

**AGREEMENT OF PURCHASE AND SALE (hereinafter called the “APS”)**

**THIS AGREEMENT** made as of the 30th day of May, 2018.

**BETWEEN:**

**THE CORPORATION OF THE TOWN OF MINTO**

hereinafter called the “Vendor” of the FIRST PART;

-and-

**METZGER HEATING LTD.**

hereinafter called the “Purchaser” of the SECOND PART;

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

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and promises 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 Purchase Price calculated at Fifteen Thousand Dollars (\$15,000.00) per acre to the Vendor, subject to the Purchaser’s determination of the total area of the subject property within (10) days prior to closing. The Vendor acknowledges that the Purchase Price may be adjusted based on the findings of the Purchaser during the due diligence process. The Purchase Price shall be paid as follows:
  - a) One Thousand, Five Hundred Dollars (\$1,500.00) is payable by the Purchaser by 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 without interest or deduction; and
  - b) The balance of the Purchase Price, subject to adjustments, shall be paid to the Vendor on the Completion Date, by certified cheque or bank draft.
3. The parties agree that the lands to be purchased are set out in Schedule “A” attached described generally as Parts 3 and 6 with the Vendor retaining an easement over Part 6 for servicing.

**SECTION II  
PURCHASE OF PROPERTY**

4. Irrevocable Date
  - a) This APS shall be open for acceptance by the Vendor until the 5<sup>th</sup> day of June, 2018, 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.

5. Deed

- a) The Vendor agrees to deed or transfer the Property to the Purchaser subject to the terms of this Agreement.

6. Completion Date

- a) The closing of this transaction shall be July 20, 2018, 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 covenants that it has the right and authority to sell the Property.

7. Council Approval

- a) This transaction is subject to compliance with Section 270 of the *Municipal Act, 2001* 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.

8. Documents, Reports and Information

- a) The Vendor will produce and deliver to the Purchaser within twenty four (24) days after 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.

9. Withdraw

- a) The Purchaser may terminate this Agreement at any time before the Completion Date, and the Vendor shall return the deposit to the Purchaser without interest or deduction, if, prior to the Completion Date, a similar use is proposed within the Palmerston Industrial Park.

**SECTION III  
CONDITIONS, REPRESENTATIONS AND WARRANTIES**

10. "As Is" Condition

- a) The Purchaser acknowledges that they are acquiring the Property in an "as is" condition and that it must satisfy itself within fifteen (15) 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 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.

11. 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 conditional 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.

12. Future Use

- a) The Parties acknowledge that the zoning bylaw allows light industrial and industrial uses subject to the requirements of the Town of Minto Zoning By-law and other municipal by-laws and codes including but not limited to the Town's Site Plan Control Area By-law.

13. 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 Vendor. 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 they shall not transfer, assign its rights, interests, liabilities and obligations under this Agreement 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 or upon the Purchaser's transfer of the Property, 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.

14. 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**

15. 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.

16. 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**

17. 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.

18. 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* 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.

19. Survey or Reference Plan

- a) The Vendor shall deposit a Reference Plan on title of the Property at its expense to provide a registerable description of the Property in accordance with the terms of this Agreement.

20. 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 surveyor Reference Plan delivered to the Purchaser.
- b) The Purchaser is allowed until 6:00 p.m. on the 15<sup>th</sup> day prior to the Completion Date to examine the title to the Property at its own expense. 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.

21. Vendor to Discharge Encumbrances, Purchaser to Accept Easements

- a) The Vendor agrees to obtain and register at its own expense, on or before the Completion Date, a discharge of all liens and mortgages affecting the Property. The Purchaser agrees to accept the property subject to all easements registered against the title of the Property as at the date of final acceptance of this agreement, except the parties agree that after closing and during the road design and construction by the Town, additional easements and lot re-configuration may be required to address site specific conditions and such easements and re-configuration to be mutually agreed to by the parties with the cost of a final reference plan provided by the Vendor at its sole

cost. The Purchaser agrees that the Vendor shall be able to obtain such easements or lot re-configuration at a nominal charge.

## 22. 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.

## 23. 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) The Reference Plan depicting the Property as contemplated in Section 1;
  - iii) A Statutory Declaration by an authorized officer of the Vendor stating that accurateness and truthfulness of all of the representations and warranties in this Agreement;
  - 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* of Canada;
  - 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 stipulated by the APS.

## 24. Harmonized Sales Tax

- a) The parties hereto acknowledge and agree that the transaction contemplated herein may be subject to the Harmonized Sales Tax (HST) under the *Excise Tax Act* (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 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.

- ii) An indemnity, indemnifying and saving harmless the vendor from any HST payable on this transaction and penalty and interest relating to HST; and
- iii) A notarial true copy of its HST registration confirmation.

## **SECTION VI POST CLOSING LOT EXCHANGE**

25. In accordance with the terms of the APS, the Vendor has not certified in any manner whatsoever the suitability of the soils of the Property for the Purchaser's intended development. In consideration of the Purchaser completing the purchase of the Property without any information relating to soils suitability and the ability of the Purchaser to construct a building on the Property, the Vendor covenants and agrees that should the Purchaser's consulting engineer reasonably determine during the construction of its intended development that the soils at the Property are unsuitable, the Vendor shall allow the Purchaser to exchange the Property for a more suitable parcel within the Vendor's industrial development in which the Property is situate. In order to give effect to this Property exchange right, the Vendor and the Purchaser mutually covenant and agree to execute an Agreement of Purchase and Sale on the same terms as contained in this APS for such new parcel as is selected by the Purchaser from the Vendor's then current industrial land inventory

## **SECTION VII MISCELLANEOUS**

### 26. Entire Agreement

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

### 27. 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.

### 28. Time of Essence

- b) Time shall be of the essence of this Agreement.

### 29. Planning Act

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

### 30. 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 address:

Solicitors for the Vendor:  
White, Duncan, Linton LLP  
ATTENTION: Patrick J. Kraemer  
45 Erb Street West  
P. O. Box 457  
Waterloo, ON N2J 4B5

Fax: (519) 886-8651

For the Purchaser:

Fallis Fallis & McMillan  
233 Main St. W.  
Palmerston, ON N0G 2P0  
Fax (519) 343-3528

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.

### 31. 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.

### 32. Schedules

- a) The following Schedules shall form an integral part of this Agreement:

Schedule "A" Description of Property

Schedule "B" Development Covenants

### 33. Acceptance by Fax

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

### 34. 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.

### 35. 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.

**Metzger Heating Ltd.**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**THE CORPORATION OF THE TOWN  
OF MINTO**

Per: \_\_\_\_\_  
Name: George A. Bridge  
Title: Mayor

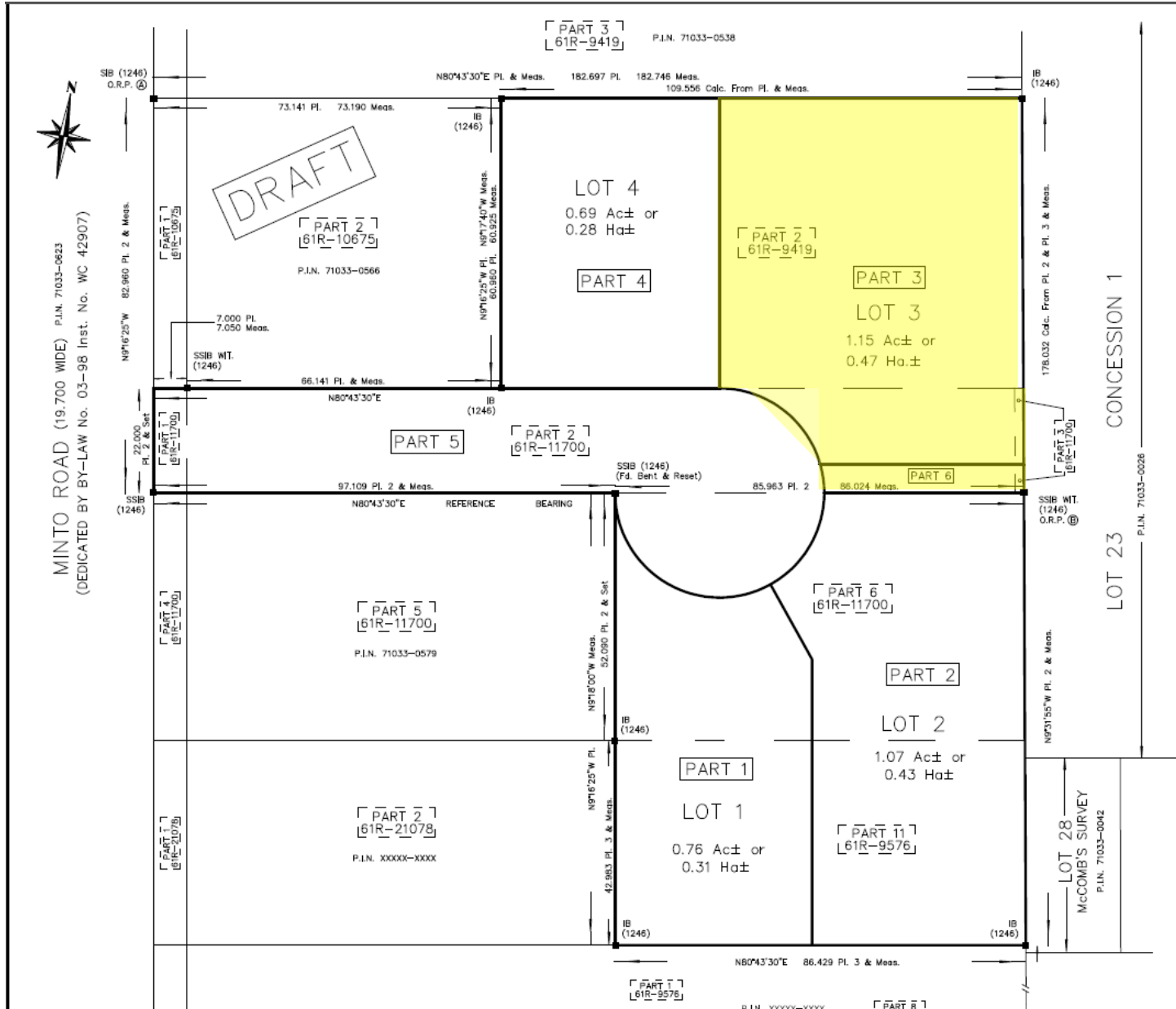
Per: \_\_\_\_\_  
Name: Bill White  
Title: Clerk

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



**Schedule "A" to  
Description of Property  
Proposed to be Sold to Metzger Heating Ltd.**

All and singular that certain parcel of land located within the Province of Ontario, County of Wellington, Town of Minto known as Part of Lot 24 Concession 1 being more or less the 1 acre known as Part 3 and Part 6 as identified below.



## SCHEDULE "B"

### DEVELOPMENT COVENANTS

#### 1. Title Control

- a) The Purchaser covenants and agrees to obtain a building permit for a permanent building with a minimum building coverage of 15% of the lot area of the Property. The Purchaser 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) years of the Completion Date of this transaction and to substantially complete the construction of the said building in conformity with an approved site plan within two (2) years from the Completion Date of this transaction.
- b) In the event that the Purchaser has not obtained a building permit in accordance with the provisions of subclause 1.a) above, the Purchaser may request from the Vendor, in writing, an extension of the time specified in subclause 1.a) above up to a maximum extension period of six (6) months, as the case may be (such extension, the "Extended Time") upon payment by the Purchaser to the Vendor 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 Purchaser, without interest, upon the Purchaser's compliance with and completion of the provisions of subclause 1.a) above within the Extended Time. In the event that the Purchaser fails to complete construction within the Extended Time, then the Vendor 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 Vendor's damages, as the case may be.
- c) If the Purchaser does not comply with the provisions of subclause 1.a) above within the periods therein specifically set out or within the Extended Time, the Purchaser, will, at the option of the Vendor by notice in writing to the Purchaser, re-convey good title to the Property to the Vendor, free and clear of all encumbrances, in consideration for payment by the Vendor to the Purchaser of 90% of the purchase price paid by the Purchaser to the Vendor for the conveyance of the Property in the first instance (the "Discounted Consideration"). The Vendor 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 Vendor to the Purchaser, as well as the costs of the Vendor 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 Vendor therefor. The Vendor shall not be required to pay for any improvements that may have been made, constructed, installed or performed by the Purchaser on the Property.
- d) Subject to subclause 1.c) above, the Purchaser 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 Vendor for consideration equal to or less than the consideration paid by the Purchaser to the Vendor in the original conveyance of the Property less the costs of the Vendor 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 Vendor. The Vendor shall have ninety (90) days from the receipt of an offer made by the Purchaser under this subclause, to accept such offer which acceptance shall be in writing. If the Vendor does not accept an offer to sell made by the Purchaser under the provisions of this subclause, the Vendor'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 Purchaser fulfilling all of the building requirements as set out in subclauses 1.a) and 1.b) above.

#### 2. Occupation of Building

- a) If the Purchaser 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 Purchaser shall pay to the Vendor as liquidated damages, quarterly

amounts equal to the difference in Property tax between what is being paid by the Purchaser as Property tax for the Property when deemed vacant land and what would be paid as Property tax by the Purchaser for the Property if the building was occupied. If any such payment is not duly remitted by the Purchaser, interest shall be calculated on the balance owing in the same manner and shall be paid at the same rate to the Vendor as interest is calculated and paid to the Vendor on unpaid taxes.

- b) In the event that the Purchaser or the Purchaser's lessee has not occupied the building in accordance with the provisions of subclause 2.a) above, the Purchaser may request, in writing, that the Vendor extend the time for occupation of the building for a maximum period of 6 months, which request the Vendor shall review and may approve in its sole and unfettered discretion. Additional Extensions can be granted at the option of the Vendor, upon written request from the Purchaser prior to the expiry of any prior extensions granted by the Vendor.

### 3. Assignment of Covenants

- a) The Purchaser acknowledges and agrees that the covenants and restrictions herein shall run with the title to the Property. The Purchaser, for themselves, 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 this Agreement of Purchase and Sale and that the Purchaser 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.

### 4. Force Majeure

- a) If the Purchaser 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 Vendor or any of its employees, or due to strikes, walkouts, lockouts, fire, unusual delay by common carriers, or by any other cause beyond the Purchaser's reasonable control, then the time for fulfilling any such obligations shall be extended for such reasonable time as may be required by the Purchaser to fulfill such obligation.

### 5. Right to Waive

- a) Notwithstanding anything herein contained, the Vendor 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 Purchaser or notice to or approval from the owners of any other adjacent or nearby lands.