

# AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** is made as of \_\_\_\_\_, 20\_\_,

**BETWEEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

("Seller")

**AND:**

\_\_\_\_\_  
\_\_\_\_\_

("Buyer")

## **1. Definitions**

1.1 "Closing Date" means \_\_\_\_\_, 20\_\_.

1.2 "Condition Date" means \_\_\_\_\_, 20\_\_.

1.3 "Condition" means the condition precedent set out in section 3.1.

1.4 "Contamination" or "Contaminants" means those substances which are:

(a) polluting substances, waste, special waste or contamination, as those terms are defined in the *Waste Management Act*, S.B.C. 1995, c.41, as amended from time to time or in any regulations thereunder or any statute enacted in substitution thereof; or

(b) substances or toxic substances, as those terms are defined in the *Canadian Environmental Protection Act* (Canada), as amended from time to time or in any regulations thereunder, or in any statute enacted in substitution therefor.

1.5 "Deposit" means the First Deposit and the Second Deposit.

1.6 "First Deposit" means \$ \_\_\_\_\_.

1.7 "Permitted Encumbrances" means those encumbrances listed in Schedule "B".

1.8 "Property" means the lands legally described in Schedule "A".

1.9 "Purchase Price" means \$ \_\_\_\_\_.

1.10 "Second Deposit" means \$ \_\_\_\_\_.

## **2. Agreement of Purchase and Sale**

2.1 Subject to the terms and conditions contained herein, Seller hereby agrees to sell and Buyer agrees to purchase the Property on the Closing Date, free and clear of all encumbrances except for the Permitted Encumbrances, in

consideration of payment of the Purchase Price.

### **3. Condition Precedent**

3.1 The obligations of Buyer to buy the Property are subject to the following Condition being satisfied on or before the Condition Date:

(a) Buyer conducting, at its cost, and being satisfied with the results of an inspection and investigation of the environmental conditions and state of title of the Property.

3.2 The Condition is for the sole benefit of Buyer and may be waived by notice in writing by Buyer at any time prior to the Condition Date. The Condition shall be deemed not to have been satisfied or waived unless Buyer delivers to Seller, on or before the Condition Date, notice in writing to the effect that the Condition has been satisfied or waived.

3.3 If the Condition is not satisfied or waived, this Agreement shall terminate and be of no further force and effect and neither party hereto shall have any claims against the other party under this Agreement and the Deposit shall be returned to Buyer.

3.4 Seller acknowledges the receipt and sufficiency of \$10.00 from Buyer as good consideration for Seller's agreement not to withdraw from its obligations pursuant to this Agreement while Buyer's obligations contemplated in this Agreement remain subject to fulfillment of the Condition.

3.5 Seller shall have the right, at its sole discretion, to continue to market the Property for sale prior to the fulfillment of the Condition. Notwithstanding any other provision hereof, if Seller receives a bona fide offer from a third party to purchase the Property on terms which Seller, at its sole discretion, is prepared to accept, then Seller shall notify Buyer in writing of such offer and Buyer shall have 48 hours after its receipt of such notice to satisfy and waive the Condition and pay the Second Deposit. If Buyer fails to satisfy and waive the Condition within the said period and pay the Second Deposit, then this Agreement shall terminate and be of no further force and effect and neither party hereto shall have any claims against the other party under this Agreement and the First Deposit shall be returned to the Buyer.

3.6 Upon receipt by the Seller of Buyer's notice in writing that the Condition has been satisfied or waived, Buyer's obligations under this Agreement shall be firm, binding and unconditional and the Deposit shall be non-refundable.

### **4. Purchase Price and Adjustments**

4.1 The Buyer shall pay Purchase Price in lawful money of Canada as follows:

(a) the First Deposit shall be paid to Seller's solicitors in trust upon the execution of this Agreement by Seller;

(b) the Second Deposit shall be paid to Seller directly upon fulfillment of the Condition; and

(c) The balance of the Purchase Price shall be paid to Seller in accordance with Section 6.

4.2 The Deposit shall be dealt with as follows:

(a) the Deposit, without interest, shall be credited against the Purchase Price on the Closing Date;

(b) the First Deposit, without interest, shall be returned by Seller to Buyer if the Condition is not fulfilled as contemplated in Section 3.1;

(c) the Deposit, without interest, shall be returned by Seller to Buyer and without limiting Buyer's rights or remedies, if Seller is in default hereunder, promptly upon demand by Buyer in the event that such default is not rectified within \_\_\_\_\_ (\_\_\_) days following receipt by Seller of written notice from Buyer and if such default is not expressly waived by Seller in writing; and

(d) the Deposit shall, at the option of Seller and without limiting Seller's rights or remedies be retained by Seller as liquidated damages if Buyer refuses or neglects to complete the purchase of the Property after the Condition has been fulfilled or waived.

4.3 The Purchase Price shall be adjusted on and as at the Closing Date for taxes, utilities, rents, deposits and interest thereon, insurance and all other items normally adjusted between a vendor and a purchaser.

4.4 The Purchase Price does not include Goods and Services Tax, Property Transfer Tax or any other taxes applicable to the conveyance of the Property to Buyer, all of which shall be directly paid by Buyer.

## **5. Closing Date**

5.1 The purchase and sale of the Property shall be completed at 11:00 AM (Vancouver time) on the Closing Date, and shall be completed at the offices of Buyer's solicitors in Vancouver, British Columbia, or shall be completed at such other time and place as the parties may agree to in writing.

## **6. Completion of Purchase and Sale**

6.1 At least five business days before the Closing Date, Buyer's solicitors shall prepare and deliver to Seller's solicitors the following closing documents only, in a form reasonably acceptable to Seller's solicitors ("Closing Documents"):

(a) Form A Transfer in respect of the Property (the "Transfer"); and

(b) Statement of Adjustments.

Provided Buyer's solicitors have prepared and forwarded the Closing Documents as set out above, Seller shall execute and deliver the Closing Documents to Buyer's solicitors at least one business day before the Closing Date. Seller shall not be required to prepare or execute any other documents for this transaction.

6.2 If Seller has existing encumbrances which are not Permitted

Encumbrances, to be cleared from title, Seller shall be entitled to wait until after closing of the sale and receipt of the Purchase Price before discharging all encumbrances which are not Permitted Encumbrances and providing evidence of such discharge to Buyer, however Seller's solicitors shall provide an undertaking to

(a) pay to the holders of such encumbrances the amount required by the holders' written statements to payout such encumbrances; and

(b) file the aforesaid discharges upon receipt from the holders of the encumbrances and to provide Buyer's solicitors with registration particulars in due course.

6.3 Upon delivery of the documents referred to in Section 6.1 to Buyer's solicitors, Buyer shall deliver or cause to be delivered to Buyer's solicitors, the adjusted Purchase Price less the deposit and Buyer's solicitors shall then forthwith take steps to carry out and complete registration of the Transfer.

6.4 If Buyer is relying upon a new mortgage to finance the Purchase Price ("Buyer's Mortgage"), the Buyer, while still required to pay the Purchase Price on the Closing Date, may wait to pay the balance of the Purchase Price to Seller until after the Transfer and the documents for Buyer's Mortgage have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, Buyer has:

(a) delivered payment to Seller's solicitors of that portion of the Purchase Price not secured by the Buyer's Mortgage, which payment will be applied to the Purchase Price due on completion of the transaction, or released to and retained by Seller on account of Seller's damages (and without prejudice to Seller's rights and remedies against Buyer) if Buyer fails to complete this transaction;

(b) fulfilled all the mortgagee's conditions for funding except for actual lodging of the documents for the Buyer's Mortgage for registration;

(c) provided Seller with a letter from the mortgagee confirming that:

(i) the Buyer's Mortgage has been fully approved by the mortgagee and will be funded immediately upon registration of the documents for the Buyer's Mortgage in the Land Title Office and receipt of a satisfactory post-filing title search indicating that Buyer will (in the ordinary course of Land Title Office procedure) become the registered owner of the Property free and clear of all charges and encumbrances save and except the Permitted Encumbrances, and

(ii) if the mortgagee fails to advance funds pursuant to the Buyer's

Mortgage on the Closing Date, then the mortgagee will forthwith discharge registration of the documents for the Buyer's Mortgage from title to the Property at no cost to Seller;

(d) made available to Seller, the undertaking of Buyer's solicitors to pay the balance of the Purchase Price upon the lodging of the Transfer and the documents for the Buyer's Mortgage and the advance by the mortgagee of the mortgage proceeds, provided that if the transaction does not complete for any reason or if Buyer's solicitors are unable to comply with their undertakings, then Buyer's solicitors will either return the Transfer, unused, to Seller's solicitors upon demand, or alternatively to make application to the Registrar of the Land Title Office to have the Transfer and the documents for the Buyer's Mortgage withdrawn and to return the Transfer to Seller's solicitors on demand; and

(e) executed and delivered to Seller's solicitors a Form A Freehold Transfer, in registerable form acceptable to Seller's solicitors and to be prepared at Buyer's expense, sufficient to re-convey title to the Property from Buyer to Seller for \$1.00 (the "Re-Transfer"), which Re-Transfer will be held by Seller's solicitors to be filed with the Land Title Office only if Buyer becomes the registered owner of the Property and fails to pay the entire Purchase Price to Seller on the Closing Date, or otherwise returned to Buyer for cancellation following Seller's receipt of the entire Purchase Price on the Closing Date.

6.5 The purchase and sale shall be completed in accordance with the terms of this Agreement on an exchange of undertakings between Seller's and Buyer's solicitors, which undertakings must be consistent with the terms of this Agreement. The terms of this Agreement shall take precedence over any undertakings or closing arrangements customarily used in Vancouver, British Columbia.

6.6 Registration of the Transfer (and if necessary, the Re-Transfer) of the Property at the Land Title Office shall be at the sole cost and expense of Buyer, and the registration fees for discharges of encumbrances (other than Permitted Encumbrances) shall be at the sole cost and expense of Seller. If the Buyer's mortgagee fails to advance loan proceeds on the Closing Date, the Buyer will, at its sole cost, discharge the Buyer's Mortgage from title to the Property and re-convey title to the Property to the Seller free and clear of all encumbrances (other than Permitted Encumbrances).

6.7 Save and except for the Permitted Encumbrances (and any encumbrances to be discharged by Seller after closing), Buyer shall be entitled to vacant possession of the Property on the Closing Date.

**7. Right of Entry, Inspection, etc.**

7.1 From and after the date of this Agreement, Seller authorizes Buyer to conduct any due diligence, surveys, tests, inspections and investigations which Buyer may desire to carry out and conduct in respect of the Property including, without limitation, tests, inspections and investigations relating to environmental matters and condition, soils, zoning and permitted uses, development permit matters, title matters, state of repair, elevations, contours and grades, and taxes and other similar items in respect of the Property.

7.2 All due diligence, surveys, tests, inspections and any other investigations which Buyer may carry out in respect of the Property or this transaction shall be at the sole expense and liability of Buyer. Buyer will promptly repair any damage to the Property caused by such due diligence or other investigations and will indemnify and save Seller harmless from any loss, claim, damage, liability of any nature of kind arising from Buyer's investigation.

7.3 Buyer shall, upon its receipt, deliver to Seller a true and complete copy of its environmental assessment and/or soil condition report(s) for the Property and any governmental or municipal searches regarding the Property.

## **8. Representations and Warranties etc.**

8.1 Seller hereby represents and warrants to and covenants and agrees with Buyer as follows and acknowledges and agrees that Buyer is relying upon such representations and warranties, covenants and agreements in connection with its possible purchase of the Property pursuant hereto:

(a) Seller is now, and on the Closing Date will be, the legal, registered and beneficial owner of the Property by good and marketable title thereto and on the Closing Date, the Property will be free and clear of all financial encumbrances (or the Seller will cause such encumbrances to be discharged from title after the Closing Date in accordance with section 6.2), other than the Permitted Encumbrances.

(b) Seller has full power, right and authority to enter into this Agreement and to complete the transactions required and contemplated hereby.

(c) Seller is, and on the Closing Date will be, resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada) and on the date Seller shall deliver to Buyer's solicitors a certificate confirming the same.

(d) Seller has not retained the services of, nor incurred any expenses in relation to, any real estate agent or broker with respect to this Agreement or the purchase and sale of the Property.

8.2 Seller covenants and agrees that all representations and warranties set forth in this Agreement including, without limitation, those set forth in Section 8.1, shall be true and correct as of the date hereof, and that all such representations and warranties and all covenants, agreements and obligations of Seller hereunder shall not be discharged by nor merged in the closing of the transactions required

and contemplated herein but shall survive such closing and, notwithstanding such closing, shall remain in full force and effect of the benefit of Buyer for a period of 12 months after the date hereof.

8.3 The Buyer acknowledges that Buyer is purchasing the Property in an "as is, where is" condition and that Seller has not made any representations, warranties, covenants or agreements with respect to the condition of the Property, the suitability of the Property for Buyer's intended use or any use whatsoever, and in particular without limiting the generality of the foregoing, as to the environmental condition of the Property. The Buyer further acknowledges that it is Buyer's responsibility to satisfy itself with respect to the environmental condition of the Property. The Seller has provided, or will provide, to Buyer copies of Seller's environmental reports, tests and investigations in respect of the Property (the "Existing Environmental Information") for Buyer's information only and Buyer acknowledges that Buyer is responsible to satisfy itself as to the contents of the Existing Environmental Information and to perform such investigations of the Property as Buyer considers appropriate in order to satisfy itself as to the environmental condition of the Property. If Buyer provides notice of the satisfaction, waiver or removal of the Condition, Buyer shall be deemed conclusively to be satisfied with, and to have fully accepted, the Property and the environmental condition of the Property. Any remediation of the Property that may be required following the Closing Date or at any time in the future because of the presence of Contaminants in, on or under the Property, including its soils and groundwater, shall be performed by Buyer, at Buyer's expense, and Seller shall have no responsibility whatsoever therefor.

8.4 The Buyer hereby, effective on the Closing Date, assumes and shall be responsible for and releases Seller and its officers, directors, employees and agents from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs and expenses whether occurring or caused before, on or after the Closing Date which Buyer or any other person has or may have by reason of any cause, matter or thing whatsoever arising out of or in any way related to environmental liability with respect to on in connection with the Property or disclosed in the Existing Environmental Information, including without limitation the presence of Contaminants in, on, under or migrating from the Property, and Buyer shall indemnify and save harmless Seller and its officers, directors, employees and agents from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs and expenses whether occurring or caused before, on or after the Closing Date which Seller or its officers, directors, employees or agents may suffer, incur, be subject to or liable for as a result of any claim brought against any one or more of them by Buyer or any other person for any cause, matter or thing whatsoever arising out of or related to environmental

liability with respect to or in connection with the Property, including without limitation the presence of Contaminants in, on, under or migrating from the Property or disclosed in the Existing Environmental Information.

8.5 Buyer acknowledges and agrees that:

- (a) there is no representation, warranty, collateral agreement or condition, whether direct or collateral, express or implied, which induced Buyer to enter into this Agreement or on which reliance is placed by Buyer other than as expressed herein;
- (b) any information relating to the Property which has been or may be obtained from Seller has been prepared solely for the convenience of Buyer and is not warranted to be accurate or complete and does not form part of the terms of this Agreement; and
- (c) Buyer has received from Seller certain architectural drawings and a CAD disk that relate to the Property ("Drawings"). The Drawings have been provided to Buyer for Buyer's information and convenience only, and Seller does not represent or warrant that the Drawings are in any way final as built drawings. Buyer shall indemnify and save Seller harmless from all costs, suits, actions, causes of action, liabilities or claims that may result from or arise in connection with Buyer's reliance on the Drawings for any purpose;
- (d) if Buyer does not complete the purchase of the Property for any reason, then Buyer will forthwith return all information relating to the Property provided by Seller to Buyer, including without limitation the Existing Environmental Information and the Drawings.

## **9. Miscellaneous**

9.1 All payments to be made by Buyer hereunder shall be made in Canadian funds by certified cheque, bank draft or certified solicitors cheque. Buyer's solicitors shall deliver payment to Seller's solicitors prior to 3:00 p.m. on the date payment is required to be made.

9.2 If any section, subsection, paragraph, subparagraph or other provision hereof shall be judged invalid or unenforceable, the same shall not affect the validity or enforceability of any other section, subsection, paragraph, subparagraph or provision of this Agreement or constitute any cause of action in favour of either party as against the other.

9.3 Time shall in all respects be of the essence of this Agreement.

9.4 This Agreement shall be governed by the laws of the Province of British Columbia.

9.5 Buyer shall not assign this Agreement or any rights herein to any third party without the prior written consent of Seller, which consent may be arbitrarily withheld.

9.6 All notices, documents, instruments or monies required or contemplated by the terms hereof to be provided by either party to the other shall be sufficiently given if personally delivered to the parties at their respective addresses as set forth at the beginning of this Agreement. All such notices, documents, instruments and monies shall have been deemed to have been delivered and received at the time when the party to whom the same is addressed is in actual receipt thereof by personal delivery as aforesaid.

9.7 Seller acknowledges and agrees to pay commissions payable to Seller's real estate agents, including Colliers International, in connection with this transaction.

9.8 Buyer will pay all costs in connection with the completion of this transaction, including applicable Goods and Services Tax, Social Service Tax and Property Transfer Tax, but not the costs of Seller incurred to clear title to the Property.

9.9 This Agreement shall supersede all previous negotiations, communications and agreements between the parties hereto in respect to the Property and contains the whole of the agreement the parties. There are no agreements, representations or warranties save as herein set out expressly incorporated by reference.

9.10 This Agreement may be executed in one or more counterparts and delivered by telecopier with the same effect as if the Parties had concurrently signed and delivered the same original copy of this Agreement.

9.11 This Agreement will have no force and effect unless the Parties sign and exchange the Agreement by 6:00 p.m. (Vancouver time) on \_\_\_\_\_, 20\_\_ and the Purchaser pays the First Deposit as required by Section 4.1.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties as of the date and year on page one.

SELLER:

\_\_\_\_\_

Per:

\_\_\_\_\_

Authorized Signatory

BUYER:

\_\_\_\_\_

Per:

\_\_\_\_\_

Authorized Signatory





