

AGREEMENT OF PURCHASE AND SALE

B E T W E E N:

THE CORPORATION OF THE TOWN OF MARATHON

hereinafter called the "Municipality"

OF THE FIRST PART,

- and -

*

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:

LOT XXX PLAN MXXX PIC; 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 123 Main Street, 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 _____
DOLLARS of lawful money of Canada.

PAYMENT TERMS

2. On execution of this Agreement, a deposit of _____
DOLLARS shall be paid by the Purchaser to the Municipality and the balance shall be payable by certified cheque or bank draft on closing.

ADJUSTMENTS

3. Any rents, mortgage interest, realty taxes including local improvement rates, unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Purchaser.

CHATELS

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

N/A

FIXTURES

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

N/A

RENTAL ITEMS

6. 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

7. The Purchaser is to be allowed until the ____ day of _____, 2011, 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.
8. 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.
9. 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

10. 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

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

COMPLETION

12. The within transaction shall be completed on or before 4:00 p.m. local time on the _____ day of _____, 2011, on which date vacant possession of the Lands is to be given to the Municipality unless otherwise provided for herein.

INSURANCE

13. 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

14. 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, non-registrable 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

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

UTILITY CONNECTIONS

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

PROTECTION OF MUNICIPAL PROPERTY

17. 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.

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18. 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

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

ZONING BY-LAW

20. 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

21. 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

22. 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.
23. 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 the Purchaser and specifically makes no representation or warranty as to any environmental pollutant that may be in the soil.

SOIL TESTS

24. 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

25. The Purchaser shall be responsible for all legal fees incurred by the Municipality in connection with the preparation of this Agreement; the completion of the transaction hereunder, and the completion of any re-purchase of the Lands by the Municipality as referred to herein.

DOCUMENT PREPARATION

26. 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

27. 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.

NO ASSIGNMENT

28. 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.

HST

29. 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

_____.

NON-MERGER

- 30. The covenants of the Purchaser shall not merge on the closing of the within transaction.

TIME

- 31 Time in all respects shall be of the essence hereof.

INTERPRETATION

- 32. 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

- 33. 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 _____, 2014.

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 _____, 2014.

DEVELOPER

Per:

Name:

Title:

SCHEDULE "A"

1. DEVELOPMENT OF THE LANDS

- (1) The Purchaser agrees to renovate and refurbish the property as _____, 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.
- (3) The Improvements shall be completed in every respect in accordance with Plans and Specifications initialed by the Purchaser and Chief Fire and Building Official of the Municipality and filed with the Treasurer of the Municipality.
- (4) 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.
- (5) The Improvements shall comply with all By-Laws of the Municipality, all applicable building codes, site grading and drainage plans and any other municipal or governmental laws, regulations or requirements.
- (6) The Improvements shall be fully completed, free of deficiencies, within **Two (2) Years** from the date of closing of the within transaction.
- (7) 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 and to require a re-transfer of them together with the Improvements as may then be located thereon, subject to the same adjustments as at closing, with the re-transfer to be completed Thirty (30) days next following a demand by the Municipality for such a re-transfer. The re-transfer by the Purchaser to the Municipality shall be free and clear of all encumbrances. The Purchaser shall not be entitled to any refund of the Purchase Price which shall remain the absolute property of the Municipality.
- (8) The Purchaser shall request a final inspection of the Improvements by the Municipality prior to the expiry of the said Two (2) Year period.

SCHEDULE "B"

Legal Description

LT XXXX PL MXXXX PIC ; Marathon

BEING ALL OF PIN 62448-XXXX (LT)