

IMPORTANT: Sample only for general information. The form of agreement is subject to negotiation in all respects and approval by Council

## AGREEMENT OF PURCHASE AND SALE

BETWEEN:

**THE CORPORATION OF THE TOWN OF MARATHON**

hereinafter called the "Municipality"

OF THE FIRST PART, and

### SUCCESSFUL BIDDER

hereinafter called the "Purchaser"

OF THE SECOND PART,

WITNESSETH that the Municipality agrees to sell and the Purchaser agrees to purchase all the interest of the Municipality in All and Singular, that certain parcel or tract of land situate, lying and being in the Town of Marathon, in the District of Thunder Bay, and more particularly described as follows, that is to say: **legal description** ; MARATHON

together with and subject to easements and rights of way more particularly described in **Schedule "B"** hereto. BEING ALL OF PIN 62448-XXXX (LT) Municipally known as **Street Address**, Marathon, Ontario hereinafter referred to as "the Lands"

on the following terms and conditions:

### PRICE

1. The Purchase Price of the Lands is the sum of **Price** **DOLLARS (\$XX,XXX.XX)** of lawful money of Canada.

### PAYMENT TERMS

2. (1) The Municipality acknowledges receipt of a deposit in the amount of **15% of the Purchase Price** on **Date** . **The balance of the Purchase Price is to be paid upon execution of this Agreement.**

(2) If the Purchaser shall make default in payment of the balance of the purchase money hereinbefore set out, or in full payment for any utilities servicing the property, as and when such payments become due, and such default shall continue for thirty days, then at such time or times, this Agreement and all rights of the Purchaser hereunder shall, at the option of the Municipality, immediately thereupon become and be forfeited and void, without any notice, action or other proceeding on the part of the Municipality, and all monies theretofore paid by the Purchaser shall be forfeited to the Municipality as and for liquidated damages, and not as penalty, and the Municipality shall thereupon be at liberty to resell the said lands free and clear of any right, title, or interest of the Purchaser or of any person or persons claiming under it.

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The production of a statutory declaration made by the Municipality's Clerk showing such default, shall be conclusive evidence of such default and of the forfeiture of this agreement as against the Purchaser or heirs, executors, administrators or assigns.

### TRANSFER OF TITLE

3. (1) The Purchaser agrees that it will renovate the existing structure in conformity with all bylaws of the Municipality so that such building can be lawfully **open for business** within **one year** after the date hereof.

(2) Notwithstanding anything herein elsewhere contained and notwithstanding that it may have paid the whole purchase price, the Purchaser shall not be at liberty to assign any of its rights under this Agreement (except with the consent of the Municipality as hereinafter provided), and shall not be entitled to have the said lands conveyed to it until it shall have renovated the said existing building to **open for business** and shall have paid the whole purchase price, at which time, it shall be entitled to have the said lands conveyed to it or to nominee or nominees by a transfer, without any covenants, and subject to taxes from the date hereinafter set forth.

(3) On compliance with the requirements here at, the Purchaser shall be entitled to a transfer of title from the Municipality within **30 days** from the date of issuance of a Final Occupancy Permit.

4. (1) If the Purchaser shall fail to renovate the building as hereinbefore referred to or to accept a Transfer of Title as hereinbefore provided, this Agreement and all of the rights hereunder shall immediately thereupon become and be forfeited and void, without any notice, action or other proceeding on the part of the Municipality, and the Municipality shall thereupon be at liberty to resell the said lands free and clear of any right, title and interest of the Purchaser or of any person or persons claiming under it, and all monies theretofore paid by the Purchaser shall be forfeited to the Municipality as and for liquidated damages and not as a penalty, except that there shall be refunded to the Purchaser all monies paid by it in excess of **twenty five per cent** of the purchase price.

(2) The production of a statutory declaration made by the Municipality's Clerk showing such default, shall be conclusive evidence of such default and of the forfeiture of this agreement as against the Purchaser or heirs, executors, administrators or assigns.

### NO ASSIGNMENT OR REGISTRATION

5. Notwithstanding anything herein elsewhere contained and notwithstanding that the Purchaser may have paid the whole purchase price, the Purchaser shall not be at liberty to assign any rights under this Agreement except with the written consent of the Municipality which consent may be withheld on its absolute discretion.

6. The Purchaser agrees with the Municipality that it will not register or allow this Agreement to be registered, but if it shall be registered contrary to this provision, and if default of payment is made by the Purchaser as above mentioned and such default shall continue for thirty days, or if the Purchaser shall fail to renovate the building as required hereunder before referred to, the Municipality's Clerk shall have the power, at the request of the Municipality and without any waiver of the forfeiture by default as hereinbefore provided for, in the name and on behalf of the Purchaser, to release and surrender to the Municipality all the right, title, or interest of the Purchaser in the said land and in this Agreement, and the Purchaser hereby nominates and appoints the Clerk for the time being of the Municipality, its agent and attorney for the purposes of signing, sealing, executing and delivering such release and surrender.

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### ADJUSTMENTS

7. (1) The Purchaser shall assume and pay all unmetered public or private utility charges against the said lands from and after the date of the execution of this Agreement, up to which date the Municipality will pay them.

(2) The Purchaser shall assume and pay all rates, taxes, and assessments after the transfer of title in its favour as set out in Paragraph 3 above, up to which date the Municipality will pay them.

### CHATTELS

8. The following chattels, the property of the Municipality shall be included in this sale for the price above mentioned.

N/A

### FIXTURES

9. All fixtures shall remain with the property except the following:

N/A

### RENTAL ITEMS

10. The following equipment is rented and not included in the purchase price. The Purchaser agrees to assume the rental contract, if assumable:

N/A

### TITLE

11. The Purchaser is to be allowed until the **date** , to investigate the title to the Lands at the Purchaser's own expense and if within that time any valid objection to the title is made in writing which the Municipality will be unwilling or unable to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement shall be null and void, notwithstanding any intermediate acts or negotiations in respect of such objections, and the Deposit shall be repaid to the Purchaser without interest or deduction and the Municipality shall not be liable for any costs or damages resulting therefrom. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the Municipality's title to the Lands.

12. The Purchaser agrees to accept the Lands subject to all municipal requirements including Building and Zoning By-laws, Site Plan Control designations and Site Plan Agreements, minor easements for hydro, gas, telephone or like services and to restrictions and covenants that run with the Lands.

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13. The Purchaser hereby accepts the title of the Municipality to the said Lands subject to any reservations in the original Patent from the Crown. Should the Municipality own the surface rights only of the Lands, the Purchaser agrees to accept title to the surface rights only.

#### **DOCUMENTS**

14. The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as is in the possession of the Municipality. If requested by the Purchaser, the Municipality will deliver any sketch or survey of the property within the Municipality's control to the Purchaser as soon as possible and prior to the Requisition Date.

#### **SPECIAL CONDITIONS**

15. The Special Conditions set forth in **Schedule "A"** hereto form part of this Agreement.

#### **INSURANCE**

16. Any buildings on the property and any other things being purchased shall be and remain until completion at the risk of the Municipality. Pending completion, the Municipality shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Purchaser may either terminate this Agreement and have all monies paid returned without interest or deduction or take the proceeds of any insurance up to but not exceeding the balance to close and complete the purchase. No insurance shall be transferred on completion.

#### **CLOSING ARRANGEMENTS**

17. Where each of the Municipality and Purchaser retain a lawyer to complete the Agreement of Purchase and Sale (Land Sale) of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S. O. 1991, Chapter 44, and any amendments thereto, the Municipality and the Purchaser acknowledge and agree that the exchange of closing funds, nonregistrable documents and other items (the "Requisite Deliveries") and the release thereof to the Municipality and the Purchaser will:

- (a) not occur at the same time as the registration of the Transfer/Deed (and any other documents intended to be registered in connection with the completion of this transaction), and;
- (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Municipality and the Purchaser irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

#### **EXTENSIONS**

18. Any time limit or closing date as set out in this Agreement may be extended on behalf of the Municipality by the written consent of the Municipality's Chief

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Administrative Officer, Clerk or Chief Building Official, without the necessity of specific Municipal Council authorization.

### **UTILITY CONNECTIONS**

19. The Purchaser shall be solely responsible for all costs and expenses related to connecting to utility services.

### **PROTECTION OF MUNICIPAL PROPERTY**

20. The Purchaser shall not do or omit to do anything on any part of the said Lands which will interfere with or cause damage to any service installed or to be installed on any part of the said Lands or on any Municipally owned property adjacent thereto, which services include, without limiting the generality of the foregoing, roads, ditches, drains, sidewalks, grade stakes, gas lines, water lines, water boxes, telephone boxes and hydro electric works. Any such damage may be corrected by the Municipality at the expense of the Purchaser and the Municipality shall have an immediate right of entry for the purpose of undertaking such work.

### **UFFI**

21. The Municipality represents and warrants that during the period of its occupancy of the Lands no building on the Lands has been insulated with urea formaldehyde foam insulation. This warranty shall survive completion of this transaction.

### **COMPLIANCE**

22. The Municipality shall not be responsible for ensuring that the Improvements on or uses of the Lands comply with any applicable bylaws (zoning or otherwise) or Provincial or Federal laws, regulations or any other requirement.

### **ZONING BYLAW**

23. In the event that the Purchaser requires an amendment to the Zoning By-law and/or Official Plan in order to proceed with the required development, it shall make application to the Council of the Municipality for consideration pursuant to the Planning Act. Nothing herein binds the Municipality to enact any amendment to the Zoning By-law and/or Official Plan and all costs relating to any such amendment shall be borne by the Purchaser.

### **SURVEYS**

24. The Purchaser is solely responsible for all survey costs, including but not limited to plans, locating survey stakes or bars on the said Lands.

### **NO MUNICIPAL WARRANTY**

25. There is no representation, warranty, collateral agreement or condition affecting this Agreement or the Lands or supported hereby other than as expressed herein in writing.

26. Without restricting the generality of the foregoing, the Municipality makes no representation or warranty as to the fitness of the Lands for the uses intended by

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the Purchaser and specifically makes no representation or warranty as to any environmental pollutant that may be in the soil.

### SOIL TESTS

27. The Purchaser shall have the right to take soil tests on the condition that the Purchaser restore the Lands to their original condition and within the time herein set out for examining the title to the Lands. In the event that the soil tests disclose a material presence of pollutants, the Purchaser may during such period, so notify the Municipality, which shall then have the option of removing the pollutants prior to closing or cancelling this Agreement and returning the deposit monies without further obligation or liability. Failing the Purchaser conducting such tests within such time or failing the Purchaser notifying the Municipality of any pollutants found in the soil within the aforesaid time limit, this Agreement shall be fully enforceable against the Purchaser notwithstanding such failure to examine the soil or failure to notify the Municipality of any found pollutants and the Purchaser shall be deemed conclusively to have accepted the Lands on an "As Is Where Is" basis.

### LEGAL FEES

28. The Purchaser shall be responsible for all legal fees incurred by the Municipality [subject to negotiations](#) in connection with the preparation of this Agreement; the completion of the transaction hereunder.

### DOCUMENT PREPARATION

29. The Transfer/Deed or Municipality's electronic form is to be prepared by the Municipality's Solicitor in a form acceptable to the Purchaser's Solicitor acting reasonably and if a Charge/Mortgage or equivalent electronic form is to be given back, same is to be prepared at the expense of the Purchaser on a form acceptable to the Municipality's Solicitor, acting reasonably.

### TENDER

30. Any tender of documents or money hereunder may be made upon the Municipality or Purchaser or upon the Solicitor acting for the Party on whom tender is desired, and it shall be sufficient that a negotiable certified cheque be tendered instead of cash.

### HST

31. The Purchase Price does not include Harmonized Sales Tax ("HST"). If the transaction is subject to HST and the Purchaser is not a HST Registrant, the Purchaser agrees to pay the applicable HST to the Municipality in addition to the purchaser price herein.

If the Purchaser is a HST Registrant and the Municipality is not required to collect or remit the applicable HST, the Purchaser irrevocably undertakes to file the "Harmonized Sales Tax Return for Acquisition of Real Property (HST/GST Form 60 or its equivalent) with Canada Customs and Revenue Agency. The Purchaser certifies that his HST Registration Number is \_\_\_\_\_.

### NONMERGER

32. The covenants of the Purchaser shall not merge on the closing of the within

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transaction.

**TIME**

33. Time in all respects shall be of the essence hereof.

**INTERPRETATION**

34. The title to the paragraphs herein are for convenience of reference only and do not affect the interpretation of this Agreement. In referring to the Parties, this Agreement shall be construed with all necessary changes of number and gender.

**SUCCESSORS AND ASSIGNS**

35. The heirs, executors, administrators, successors and permitted assigns of the undersigned are bound by the terms herein.

IN WITNESS WHEREOF the Municipality has caused its Corporate Seal to be hereunto affixed and attested by its proper signing Officers duly authorized in that behalf this \_\_\_\_ day of \_\_\_\_\_, 2012.

THE CORPORATION OF TOWN OF MARATHON

Per:

Rick Dumas Mayor

Brian Tocheri Clerk

IN WITNESS WHEREOF the Purchaser has caused its Corporate Seal to be hereunto affixed and attested by its proper signing Officers duly authorized in that behalf this \_\_\_\_ day of \_\_\_\_\_, 2012.

Successful Bidder

Per:

Name:

Title:

Name:

Title:

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## SCHEDULE "A"

### 1. DEVELOPMENT OF THE LANDS

- (1) The Purchaser agrees to renovate and refurbish the property for use as a **type of building** which development is hereinafter referred to as "the Improvements".
- (2) A Building Permit must be obtained within **Four (4) Weeks** of the closing of this transaction at the sole cost of the Purchaser.
- (3) The Improvements shall be completed in every respect in accordance with Plans and Specifications approved by the Chief Fire and Building Official of the Municipality. Such Plans and Specifications shall, at minimum, provide for all work necessary to obtain a Final Occupancy Permit for the property in compliance with the Ontario Building Code and the Ontario Fire Code.
- (4) The said Plans and Specifications shall be initialed by the Purchaser and the Chief Fire and Building Official of the Municipality and filed with the Treasurer of the Municipality prior to the issuance of any Building Permit.
- (5) Nothing herein restricts the Chief Fire and Building Official from ordering further or other improvements or safety or emergency works or other matters to be provided and done in accordance with the Ontario Building Code, the Ontario Fire Code and any other applicable law.
- (6) The Improvements shall comply with all By-laws of the Municipality, all applicable building and fire codes, site grading and drainage plans and any other municipal or governmental laws, regulations or requirements.
- (7) The Improvements shall be fully completed, free of deficiencies, within **One (1) Year** from the date of the execution of this agreement.
- (8) In default of obtaining a Building Permit and/or completion of the Improvements as herein required, the Municipality shall have the option to repossess the Lands together with the Improvements as may then be located thereon. The Purchaser shall not be entitled to any refund of the Purchase Price which shall remain the absolute property of the Municipality.
- (9) The Purchaser shall request a final inspection of the Improvements by the Municipality prior to the expiry of the said **One (1) Year** period at the sole cost of the Purchaser.

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**SCHEDULE "B"**

**Legal Description**

~~PCL 23143 SEC TBF; LT~~

BEING ALL OF PIN 62448-XXXX (LT)

SAMPLE