

CONTINUING LEGAL EDUCATION
BUYING AND SELLING COMMERCIAL PROPERTY
DRAFTING AGREEMENTS OF PURCHASE AND SALE
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Introduction

The focus of my presentation relates to an income type of commercial property. The attached agreement of purchase and sale is a "collection" of clauses which resembles a working agreement of purchase and sale for a commercial property. The reader should keep in mind, however, that the attached draft agreement is simply a collection and is not specific to a particular asset being purchased or sold.

Preliminary Considerations

Although the basic elements of an agreement of purchase and sale are generally the same for many kinds of assets, obviously the clauses should be specifically tailored to your client's individual needs. Considerations relating to the purchase of a vacant piece of land would be considerably different than purchasing an existing shoe repair store. My presentation attempts to identify the key elements of consideration in drafting the agreement. I intend to cover in a broad sense matters relating to the form of the agreement, purchase price considerations and adjustments, representations, warranties, conditions, and covenants. My draft agreement covers

preclosing deliveries and closing documentation. These topics together with the closing mechanics, requisitions, searches and other related matters will be dealt with by a separate paper done by another speaker in today's presentation.

1. Purchase Price and Adjustments

(a) Price

The price is normally a fixed amount in the first instance. Commercial transactions often have a price based upon square footage of building or land, ability to rezone the property to commercial use from residential, availability of redevelopment, etc. Often times the price is adjusted based upon changes in that regard. The purchase of a building is often subject, as an example, to a finalization of the size of the building as determined by survey with a square footage price adjustment based upon the difference in the actual size of the building from that referred to in the agreement.

(b) Deposits

The agreement should specifically identify which party is to hold the deposit, under what conditions the deposit is to be returned to the purchaser or delivered to the vendor, and of

particular note, where the interest is to go in the event the agreement is terminated by default of either the purchaser or the vendor. I have had occasion where deposits which are often minimal in the first instance, have been increased to substantial sums of money during the term of the agreement before the closing date. I also prefer to ensure that the agreement indicates in which financial institution this deposit money is to be held. If the lawyer holds the deposit and there is a problem with the financial institution, then the lawyer still has a responsibility to produce the deposit monies on closing.

(c) Allocations of Purchase Price

For income tax purposes, it is advisable for the vendor and purchaser to agree among themselves as to the allocation of the purchase price between land, building, chattels and goodwill. This will affect the respective capital cost allowances and can have significant tax advantages or disadvantages. Revenue Canada, under the provisions of the Income Tax Act, is not obliged to accept the allocation as set out by the vendor and purchaser if they do not consider it to be reasonable in the circumstances.

(d) Adjustments

The obvious normal adjustment clause should be inserted in the agreement relating to realty taxes, utilities, rents, etc. Special consideration should be given to other types of adjustments such as rental arrears, prepaid rent, in particular percentage rent, prepayments toward common area fees, prepaid service contracts, etc.

A readjustment clause is normally inserted to allow some of these matters to be recalculated following the closing date, usually on the basis of audited financial statements or third party reviews or investigations. There is normally a fixed time period to allow the adjustments to take place, such as 45 days.

(e) Residential Security Deposits

I cannot overemphasize the importance of separate adjustments and deliveries for security deposits of residential tenants. Security deposits are required to be held in trust under the Residential Tenancies Act. A vendor therefore is under a fiduciary duty to deliver the trust funds to the purchaser by way of separate cheque. It is inappropriate and potentially dangerous to the parties and the lawyers to adjust on closing for

security deposits as against the purchase price. Is important as well for a solicitor to a purchaser to advise the purchaser that security deposits are to be held in a separate trust account and not intermingled with the purchaser's other financial matters.

2. Representations and Warranties

A representation is an express or implied statement as to certain facts which are pertinent to the agreement and which were influential in causing the parties to enter into the agreement. A warranty is a form of representation made as part of the contract with respect to its character, quality or title to property and by which the vendor promises to ensure that certain facts are or shall be as represented. A breach of a representation or warranty results in damages but does not in itself give rise to the right to terminate the agreement. To avoid the potential for merger of the representations and warranties on closing, you should insert a survival clause which indicates that the representations and warranties will survive through the closing and continue in full force and effect for purposes of being fully performed.

Vendors will attempt to minimize their representations or warranties by inserting certain words such as "reasonably" or "materially" or "to the best of the vendor's knowledge and

belief". Purchasers, on the other hand, are more concerned about the continuation of the representations and warranties. I caution against using words such as "the vendor shall use his best efforts...". There is a very real concern that the reference to best efforts can imply utilization of all his resources if in fact that is necessary to accommodate the task.

3. Conditions

A true condition precedent prevents the formation of a contract until it is satisfied and normally cannot be waived unilaterally by only one party. This is because the contract technically does not exist if the condition precedent is still unsatisfied. It is common to insert in the agreement a statement that certain conditions are for the benefit of either the purchaser or the vendor and that they have the right to waive those conditions. This is done so that a condition which is obviously for the benefit of the purchaser and which is not capable of being satisfied can in fact be waived by the purchaser without the consent of the vendor. It is not the question of how to terminate the agreement, but may be of significance to either party in the event they wish the agreement to proceed even though a condition is not met.

Because certain representations and warranties can in fact be conditions in the mind of the purchaser, there may be inserted a clause in the condition section of the agreement that states that the representations and warranties are considered to be conditions of the agreement.

4. Delivery and Inspections

Do not make the mistake of drafting an agreement of purchase and sale without totally understanding what items are included in the assets to be sold. It is obviously embarrassing if not more serious to find that after the agreement of purchase and sale has been signed, the specifics or peculiar aspects of the assets being purchased have not been clearly understood by the purchaser's solicitor and the solicitor has not provided for the ability to do proper inspections or deliveries of items which are of concern to the purchaser. A purchaser does not have a right to inspect the property, nor does he have the right to review books of account, contracts, etc. unless it is specifically referred to in the agreement. There is conversely no requirement that a vendor produce these so-called property documents unless there is a provision in the agreement to that effect. Indeed vendors may be reluctant to produce certain documents for the following reasons:

1. Cost to reproduce;
2. Time and inconvenience to reproduce;
3. Confidentiality;
4. To avoid triggering any governmental audits or reviews, such as from a building inspection department.

The agreement should require the vendor to deliver to the purchaser certain items such as as-built architectural plans, books of account, leases, permits, list of chattels and other financial information. Normally there is an inspection period during which time the purchaser can do his own review. The purchaser then following the review can elect to terminate the agreement if matters are of a conditional nature, require matters to be corrected if they are representations and warranties or may waive problems. You will find that commercial agreements are really a two-stage process. The first stage identifies the assets, outlines the representations and warranties and provides the conditions. The second stage normally is triggered following the inspection and delivery of these documents. It is at this point in time that the purchaser really has a clear understanding of the condition of the asset he is preparing to purchase. It is often at this stage that the agreement is either aborted or continues in its current form, or thirdly, and which often happens, it is renegotiated or readjusted on matters of price

where the inspections have revealed inconsistencies or matters which were not previously disclosed. An example would be as I referred to earlier where the square footage of a building or a piece of land is less than originally referred to in calculating the purchase price.

It is therefore extremely important that the purchaser's lawyer and the purchaser communicate during the inspection and review process to determine whether all the representations and warranties that are material to the purchaser have been met and the conditions have been satisfied.

I also recommend that a clause be inserted in the agreement which would indicate that the representations and warranties still continue notwithstanding the independent reviews and inspections done by the purchaser and that these reviews and inspections do not in themselves act as a waiver or estoppel with respect to the representations and warranties made by the vendor. This is particularly so and acute when matters of title and objections to title are being made.

5. Closing Documentation

The closing documentation should include deliveries which are consistent with the representations and warranties

being made in the agreement, with the title documents being referred to in the agreement and for delivery with a price together with normal adjustments as referred to.

I want to refer specifically to a couple of items:

- (a) Estoppel Certificates - These are often difficult to obtain within short time periods, which are many times the case in commercial transactions. In addition, estoppel certificates are often obtained from national tenants who are out of the province. You should provide a mechanism for readjustment in the event they are not obtained and specific statutory declarations of officers of the vendor as to compliance and that there are no outstanding matters in relation to the estoppel certificate.
- (b) Vendor's Solicitor's Legal Opinion - This is often a topic which results in considerable discussion between the lawyers. You should have arranged prior to the closing for the content of the solicitor's opinion you wish. It basically should cover the corporate capacity of the vendor which should be in the knowledge of the vendor's

solicitor. It should also indicate that the delivery items have been duly authorized and are enforceable in accordance with their terms. This simply means that there are remedies available to the purchaser in the event there is default by the vendor. Solicitor's opinions can be somewhat voluminous and should be carefully considered by both parties prior to closing.

- (c) Mortgage Assumption - Many times a purchaser will be assuming an existing mortgage of the vendor. The vendor will ask for a covenant that the purchaser assume that mortgage. It is becoming common for purchasers to agree to assume the mortgage but provide a provision that at such time as the purchaser should resell the property, then his obligation as it relates to the vendor to assume the mortgage would cease. In essence, if the property is sold two or three times over and then should go in default, the current purchaser does not want to be obliged to the current vendor for payment of that mortgage when the current purchaser no longer has an interest in the property.

I want to specifically touch on three other important points to consider in agreements.

- (a) Insurance - We tend to be familiar with standard real estate agreements where there are provisions for insurance inserted in the document. It is often forgotten however that once an agreement of purchase and sale is entered into, the vendor is not obliged, as it relates to the purchaser, to insure the property. The purchaser takes on the risk in the event the property is destroyed by fire and it is in the interest of the purchaser to shift that risk back to the vendor by inserting a provision requiring the vendor to insure the property during the term of the agreement. It is recommended that the purchaser's solicitor not only insert such a provision but require the copy of the insurance policy be delivered and be reviewed as a condition of the agreement. I go further and often suggest that since it is probable that the purchaser will close within a short period of time, the purchaser should take out his own insurance early. This may be an abundance of caution, however, it should be recognized that the purchaser does have an

insurable interest and should protect himself in the event of destruction. It is also remembered that in the event the project is destroyed by fire, it is cold comfort to a purchaser to be able to terminate the agreement and to have lost all his efforts and financial costs in doing the reviews during the term of the agreement.

(b) Environmental Clauses - This is a timely topic and was referred to in the morning presentation. Environmental clauses inserted in agreements are driven by the following considerations:

1. Compliance under the Environmental Protection Act of Nova Scotia, the Environmental Assessment Act of Nova Scotia and the Canadian Environmental Protection Act can impose significant liabilities on the owner of land for cleanup purposes of environmental hazards. These can exceed the value of the land but not necessarily exceed the resources available to the owner.

2. Because these environmental concerns can pass through to mortgage companies who take title to land, many mortgage companies place stringent

environmental conditions in their mortgage commitments which purchasers must satisfy. A purchaser should ensure that his agreement of purchase and sale reflects the same environmental concerns as will be reflected in his financing commitment or he may find that he is unable to obtain financing but is still obliged to purchase the land.

3. Potential future problems respecting the use of the property can be avoided if the purchaser is aware of the past history. These may not give rise to assessments or environmental orders from government regulatory authorities but they can impact on the costs that a purchaser will incur in developing the property. We are aware, as an example, that slate in Nova Scotia when exposed to water and air can leach a form of acid and oil mixture which is environmentally hazardous. The existence of such a product on the land if known to the purchaser can be taken into consideration when he is doing his cost analysis of the feasibility of the project. He may not be aware of its existence without specific clauses on environmental matters to bring it to his attention

or unless he has an opportunity to inspect the site and to be able to make objections if its presence is found.

- (c) GST - Many agreements of purchase and sale currently executed do not refer to or make provision for the effects of GST on the transaction.

From a vendor's point of view the objective should be to ensure that he has not misrepresented the GST status of the property by using a clause that the purchaser acknowledges that the property is not GST exempt under Schedule V of the GST provisions of the Excise Tax Act and that GST will be added to the purchase price of the property on closing. This is particularly so where a purchaser may be purchasing a vacant building under the belief it has been a used residential property only to find that on the closing it is in fact a commercial property which would not be exempt and which would attach GST.

From the purchaser's point of view if the understanding is that the property is GST exempt,

such as a used residential complex, then having such an assurance from the vendor in the agreement of purchase and sale is desirable.

Where the purchaser is a registrant, it will likely be advantageous for him to file a special return with respect to the GST and, provided the property purchased is to be used exclusively in the commercial activities of the purchaser, the tax otherwise payable on the transaction will be set off as an Input Tax Credit against the GST otherwise payable on the return.

The Act provides that a purchaser is liable to pay GST on property that is not exempt. However, the Act also indicates that, except under certain circumstances, the vendor is responsible to collect the tax from the purchaser and to make the remittance. In essence, if this is not done the vendor may become liable to Revenue Canada and the vendor may have the remedy of looking to the purchaser for recovery on the assumption the purchaser has financial resources to respond.

One of the exceptions to the rule requiring the vendor to collect the tax is where the purchaser is a registrant under the Act, and the property is not a residential complex being sold to an individual. Under these circumstances, the purchaser will likely want to self-remit as described above. Since there does not appear to be a requirement that the vendor allow the purchaser to self-remit, the purchaser may want to include a clause where the purchaser warrants that it will be a GST registrant on closing and that it will file the appropriate return with Revenue Canada and the vendor will not require the purchaser to add the GST payable to the purchase price on the property on closing. Such a provision should only be done however where it is accepted as a risk of business that the vendor is relying upon the purchaser to make the remittance. The vendor in such a situation will also want assurances that the purchaser is in fact or will be a registrant on the date of closing.

It should be kept in mind that any assurance of the purchaser that it is or will be a registrant at the date of closing does not have

the same effect as a certificate under Section 194 of the Act. Such assurances do not have the effect of absolving the vendor of his responsibility to collect the tax if, in fact, the purchaser is not a registrant on closing. The acceptance of an inaccurate certificate as to the registration status of the purchaser by the vendor still leaves the vendor in the unenviable position of paying the tax, and taking recourse against the purchaser.

I point out however and notwithstanding what I have indicated above, the Act is unclear as to the responsibility of the vendor who insists on collecting GST even if the purchaser is a GST registrant. As I have indicated, a vendor may be assuming some risk by allowing the purchaser to self-remit, and if the vendor is also a registrant it will specifically be to the vendor's advantage to collect GST at the time of closing and to use the GST so collected for the purpose of funding any GST arising upon purchases made by the vendor in the ordinary course of business.

On balance, it is my view that a vendor may insist on collecting the tax at the time of closing unless the parties have agreed to the contrary. Accordingly, if the purchaser is a registrant and places importance on being able to self remit, the issue should be explicitly addressed in the agreement of purchase and sale.

PJM/ed
AUGUST1
PJM05743

SAMPLE AGREEMENT

THIS AGREEMENT made as of the _____ day of
_____, 19____

BETWEEN:

PARTY OF THE FIRST PART

- and -

PARTY OF THE SECOND PART

WITNESSETH that in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto respectively covenant and agree each with the other as hereinafter set forth.

ARTICLE 1 - DEFINITIONS

1.01 In this Agreement, unless there is something in the subject matter or text inconsistent therewith:

- (a) "Assets" means collectively the Building, Chattels, Goodwill, Real Property and Leases;
- (b) "Authority" shall mean any or all federal, provincial or municipal governments or agencies which have the responsibility of providing approvals, permits, licenses or similar matters relating to the operation, use and conduct of the Project;
- (c) "Buildings" means the buildings, structures, fixtures and other facilities and improvements (including the parking areas) located in, on and upon the lands and premises comprising the Real Property;
- (d) "Chattels" collectively means any and all equipment owned by the Vendor and located on the Project, more particularly described in Schedule "C";
- (e) "Closing" means the closing of the purchase and sale transaction contemplated by this Agreement on the Closing Date;

- (f) "Closing Date" means 11:00 a.m. on _____, or such other earlier time and place as the parties may in writing agree;
- (g) "Contemplated Use" shall mean the use of the project as a mixed residential/commercial/retail shopping complex;
- (h) "Second Mortgage" means a mortgage to be arranged by the Purchaser with a recognized lending institution in the principal amount of \$_____;
- (i) "Goodwill" means the goodwill of the Vendor together with the client list of the Vendor as it relates to the contemplated use conducted by the Vendor, together with assets of the Vendor relating to the legal business, including the business name "_____" or any derivative thereof hereto and any licenses relating thereto;
- (j) "First Mortgage" means a mortgage in favour of Royal Trust Corporation of Canada which mortgage has a balance to be outstanding on the Closing Date not to exceed \$_____. The said mortgage to bear interest at the rate of _____% per annum, to be payable by monthly installments of principal and interest of \$_____ each and matures on the _____ day of _____, 19____;
- (k) "Third Mortgage" means a mortgage to be granted by the Vendor to the Purchaser on Closing in the principal amount of \$_____ which mortgage shall have an amortization period of _____ years, shall bear interest at the rate of _____% per annum calculated half-yearly, not in advance, and shall provide for blended monthly payments of principal and interest of \$_____ each. The Third Mortgage will be open and may be prepaid in whole or in part at any time or times without notice or bonus of interest in lieu of notice. It shall be drawn on a "non-recourse" basis so that the mortgagee's remedies will be against the assets only;
- (l) "Inspection Period" shall mean those time periods referred to in Article 4 herein;

- (m) "Leases" means the leases referred to in the Lease Summary in Schedule "B" annexed hereto;
- (n) "Project" means the Buildings and Real Property;
- (o) "Property Documentation" shall mean such documentation as referred to in paragraph 4.01 herein;
- (p) "Purchaser" means the Party hereto of the Second Part and its successors and assigns or its nominee;
- (q) "Purchase Price" means the sum of \$_____ in lawful money of Canada;
- (r) "Real Property" means the lands and premises including the Buildings, more particularly described in Schedule "A";
- (s) "Vendor" means the Party hereto of the First Part and its successors and assigns.

ARTICLE 2 - AGREEMENT OF PURCHASE AND SALE - PRICE AND PAYMENT

2.01 Subject to the warranties, representations, terms and conditions set out in this Agreement, the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Assets.

2.02 The Purchase Price shall be payable by the Purchaser to the Vendor as follows:

- (a) A deposit of \$_____ shall be paid by certified cheque or bank draft to the Purchaser's Solicitors on the execution of this Agreement which deposit shall be deposited by such solicitors in trust in a Daily Interest Savings Account of a chartered bank, trust company or other recognized financial institution to be disbursed as follows:
 - (1) If the Closing takes place, the deposit shall be paid to the Vendor on the Closing Date and the deposit shall be credited against the Purchase Price;
 - (2) If the Closing does not take place through the Vendor's default after being obligated to close pursuant to the provisions hereof, or

through the non-fulfillment or non-performance of any of the conditions precedent herein, the deposit shall be refunded to the Purchaser;

- (3) If the Closing does not take place through the Purchaser's default after being obligated to close pursuant to the provisions hereof, such deposit shall be forfeited to the Vendor.

Interest earned on such deposit shall be paid to the party entitled to receive the principal amount pursuant to the provisions of this Paragraph 2.02(a), PROVIDED that if the interest is paid to the Vendor pursuant to Paragraph 2.02(a)(1) the Purchaser will be credited with the amount of such interest against the Purchase Price.

- (b) Assumption of the First Mortgage by the Purchaser.

- (c) Delivery by the Purchaser to the Vendor of the Third Mortgage.

- (d) The balance of the Purchase Price shall be paid to the Vendor by the Purchaser at the Closing by cash or certified cheque.

2.03 Security Deposits

Any security deposits or interest accruing thereunder with respect to any of the leases of residential tenants shall not form a part of the Purchase Price but shall be delivered by the Vendor to the Purchaser on Closing.

2.04 Allocations

The Vendor and Purchaser agree that the Purchase Price has been reasonably apportioned as between the Lands, Buildings, Chattels and Goodwill as follows:

<u>Lands</u>	\$
<u>Buildings</u>	\$
<u>Chattels</u>	\$
<u>Goodwill</u>	\$
<u>Total</u>	\$

The Vendor covenants and agrees with the Purchaser to allocate the Purchase Price in accordance with the provisions of this paragraph and as of and from the Closing Date to cause its books and records of account and all governmental returns, representations and any other submission to any Authority to represent and reflect the fact and accuracy of such allocation.

2.05 The Purchase Price shall include all property, whether real or personal, and all rights and other assets or things used by the Vendor in connection with the operation and rental of the Project including, without restricting the generality of the foregoing:

- (a) All right, title and interest of the Vendor in the name or names commonly used for or in connection with the Project;
- (b) All building, development or occupancy permits or similar documents relating to the Project and all books of account, records and documents relating to the establishment, operation, rents and management of the Project as well as the original plans and architectural drawings and specifications of the Building;
- (c) All of the right, title and interest of the Vendor in the Leases, together with all rental including percentage rental excepting unbilled tenant recoveries or rent in arrears for no more than one month at the Closing Date;
- (d) The Assets and also any fixtures, office equipment, furnishings, machinery, inventory, supplies, maintenance and repair equipment and all other equipment situate on or useable or in use in the maintenance and operation of the Project.

2.06 Normal Adjustment

Fuel, taxes, rates and assessments, rents, electrical charges, insurance, water and other rates and all proper and necessary adjustments, shall be made as of the Closing Date. Municipal improvements, betterment charges and capital charges for utility or municipal services completed as of the date of this Agreement whether billed or not are to be paid by the Vendor on or before the Closing Date.

2.07 Arrears Respecting Tenancies

No adjustment shall be made with respect of any claim of the Vendor for any arrears respecting tenancies arising by virtue of the Leases or otherwise as of the Closing Date. Notwithstanding the foregoing, the Vendor reserves the right to collect from such tenants the amount of all rents which may be in arrears as of the Closing Date.

2.08 Re-Adjustments

The parties hereby acknowledge that due to the nature of the sale of the Real Property and the Leases not all adjustments will be capable of being determined as aforesaid. The parties hereby agree to make all necessary readjustments with respect to the Real Property and the Leases as soon as is reasonably practical, and in any event such readjustments shall be made within forty-five (45) days of the Closing Date.

2.09 Recoveries

The transaction contemplated by this Agreement shall be completed on the Closing Date from and after which date the Purchaser shall be entitled to receive all rents and profits and shall bear all expenses pertaining to the Project. Current rents, prepaid rents or security deposits, if any, realty taxes, rent under the Leases, water, hydro, fuel and other utilities, Tenants' recoveries for taxes, maintenance and common operating expenses under the Leases, Tenants' allowances, if any, and payments under service contracts with the Vendor as a party thereto shall be adjusted on the Closing Date in accordance with the usual practice and intention of the parties expressed in this paragraph. Rent arrears shall not be adjusted but the Vendor shall be entitled to pursue and collect all rent arrears at its expense. The Purchaser agrees to co-operate with the Vendor in connection with the collection of rent arrears and to pay to the Vendor any amount on account of rent arrears which it receives after the Closing Date. The parties agree to co-operate each with the other in respect of the collection of the Tenants' contributions for maintenance and common operating expenses for the calendar year 1992. The Vendor shall provide the Purchaser detailed information as to the determination of the sums recoverable from the Tenants for maintenance and common operating expenses incurred in 1992 calendar year in operating and maintaining the Project and the amount thereof billed and recovered from the Tenants. The Purchaser shall use its best efforts to collect such amounts due from Tenants so soon after the 1992 calendar year as may be practicable and to remit to the Vendor that portion due to the Vendor in respect of the period prior to the Closing Date, if any. The parties shall adjust

after the Closing Date, if necessary, forthwith upon receipt of a written request, for all adjustments required to be made pursuant hereto.

2.10 Re-Calculation

The parties agree that the Purchase Price is based upon the Real Property having an area of 10 acres and in the event that the area of the Real Property is more or less than 10 acres, the Purchase Price shall be adjusted by the amount obtained when Five Thousand Dollars (\$5,000.00) is multiplied by the area of the Real Property in acres in accordance with a certificate of a Nova Scotia Surveyor obtained by the Vendor at its expense and delivered to the Purchaser on or before five (5) days prior to the Closing Date.

2.11 Salaries

The Vendor acknowledges that it will be responsible for all salaries due its employees including Worker's Compensation payments and any payments required under the Labour Standards Code to and including the day falling immediately before the Closing Date.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.01 The Vendor warrants and represents to the Purchaser as follows:

(a) Corporate Capacity

The Vendor is now, and at the time of the Closing will be, properly incorporated, validly existing and in good standing under the laws of the Province of Nova Scotia and all of the Assets are now and will at the time of Closing be owned by the Vendor as beneficial owner thereof, free of all liens, charges and encumbrances whatsoever and the Vendor has and will at the time of Closing have full power and authority to convey, sell, assign and transfer the Assets to the Purchaser and further that the transactions contemplated hereunder have been duly authorized and this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the Vendor enforceable in accordance with its terms;

(b) Easements

There are no easements or burdens affecting the Real Property other than routine public utility easements and no restrictive covenants or other restrictions or limitations on the use of the Real Property and any such easements, burdens, restrictions or limitations have been complied with to date and do not interfere with the normal business operations of the Real Property;

(c) Access

There is free access to and access from the Property for loading and all other purposes to a public highway;

(d) Historical Designation

No portion of the Project has been designated as a historic site by an Authority having jurisdiction and no building on the Real Property shall have been designated by any such body as being of sufficient historical interest that a demolition permit is not available for such building;

(e) Lease Validity

Each of the Leases is now, and at the time of the Closing will be, a good, valid and subsisting lease enforceable in accordance with its terms and at the time of the Closing, each of the Leases will be in full force and effect and unamended and neither the landlord nor the tenant under any such Lease shall be in default, under any provision thereof;

(f) New Leases

After the date of execution of this Agreement until the time of the Closing, the Vendor will not execute or enter into any lease or other agreements pertaining to the use and occupancy of the Project, or any part thereof, without first notifying the Purchaser in writing;

(g) Lease Summary and Statements of Fact

The Lease Summary referred to herein and shown on the attached Schedule "B" and the statements of

fact contained are now, and at the time of the Closing will be, accurate and complete and the Leases are now, and at the time of the Closing will be, in good standing and the Vendor knows of no other factors, whether similar or dissimilar, which would affect the evaluation of the Real Property by the Purchaser;

(h) Notification and Sublease

No notice has been received by the Vendor from any Tenant indicating an intention to assign or sublet or indicating an intention to surrender the term or otherwise part with possession of the portion of the Building demised to it. No Tenant is or shall be entitled to any concession, rebate, allowance or rent-free period with respect to the occupancy of its premises other than as stipulated in its lease. The Tenants identified in the Lease Schedule are in possession and occupying their premises at the Building and paying full rent as required under the Leases and save for the current month's rent no rent has been prepaid or security deposited with the Vendor as landlord by any Tenant which is not disclosed in the Tenant Schedule. Any partitioning or leasehold improvements required to be completed and fully paid for, save as disclosed in the Lease Schedule. No Tenant or any other person has any right of first refusal, right of first opportunity, or option or similar right to purchase the Assets or any interest therein. The information set out in the Lease Schedule is true, complete and correct as at the date thereof and accurately reflects all material information relating to the Leases;

(i) Tenant Disputes

There are no disputes between the Vendor as landlord and any Tenant of the Property nor has the Vendor received any complaint from a Tenant relating to the state of repair of the Property or its leasehold premises, the payment of rent, the calculation of or payment for taxes or common operating expenses or any other matter relating to the provisions of the Tenant's lease [other than as set out in Schedule "B" hereto];

(j) Rental

The rents set forth in the Lease Schedule have been established in accordance with the provision of the Rent Review Act, as amended, and the Residential Tenancies Act, as amended;

(k) Rent Review

There are no proceedings or applications outstanding under the Rent Review Act, as amended, and the Residential Tenancies Act, as amended, other than those disclosed to the Purchaser at the time of execution of this Agreement;

(l) Residential Leases

There are no residential leases in existence for a term in excess of one (1) year;

(m) Existing Uses

The existing uses and business of the Tenants on the Property are not in violation of any requirement of an Authority having jurisdiction over the Real Property;

(n) Lease Amendment

The Vendor will continuously and promptly deliver a copy of all leases, offers to lease and other contracts affecting the Project as are from time to time proposed to be executed and all correspondence relating thereto, and the Vendor shall not enter into, amend or renew any lease or offer to lease or other contract affecting the Real Property without first obtaining the approval of the Purchaser, which approval may be unreasonably withheld;

(o) Tenant Default

The Vendor shall keep the Purchaser advised in the event that any of the Tenants default under any provision of their respective Leases between the date hereof and the Closing Date;

(p) Residency

The Vendor is not now, nor at the time of the Closing will it be, a non-resident person within the meaning of the Income Tax Act (Canada);

(q) Financial

All financial information disclosed or to be disclosed by the Vendor to the Purchaser prior to the Closing is true and correct;

(r) Property Document Accuracy

The Property Documents delivered or made available by the Vendor hereunder fairly and correctly disclose in all material respects the financial aspects of the Project and all materials financial transactions of the Vendor relating to the Project have been accurately recorded in such books and records;

(s) Insurance

The Vendor has the Buildings and Chattels insured against loss or damage for all insurable hazards or risks to the replacement cost thereof and carries liability insurance to reasonable limits and all such insurance coverage will be continued in full force and effect until the time of the Closing and further maintains, and is in good standing in respect of fire, boiler, public liability, property damage and rental insurance covering the Real Property, which insurance in respect of loss or damage to the Building is in an amount at least equal to the replacement value thereof;

(t) Notice of Construction Defect

If the Vendor shall receive a notice (a "Notice") advising of any defects in the construction, state of repair or state of completion of the Building or ordering or directing that any alteration, repair, improvement or other work be done or relating to non-compliance with any building permit, building or land use by-law, ordinance or regulation following the date hereof from a Tenant or Authority, it shall be complied with prior to Closing by and at the Vendor's expense to the

satisfaction of the Tenant or Authority, as the case may be, who gave the Notice;

(u) Indemnities

After the Closing Date, the Vendor will fully indemnify and save harmless the Purchaser from all suits, hindrances, actions or other legal proceedings arising with respect to events occurring prior to the Closing Date which in any way affect the Assets;

(v) Legal Proceedings

There are not now, and at the time of closing will not be, any actions, suits or proceedings (whether or not purportedly by or on behalf of the Company) pending to the knowledge of the Vendor, threatened against or affecting the Company at law or in equity or before or by any federal, provincial, state, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and which involves the possibility of any judgment or liability not fully covered by insurance and which may affect or attach the Assets;

(w) Restraining Orders

No orders, requests, demands or other communications have been received by the Vendor or by anyone on behalf of the Vendor, requiring any changes, modifications or alterations to the Real Project or the water, electric or other utilities presently installed therein and the Project is in compliance with all applicable statutes, laws, regulations, codes, by-laws ordinances and orders of all Authorities having jurisdiction;

(x) Taxes Assessments

There are not outstanding against the Real Property any present or future capital levies, sewer fees, local improvement rates, special assessments, deferred or installment charges of a capital nature or any other similar charges;

(Y) Permits and Licences

All necessary permits as may be required by any governmental body for purposes of operation of the Project as a commercial complex have been obtained and are now and at the time of the Closing will be in good standing and the Project now fully complies and at the time of the Closing will fully comply with all applicable municipal by-laws and other by-laws, laws and regulations and standards enacted by or administered by any governmental or other authority having jurisdiction;

(Z) Notice of Defect

No notice advising of any defects in the construction, state of repair or state of completion of the Building or ordering or directing that any alteration, repair, improvement or other work be done with respect thereto or relating to non-compliance with any building permit, building or land use by-law, ordinance, order or regulation, or relating to any threatened or impending condemnation has been received to date by the Vendor from any Tenant or any Authority which has not been complied with to the Tenant's or Authority's satisfaction, as the case may be;

(aa) Valid Contracts

That the Company now holds and at the closing shall hold all such contracts, licenses, permits and permissions as may be requisite for the carrying on of its business in the manner that it has heretofore been carrying on;

(bb) Normal Operations

The Vendor shall operate and manage the Project in the ordinary course, to Closing in as good, proper, efficient and competent a manner as the Project has been managed to the date of this Agreement and until the Closing the Vendor shall at its sole cost effect normal repairs and maintenance that would be made by a prudent owner of a project similar to the Project;

(cc) Contract Assumption

The Purchaser shall not be required to assume any contract entered into by the Vendor with respect to the operation, maintenance or management of the Property, including any employment contract (unless such contract can be terminated within thirty (30) days after Closing at the option of the Purchaser);

(dd) Mechanical and Electrical Systems

As of the Closing Date, to the best of the Vendor's knowledge and belief all mechanical and electrical systems of the Building are in good working order and the water, power and other utilities presently installed in, on or upon the Project are adequate for the use to which the Project is being put;

(ee) System Operations

The Building including all Systems are operating properly and in good working order and condition and in a good state of repair maintaining a standard consistent with that of a first class commercial property;

(ff) Brokers

No broker, agent or other intermediary acted for the Vendor in connection with the sale herein provided for and the Vendor agrees to indemnify and save harmless the Purchaser from and against any claims whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Vendor;

(gg) Employees

There are no employees of the Vendor at the Project;

(hh) Hazardous Waste

The Vendor does not generate, transport, treat or dispose of hazardous wastes as defined by any federal, provincial or municipal law. The Vendor has not caused or permitted, or has any knowledge

of the release or spill of any contaminant or hazardous or toxic substance on or off-site of properties, or facilities whether owned by the Vendor or owned or operated by third parties but with respect to which the Vendor is alleged to have liability;

(ii) Environmental Approval

The Vendor is not subject to any approval, consent, direction or order of any court or governmental authority, including the Ministry of the Environment and the Ministry of Labour, respecting the installation or operation of any machinery, equipment or facility, constituting the assets of the business, or any land or any structure, or activity on or in the land or structure, and the company is not aware of any circumstances which might give rise to any such order, certificate, approval, consent or direction which may affect the realty of either company or the business operated therefrom;

(jj) Environmental Uses

The Vendor has not used the Project as a landfill, waste storage or disposal site, deep-wells, tanks or other similar storage or disposal. Neither the Vendor nor any lessee, prior owner or other person has deposited or buried or otherwise disposed of waste on the Real Property. The Vendor has not received any notice that it is potentially a responsible party for a federal, provincial, municipal or local clean-up or corrective action under any environmental law, regulation or order. The Vendor has not received any written request for information in connection with any federal, provincial, municipal or local inquiries as to disposal sites or otherwise;

(kk) Environmental Notification

The Vendor has not received any notice, and does not know or have reasonable ground to know, of federal, provincial or municipal remedial or control actions or orders or statute violations, or of any investigation or evaluation as to whether any remedial action is needed to respond to a release or threatened substance into the environment or any facility or structure;

(11) Legislative Warranties

The Vendor hereby warrants that no ureaformaldehyde foam, asbestos, PCB's, radioactive materials or substances determined to be injurious to human life or health (hereinafter referred to as "Hazardous Substances") have ever been and are not present in the building, improvements or soil of the Real Property. The Purchaser further warrants that their activities on the Project, their use of the Project and the Project itself has been and are in complete compliance with the provisions of the laws, by-laws, regulations, orders in the council and other authorities of Nova Scotia or Canada with respect to the environment including and without limitation the Environmental Protection Act of Nova Scotia, the Environmental Assessment Act of Nova Scotia and the Canadian Environmental Protection Act. Prior to the Closing Date the Purchaser may at its option conduct or cause to be conducted onsite and other inspections and investigations of the Project by a qualified environmental consultant to determine the current and past use thereof and the results of all such inspections, investigations and assessments must be satisfactory to the Purchaser. The Vendor hereby agrees to indemnify the Purchaser with respect to any and all costs, expenses, damages or liabilities (including, without limitation, reasonable attorneys fees), directly or indirectly arising out of or attributable to the presence on, under or about the Project of any Hazardous Substances and such indemnity shall survive the closing of this transaction. The Vendor agrees to provide a further written warranty and indemnity to this effect on Closing.

(mm) Environmental Disclosure

The Vendors agree to disclose the presence of hazardous substances as well as the presence of potential environmental problems within five (5) banking days of acceptance of this Agreement and, if an environmental problem exists, the Purchaser may declare this Agreement null and void and the deposit shall be returned to the Purchaser without interest;

(nn) Environmental Storage

There has been no storage, disposal or treatment of solid wastes or hazardous wastes on the Property in violation of law or which would require remedial action under any applicable law. There has been no spill, discharge, leak, emission, injection, escape, dumping or release of any kind made on the Property or into the environment surrounding the Property, of any toxic or hazardous substances as defined under any law other than these releases permissible under law or allowable under applicable permits.

ARTICLE 4 - PRE-CLOSING DELIVERIES

4.01 The Vendor covenants that within five (5) days of the date of this Agreement it will deliver to the Purchaser the following Property Documents:

(a) Leases

Original or certified copies of all of the Leases, offers to lease and amendments, and any service, maintenance or other contracts affecting the Project;

(b) Statements

Unaudited statements of the operating expenses of the Project during such part of the current year, as is applicable to each Tenant, and any pro forma budgeted costs for the Project for the next fiscal year and audited statements for the past three (3) years and to include certified true copies of the common area, realty tax and operating expense recoveries, billings submitted to each Tenant for the current fiscal year of the Vendor and evidence of payment thereof by each Tenant, copies of the Vendor's estimate of operating costs and expenses for the balance of the current fiscal year and projections of the same for the next ensuing fiscal year, if such projections are available;

(c) Lease Summary

A lease summary with respect to the Real Property showing the name of each tenant or subtenant, the term of the lease or sublease and any renewal rights, the rent, any provisions for additional

rent, the current and recent arrear status of each tenant or subtenant, and any other provisions relating to each tenancy which are material in evaluating such leases and subleases;

(d) Insurance

Copies of all insurance policies affecting the Project;

(e) Survey

A current and up-to-date building survey certificate and plot plan prepared by and under the seal of a Nova Scotia Land Surveyor indicating the location of the Building erected on the Real Property, setting out the boundaries and dimensions of the Real Property, the front, rear and side year dimensions as set back, entrances and exists from the Real Property, any encroachments over the Real Property, the location of all fences on or separating the Real Property from adjacent lands, the locations of any easements, rights-of-way or other rights or restrictions which affect the Real Property together with the surveyor's certificate of acreage of the Real Property;

(f) Plans and Specifications

Any plans and specifications relating to the original construction and improvement of the Building, "as-built" drawings, and plans for leasehold or tenants improvements which are in the possession or control of the Vendor and all building, development or occupancy permits or similar documents relating to the Project and all books of account, records and documents relating to the establishment, operation, rents and management of the Project;

(g) Chattels

The manufacture, model number and serial number of all Chattels and equipment included in the Purchase Price;

(h) Mortgage Statements

A copy of a recent mortgage statement signed by the Vendor's mortgagee with respect to any existing mortgages on the Real Property showing the principal and interest outstanding on the said mortgage, payments of interest and principal required under the mortgage and the date when the balance of the principal falls due;

(i) Tax Notices

Any current realty tax assessment notices and tax bills relating to the Project;

(j) Documents

Originals of all guarantees, warranties and indemnities relating to the Project or any part thereof;

(k) Legal Description

A meets and bounds legal description of the Real Property together with any back title information respecting the Real Property in the possession of the Vendor or under the control of the Vendor.

(l) Contracts

Executed copies of all service contracts, operating agreements and management agreements;

(m) Government Approvals

Executed copies of all agreements with Authorities relating to the Property;

(n) Employees

A list of employees employed in connection with the Project together with the particulars of their employment;

(o) Miscellaneous

All correspondence relating to all of the foregoing, provided that, in the case of documents such as financial records, the originals of which

are required by the Vendor, the documents may consist of legible copies thereof.

All the foregoing shall be held by the Purchaser in escrow, but may be photocopied by it and shall be returned to the Vendor if the transaction contemplated hereby does not close.

4.02 Inspection Period

Subject to the extended inspection period referred to in paragraph 4.10 herein, the Purchaser shall have ten (10) days to examine the Property Documentation provided to it pursuant to the provisions of Paragraph 4.01 hereof. The Purchaser shall also have the right at least five (5) days prior to the Closing Date to inspect the books of account and receipts of the Vendor at the Vendor's offices in order to verify the expenses and other figures referred to herein. (The aforementioned time period shall be respectively referred to as the "Inspection Period".)

4.03 Inspections Approval

The Purchaser shall have until the expiry of the Inspection Period to approve of the Property Documents, the state of repair of the Building and the suitability of the Project for the Contemplated Use. If the Purchaser does not approve any one of the Property Documents or the state or repair of the Building or the suitability of the Project for the Contemplated Use, then the Purchaser shall so notify the Vendor in writing on or before the expiry of the Inspection Period providing details of the basis for such disapproval.

If the basis for such disapproval relates to the state of repair of the Project the Vendor shall have the right but not the obligation to elect within two (2) days next after the receipt of such notice (a) to remedy such defects on or before Closing or (b) not to remedy such defects. If the basis for the Purchaser's disapproval does not relate to the state of repair of the Property or the Vendor fails to elect or elects not to remedy such defects, this Agreement shall be at an end and the deposit, inclusive of earned interest, shall be immediately returned to the Purchaser without deduction and neither party shall have any further rights or obligations hereunder.

If, however, (i) the Vendor shall be notified in writing within the time limited in this paragraph 1 that the Purchaser approves of the Property Documents, the state of repair of the Building and the stability of the Project for the Contemplated Use or (ii) the Purchaser shall fail to give any written notice to the Vendor pursuant to this paragraph 1 within the Inspection Period or (iii) the Vendor elects to remedy the

such defects and does in fact remedy such defects on or before the Closing Date at the Vendor's sole costs and expense, then this transaction of purchase and sale shall be completed as herein provided.

4.04 Physical Inspections

The Purchaser shall have a period of up to ten (10) business days prior to the Closing Date to conduct such physical inspections of the Project by such agents, consultants or other persons as it deems necessary. If the results of such inspections are unsatisfactory to the Purchaser in its absolute and sole discretion, it may terminate this agreement by notice in writing delivered to the Vendor or its solicitors on or before the end of the period set out above. In addition to the foregoing the Purchaser shall be permitted the right of inspection of the premises one day prior to the Closing Date in order to verify that the state of the premises is consistent with the hereinbefore referred to physical inspection;

4.05 Examinations

The Vendor covenants and agrees to promptly deliver to or make available all of the Property Documentation (in its possession or under its control) for the examination of the Purchaser and its advisors and authorized representatives during the Inspection Period. The Purchaser shall be entitled to photocopy all or any part of the Property Documentation at its cost and expense.

4.06 Confidential Documents

The Purchaser, its agents, advisors and authorized representatives shall keep in strict confidence all information obtained with respect to the Assets pursuant to this Agreement until such time as the purchase and sale contemplated herein is completed. If the purchase and sale of the Assets is not completed for any reason, the Purchaser shall, upon request, promptly return to the Vendor all Property Documentation and copies thereof delivered pursuant hereto.

4.07 Access for Inspections

The Vendor agrees to allow the Purchaser and its advisors and authorized representatives full access to the Project (subject only to restrictions, if any, contained in the Leases) from time to time during business hours to carry out at the sole expense and risk of the Purchaser such reasonable tests (including soil tests and roof core samples) and inspections as the Purchaser or its advisors and authorized representatives may

deem necessary provided that such tests and inspections shall not unduly interfere with the Tenants of the Project and provided further that any damage to the Project caused by such tests and inspections shall be promptly repaired by the Purchaser at its sole cost and expense.

4.08 Authorities

The Vendor hereby authorizes and directs all municipal, provincial, federal and other authorities having jurisdiction over the Assets to provide the Purchaser with such information certificates and clearance statements relating thereto as the Purchaser may in writing request, all at the Purchaser's expense, and further upon the request of the Purchaser, shall forthwith deliver letters addressed to such Authorities as may be requested by the Purchaser or its solicitors authorizing each such Authority to release to the Purchaser such information and material presently in their files with respect to the Assets, but not to permit any further investigations unless a further inspection is a condition precedent to the release of such information and material together with advice as to any work orders, directives, action requests, memoranda or instructions presently outstanding with respect to the Property over which each such Authority has jurisdiction. The Vendor agrees to execute the aforesaid specific authorizations in pursuance of this paragraph within two (2) days of request thereof by the Purchaser.

4.09 Non-Waiver

No investigations made by or on behalf of the Purchaser at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the Vendor herein or pursuant hereto.

4.10 Title Investigation

The Purchaser shall have thirty (30) days to investigate the title of the Vendor to the Assets, and if prior to that time any valid objection to title is made in writing to the Vendor which the Vendor shall be unable to remove after making all possible efforts, and which the Purchaser will not waive, then this Agreement shall be null and void notwithstanding any intermediate acts or negotiations and the deposit herein shall be returned to the Purchaser in accordance with Article 2.02 and without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser. For purposes of this Agreement objections to title referred to herein shall be deemed to be capable of being removed by the Vendor, if they were

created by the Vendor or if they were known by the Vendor prior to the execution of this Agreement.

4.12 GST Clauses for Commercial Agreements
of Purchase and Sale

(For commercial property on which GST will be payable)

(a) "The Purchaser acknowledges that the Property is not GST exempt under Schedule V of the GST provisions of the Excise Tax Act (Canada), and that GST will be added to the purchase price of the Property on closing."

4.12 (For "used" apartment building)

(b) "The Vendor warrants that no GST will be payable by the Purchaser on the purchase of the Property, and that the Vendor will provide a GST Certificate which satisfies Section 194 of the GST provisions of the Excise Tax Act (Canada) on closing."

(c) The Vendor warrants and represents that the Property is an exempt supply of property as defined for the purposes of Part IX of the Excise Tax Act (Canada) and the purchase price is GST included.

4.12 (Mixed-use supply - i.e. "used" apartment complex + vacant land)

(d) "The Purchaser acknowledges that the Property consists of a Used Residential Complex (as defined by the Excise Tax Act (Canada), the "Act") and vacant land. The Vendor warrants that it will provide a GST Certificate which satisfies Section 194 of the GST provisions of the Act on closing with respect to the Used Residential Complex. The Purchaser acknowledges that the vacant land is not exempt from GST under Schedule V of the Act.

4.12 (Self-remittance by Purchaser)

(d) "The Purchaser warrants that it will be a GST Registrant (as defined by the GST provisions of the Excise Tax Act (Canada) - the "Act") on the date of closing, and that it will file the appropriate return with Revenue Canada to account for the GST payable on this transaction. The Vendor will not require the Purchaser to add the GST payable to the purchase price of the Property.

ARTICLE 5 - CONDITIONS

5.01 The obligation of the Purchaser to purchase the Assets shall be subject to the fulfillment at or prior to the Closing of the following conditions precedent:

(a) **Evidence of Compliance**

Each of the representations and warranties of the Vendor referred to in Paragraph 3.01 of this Agreement are true and correct as of the time of the Closing and at the Closing the Purchaser shall be furnished with such evidence as the Purchaser's Solicitors may reasonably require that such representations and warranties are true and correct;

(b) **Corporate Capacity**

The Vendor furnishing to the Purchaser on or before the Closing Date such evidence as the Purchaser's Solicitors may reasonably require that the Vendor has corporate capacity and power, which it has properly exercised, to enter into and carry out the provisions of this Agreement;

(c) **Fulfillment of Covenants**

That on or before the Closing Date the Vendor shall have observed all covenants, agreements and conditions which, under the terms of this Agreement are to be observed, fulfilled or performed by it at or prior to the Closing;

(d) **Vacant Possession**

Vacant possession, subject to tenancies, is to be given by the Vendor to the Purchaser on the Closing Date;

(e) **Insurable Risk**

The property shall be and remain at the Vendor's risk until Closing and the Vendor shall hold all fire insurance policies and the proceeds thereof in trust for the parties as their respective interests may appear pending the Closing Date. If the Project is substantially damaged on or prior to the Closing date, the Purchaser shall be

entitled within ten (10) days after being advised in writing by the Vendor of the happening of such damage but not thereafter to elect either (a) to cancel this Agreement and in such event the deposit, inclusive of accrued interest, shall be immediately returned to the Purchaser without deduction and neither party shall have any further rights or obligations hereunder; or (b) to complete this transaction as herein required. If the Purchaser elects to complete this transaction or the Project is damaged (but not substantially damaged so as to give rise to a right of termination hereunder), then the Purchaser shall be entitled to receive all of the insurance proceeds (which the Vendor shall assign and release in favour of the Purchaser upon completion of the transaction on the Closing.

(f) Property Documents

The documentation referred to in Paragraph 4.01 is delivered, and, in the discretion of the Purchaser acting reasonably, all of the Purchaser's examinations and inspections referred to in Paragraphs 4.02 and 4.03 hereof, are satisfactory to the Purchaser;

(g) Authority Compliance

The Project fully complies with all applicable municipal by-laws and other by-laws, laws and regulations and standards enacted by or administered by any governmental or other authority having jurisdiction, and the Vendor shall have delivered such certificates as may be reasonably required by the Purchaser's Solicitors evidencing the foregoing;

(h) Taxes

There are not outstanding against the Projects any present or future capital levies, sewer impost fees, local improvement rates, special assessments, deferred or installment charges of a capital nature or any other similar charges;

(i) Easement

There are no easements or burdens affecting the Real Property other than routine public utility

easements and no restrictive covenants or other restrictions or limitations on the use of the Project and any such excepted easements, burdens, restrictions or limitations have been complied with to date and do not interfere with the normal business operations of the Project;

(j) Second Mortgage

This Agreement is terminable by the Purchaser if the Purchaser is unable to arrange the Second Mortgage on or before the Closing Date. The Purchaser shall notify the Vendor on or before the Closing Date of its inability to obtain the said mortgage otherwise this condition shall be deemed to have been waived;

(k) Assumption Approval- First Mortgage

The Vendor shall have obtained, at the Vendor's expense, the consent of the Mortgagee to the assumption by the Purchaser of the First Mortgage. Notwithstanding the foregoing in order to ensure that the Purchaser will have no contingent liability if it sells or otherwise disposes of the Project, it is agreed that while it remains the owner of the Project the Purchaser will be obliged to make all payments and perform all other obligations of the Mortgagor under the existing First Mortgage being assumed hereunder, but the Vendor shall have no recourse against the Purchaser with respect to obligations under the Mortgage after the Purchaser sells or reconveys the Project;

(l) Director Approval

The Purchaser shall not have notified the Vendor on or before the expiry of the Inspection Period that it has been unable to obtain approval of this Agreement of Purchase and Sale by the Board of Directors of the Purchaser;

(m) Compliance

There shall be full compliance with the covenants, agreements, representations and warranties of the Vendor contained in this Agreement as of the Closing Date, each and every one of which is hereby deemed to be a condition;

(n) Notification

The Purchaser shall not have notified the Vendor on or before the expiry of the Inspection Period that Property Documentation or the suitability of the Project for the Contemplated Use or the state of repair of the Building do not meet with its approval, or if the Purchaser has so notified the Vendor, the Vendor shall not have elected on or before the date two (2) days next following the date of receipt of such notice to remedy those defects specified in such notice on or before the Closing Date, in accordance with Section _____ hereof;

(o) Conditional Date

The Purchaser shall have notified the Vendor on or before the expiry of the Inspection Period that it has been unable to obtain a contract for the sale of the Purchaser's property municipally known as _____ with a closing date on or before _____ and on such other terms as are satisfactory to the Purchaser;

(p) Soil Tests

The Purchaser shall not have notified the Vendor on or before the expiry of the Inspection Period that the results of the soil tests of the Property are not satisfactory to the Purchaser;

(q) Re-Zoning

The Vendor shall have obtained, at the Vendor's expense, a re-zoning of the Property to _____ use and all appeals, if any, in connection with such re-zoning shall have been disposed of;

(r) Variances

The Vendor shall have obtained, at the Vendor's expense, such minor variances as are necessary to obtain a building permit to complete the renovations on the Buildings in accordance with the plans and specifications attached hereto as Schedule "_____" and all appeals, if any, in connection with such minor variances shall have been disposed of;

(s) Permits

The Purchaser shall have obtained, at the Purchaser's expense, building permits for the construction of _____ containing not less than _____ square feet of gross floor area issued by the appropriate municipal authorities in favour of the Purchaser or its nominee.

(t) Property Purchase Condition

The Purchaser shall not have notified the Vendor on or before the expiry of the Inspection Period that it has been unable to obtain a contract for the purchase of the adjoining properties municipally known as _____ with closing dates on or before _____ and on such other terms as are satisfactory to the Purchaser;

5.02 Specific Performance

Notwithstanding any other provision of this Agreement, in the event of a default by either party then the other party shall have the right of specific performance, provided that any of the said conditions precedent may be waived in whole or in part by either party without prejudice to its right of rescission.

5.03 Benefit of Condition

The provisions of paragraph 5.01 are for the benefit of the Purchaser and may be waived by the Purchaser.

ARTICLE 6 - CLOSING DOCUMENTATION

6.01 On the Closing Date, the Vendor agrees to deliver to the Purchaser all such documentation as the Purchaser's Solicitors may reasonably require to give full force and effect to the terms of this Agreement including, without limiting the generality of the foregoing, the following:

(a) Warranty Deed

A Warranty Deed conveying the title in the Real Property to the Purchaser free and clear of all encumbrances whatsoever except as to any easements registered restrictions or covenants that do not materially affect the enjoyment of the Real Property;

(b) Assignment Lease

An assignment of all of the Leases and confirmation that the tenants have prepaid only such sums on account of rent as are referred to in each Lease;

(c) Bill of Sale

A Bill of Sale Absolute in registerable form for all chattels and assets other than Real Property being acquired hereunder;

(d) Matrimonial Property Act

A Statutory Declaration in accordance with the provisions of the Matrimonial Property Act of Nova Scotia;

(e) Good Standing Certificate

A certificate of good standing issued by the appropriate governmental regulatory authorities relating to the Vendor with respect to Workman's Compensation, Labour Standards Act, Nova Scotia Power Corporation Utility Accounts, Zoning Compliance for the municipality in which the Project is situate, satisfactory evidence from the municipality of the issuance of the appropriate building permit and occupancy permit relating to the Project;

(f) Direction of Tenant

A written direction from the Vendor to the tenants under the Leases, if requested by the Purchaser, advising such tenants as to the new owners of the Project;

(g) Statutory Declaration as to Warranties

A Statutory Declaration by an officer of the Vendor confirming that the warranties and representations contained herein are true as of the Closing Date;

(h) Resolution

A certified copy of corporate resolutions of the Vendor confirming and authorizing the sale of the Assets to the Purchaser;

(i) Residency

Confirmation that the Vendor is not a non-resident within the meaning of the provisions of the Income Tax Act (Canada);

(j) Keys

Any and all master keys pertaining to the use of the Real Property;

(k) Leases

Original Copies of all of the Leases;

(l) Undertaking

An undertaking by the Vendor to readjust any errors, omissions or changes in the Statement of Adjustments together with an undertaking to turn over to the Purchaser all rents received after the Closing which are the property of the Purchaser;

(m) Estoppel Certificate

An Estoppel Certificate signed by each tenant under the Leases acknowledging that such tenant is in occupation of its premises, confirming the lease documents pursuant to which it is occupying its premises, the state of rental accounts, that the Lease is in good standing and in full force and effect, unamended, or as the case may be, that there is no default by either the landlord or the tenant under the Lease, that all landlord's work has been satisfactorily completed, and setting out the Lease commencement date, and the square footage contained in the leased premises. In the event the Estoppel Certificates received after the date of Closing by the Purchaser, should show or disclose a difference from the matters referred to on the Schedule of Leases attached hereto as Schedule "B", or should show or disclose any matter including any disputes between the tenant and the landlord, which have not been disclosed to

the Purchaser prior to the execution of this Agreement, then the Vendor shall indemnify and save harmless the Purchaser from any losses, claims, cost either direct or indirect, damages, loss of anticipated profits or losses of any other kind, which the Purchaser may suffer as a result thereof. For purposes of this subparagraph, the Purchaser may grant extensions of time or other indulgences to the tenants without prejudice to or in any way limiting or lessening the liability of the Vendor hereunder and the Purchaser shall not be bound to exhaust its recourse against the tenants or other parties before entitled to payment or other action from the Vendor hereunder and the Vendor shall make payment to the Purchaser of the amount of the liability of the Vendor hereunder forthwith after demand is made in writing and such demand shall be deemed to have been effectively made when an envelope containing it addressed to the last address of the Vendor known to the Purchaser is deposited postage prepaid and registered in the Post Office in Canada and further this Guarantee shall extend to and enure to the benefit of the successors of the Purchaser and shall be binding upon the Vendor and its successors;

(m) Tenant Acknowledgment

The Vendor has delivered to the Purchaser acknowledgements from each Tenant in a form reasonably satisfactory to the Purchaser's solicitors confirming:

- (i) that its Lease is in good standing, unassigned and unmodified (or as the case may be);
- (ii) that there are no other agreements with respect to the Property between the Vendor and the Tenant;
- (iii) that no rent or other amounts payable under its Lease have been prepaid other than in accordance with the Lease;
- (iv) the amount of any security deposits paid;
- (v) that there is no default on the part of the landlord or other event of any kind has

occurred which would permit the Tenant to terminate the Lease or withhold payment of rent;

- (vi) that no default on the part of the Tenant has occurred and is extant or particulars of any such default;
- (vii) that the Tenant has no charge, lien or claim for a right of set-off which it is actually asserting and claiming against its Lease or against the rent payable thereunder, save and except for capital repayments on account of leasehold improvements required under the Lease;
- (viii) that the Tenant is in occupation of the demised premises pursuant to the Lease;
- (ix) the area of the leasehold premises;
- (x) the commencement date of its Lease;
- (xi) the maturity date of its Lease;
- (xii) that the landlord's work has been satisfactorily completed;

all of the above to be consistent with the Rental Schedule; provided, however, that if such an Acknowledgement is not obtainable from any Tenant after reasonable efforts by the Vendor in that regard, the Vendor shall furnish a Statutory Declaration of an officer of the Vendor in respect of such Lease which confirms the foregoing to the extent of Vendor's knowledge of same; provided further that the Purchaser shall not be required to accept such a Statutory Declaration in respect of any Tenant(s) occupying in aggregate in excess of _____% of the rentable area of the Building;

(n) Statutory Declaration as to Work in Progress

The Vendor shall provide to the Purchaser a Statutory Declaration on the Closing Date stating the name of a contractor and the value of work to contracts with respect to any matters relating the Project which may be subject to the provisions of the Mechanic's Lien Act and further agrees that

ten percent (10%) of the cost of the said work referred to in the said Statutory Declaration provided by the Vendor shall be held back from the Purchase Price until the expiry of the time periods referred to in the Mechanic's Lien Act, and which sum shall be held in trust by the solicitor for the Vendor in an interest bearing account, the interest being that of the Vendor.

(o) **Warranties**

The Vendor shall assign all existing warranties which the Vendor shall have or be entitled to from manufacturers, suppliers, installers, contractor and subcontractors, with respect to the Project;

(p) **Reasonable Assurances**

Deliver such evidence as counsel for the Purchaser may reasonably require that all of the Vendor's warranties and representations are true and correct to the Closing Date and that all conditions precedent to closing have been met or complied with, which such evidence may, without restricting the generality of the foregoing, include such certificate or certificates or statutory declaration or declarations as counsel for the Purchaser may reasonably require;

(q) **Legal Opinion**

An opinion from legal counsel of the Vendor that all necessary corporate actions and proceedings have been taken by the Company to permit the due and valid transfer of the Assets on the closing date and that to the best of the knowledge and belief of the said solicitor, the Vendor is not engaged and has not been threatened with any legal action or other proceedings which would have an affect or could become a lien against the Assets;

(r) **GST Compliance Documents**

A GST certificate to satisfy section 194 of the GST provisions of the Excise Tax Act (Canada) with respect to the Used Residential Complex as referred to in paragraph 4.12 herein;

(s) GST Election

The election required under the Act in order that the Purchaser be allowed to remit any GST payable on the sale directly to Revenue Canada pursuant to paragraph 4.12 herein;

(t) Security Deposits

Delivery of security deposits and interest accruing thereunder, which are delivered to the Purchaser in trust, and relate to and to be held on behalf of any residential tenants in the Building with respect to their tenancies and Leases.

6.02 Compliance

The Vendor shall further provide to the Purchaser satisfactory evidence to the Purchaser or the Purchaser's solicitor of compliance by the Vendor of the provisions provided for in Article 3 herein and Article 5 herein.

6.03 Closing Documentation

On the Closing Date, the Purchaser shall deliver to the Vendor, any closing documentation which may be reasonably required by the Vendor's Solicitors.

6.04 Purchase Price Payment

At the time of closing the Purchaser shall pay to the Vendor that portion of the purchase price payable on the Closing Date as provided in Part II.

6.05 Security Deposits

At the time of closing the Vendor shall deliver to the Purchaser any security deposits and interest accruing thereunder, which are delivered to the Purchaser in trust on behalf of any tenants in the building with respect to their tenancies and leases.

ARTICLE 7 - MISCELLANEOUS

7.01 Survival

Notwithstanding the closing in accordance with the provisions hereof and the payment of the Purchase Price, this Agreement shall continue in full force and effect so far as it

remains to be performed and the representations, warranties and covenants and agreements made in this Agreement shall remain in full force and effect until fully discharged and shall not merge in any document to be delivered on the Closing Date.

7.02 Notice to Rescind

In case any of the conditions contained in this Agreement shall not be fulfilled at or before the time of closing, the Purchaser may rescind this Agreement by notice to the Vendor and in such event the Purchaser will be released from all obligations hereunder unless the Purchaser can show that the condition or conditions for the non-performance of which the Purchaser has rescinded such agreement are reasonably capable of being performed or caused to be performed by the Vendor, then the Vendor shall also be released from all obligations hereunder and the parties shall bear the expense which they have respectively incurred in respect of this Agreement; provided that any of the said conditions may be waived in whole or in part by the Purchaser without prejudice to its right of rescission in the event of non-fulfillment of any other condition or conditions, any such waiver to be binding on the Purchaser only if the same is in writing.

7.03 Reliance

All covenants, agreements, representations and warranties made herein shall be deemed to have been relied upon by the Purchaser notwithstanding any investigation heretofore or hereinafter made by it or on its behalf, and shall survive the completion of the purchase and sale of the Assets and payment of the purchase price therefor and shall remain in full force and effect until fully discharged.

7.04 Good Faith

The Purchaser acknowledges and agrees that any and all information provided by the Vendor whether or not set out in this Agreement has been prepared in good faith from records in the Vendor's possession and control. While all such information is believed to be accurate, the Vendor expressly disclaims any and all liability for representations or warranties, express or implied, contained in, or omissions from, this Agreement or in any other written or oral communication transmitted either directly or through the Agent or made available to the Purchaser excepting only those particular representations and warranties which may be made to the Purchaser in this Agreement, and subject to such limitations and restrictions as may be specified in this Agreement.

7.05 (a) Notice

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or by sending the same by prepaid registered mail or by facsimile to the following addresses:

(i) To the Purchaser:

(ii) To the Vendor:

(b) Any notice or communication served hereunder by registered mail shall, except for delays caused by interruption of postal service through strikes or lockouts, be deemed delivered on the third business day following mailing;

(c) Any party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the date of giving of such notice the address therein specified shall be deemed to be the address of such party for the giving of notices hereunder.

7.06 Further Assurances

The Vendor agrees that following the Closing Date it will provide at the request of the Purchaser such further assurances as may be reasonably required.

7.07 Nova Scotia Law

The laws of the Province of Nova Scotia shall govern the provisions hereof.

7.08 Public Announcement

No public announcement or press release concerning the purchase and sale herein provided for shall be made by the Vendor without the consent and approval of the Purchaser.

7.09 Time

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

7.10 Arbitration

If any dispute or difference shall at any time arise between the Vendor and the Purchaser with respect to the construction and interpretation of this Agreement or anything arising out of this Agreement or done or to be done and pursuant to this Agreement, that the same shall be submitted to the arbitration of three (3) individuals and be governed by the provisions of any act relating to arbitration at the time in force in the Province of Nova Scotia. The cost of such arbitration shall be decided by the arbitrators.

7.11 Bulk Sales Act Waiver

The parties hereto agree to waive compliance with the provisions of the Bulk Sales Act of Nova Scotia.

7.12 Bulk Sales Act Indemnity

The Vendor agrees to indemnify the Purchaser and save the Purchaser harmless from and against all debts, liabilities, claims, demands, contracts, commitments and engagements of the Vendor, including but not limited to claims made against the Purchaser of the purchase assets arising out of claims or alleged claims against the Vendor or the Principal, any failure to comply with any applicable bulk sale legislation, any failure by the Vendor or the Principal to pay any taxes, assessments, penalties or levies of any kind or nature whatsoever including sales tax, and any and all damages resulting from any misrepresentations, breach of warranty or nonfulfillment of any agreement on the part of the Vendor or the Principal contained in the Agreement or in any document, statement or certificate furnished or to be furnished to the Purchaser pursuant thereto or in connection with the transaction contemplated thereby.

7.13 Bulk Sales Act Indemnity

The Vendor will indemnify the Purchaser with respect to all costs, expenses, damages and loses which the Purchaser may incur or suffer as a result of the Vendor's noncompliance with the Bulk Sales Act of Nova Scotia, except to the Extent that such damages arise from the Purchaser's failure to pay and satisfy any of the Assumed Liabilities.

Per: _____

SCHEDULE "A"

REAL PROPERTY

SCHEDULE "B"

LEASE SUMMARY

SCHEDULE "A"

CHATELS

DATED: _____ 19

BETWEEN:

OF THE ONE PART

- and -

OF THE OTHER PART

AGREEMENT

PETER J. MacKEIGAN
DALEY, BLACK & MOREIRA
Barristers & Solicitors
400-1791 Barrington Street
P.O. Box 355
Halifax, Nova Scotia
B3J 2N7

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