

**AGREEMENT OF PURCHASE AND SALE (the “Agreement” or “APS”)
this 2nd day of July, 2019.**

BETWEEN:

THE CORPORATION OF THE TOWN OF MINTO

(the “Vendor”)

-and-

Dave Scholten Flooring Inc.

(the “Purchaser”)

WHEREAS the Vendor is the owner, in fee simple, of the lands and premises described in Schedule “A” (the “Property”);

NOW THEREFORE IN CONSIDERATION of the mutual covenants and premises in this Agreement, the parties agree as follows:

**SECTION I
GENERAL**

1. The Purchaser agrees to purchase the Property and the Vendor agrees to sell the Property according to the terms of this Agreement.
2. In consideration of the agreement referred to in the preceding paragraph, the Purchaser shall pay a total Purchase Price of Thirty Eight Thousand, Five Hundred Dollars (\$38,500) to the Vendor. The Purchase Price shall be paid as follows:
 - (a) Three Thousand, Eight Hundred and Fifty Dollars (\$3,850) is payable by the Purchaser by certified cheque upon execution of this Agreement, to be held on an interest free basis by the Solicitor for the Vendor as a deposit pending completion of this transaction on account of the Purchase Price on completion, or if this Agreement is not completed through no fault of the Purchaser, the deposit shall be returned to the Purchaser; and
 - (b) The balance of the Purchase Price, subject to adjustments, shall be paid to the Vendor on the Completion Date, by certified cheque.

**SECTION II
PURCHASE OF PROPERTY**

3. Irrevocable Date
 - (a) This APS shall be open for acceptance by the Vendor until the 2nd day of July, 2019, and when accepted shall constitute a binding contract of purchase and sale, otherwise the APS shall be null and void and all deposit monies paid shall be returned to the Purchaser without deduction.

4. Deed
 - (a) The Vendor agrees to deed or transfer the Property to the Purchaser subject to the terms of this Agreement.
5. Completion Date
 - (a) The closing of this transaction shall take place sixty (60) days from the date of execution of the APS, or such other date as mutually agreed upon (the "Completion Date") at which time possession of the Property in "as is, where is" condition shall be given to the Purchaser other than as provided in this APS. The Vendor acknowledges that it has the right and authority to sell the Property.
6. Council Approval
 - (a) This transaction is subject to compliance with Section 270 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended and the approval of the Council of The Corporation of the Town of Minto in its sole and absolute discretion by by-law. Council approval shall be obtained on or before the Completion Date, or this agreement will be null and void and the deposit returned without interest or deduction.
7. Documents, Reports and Information
 - (a) The Vendor will produce and deliver to the Purchaser within thirty (30) days of the execution of the APS any documents, reports or information in its possession in respect to the Property. The Purchaser agrees to return all of the above documentation to the Vendor if this transaction is not completed.

SECTION III CONDITIONS, REPRESENTATIONS AND WARRANTIES

8. "As Is" Condition
 - (a) The Purchaser acknowledges that it is acquiring the Property in an "as is" condition and that it must satisfy itself within thirty (30) days of the execution of the APS regarding the condition of the Property including, but not limited to, all existing physical conditions of this Property, environmental conditions, fitness for any purpose, suitability for construction, soil bearing capacity for any building proposed, and the availability of municipal services and utilities necessary for the Purchaser's proposed use of the Property. The Purchaser acknowledges that the Vendor shall not be responsible for any physical deficiencies of this Property or for any past, present or future environmental liabilities and hereby waives any claims against the Vendor in respect of any environmental liabilities on this Property. The Purchaser agrees to sign a release and indemnity in favour of the Vendor on or before closing with respect to matters set out in the preceding sentence. If the Purchaser is for any reason whatsoever dissatisfied with the Property, it shall deliver written notice to that effect to the Vendor by no later than the time specified herein, and this Agreement shall be terminated and the deposit shall be returned to the Purchaser without interest or deduction. If the Vendor is notified that the condition of the Property is not satisfactory, then the Purchaser shall, prior to receiving its deposit monies back and prior to being entitled to a full release from the Vendor with respect to this Agreement, restore the Property to its original condition as it existed prior to such testing or inspection by the Purchaser, at the Purchaser's sole expense. If the Purchaser fails to deliver written notice to the Vendor within the time specified herein regarding this

condition, this condition shall be deemed to have been waived by the Purchaser.

9. Investigation by the Purchaser

- (a) The Purchaser acknowledges having inspected the Property prior to executing the APS and understands that upon the execution by the parties of this APS, and subject to any conditions herein, there shall be a binding agreement of purchase and sale between the Purchaser and the Vendor. It shall be the Purchaser's responsibility to provide, at its own expense, any soil bearing capacity tests or environmental inspection, as may be required or desired, and the Vendor shall grant the Purchaser access for such testing or inspection at all reasonable times, on reasonable notice, for the purpose of conducting reasonable inspections.

10. Future Use

- (a) The Vendor and the Purchaser 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 Purchaser is or will be lawful except as may be specifically stipulated elsewhere in this Agreement.

11. Development Covenants and Restrictions

- (a) The Property shall be subject to the development covenants and restrictions more particularly set out in Schedule "B" attached to this APS, which shall survive the completion of this transaction and run with the Property. The development covenants and restrictions shall be registered on title by the Vendor and the cost of registration shall be at the expense of the Purchaser. In the event that the said covenants and restrictions are not registered on title to the Property on or before closing, the Purchaser covenants and agrees to consent to the registration of the covenants and restrictions after closing. The Purchaser agrees that it shall not transfer, assign its rights, interests, liabilities and obligations under this Agreement or to the Property without first ensuring that the proposed assignee or transferee has entered into an assumption agreement in a form satisfactory to the Vendor, acting reasonably, requiring the assignee or transferee to be bound by all of the terms and conditions of this Agreement. In the event of such assignment, the Purchaser's rights, interests, liabilities and obligations hereunder is released and discharged from any and all liabilities and obligations arising under and pursuant to this Agreement.

12. Property Not for Resale

- (a) The Purchaser covenants that it is purchasing the Property for the construction of a building and not for resale purposes.

**SECTION IV
PRIOR TO COMPLETION DATE**

13. Purchaser May Inspect the Property

- (a) The Purchaser, its agents and contractors shall be permitted to inspect the Property and the buildings as frequently as is reasonably necessary between the date of acceptance hereof and the Completion Date at reasonable times and upon reasonable notice to the Vendor.

14. Insurance

- (a) Pending closing, the Vendor shall hold all insurance policies and the proceeds thereof in trust for the parties as their interest may appear and in

the event of damage to the Property. The Purchaser may elect to either receive the proceeds of the insurance and complete the purchase or to cancel the APS and have all the deposit monies paid to the Vendor returned together with all interest earned thereon without deduction.

SECTION V COMPLETING THE TRANSACTION

15. Deed
 - (a) The Deed or Transfer of the Property will be prepared at the expense of the Vendor in a form acceptable to the solicitors for the Purchaser and the Purchaser will pay all Land Transfer Tax, Harmonized Sales Tax and other costs in connection with the registration of it.
16. Electronic Registration
 - (a) The parties agree that the transaction shall be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, c.L.4 as amended. The parties acknowledge and agree that the delivery and release of documents may, at the discretion of the lawyer: a) not occur contemporaneously with the registration of the transfer/deed and other registerable documentation, and b) be subject to conditions whereby the lawyer receiving documents and/or money will be required to hold them in trust and not release them except in accordance with the terms of a written agreement between the lawyers entered into in the form of the Document Registration Agreement adopted by the Joint LSUC-OBOA Committee on Elective Registration of Title Documents.
17. Survey or Reference Plan
 - (a) The parties acknowledge that a Reference Plan shall be registered on title and will be used to provide a registrable description of the Property.
18. Letters and Reports from Officials of the Vendor
 - (a) On or before the requisition date, the Vendor agrees to provide to the Purchaser, at the Vendor's expense, letters or reports from the Fire Chief of the Town of Minto and the Building and Zoning Department of the Town of Minto regarding the status of compliance with all codes, by-laws, rules and regulations with respect to the Property and the buildings located thereon.
19. Examination of Title
 - (a) Title to the Property shall be good and marketable and free from all encumbrances except for any service easements or rights-of-way to be reserved in favour of the Vendor and for any easements or rights-of-way registered on title and any minor encroachments shown on the survey or Reference Plan delivered to the Purchaser.
 - (b) The Purchaser is allowed thirty (30) days from the execution of the APS to examine the title to the Property. If on or before this date the Purchaser furnishes the Vendor in writing with any valid objections: to the title; to any undisclosed outstanding work orders; to undisclosed non-compliance with the municipal by-laws or covenants and restrictions which run with the land and cannot be resolved before the Completion Date; as to any objection of which the Vendor shall be unable to remedy or correct by the Completion Date and which the Purchaser will not waive, then this APS shall, notwithstanding any intermediate acts or negotiations, be terminated and the deposit shall be returned to the Purchaser without deduction and

the Vendor and the Purchaser shall not be liable for any costs, damages, compensation or expenses.

20. Vendor to Discharge all Encumbrances

- (a) The Vendor agrees to obtain and register at its own expense, on or before the Completion Date, a discharge of all liens, encumbrances, agreements and mortgages now registered against the Property and not assumed by the Purchaser. The Vendor further covenants and agrees to discharge, on or before the Completion Date, any and all liens, chattel mortgages, assignments or any other security interest given by the Vendor against its personal Property.

21. Adjustments

- (a) The Vendor agrees that all security deposits, if any, held by the Vendor including interest thereon shall be credited to the Purchaser in the Statement of Adjustments prepared for the Completion Date.
- (b) Any rents, mortgage, interest, taxes, local improvements, water and assessment rates shall be apportioned and allowed to the Completion Date, the day itself to be apportioned to the Purchaser.

22. Deliveries by the Vendor To The Purchaser on Closing

- (a) The Vendor covenants and agrees to deliver to the Purchaser on the Completion Date, all such deliveries to be a condition of the Purchaser's obligation to close this transaction, the following:
 - (i) A deed of the Property;
 - (ii) Any survey or reference plan of the Property in the possession of the Vendor;
 - (iii) A Statutory Declaration by an authorized officer of the Vendor stating that accurateness and truthfulness of all of the representations and warranties;
 - (iv) A Statutory Declaration by an authorized officer of the Vendor as to possession of the Property in a form acceptable to the solicitors for the Purchaser;
 - (v) A Statutory Declaration by an authorized officer of the Vendor that it is not now, and upon completion will not be, a "non-resident person" within the meaning and for the purpose of Section 116 of the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.) as amended;
 - (vi) Certified copies of all appropriate Certificates, By-Laws and other documents of Vendor authorizing the transaction herein; and
 - (vii) Such further documentation and assurances as the Purchaser may reasonably require to complete the transaction contemplated by the APS.

23. Harmonized Sales Tax

- (a) The parties hereto acknowledge and agree that the transaction contemplated herein is subject to the Harmonized Sales Tax (HST) under the Excise Tax Act, R.S.C., 1985, c. E-15 (the "Act") and that the Purchase Price does not include HST. The Vendor shall provide the Purchaser with its HST Business Number. The Purchaser shall pay to the Vendor any HST imposed under the Act payable in connection with the transfer of the

Property to the Purchaser, or as it may direct, unless the Purchaser or its nominee, or its assignee, provides:

- (i) A certificate on or before the Completion Date containing a representation and warranty to the Vendor that:
 - (1) It is registered for the purpose of the HST on the Completion Date and specifying the HST registration number;
 - (2) It will self-assess the HST on its GST/HST return or file the prescribed form pursuant to subsection 228(4) of the Act in connection with the purchase of the Property; and
 - (3) The Property transferred pursuant to this APS is being purchased by the Purchaser, or its nominee or assignee, as principal for its own account and is not being purchased by the Purchaser as agent, trustee or otherwise on behalf of or for another person, and does not constitute a supply of residential complex made to an individual for the purpose of paragraph 221 (2)(b) of the Act.
 - (4) An indemnity, indemnifying and saving harmless the vendor from any HST payable on this transaction and penalty and interest relating to HST; and
 - (5) A notarial true copy of its HST registration confirmation.

SECTION VI MISCELLANEOUS

24. Entire Agreement

- (a) There is no representation, warranty, collateral agreement or condition affecting this Agreement of the Property other than expressed herein.

25. Tender

- (a) Any tender of documents or moneys hereunder may be made upon the solicitor acting for the party upon whom tender is desired, and it shall be sufficient that a negotiable, certified cheque may be tendered instead of cash.

26. Time of Essence

- (a) Time shall be of the essence of this Agreement.

27. Planning Act

- (a) This Agreement shall be effective only if the provisions of Section 50 of the Planning Act, R.S.O. 1990, c.P.13, as amended are complied with.

28. Notices

- (a) All notices in this Agreement shall be in writing and shall be deemed to have been given if delivered by hand or mailed by ordinary mail, postage prepaid, addressed to the solicitor for the person to whom such notice is intended to be given at the following addressed:

Solicitors for the Vendor:

Duncan, Linton LLP
ATTENTION: Patrick J. Kraemer

45 Erb Street West
Waterloo, ON N2J 4B5
Fax: (519) 886-8651

Solicitors for the Purchaser:

Woods, Clemens & Fletcher
ATTENTION: Mary Lou Fletcher
9 Memorial Ave.
Elmira, ON N3B2R1.
Fax: (519) 669-5101

If mailed, such notices must also be given by facsimile transmission on the date it was so mailed. If so given, such notices shall be deemed to have been received on the first business day following the date it was delivered or marked mailed out.

29. Successors and Assigns

- (a) The Purchaser shall be permitted to assign all of its right, title and interest in and to this APS with the Vendor's written approval which shall not be unreasonably withheld. Subject to the restrictions in the preceding sentence, the Vendor agrees to engross the Transfer/Deed of Land as directed by the Purchase on the completion Date as the Purchaser may elect, and the Vendor agrees to complete the transaction contemplated by this APS on the Completion Date with such assignee or nominee. The Purchaser is released from all liability hereunder, if it assigns its interest in this APS. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

30. Schedules

- (a) The following Schedules shall form an integral part of this Agreement:
 - (i) Schedule "A" Description of Property
 - (ii) Schedule "B" Development Covenants

31. Acceptance by Fax or Email

- (a) The Purchaser and Vendor acknowledge and agree that the communication of this Agreement of Purchase and Sale may be transmitted by way of facsimile or electronic mail, and that they agree to accept such signatures and documents to be legal and binding upon them.

32. Counterparts

- (a) This agreement may be signed in any number of counterparts, each of which is considered to be an original, and all of which are considered to be the same documents.

33. Severability

- (a) If any provision of this Agreement, or the application thereof to any circumstances, shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement, or the application thereof to other circumstances, shall not be affected, and shall be valid and enforceable.

IN WITNESS WHEREOF the parties have executed this Agreement.

The Corporation of the Town of Minto

George Bridge
Mayor

Gordon Duff
Acting Clerk

We have authority to bind The Corporation of
the Town of Minto.

Dave Scholten Flooring Inc.

Per:

Name:

Title:

Name:

Title:

I/We have authority to bind the Corporation.

**SCHEDULE “B”
DEVELOPMENT COVENANTS**

1. Title Control

- (a) The owner or owners of the property (the “Owner”) upon which these development covenants attach (the “Property”) covenants and agrees that it may not use the Property for its intended use and may not retain ownership of the Property unless the Owner has constructed a building for such use including obtaining a building permit for a permanent building with a minimum building coverage of thirteen point six percent (13.6%) of the total area of the Property. The Owner further covenants and agrees to commence construction of a permanent building on the Property which complies with the permitted uses of the Property’s zoning within one (1) year of the date the Owner took title to the Property being the date of registration of transfer (the “Completion Date”) and to substantially complete the construction of the said building in conformity with an approved site plan within eighteen (18) months from the Completion Date of this transaction.
- (b) In the event that the Owner has not obtained a building permit in accordance with the provisions of subclause 1.a) above, the Owner may request from The Corporation of the Town of Minto (the “Town of Minto”), in writing, an extension of the time specified in subclause 1.a) above up to a maximum extension period of six (6) months, (such extension, the “Extended Time”) upon payment by the Owner to the Town of Minto of a performance deposit equal to ten (10%) percent of the purchase price of the Property (the “Performance Deposit”). The Performance Deposit shall be refunded to the Owner, without interest, upon the Owner’s compliance with and completion of the provisions of subclause 1.a) above within the Extended Time. In the event that the Owner fails to complete construction within the Extended Time, then the Town of Minto shall, in addition to its other rights and remedies as set out herein or otherwise, be entitled to retain the Performance Deposit as liquidated damages and not as a penalty, in partial or full satisfaction of the Town of Minto’s damages.
- (c) If the Owner does not comply with the provisions of subclause 1.a) above within the periods therein specifically set out or within the Extended Time, the Owner, will, at the option of the Town of Minto by notice in writing to the Owner, re-convey good title to the Property to the Town of Minto, free and clear of all encumbrances, in consideration for payment by the Town of Minto to the Owner of 90% of the purchase price paid by the Owner to the Town of Minto for the conveyance of the Property in the first instance (the “Discounted Consideration”). The re-conveyance shall be completed within sixty (60) days of the notice set out in this subclause. The Town of Minto shall be allowed to deduct from the Discounted Consideration all of its reasonable costs, realty commission and legal fees incurred with respect to the original conveyance of the Property by the Town of Minto to the Owner, as well as the costs of the Town of Minto in re-acquiring the Property, including without limitation, realty commission, registration costs, land transfer tax, legal fees and such other costs as reasonably incurred by the Town of Minto. The Town of Minto shall not be required to pay for any improvements that may have been made, constructed, installed or performed by the Owner on the Property.
- (d) Subject to subclause 1.c) above, the Owner covenants that it will not sell the Property or any part thereof to any person, firm or corporation without first offering, in writing, to sell the Property to the Town of Minto for consideration equal to or less than the consideration paid by the Owner to the Town of Minto in the original conveyance of the Property less the costs

of the Town of Minto incurred in re-acquiring the Property, including without limitation, real estate commission, land transfer tax, registration costs, legal fees and such other costs as reasonably incurred by the Town of Minto, provided however that the Owner may sell or transfer the Property to a subsidiary or affiliate corporation as defined in the Business Corporations Act, R.S.O. 1990, c.B.16 as amended, provided such subsidiary assumes and confirms its acceptance of the within covenants and restrictions and expressly undertakes in writing to comply with them in such form as the Town of Minto may require. The Town of Minto shall have ninety (90) days from the receipt of an offer made by the Owner under this subclause, to accept such offer which acceptance shall be in writing. If the Town of Minto does not accept an offer to sell made by the Owner under the provisions of this subclause, the Town of Minto's right to repurchase the Property so offered shall terminate. However, the remaining provisions of this clause 1 as well as other provisions herein shall continue in full force and effect. The limitation contained in this subclause, will expire upon the Owner fulfilling all of the building requirements as set out in subclauses 1.a) and 1.b) above.

2. Town of Minto Option on Vacant Portion of Land

- (a) The Town of Minto shall have the option to repurchase such vacant portion of the Property not used by the Owner for the construction of an initial building thereon provided such land is not reasonably ancillary to the Owner's use and occupation of the said building. The option shall be exercisable by the Town of Minto for consideration equal to the per square foot consideration paid by the Owner to the Town of Minto in the original conveyance of the Property, less the costs of the Town of Minto incurred in re-acquiring the subject portion of the Property, including without limitation, real estate commission, land transfer tax, registration costs, legal fees and such other costs as reasonably incurred by the Town of Minto.

3. Occupation of Building

- (a) If the Owner or a lessee thereof fails to occupy the building within six (6) months after satisfying the provisions of subclauses 1.a) and 1.b) above with respect to the completion of the building, and for so long as the building remains unoccupied, beginning on the first day following the six (6) month period after satisfying the provisions of subclauses 1.a) and 1.b) above, the Owner shall pay to the Town of Minto as liquidated damages, quarterly amounts equal to the difference in Property tax between what is being paid by the Owner as Property tax for the Property when deemed vacant land and what would be paid as Property tax by the Owner for the Property if the building was occupied. If any such payment is not duly remitted by the Owner, interest shall be calculated on the balance owing in the same manner and shall be paid at the same rate to the Town of Minto as interest is calculated and paid to the Town of Minto on unpaid taxes.
- (b) In the event that the Owner or the Owner's lessee has not occupied the building in accordance with the provisions of subclause 3.a) above, the Owner may request, in writing, that the Town of Minto extend the time for occupation of the building for a maximum period of 6 months, which request the Town of Minto shall review and may approve in its sole and absolute discretion. Additional Extensions can be granted at the option of the Town of Minto, upon written request from the Owner prior to the expiry of any prior extensions granted by the Town of Minto.

4. Assignment of Covenants

- (a) The Owner acknowledges and agrees that the covenants and restrictions herein shall run with the title to the Property. The Owner, for itself, its

successors, heirs, and assigns in title from time to time of all or any part or parts of the Property will observe and comply with the stipulations, restrictions, and provisions herein set forth (the “Restrictions”), and covenants that nothing shall be erected, fixed, placed or done upon the Property or any part thereof in breach or in violation or contrary to the Restrictions or the provisions of the agreement of purchase and sale between the Owner and the Town of Minto and that the Owner will require every subsequent purchaser or every successor in title to assume and acknowledge the binding effect of this document, as well as, covenant to observe and comply with the Restrictions and other covenants herein, and the surviving provisions of this Agreement of Purchase and Sale.

5. Force Majeure

- (a) If the Owner shall be unable to fulfill, or shall be delayed or restricted in fulfilling any of the obligations set out herein due to any act or neglect of the Town of Minto or any of its employees, or due to strikes, walkouts, lockouts, fire, unusual delay by common carriers, or by any other cause beyond the Owner’s reasonable control, then the time for fulfilling any such obligations shall be extended for such reasonable time as may be required by the Owner to fulfill such obligation.

6. Right to Waive

- (a) Notwithstanding anything herein contained, the Town of Minto and its successors shall have the power by instrument or instruments in writing from time to time to waive, alter or modify the herein covenants and restrictions with respect to their application to any part of the Property without notice to or approval from the Owner or notice to or approval from the owners of any other adjacent or nearby lands.