



**CITY OF KINGSTON INDUSTRIAL LANDS
AGREEMENT OF PURCHASE AND SALE**

BETWEEN:

_____ (the "Purchaser")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF KINGSTON,
(the "City")

OF THE SECOND PART

1.0 STANDARD FORM AGREEMENT

1.1 The Purchaser acknowledges that this is the City's standard form of agreement of purchase and sale for industrial land. Any addition, deletion or alteration made to this agreement by the Purchaser shall be clearly shown by highlighting or strikeout and initialed by the Purchaser, failing which this agreement shall be read as though such addition, deletion or alteration had not been made.

2.0 DEFINITIONS

2.1 In this agreement,

"Closing Date" shall mean the date more particularly described in Schedule "A" on which the purchase and sale of the Lands is to be completed;

"Deposit" shall mean the sum more particularly described in Schedule "A" to be tendered with this offer on account of the Purchase Price;

"Irrevocable Date" shall mean the date more particularly described in Schedule "A" until which this offer to purchase is open for acceptance by the City;

"Lands" shall mean those lands owned by the City more particularly described in Schedule "A";

"Lot Occupancy" means the sum of the individual gross floor areas of the building or buildings on the Lands expressed as a percentage of the area of the Lands;

"Option to Repurchase Agreement" means the agreement between the Purchaser and City in the form of agreement more particularly described in Schedule "C";

"Permitted Encumbrances" means those agreements, easements, rights of way, or other restrictions, limitations, conditions or encumbrances affecting title to the Lands more particularly described in Schedule "A" that are now or will be at the Closing Date registered against title to the Lands;

"Price Adjustment Agreement" means the agreement between the Purchaser and the City in the form of agreement more particularly described in Schedule "D";

Purchaser's Initials: _____

City's Initials: _____



“Purchase Price” shall mean the price to be paid by the Purchaser for the Lands as more particularly described in Schedule “A”;

“Purchaser’s Conditions” means those conditions as more particularly set out in Schedule “B” inserted in this agreement for the sole benefit of the Purchaser;

“Schedules” means Schedules “A”, “B”, “C” and “D” to this agreement that are to be read with and form a part hereof;

“Table of Critical Dates” means the following table of dates:

EVENT	TIMING	SECTION
Irrevocable Date	Minimum 14 days from date of agreement	Section 4.1 and Schedule A
City delivers Phase 1 Environmental Assessment	Maximum 40 days after acceptance	Schedule B, Clause 1
Purchaser waives conditions	Maximum 60 days after acceptance	Schedule B
City delivers draft reference plan of survey	Maximum 30 days after Purchaser waives all conditions	Section 10.1(b)
Purchaser submits Site Plan application	Maximum 120 days after acceptance	Section 8.1
Purchaser executes Site Plan Agreement	Maximum 210 days after acceptance	Section 8.1
City delivers deposited reference plan of survey	Prior to date for examining title	Section 10.1(b)
Date for examining title	21 days prior to Closing date	Section 13.2
Closing Date	21 days after Site Plan Agreement executed by Purchaser	Schedule A
Occupancy Permit	Maximum twelve (12) months after Closing Date	Section 11.1(f)

3.0 OFFER TO PURCHASE

3.1 The Purchaser hereby offers to purchase the Lands from the City for the Purchase Price.

Purchaser’s Initials: _____

City’s Initials: _____

4.0 IRREVOCABLE OFFER

- 4.1 This offer to purchase shall be irrevocable by the Purchaser and remain open for acceptance by the City until 4:00 p.m. on the Irrevocable Date.
- 4.2 If this offer to purchase is not accepted by the City on or before 4:00 p.m. on the Irrevocable Date, it shall immediately terminate and the Purchaser shall be entitled to the return of the Deposit in full without interest or deduction.

5.0 PAYMENT OF PURCHASE PRICE

- 5.1 The Purchaser shall pay the Purchase Price as follows:
- (a) the Deposit shall be tendered with this offer to purchase to be held by the City in trust pending completion of the transaction and shall be credited on account of the Purchase Price on the Closing Date, and
 - (b) the balance of the Purchase Price shall be paid on the Closing Date, subject to all usual and proper adjustments, with the day of closing apportioned to the Purchaser.
- 5.2 All payments on account of the Purchase Price shall be made in lawful money of Canada, payable to the City, or as it may otherwise direct in writing, and shall be by bank draft or cheque certified by a chartered bank, trust company, Province of Ontario Savings Office, credit union or caisse populaire.
- #### **5.3 Price Adjustment**
- 5.4 The Purchaser acknowledges that the Base Purchase Price, as more particularly described in Schedule "A", was determined on the basis of the uses permitted for the Lands in the City's Official Plan and Zoning By-Law as of the first day of the month in which the Offer to Purchase was made to the City.
- 5.5 The Purchaser further acknowledges and agrees that should the official plan and/or the zoning by-law applicable to the Lands be amended prior to Closing Date as a result of an application filed by or on behalf of the Purchaser or its successors or assigns, then the overall purchase price shall be adjusted upward from the Base Purchase Price by the Additional Purchase Price, as more particularly described in Schedule "A", and shall be paid on the Closing Date.
- 5.6 The Purchaser further acknowledges and agrees that in the event that the Additional Purchase Price is not payable on the Closing Date pursuant to Section 5.5 and should the official plan and/or the zoning by-law applicable to the Lands be subsequently amended as a result of a request for amendment made to the City within the period commencing on the date of execution of this agreement and ending five years from the date of registration of the transfer/deed as a result of an application filed by or on behalf of the Purchaser or its successors or assigns, the Purchaser shall pay to the City the Additional Purchase Price not later than 30 days after the official plan and/or zoning by-law amendment becomes final and binding. The Agreement of Purchase and Sale shall be conditional on the Purchaser and City entering into the Price Adjustment Agreement prior to the Closing Date and the Price Adjustment Agreement being registered against title to the Lands immediately following registration of the Transfer/Deed for the Lands from the City to the Purchaser with no intervening registrations or the creation of any intervening rights in the Lands. This condition

Purchaser's Initials: _____

City's Initials: _____

is inserted for the sole benefit of the City and may be waived by it in writing at any time prior to the Closing Date.

6.0 PRICE ADJUSTMENT AGREEMENT

6.1 This agreement shall be conditional on the Purchaser and City entering into the Price Adjustment Agreement prior to the Closing Date and the Price Adjustment Agreement being registered against title to the Lands immediately following registration of the Transfer/Deed for the Lands from the City to the Purchaser with no intervening registrations or the creation of any intervening rights in the Lands, save and except for the registration of the Option to Repurchase Agreement pursuant to this agreement. This condition is inserted for the sole benefit of the City and may be waived by it in writing at any time prior to the Closing Date.

7.0 HARMONIZED SALES TAX ("HST")

7.1 The Purchaser acknowledges that this transaction is subject to HST and that such tax and any other type of value-added or sales tax payable in connection therewith shall be in addition to the Purchase Price and shall be paid by the Purchaser.

7.2 The City will not collect HST if the Purchaser provides to the City on the Closing Date a warranty that the Purchaser is registered under the Excise Tax Act ("ETA"), together with a copy of the Purchaser's ETA registration, a warranty that the Purchaser shall self-assess, remit the HST payable and file the prescribed form, and shall indemnify the City in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction.

8.0 CONDITIONAL ON SITE PLAN APPROVAL

8.1 This agreement shall be conditional on the Purchaser filing with the City an application for site plan approval within the time prescribed on the Table of Critical Dates and, having filed the application, obtaining site plan approval, free of all rights of appeal:

- (a) in respect of a refusal by the City to grant such approval; or
- (b) in respect of any terms or conditions of any site plan approval granted by the City,

and entering into a site plan agreement as required by the City pursuant to Section 41(7) of the *Planning Act*, within the time prescribed on the Table of Critical Dates.

8.2 If this condition is not satisfied within the prescribed time and if both parties do not agree in writing to an extension, this agreement shall automatically terminate and the Deposit shall be returned to the Purchaser less a deduction for any survey costs for the Lands incurred to date by the City and neither party shall have any further obligations under this agreement. This condition cannot be waived by either party.

8.3 Such further and other conditions as may be included in Schedule "A".

Purchaser's Initials: _____

City's Initials: _____

9.0 PURCHASER'S CONDITIONS

9.1 This agreement shall be conditional on the Purchaser's Conditions being satisfied within the time and in the manner described therein. The Purchaser's Conditions are inserted for the sole benefit of the Purchaser and may be waived by the Purchaser in writing at any time. If the Purchaser fails or refuses to waive the Purchaser's Conditions approval within the time prescribed on the Table of Critical Dates, this agreement shall be at an end and the Purchaser shall be entitled to the return of the Deposit without interest or deduction and neither the Purchaser nor the City shall have any further obligations under it.

9.2 The Purchaser shall have the right at any time or times prior to the Closing Date to enter on the Lands, by itself or with its contractors or agents, to conduct at its own expense and risk such further investigations or assessments of the Lands as the Purchaser deems necessary for the purpose of completing the site plan approval process, provided the Purchaser restores the Lands to their original condition upon completion of such investigations.

10.0 CITY'S REPRESENTATIONS AND WARRANTIES

10.1 The City represents and warrants to the Purchaser as follows:

(a) the City has the lawful authority to sell the Lands and all Council approvals have been given and all corporate authority exists for the City to complete the transaction in accordance with its terms;

(b) the City shall, at its expense, provide to the Purchaser,

(i) a draft reference plan of survey illustrating the proposed dimensions of the Lands, and

(ii) a deposited reference plan of survey of the Lands;

within the times prescribed on the Table of Critical Dates;

(c) that to the best of the City's knowledge and belief, during the period of its ownership of the Lands all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the Lands, no limitations or restrictions affecting the continued use of the Lands exist, other than those specifically provided for herein, no pending litigation respecting environmental matters, no outstanding Ministry of Environment and Energy Orders, investigations, charges or prosecutions regarding environmental matters exist, and there has been no prior use of the Lands as a waste disposal site; and

(d) the City shall provide to the Purchaser upon request, all documents, records and reports relating to environmental matters that are in the possession of the City, and the City shall provide such further authorizations as the Purchaser may reasonably require for the Ministry of the Environment and Energy to release to the Purchaser, its agent or solicitor, any and all information that may be on record in the Ministry office with respect to the Lands.

10.2 All of the City's representations and warranties shall survive closing.

Purchaser's Initials: _____

City's Initials: _____

11.0 PURCHASER'S REPRESENTATIONS AND WARRANTIES

11.1 The Purchaser represents and warrants to the City as follows:

- (a) that the Purchaser has inspected the Lands and agrees that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Purchaser and City;
- (b) that the Purchaser is:
 - (i) acquiring the Lands under the current zoning of the Lands and a zoning amendment is not a condition to the Purchaser completing the purchase;
 - (ii) responsible for satisfying itself at its cost that there are services available having sufficient capacity as needed for the Purchaser's intended use of the Lands;
- (c) that the Purchaser will be responsible for any present and/or future costs required to upgrade existing services as may be required to satisfy the Purchaser's particular needs;
- (d) that the Purchaser will be responsible for obtaining the approval of any other utility needed to service the Lands;
- (e) that the Purchaser shall submit an application to the City for site plan approval for the Lands approval within the time prescribed on the Table of Critical Dates;
- (f) that if the site plan is approved, the Purchaser shall substantially complete construction of a building or buildings on the Lands with a minimum Lot Occupancy that is the greater of (i) the minimum Lot Occupancy prescribed by the zoning for the Lands or (ii) twenty percent (20%) being not less than _____ square feet, and obtain an occupancy permit therefor within twelve (12) months of the date of registration of the Transfer/Deed for the Lands to the Purchaser;
- (g) that prior to obtaining an occupancy permit for the building or buildings, the Purchaser shall not transfer the Lands or any part thereof to any third person without the prior written consent of the City, which consent may be arbitrarily refused unless such transfer is for the purpose of securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage; and
- (h) that the Purchaser shall not transfer any portion of the Lands unencumbered by a building to any third person prior to the 10 year anniversary of the date of registration of the Transfer/Deed for the Lands without the prior written consent of the City, which consent may be arbitrarily refused.

11.2 All of the Purchaser's representations and warranties shall survive closing.

12.0 OPTION TO REPURCHASE AGREEMENT

12.1 This agreement shall be conditional on the Purchaser and City entering into the Option to Repurchase Agreement prior to the Closing Date and the Option to Repurchase Agreement being registered against title to the Lands immediately

Purchaser's Initials: _____

City's Initials: _____

following registration of the Transfer/Deed for the Lands from the City to the Purchaser with no intervening registrations or the creation of any intervening rights in the Lands, save and except for the registration of a Price Adjustment Agreement pursuant to this agreement. This condition is inserted for the sole benefit of the City and may be waived by it in writing at any time prior to the Closing Date.

13.0 TITLE TO THE LANDS

13.1 Title to the Lands as at the Closing Date shall be good and marketable and free from encumbrances of every nature or kind, except for:

- (a) any restrictions, limitations or conditions contained in the original grant from the Crown;
- (b) any restrictions, limitations or conditions imposed by any applicable building and zoning by-laws;
- (c) any minor easements for hydro, gas, telephone or like services to the Lands;
- (d) the Price Adjustment Agreement;
- (e) the Option to Repurchase Agreement; and
- (f) the Permitted Encumbrances.

13.2 The Purchaser shall have until 4:00 p.m. on the date for examining title to the lands as prescribed on the Table of Critical Dates within which to examine the title of the Lands and to submit requisitions with respect thereto. If the City is unable or unwilling to remove or remedy any requisition, and if the Purchaser will not waive the requisition, then this agreement, despite any intermediate acts or negotiations in respect of any such objections, shall be at an end and the Deposit shall be returned to the Purchaser without interest or deduction and neither the City nor the Purchaser shall be liable to the other for any matter in connection with this agreement. Save as to any valid objection made within the times above limited, and except for any objection going to the root of the title of the City, the Purchaser shall be conclusively deemed to have accepted the City's title to the Lands.

13.3 The Purchaser shall not call for the production of any title deed, abstract of title, proof or evidence of title, or survey, except as may be expressly permitted or required under the terms of this agreement.

14.0 CLOSING

14.1 This transaction shall be completed by no later than 4:00 p.m. on the Closing Date, provided that if on such day the Registry or Land Titles Office is not open, closing shall occur on the next day thereafter on which such office is open. Upon completion, vacant possession of the Lands shall be given to the Purchaser unless otherwise provided in this agreement.

15.0 TENDER

15.1 Any tender of documents or money required by this agreement may be made upon either of the parties or their respective solicitors on the Closing Date.

Purchaser's Initials: _____

City's Initials: _____



16.0 DOCUMENT PREPARATION

16.1 The transfer/deed shall be prepared in registerable form by and at the expense of the City. The Purchaser at the Purchaser's expense shall prepare the land transfer tax affidavit.

17.0 NOTICE

17.1 Any notice required or permitted to be given by this agreement shall be in writing. Any notice to the Purchaser shall be given to the Purchaser at the address or facsimile number hereafter set forth, and any notice to the City shall be given to the City's solicitor at the address or facsimile number hereafter set forth.

17.2 Any notice forwarded by mail shall, if posted in Ontario, be deemed to have been received on the fourth day, excluding Saturdays, Sundays and statutory holidays, after its post mark and any notice forwarded by facsimile shall be subject to actual receipt by the party to whom it is directed, with evidence of confirmation of transmission by the sender of such notice being sufficient evidence of receipt by the party to whom it is addressed. If transmission is completed on a Saturday, Sunday or statutory holiday, or after 5:00 P.M. on any other day, it shall be deemed to have been received on the next day which is not a Saturday, Sunday or statutory holiday.

18.0 TIME OF THE ESSENCE

18.1 Time shall be of the essence of this agreement provided that any day established by or pursuant to this agreement for the doing of an act by any party or by which a condition is to be satisfied which falls on a Saturday, Sunday or statutory holiday shall be extended to the next day thereafter which is not a Saturday, Sunday or statutory holiday.

19.0 PLANNING ACT

19.1 This agreement shall be effective to create an interest in the property only if Vendor complies with the subdivision control provisions of the Planning Act by completion and Vendor covenants to proceed diligently at his expense to obtain any necessary consent by completion.

20.0 ENTIRE AGREEMENT

20.1 The parties agree that there is no representation, warranty, collateral agreement or condition affecting this agreement or the Lands or other assets referred to herein nor is there any such representation, warranty, collateral agreement or condition which induced the Purchaser to enter into this agreement, other than expressed herein in writing.

21.0 ENUREMENT

21.1 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, successors and assigns.

Purchaser's Initials: _____

City's Initials: _____



Executed under seal by the Purchaser at _____ on the _____ day of _____, 201____.

Witness

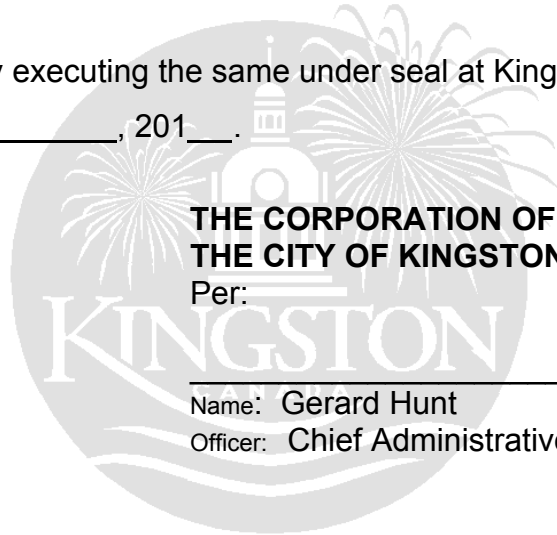
Name -
Title -

Witness

Name -
Title -

I/We have authority to bind the corporation if the Purchaser is a corporation

The City accepts this offer by executing the same under seal at Kingston, Ontario on the day of _____, 201____.



**THE CORPORATION OF
THE CITY OF KINGSTON**
Per:

Name: Gerard Hunt
Officer: Chief Administrative Officer

Purchaser's Initials: _____

City's Initials: _____



ADDRESSES FOR NOTICES

Purchaser: _____

Address: _____

Telephone No: _____

Facsimile No: _____

Mr. Peter Huigenbos
Project Engineer
Real Estate & Construction Services
The Corporation of the City of
Kingston
216 Ontario Street
Kingston, On K7L 2Z3
Telephone No: (613) 546-4291 ext 3148
Facsimile No: (613) 546-4867
Location of Office: 310 King Street East

Purchaser Solicitor: _____

Firm: _____

Address: _____

Telephone No: _____

Facsimile No: _____

Mr. Hal Linscott
City Solicitor
The Corporation of the City of
Kingston City Hall, 216 Ontario Street
Kingston, On K7L 2Z3
Telephone No: 546-4291 ext 1296
Facsimile No: 546-6156



Purchaser's Initials: _____

City's Initials: _____



SCHEDULE "A"

Lands:

Frontage: _____ (feet/metres) more or less
Depth: _____ (feet/metres) more or less
Municipal Street: _____ **Street Side:** _____
Legal Description: Pt. Lot _____ **Plan/Con.** _____ **Former Mun.** _____
Rights-of way/Easements: _____

Sketch: Attached to this Schedule

Base Purchase Price: _____ (\$ _____)
 calculated at the rate of \$ _____ per acre based on an estimated area of _____ acres, subject to adjustment on the Closing Date based on the actual area of the Lands as determined by plan of survey to be prepared by the City at its expense.

Deposit: _____ (\$ _____)
 representing ten percent (10%) of the Purchase Price

Additional Purchase Price

The Lands are currently zoned ____.
 In the event that the lands are rezoned in accordance with the provisions of this agreement to permit primary or accessory retail uses an Additional Purchase Price shall be paid to the City, and shall be calculated as follows:

1. For each one percent (1%) of the total floor area permitted for retail or commercial uses, in addition to any % area currently permitted in the zoning, an Additional Purchase Price of _____ (\$ _____) shall be paid, up to a maximum of _____ (\$ _____).

Example

A rezoning changes the % of floor area permitted for accessory retail uses from the existing _____% to _____%, an increase of 5%. The Additional Purchase Price would be \$ _____ (5% x \$ _____)

Irrevocable Date: _____
 being not less than fourteen (14) days after the date on which the Purchaser signs this agreement

Closing Date: Twenty one (21) days after the Purchaser executes a site plan agreement with the City for the Lands, but if this date falls on a Saturday, Sunday or statutory holiday, the Closing Date shall be on the next business day.

Purchaser's Initials: _____

City's Initials: _____

Permitted Encumbrances: *list other agreements, easements, rights of way, or other restrictions, limitations, conditions or encumbrances affecting title and surviving closing*

1. Option to Repurchase Agreement
2. Price Adjustment Agreement
3. Any municipal utility easements required as a condition of site plan approval
4. _____
5. _____



Purchaser's Initials: _____

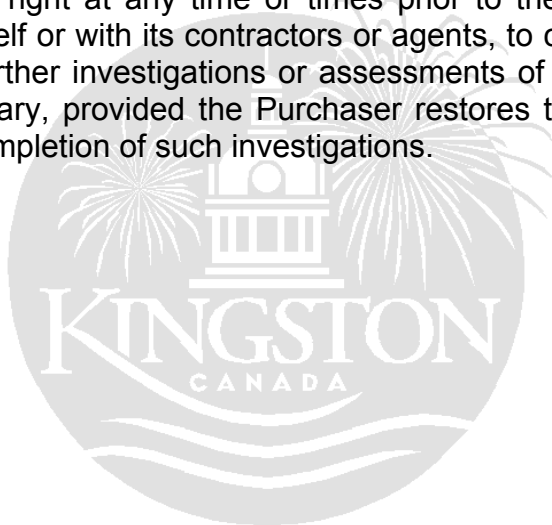
City's Initials: _____

Schedule "B"

Purchaser's Conditions

This agreement is conditional on the following:

1. The City delivering to the Purchaser within the time prescribed on the Table of Critical Dates a Phase I Environmental Assessment Report on the Lands together with the consent of the person who produced the report permitting the Purchaser to use and rely on the report;
2. The Purchaser satisfying itself within the time prescribed on the Table of Critical Dates that the Phase I Environmental Assessment Report does not disclose any environmental condition that would materially affect the Purchaser's ability to develop and use the Lands for their intended purpose and, for that purpose, the Purchaser shall have the right at any time or times prior to the Closing Date to enter on the Lands, by itself or with its contractors or agents, to conduct at its own expense and risk such further investigations or assessments of the Lands as the Purchaser deems necessary, provided the Purchaser restores the Lands to their original condition upon completion of such investigations.



These conditions are inserted for the sole benefit of the Purchaser and may be waived by the Purchaser at any time.

If the Purchaser fails or refuses to waive the Purchaser's Conditions within the time prescribed on the Table of Critical Dates, this agreement shall be at an end and the Purchaser shall be entitled to the return of the Deposit without interest or deduction and neither the Purchaser nor the City shall have any further obligations under it.

Purchaser's Initials: _____

City's Initials: _____

Schedule "C"
Option to Repurchase Agreement
(For information purposes only)

THIS OPTION TO REPURCHASE AGREEMENT made this ____ day of _____, 200__

BETWEEN:

(the "Optionor")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF KINGSTON,

(the "City")

OF THE SECOND PART

WHEREAS the Optionor purchased from the City those industrial lands more particularly described in Schedule "A" to this agreement (the "Lands");

AND WHEREAS for the purpose of selling the Lands, the City relied on representations made by the Optionor that:

- (i) the Optionor would construct a building or buildings on the Lands in accordance with a site plan approved by the City and obtain an occupancy permit for it within twelve (12) months from the date of purchase of the Lands;
- (ii) the Optionor would not sell, transfer or otherwise dispose of all or any part of the Lands prior to completion of the building or buildings without the prior written consent of the City, except for the purpose of securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage; or
- (iii) the Optionor would not transfer any portion of the Lands unencumbered by a building to any third person prior to the 10 year anniversary of the date of registration of the Transfer/Deed for the Lands without the prior written consent of the City;

AND WHEREAS for the purpose of securing its obligations, the Optionor has agreed to grant an option to repurchase the Lands to the City in accordance with the terms of this agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties agree each with the other as follows:

In this agreement,

1. The Optionor hereby grants to the City an option to repurchase the Lands (the "Option").
2. The City may exercise the Option if:
 - (a) the Purchaser fails to substantially complete construction of a building or buildings on the Lands with a minimum Lot Occupancy that is the greater of (i) the minimum Lot Occupancy prescribed by the zoning for the Lands or (ii) twenty percent (20%), being not less than _____ square feet, in accordance with a site plan approved by the City, and to obtain an occupancy permit therefor within twelve (12) months of the date of registration of the Transfer/Deed for the Lands to the Purchaser; or

Purchaser's Initials: _____

City's Initials: _____

- (b) prior to obtaining an occupancy permit for the building or buildings, the Purchaser sells, transfers or otherwise disposes of the Lands or any part thereof to any third person without the prior written consent of the City, except for the purpose of securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage; or
 - (c) the Purchaser sells, transfers or otherwise disposes of any portion of the Lands that are unencumbered by a building to any third person prior to the 10 year anniversary of the date of registration of the Transfer/Deed for the Lands to the Optionor without the prior written consent of the City.
3. The City may exercise the Option by written notice delivered to the Optionor and any other person who may appear from the abstract of title for the Lands to have an interest in the Lands,
- (a) in the case of the Optionor's failure to substantially complete construction of a building as required in sub clause 2(a) above, at any time prior to the earlier of (i) the date on which an occupancy permit for the building or buildings is issued and (ii) the ten (10) year anniversary of the date of registration of the Transfer/Deed for the Lands to the Optionor; or
 - (b) in the case of any sale, transfer or other disposition of the Lands by the Optionor contrary to the provisions of sub clause 2(b) above, at any time within 60 days from the date on which the City is notified in writing that the Optionor has sold, transferred or otherwise disposed of all or any part of the Lands; or
 - (c) in the case of any sale, transfer or other disposition of any part of the Lands that is unencumbered by a building contrary to the provisions of sub clause 2(c) above, at any time within 60 days from the date on which the City is notified in writing that the Optionor has sold, transferred or otherwise disposed of such part of the Lands.
4. The purchase price to be paid by the City if it exercises the Option shall be,
- (a) in the case of the City exercising the Option in accordance with either sub clause 3(a) or (b) of this agreement, an amount equal to ninety percent (90%) of the purchase price paid by the Optionor to originally acquire the Lands from the City; or
 - (b) in the case of the City exercising the Option in accordance with sub clause 3(c) of this agreement, an amount equal to ninety percent (90%) of the purchase price paid by the Optionor to originally acquire the Lands prorated based on the percentage that the area of land sold by the Optionor is to the total area of the Lands.
5. The purchase transaction shall close 30 days following the date the City delivers notice exercising the Option (the "Closing Date").
6. The City shall have the right, subsequent to delivery of notice exercising the Option to enter onto the Lands, by itself or by its agents or contractors, to conduct such environmental assessment of the Lands as the City may, at its cost, determine necessary or prudent and, if dissatisfied with the results of such assessment, the City shall have the right to not proceed with the purchase of the Lands.
7. The Optionor shall indemnify and save harmless the City from any and all claims of every nature and kind which may be made against the City whether for damages or otherwise as a result of the Lands containing as at the Closing Date any contaminant or pollutant within the meaning of the *Environmental Protection Act* (Ontario), or any other substances which may be considered hazardous or

Purchaser's Initials: _____

City's Initials: _____

dangerous to the health of persons or to the environment under any other legislation of the Province of Ontario or Canada applicable therein. Without limiting the obligation of the Optionor aforesaid, such obligation to indemnify shall exist with respect to claims against the City for damages to persons or property or for the costs of complying with any orders for clean up of the Lands which may be issued under any legislation or by any Court of competent jurisdiction in respect of any contamination existing at the Closing Date. This obligation of the Optionor to indemnify the City shall survive the Closing Date.

8. The City shall take title to the Lands at the time of closing free of all mortgages, liens and encumbrances existing against the Lands that were registered subsequent to the registration of this Option to Repurchase Agreement; provided that the City shall pay the Option Price,
 - (a) firstly, on account of any unpaid property taxes, interest and penalties for the Lands
 - (b) secondly, to all persons, other than the Optionor, having an interest in the Lands according to their priority at law; and
 - (c) thirdly, to the Optionor.
9. The Transfer/Deed of Land shall, except for the Land Transfer Tax Affidavit, be prepared in registrable form by and at the expense of the Optionor.
10. If the City tenders the Option Price on the Closing Date and the Optionor fails or refuses for any reason to deliver to the City a deed to the Lands in registrable form, the City may deposit the Option Price with the solicitors for the City for and on behalf of and in the name of the Optionor. Upon the deposit being made, the City shall be deemed conclusively to be the owner of the land, and the Optionor hereby irrevocably constitutes the Chief Administrative Officer of the City its lawful attorney to execute all deeds and other documents necessary to complete the purchase and sale of the Lands.
11. It is the intention of the parties that the foregoing rights to re-purchase in favour of the City shall create an interest in the Lands and, despite any decision by the City to not exercise its right at a particular time, shall continue and be binding on all subsequent owners of the land until the rights expire at the prescribed time.
12. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have entered into this agreement as at the date first set out above.

SIGNED, SEALED AND DELIVERED

in the presence of :

**THE CORPORATION OF THE CITY OF
KINGSTON**

Mayor

City Clerk

Purchaser's Initials: _____

City's Initials: _____

Schedule "D"

Price Adjustment Agreement
(For information purposes only)

THIS PRICE ADJUSTMENT AGREEMENT made this ____ day of _____,
200__

BETWEEN:

(the "Purchaser")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF KINGSTON,

(the "City")

OF THE SECOND PART

WHEREAS the Purchaser has purchased from the City those industrial lands more particularly described in Schedule "A" to this agreement (the "Lands");

AND WHEREAS for the purpose of selling the Lands, the City relied on representations made by the Purchaser of its intended use for the lands;

AND WHEREAS it is agreed that if the zoning of the lands is amended, the value of the lands will increase and the Purchaser agrees that the purchase price shall be increased and the increased amount shall be payable to the City by the Purchaser;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties agree each with the other as follows:

1. The Purchaser acknowledges that the Base Purchase Price, as more particularly described in Schedule "A", was determined on the basis of the uses permitted for the Lands in the City's Official Plan and Zoning By-Law as of the first day of the month in which the Offer to Purchase was made to the City.

2. The Purchaser acknowledges and agrees that should the official plan and/or the zoning by-law applicable to the Lands be amended prior to the Closing Date as a result of an application filed by or on behalf of the Purchaser or its successors or assigns, then the overall purchase price shall be adjusted upward from the Base Purchase Price by the Additional Purchase Price, as more particularly described in Schedule "A" and shall be paid on the Closing Date.

3. The Purchaser further acknowledges and agrees that in the event that the Additional Purchase Price is not payable on the Closing Date and where the official plan and/or the zoning by-law applicable to the Lands are subsequently amended as a result of a request for amendment made to the City within five years from the date of registration of the transfer/deed, as a result of an application filed by or on behalf of the Purchaser or its successors or assigns, the Purchaser shall pay to the City the Additional Purchase Price not later than 30 days after the official plan and/or zoning by-law amendment becomes final and binding.

4. It is the intention of the parties that the foregoing rights of price adjustment in favour of the City shall create an interest in the Lands and shall continue and be binding on all subsequent owners of the land until the rights expire at the prescribed time.

This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, successors and assigns.

Purchaser's Initials: _____

City's Initials: _____

IN WITNESS WHEREOF the parties hereto have entered into this agreement as at the date first set out above.

SIGNED, SEALED AND DELIVERED

in the presence of :

**THE CORPORATION OF THE CITY OF
KINGSTON**

Mayor

City Clerk

Purchaser's Initials:_____

City's Initials:_____