that if a discharge of an encumbrance is not available on the Closing Date, the Purchaser agrees to accept the Vendor's Solicitors undertaking to obtain and register a discharge of such encumbrance within a reasonable time after Closing, provided that such undertaking is accompanied by a statement from the holder of such encumbrance setting out the balance required to obtain a discharge and a direction by the Vendor directing payment to the holder of such encumbrance of the amount required to obtain the discharge out of the balance due on Closing; and
  - 13.2.7. that the Vendor shall have complied with each and every covenant and agreement made by it herein and required to be completed at or prior to completion of this transaction.
- 13.3. All obligations of the Vendor under this Agreement are subject to the fulfillment on or before the Closing Date of each of the following conditions, all of which are for the sole benefit of the Vendor and may be waived by it in writing in whole or in part at any time or times on or before Closing (and shall be deemed to have been waived on the completion of the transaction):
- 13.3.1. that all of the representations and warranties of the Purchaser contained in Section 11.3 shall continue to be true and accurate at the Closing Date;
  - 13.3.2. that the Purchaser shall deliver to the Vendor all of the documents, materials and funds referred to in Section 13.5; and
  - 13.3.3. that the Purchaser shall have complied with each and every covenant and agreement made by them herein and required to be completed at or prior to the completion of the transaction.
- 13.4. At closing, the Vendor shall deliver to the Purchaser, in form satisfactory to the Purchaser's solicitors acting reasonably, the following:
- 13.4.1. a deed/transfer, in favour of the Purchaser of the Property, in a form acceptable for registration; such deed shall contain the statements contemplated in clauses 50(22)(a) and (b) of the Planning Act (Ontario);
  - 13.4.2. the Vendor's certificate setting out that as of the Closing Date all of the Vendor's representations and warranties set out in Section 11.1 continue to be true and accurate;

- 13.4.3. the Vendor's undertaking to re-adjust any item on or omitted from the statement of adjustments described in Section 4;
  - 13.4.4. Option to Re-Purchase Agreement; and
  - 13.4.5. such further documentation relating to the completion of the transaction contemplated hereunder as shall be requested by the Purchaser, acting reasonably, or required by law and/or any governmental authority, or the usual practice of a purchaser's solicitor in the Province of Ontario to request in completing purchase transactions involving Ontario commercial properties.
- 13.5. At closing the Purchaser shall deliver to the Vendor, in form satisfactory to the Vendor's solicitors acting reasonably, the following:
- 13.5.1. a direction from the Purchaser designating the transferee(s) in the deed/transfer;
  - 13.5.2. the Purchaser's undertaking to re-adjust any item on or omitted from the statement of adjustments described in Section 4;
  - 13.5.3. the Purchaser's certificate setting out that as of the Closing Date all of the Purchaser's representations and warranties set out in Section 11.3 continue to be true and accurate;
  - 13.5.4. a statutory declaration and indemnity from the Purchaser in favour of the Vendor for HST, as specified in Section 3;
  - 13.5.5. Option to Re-Purchase Agreement;
  - 13.5.6. the balance of the Purchase Price described in Section 2.2.1; and
  - 13.5.7. such further documentation relating to the completion of the transaction contemplated hereunder as shall be requested by the Vendor, acting reasonably, or required by law and/or any government authority or the usual practice of a vendor's solicitor in the Province of Ontario to request in completing sale transactions involving Ontario commercial properties.

#### **14. Fees and Costs**

- 14.1. Each party shall bear its own legal fees and expenses in connection with this Agreement and the completion of the transaction contemplated herein. Without limiting the generality of the foregoing, the Purchaser shall pay the registration fees for the Transfer and Option to Re-Purchase Agreement and land transfer tax arising out of the registration of the Transfer of the Property.

## 15. General

- 15.1. The Purchaser may assign this Agreement, upon written notice to the Seller and without Seller's consent, to any affiliate as such term is defined in the Business Corporations Act (Ontario). The Purchaser may not otherwise assign this Agreement without Seller's prior written consent, which consent may not be unreasonable or arbitrarily withheld. The assignee shall assume of all of the Purchaser's rights and obligations hereunder, and the Purchaser shall be relieved of all liability hereunder.
- 15.2. Time shall in all respects be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and Purchaser or by their respective solicitors who are hereby expressly authorized in this regard. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.
- 15.3. The parties agree that an effective tender shall be deemed to have been validly made by a party upon the other when the party's solicitors has:
- 15.3.1. delivered all required closing documents and money contemplated by this Agreement to the other party's solicitors (with documents only being able to be delivered by fax for the purposes of tender);
  - 15.3.2. advised the other party's solicitors, in writing, that the party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - 15.3.3. completed all steps required by the Teraview Electronic System in order to complete the transaction, that can be performed or undertaken by the party's solicitors without the cooperation or participation of the other party's solicitors;
- all without the necessity of personally attending upon the other party or the other party's solicitors with the closing documents, money and without any requirement to have independent witness evidence the foregoing.
- 15.4. The parties acknowledge that neither party was represented by a realtor and that there are no realtor commissions associated.
- 15.5. Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given to or delivered by the parties or their respective solicitor's on their behalf. Any such notices, approvals, waiver and other documents shall be deemed to have been received on the day and at the time of delivery if delivered by hand, email or fax on a

Business Day to the last known address, email or fax number of the party to whom such is being given (current contact address being as set out below).

- 15.6. Words importing the singular include the plural and vice versa. Works importing gender include all genders. The captions, headings and section numbers are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.
- 15.7. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.
- 15.8. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectively implement and carry out the true intent and meaning of this Agreement.
- 15.9. This Agreement is subject to the subdivision control provisions of the Planning Act, Ontario and this Agreement shall be effective to create an interest in the Property only if such provisions are complied with prior to the Closing Date.
- 15.10. A fax or email of a signed copy of this Agreement shall be deemed to be an original signed copy, and this Agreement as initially signed by the Purchaser and submitted by fax or email to the Vendor may be accepted by the Vendor by the Vendor signing such faxed or emailed copy, and upon the Vendor faxing or emailing such signed copy back to the Purchaser prior to the irrevocable period expiry as set out below, this Agreement shall be a binding Agreement of Purchase and Sale.
- 15.11. This Agreement shall, when signed, accepted and faxed or emailed as aforesaid, constitute the entire agreement between the Purchaser and Vendor, and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as is expressed herein in writing, and no alteration or modification hereof shall be binding upon the parties unless in writing and signed by both parties.
- 15.12. The provisions of this Agreement shall continue to enure to the benefit of and be binding upon the parties hereto and their respective, heir, executors, administrators, successors and assigns.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

This Offer is made by the Purchaser to the Vendor and shall be open for acceptance until 5:00 p.m. on the • day of •, 2018, after which time, if not accepted; this Offer shall be null and void.

DATED this • day of •, 2018.

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement.

Purchaser’s Address/Fax:

•

Attention: •

Phone: •

Fax: •

Email: •

•

Per:

\_\_\_\_\_  
Name: •

Title: •

Purchaser’s Solicitor:

• (firm name)

• (address)

Attention: •

Phone: •

Fax: •

Email: •

\_\_\_\_\_  
Name: •

Title: •

I/We have authority to bind the Corporation.

THE VENDOR accepts the above Offer.

DATED this • day of •, 2018.

IN WITNESS WHEREOF the Vendor has duly executed this Agreement.

Vendor’s Address/Fax:

1560 Laurier Street, Rockland, ON, K4K 1P7

Attention: Municipal Clerk

Ph.:(613)446-6022

Fax: (613) 446-1497

Email:

**The Corporation of the City of Clarence-Rockland**

Per:

\_\_\_\_\_  
Name: Guy Desjardins

Title: Mayor

Vendor’s Solicitor:

Vice & Hunter LLP

101 – 85 Plymouth St., Ottawa, ON, K1S 3E2

Attention: Lynn Le Mesurier

Phone: (613) 232-5773

Fax: (613) 232-3509

Email: [llemesurier@viceandhunter.ca](mailto:llemesurier@viceandhunter.ca)

\_\_\_\_\_  
Name: Monica Ouellet

Title: Clerk

We have authority to bind the Corporation.

**“SCHEDULE “A”  
PROPERTY”**

Part of PIN 68057-0368 (LT)

Part of Lots 22 and 23 Concession 1 O.S. Clarence, City of Clarence-Rockland, as shown in heavy outline on Schedule “B”.

**SCHEDULE "B"**  
**SKETCH**

**SCHEDULE "C"**

**PERMITTED ENCUMBRANCES**

1. ByLaw BS5787 registered on August 19, 1963 designating an area of subdivision control.
2. Order RR168492 registered on October 1, 1999 (Minister's Transfer order of easements to The Corporation of the City of Clarence-Rockland)
3. Reference Plan 50R8864 registered on December 17, 2002
4. Application to Annex Restrictive Covenants RC6342 registered on October 17, 2003
5. Reference Plan 50R8968 registered on October 31, 2003
6. Transfer RC33388 registered November 15, 2006 in favour of The Corporation of the City of Clarence-Rockland
7. Application to Consolidate RC67642 registered September 27, 2010
8. Reference Plan 50R9854 registered October 7, 2010
9. Reference Plan 50R10026 registered February 8, 2012
10. Reference Plan 50R10471 registered December 21, 2015



**SCHEDULE "D"**  
**OPTION TO RE-PURCHASE AGREEMENT**

OPTION TO RE-PURCHASE AGREEMENT

THIS AGREEMENT made this ● day of ●.

BETWEEN:

●  
Hereinafter called the "OPTIONOR" of the FIRST PART

-and-

**THE CORPORATION OF THE CITY OF CLARENCE-  
ROCKLAND**  
Hereinafter called the "OPTIONEE" of the SECON D PART

WITNESSETH that in consideration of the obligations of the Optionor and the Optionee as set out in the Agreement of Purchase and Sale between them dated ●, 2017 (hereinafter the "**Agreement of Purchase and Sale**") and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Optionor hereby gives the Optionee an Option irrevocable within the time limited for acceptance to purchase, free from encumbrances save as provided herein, all the lands and premises as described in Schedule "A"(the "**Property**"), and the Optionee hereby undertakes to purchase the Property, free from encumbrances save as provided herein, on the following terms and conditions:

1. The parties acknowledge and agree that the Optionee has sold the Property to the Optionor in accordance with the proposed development described as ● to be constructed on the Property (the "**Project**").
2. The Optionor covenants with the Optionee that for a period of four (4) years after the date of this Agreement (the "**Term**"), the Optionor will not convey, sell, or otherwise dispose, of or agree to sell, convey, list for sale or otherwise dispose of the Property or any part or parts thereof, except in those cases where:
  - (a) the Optionor has completed construction of the Project and then sells the Property and Project together to a subsequent buyer; or
  - (b) the sale, conveyance, or other disposition of the Property is intended to be made to an affiliated entity of the Optionor, and in such a case, the Optionor shall notify the Optionee in writing of its intention to sell, convey or otherwise dispose of the Property (the "**Notice to Sell**") together with evidence of affiliation. For the purposes of this agreement, the term "affiliate" shall have the meaning given to it in section 1(4) of the *Business Corporations Act (Ontario)* and the consideration in the Transfer to the affiliate cannot exceed the price paid for the Property by the

Optionor plus the Optionor's constructions costs to the date of the Transfer;

- (c) the Optionor has the prior written consent of the Optionee (an "**Approval to Convey**"). The Optionor may make an application to the Optionee for an Approval to Convey in writing. Upon the receipt of such written application, the Optionee shall have the sole right and option, to either (i) approve such conveyance, sale or other disposal of the Property or (ii) repurchase the Property, free and clear of encumbrances in accordance with the provisions hereof.

Should the Optionor convey, sell, or otherwise dispose of or agree to sell, convey, list for sale, or otherwise dispose of the Property or any part or parts thereof in contravention of this section, the Optionee shall have the immediate right to exercise the option set out in paragraph 4.

3. For the purposes of this Agreement, "commenced construction" shall mean that the installation of the foundation for the building(s) forming a part of the Project has been *bonafide* commenced, and "completed construction shall mean when an occupancy permit for all buildings forming part of the Project has been issued by the municipality.
4. In the event that the Optionor has not commenced construction of the Project within twelve (12) months of the date of this agreement or completed construction of the Project within twenty-four (24) months from the date of this agreement, the Optionee shall have the sole right and option, to be exercised in its sole and unfettered discretion, upon written notice to require the Optionor to reconvey the Property to the Optionee, free and clear of encumbrances in accordance with the provisions hereof. The Optionee agrees that the option to purchase as herein provided shall become null and void upon the completion of construction as aforesaid including the completion of construction subsequent to the period set out in this paragraph 4 should the completion of construction have occurred prior to the exercise of the option to purchase.
5. The purchase price of the Property payable by the Optionee to the Optionor for the repurchase of the Property shall be equal to ● DOLLARS (\$●.00) (being 90% of the Purchase Price defined in the Agreement of Purchase and Sale as adjusted for acreage). Upon payment of the above said value, title to the Property shall vest conclusively and exclusively in the Optionee and the Optionor shall have no further right, title or interest therein, the Optionor shall remove all of its trade fixtures, equipment, inventory and other personal property from the Property, and the Optionor shall make good any damage caused by such removal. The Optionor shall, at the Optionee's request restore the land and premises to substantially the same grade as when the Optionor purchased the Property from the Optionee. The foregoing purchase price shall be the only amount payable by the Optionee to the Optionor as a result of the exercise of this option and the Optionee shall not be required to compensate the Optionor for any expenses incurred by the Optionor to acquire or develop the Property including, but not limited to any survey costs, planning costs, municipal development charges, municipal application fees, engineering fees, study costs, excavation costs, construction costs, legal fees and

disbursements or other professional fees. This provision may be pleaded by the Optionee as a bar to any claim by the Optionor for any such compensation under any law in any jurisdiction.

6. The Purchase Price for the repurchase of the Property shall be payable to the Optionor as follows:
  - (a) the Optionee shall pay the sum of ten dollars (CDN\$10.00) by cash or cheque payable to the said Optionor upon the exercise of its option;
  - (b) the balance on the closing of the repurchase of the Property which shall be completed thirty (30) days after notice is delivered to the Optionor or the Optionee as set out in section 4 or 2, as applicable.
7. The Optionee shall have until fourteen (14) days from the Optionee's notice to exercise its option to examine the title to the Property at its sole expense. Except for any valid objection made by the specified day, and except for any objections going to the root of title, the Option shall be conclusive deemed to have accepted the Optionor's title to the Property.
8. Title to the Property shall be good and free from all encumbrances except as may otherwise be provided for in this Agreement, and except for:
  - (a) any registered restrictions or covenants that run with the land (providing that they have been complied with);
  - (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service (providing that they have been complied with, or that security has been posted to ensure compliance and completion as evidence by letter from the relevant municipality or utility supplier);
  - (c) any minor easements for the supply of utility service to the Property or to adjacent properties;
  - (d) all registered agreements, restrictions, easements, etc (the "**Existing Title Documents**") as they were registered against title to the Property upon the date the Property was acquired by the Optionor provided the Optionor has not breach any of the said Existing Title Documents.
9. The Optionor and the Optionee agree that there is no condition, express, or implied, representation or warranty of any kind that the future intended use of the Property by the Optionee is or will be lawful.
10. The Optionee shall not call for the production of any title deed, abstract, survey or other

evidence of title to the Property except such as are in the possession or control of the Optionor. The Optionor agrees that, if requested by the Optionee, it will deliver any sketch or survey of the Property in its possession or within its control to the Optionee as soon as possible and prior to the last day allowed for examining title. In the event that a discharge of any mortgage or charge held by a Chartered Bank, Trust Company, Credit Union or Insurances Company and which is not to be assumed by the Optionee on completion, is not available in registerable form on completion, the Optionee agrees to accept the Optionor's solicitor's personal undertaking to obtain, out of the closing funds, a discharge or cessation of charge in registerable form and to register same on title within a reasonable period of time after completion .

11. Taxes, local improvements and water and assessment rates shall be apportioned and allowed to the date of completion (the day itself to be apportioned to the Optionee.)
12. The Optionee's solicitor and the Optionor's solicitor are hereby authorized by the parties to enter into a document registration agreement in the form recommended from time to time by the Law Society of Upper Canada (hereinafter referred to as the "DRA"), establishing the procedures and timing for completing this transaction, which DRA shall be exchanged between the Optionor's solicitor and the Optionee's solicitor no later than five (5) days before the closing date. The parties acknowledge that the delivery and exchange of documents, monies and keys to the Property, and the release thereof to the Optionor and the Optionee, as the case may be, shall not occur contemporaneously with the registration of the Transfer, but instead shall be governed by the DRA, pursuant to which the solicitor receiving any documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA.
13. Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Property may be delivered to the other party hereto or its solicitor by facsimile transmission (or by a similar electronic system reproducing the original), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also deliver the originals of same to the recipient party or to its solicitor by overnight courier sent on the closing date, if same has been so requested by the recipient party or by its solicitor.
14. Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this paragraph called the "Tendering Party") upon the other party (in this paragraph called the "Receiving Party") when the solicitor for the Tendering Party has:
  - (a) delivered all applicable closing documents, keys and/or funds to the Receiving Party's solicitor in accordance with the provisions of this Agreement and the DRA. In particular, money may be tendered by sending a copy of a bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or

Caisse Populaire by fax to the Receiving Party's solicitor and keys may be tendered by the Tendering Party's solicitor confirming to the Receiving Party's solicitor in writing that the Tendering Party's solicitor is in possession of at least one key to the property, if applicable;

- (b) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (c) has completed all steps required by the Teraview Electronic Registration System ("TERS") in order to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor;

all without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

15. The Optionee acknowledges and agrees that any and all HST payable with respect to the purchase of the Property shall be the sole responsibility of the Optionee, shall be in addition to the Purchase Price and shall be collected by the Optionor on the Closing Date. In the event that the Optionee is a registrant under the *Excise Tax Act*, the Optionee hereby agrees to indemnify the Optionor with respect to payment of the HST, to provide the Optionor, prior to the Closing Date, with a valid registration number and to execute and provide to the Optionor on the Closing Date a declaration and indemnity in a form acceptable to the Optionor's solicitors, acting reasonably or such other satisfactory documentation demonstrating that the Optionee is not required to pay HST in respect of this transaction.
16. This Option, when exercised, shall constitute a binding contract of purchase and sale and time in all respects shall be of the essence of this Agreement.
17. The Optionor covenants and agrees:
  - (a) that this Option shall be registered on title to the Property in the appropriate Land Titles Office, at the Optionor's expense, in priority to all liens, charges, mortgages, encumbrances and any other interest whatsoever; and
  - (b) to give to every purchaser of the Property actual notice of the existence and the terms of this Agreement and to include an acknowledgment of such notice in any Offer to Purchaser or other similar document dealing with the Property.
18. The Optionee covenants and agrees to deliver a registerable release of this Agreement to

discharge this Agreement from title on the earlier of: (a) completion of construction of the Project prior to the exercise of the option to purchaser pursuant to section 4; (b) ten (10) days after an Approval to Convey is granted; or (c) at the end of the Term.

19. The Optionor agrees that damages may not be a sufficient remedy to Optionee in the event of any breach by Optionor of its covenants under this Agreement due to the nature of and the difficulty in establishing the damages to the Optionee arising out of any such breach, and agrees that injunctive relief compelling the Optionor to comply with its covenants under this Schedule shall be available to the Optionee, and further agrees that this Section 19 may be pleaded and relied upon by the Optionee in any such claim for such injunctive relief and the Optionor agrees that in such circumstance it is estopped from arguing against the entitlement to such relief.
20. If any term, covenant or provision of this Agreement or the application thereof to any person or circumstance to any extent is held invalid or unenforceable, the remainder of the terms, covenants or provisions hereof or the application thereof to any person or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected thereby and each term, covenant and provision hereof will be valid and enforceable to the fullest extent permitted by law.
21. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other party make or cause to be made all such further acts, deeds, assurances and things as may be reasonably required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
22. All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. It is the intention of the parties that all rights and obligations of the parties hereunder run with the title to the Property including the Optionee's right to purchase which shall be binding on the Optionor and all successors-in-title to the Optionor in respect of the Property.
23. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable Ontario.
24. Any notice required or agreed to be given under this Agreement shall be validly given if delivered personally or by facsimile addressed to:
  - (a) In the case of the Optionor:
    - 
    - Attention: •
    - Fax: •
  - (b) In the case of the Optionee:

1560 Laurier Street  
Rockland, ON K4K 1P7  
Attention: Municipal Clerk  
Fax: 613-446-1497

and shall be deemed to have been effectively given by hand delivery on the date of such delivery or by fax on the date of transmission; provided that such delivery may be made upon the designated solicitor for the party to whom delivery is to be made. Either party may change the address to which any notice, report, demand, request or other instrument or communications authorized, required or desired to be given under this Agreement is to be delivered or mailed, by giving written notice of such change to the other party, but not such notice of change shall be effective unless and until received by the other party.

- 25. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission by facsimile or email of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

In witness whereof the Optionor and the Optionee have executed this agreement as of the date first written above.

•  
Per:

\_\_\_\_\_  
Name: •  
Title: •

\_\_\_\_\_  
Name: •  
Title: •

I/We have authority to bind the Corporation.

**THE CORPORATION OF THE CITY OF CLARENCE-ROCKLAND**

Per:

\_\_\_\_\_  
Name: Guy Desjardins  
Title: Mayor

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Name: Monica Ouellet

Title: Clerk

We have authority to bind the Corporation.



**SCHEDULE A PROPERTY**

**DESCRIPTION OF PROPERTY**

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