

An Overview of An Agreement of Purchase and Sale

From a Vendor's Perspective

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From a Purchaser's Perspective

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Introduction

In this paper, we have reproduced a standard form OREA Agreement of Purchase and Sale (Commercial) with more detailed deal-specific provisions attached as Schedule “B”. This is a common method of drafting the Agreement in smaller commercial transactions. The Agreement as a whole has a slightly pro-Vendor bias, although certain provisions are more favourable to the Purchaser. Throughout, we have included annotations that address the concerns raised by various provisions from both the Vendor’s and the Purchaser’s perspective.

We recognize that real estate clerks may not always be directly involved in the negotiation and drafting of an Agreement of Purchase and Sale. However, even if you are not responsible for negotiating the deal, having an understanding of the various issues raised in a typical Agreement of Purchase and Sale will help you protect your client’s interests at all stages of the transaction – including due diligence, addressing title issues, drafting closing documents and closing the transaction. If you are involved in negotiations, it is obviously critical that such issues are kept in mind, since the Agreement of Purchase and Sale determines your client’s rights and obligations throughout the transaction and after closing.

In either case, we hope that our paper is of assistance. We have tried to keep our comments succinct and with a practical, rather than academic, focus. In addition, no single paper could anticipate every possible issue that may come up in a commercial purchase and sale, and so our paper is by no means exhaustive. If you are interested in exploring any of these issues in more depth, there are many additional sources available. However, we hope that this paper provides a useful starting point.

AGREEMENT OF PURCHASE AND SALE COMMERCIAL

BUYER:	_____ , agrees to purchase from (Full legal names of all Buyers)
SELLER:	_____ , the following: (Full legal names of all Sellers)

Vendor's Perspective:

A corporate search should be completed to verify the proper corporate name of the Purchaser, to ensure it is an existing corporation and is properly named in the Agreement. Ensure that the Purchaser is not identified by its business name, rather than its proper corporate name.

From a business stand-point, the Vendor wants a Purchaser with a strong financial covenant. The Vendor should resist having a shell or single-purpose corporation as purchaser as it wants to ensure that the Purchaser is one that is able to close or has some assets (in addition to the property) if the Vendor needs to sue it for a breach of the Agreement. A Vendor should insist that the Purchaser be an individual or corporation with a strong covenant and then permit that individual or corporation to take title in another name or assign the Agreement on closing.

Purchaser's Perspective:

A corporate search should be done against the Vendor to ensure it is an existing corporation and is properly named. Ensure that the Vendor is not identified by its business name, rather than its proper corporate name. A preliminary subsearch of title is prudent to ensure that the registered owner is named as the Vendor.

If the Purchaser is a general partnership, all partners should sign the Agreement, with a notation that they are "carrying on business in partnership as [Partnership Name]". If the sale of land is within the partnership's ordinary course of business (which would be unusual), one partner may sign on behalf of the partnership. If the Purchaser is a limited partnership, the general partner will sign the Agreement on behalf of the limited partnership.

If title to the property is held by a nominee corporation, the beneficial owner should also execute the Agreement or provide some other evidence that it is conveying its beneficial interest to the Purchaser.

If the Agreement is signed by an individual Purchaser for a corporation to be incorporated, it should specify that the individual is contracting without any personal liability. Otherwise, the individual can be liable under the Agreement until the new corporation ratifies and adopts the Agreement.

REAL PROPERTY: Address: _____ fronting on the _____ side of _____ in the _____ and having a frontage of _____ more or less by a depth of _____ more or less described as _____ ("the property")
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Vendor's Perspective:

It is beneficial to all parties to ensure that the Property is described accurately. However, the Vendor should insist on the words "more or less" in connection with the description in order that any minor variations in the size or dimensions of the described property do not allow the Purchaser to seek an abatement to the purchase price or another remedy due to the minor misdescription. How far the words "more or less" will get a Vendor relying on them will depend on the details of each transaction; there is a large body of case law that deals with this issue. It may be beneficial for the Vendor to have the lands surveyed prior to listing them for sale to verify the dimensions and acreage. In addition, the parties should not automatically rely on the legal description in the previous Transfer as the description may have changed since that time for a variety of reasons, such as expropriation, severance or conversion.

Purchaser's Perspective:

As discussed above, the Property should be described as accurately and completely as possible. In certain cases where the lands were misdescribed, purchasers have been granted orders of specific performance with an abatement of the purchase price or have been allowed to rescind the contract.

The description should include all easements and rights of way benefiting the Property and to which it is subject. However, the *Conveyancing and Law of Property Act* ("CLPA") provides that such easements are conveyed with the land unless they are specifically excepted.

PURCHASE PRICE: _____ Dollars (CDN\$ _____)
DEPOSIT: Buyer submits (_____) _____ Dollars (CDN\$ _____) (Herewith/Upon acceptance)
by negotiable cheque payable to _____ to be held in trust without interest completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

Vendor's Perspective/ Purchaser's Perspective:

See discussion under "Schedule B", below.

SCHEDULE (S) _____ attached hereto form(s) part of this Agreement.

1. CHATELS INCLUDED: _____

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

Under the CLPA, unless specifically stated to be included, chattels will not form part of the property. Therefore, it's critical that all chattels that the Purchaser intends to buy are identified in the Agreement. The parties should describe the chattels as accurately as possible and use serial numbers for identification purposes, where available.

2. FIXTURES EXCLUDED: _____

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

All fixtures will stay with the property unless specifically excluded.

3. RENTAL ITEMS: The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable.

Vendor's Perspective:

The Vendor is in the position to identify those items that are rented and should ensure that such items are specifically listed in this section of the Agreement. Common rental items include hot water tanks, furnaces and other equipment.

Purchaser's Perspective:

See discussion under "Vendor's Perspective".

4. IRREVOCABILITY: This Offer shall be irrevocable by _____ until ____ p.m. on the ____ day of _____, 20____.
(Seller/Buyer)
after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

Vendor's Perspective:

If the offer to purchase is originating from the Purchaser, the Vendor will want the irrevocable period to be as long as possible to accept the offer. During this period the Vendor will be able to assess the offer and also may use it as a bargaining tool in connection with other offers that may be forthcoming for the property. There is case law which suggests that an offer may still be revocable even with an "irrevocable clause" unless separate consideration for the "irrevocable clause" is given or the Agreement is made under seal; reference should be made to this case law if an issue arises under this clause. It will be necessary to amend this clause each time a counter-offer is made.

Purchaser's Perspective:

See discussion under "Vendor's Perspective".

The Purchaser will typically want a shorter irrevocable period to reduce the chance that the Vendor receives a superior offer during this period.

5. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the _____ day of _____, 20____.
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

Vendor's Perspective:

In addition to the considerations listed under "Purchaser's Perspective", it is advantageous for the Vendor to have an earlier closing date to limit the time frame for the Purchaser's due diligence and to hedge against risks that may arise during the time period prior to Closing.

Purchaser's Perspective:

The Completion Date must be a date which is long enough away to accommodate the Purchaser's title search and conditional periods. Ensure that the date is not on a weekend or a holiday. It may be prudent to avoid month end closing dates due to the volume of closing occurring at these times. Of course, this is not as significant a consideration if the transaction is closing by electronic registration. Consideration should also be given to the closing time as documents can only be registered until 5:00p.m.

6. **NOTICES:** Seller hereby appoints the Listing Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. **Only if the Co-Operating Broker represents the interests of the Buyer in this transaction**, the Buyer hereby appoints the Co-operating Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No.: _____ (For delivery of notices to Seller) Fax No: _____ (For delivery of notices to Buyer)

Vendor's Perspective/ Purchaser's Perspective:

See discussion under Schedule "B", below.

7. **GST: If this transaction is subject to Goods and Services Tax (G.S.T.), then such tax shall be in addition to the Purchase Price.** The Seller will not collect GST if the Buyer provides to the Seller a warranty that the Buyer is registered under the *Excise Tax Act* ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any GST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to GST, Seller agrees to certify on or before closing, that the transaction is not subject to GST.

Vendor's Perspective/ Purchaser's Perspective:

See discussion under Schedule "B", below.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the _____ day of _____, 20____ (Requisition Date) To examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (_____) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

Vendor's Perspective/ Purchaser's Perspective::

See discussion under Schedule "B" below.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

Vendor's Perspective:

A Vendor should be reluctant to give any representation or warranty regarding permitted uses for the property.

Purchaser's Perspective:

This may be modified by the representations and warranties negotiated between the parties. See discussion under Schedule "B" below.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for: (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire in favour of Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Broker and Co-operating Broker shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

Vendor's Perspective:

The Vendor should ensure that the list of permitted encumbrances is as comprehensive as possible to limit the Purchaser's right to requisition title issues or nullify the deal on the basis of a title matter. The Vendor should insist on the right to "insure over" deficiencies as an acceptable solution to title issues where title insurance is available; this provides an expeditious and cost effective option to the Vendor to resolve title issues.

In larger transactions, it is recommended and common for the Vendor to conduct a title search prior to closing to identify any encumbrances that may interfere with a sale transaction and to "clean up" title prior to listing the property.

Purchaser's Perspective:

The Purchaser should not automatically accept this clause without reviewing it. Some of the encumbrances permitted by subparagraphs (a) through (d) may not be appropriate in a given transaction. For example, the Purchaser may discover a registered restriction on title that is currently complied with, but prevents the Purchaser's intended use. This would obviously be a major problem, but under the standard form provision, the Purchaser would not be permitted to require that this restriction be removed, and would be required to close despite this. See further discussion under Schedule "B" below.

As drafted, this clause requires the Purchaser to accept title insurance with respect to a title defect. While title insurance is becoming more common, this may not be acceptable to the Purchaser, in which case this provision should be amended.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Act, R.S.O. 1990, Chapter L4 and the Electric Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer 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 them except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as 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.

Vendor's Perspective/ Purchaser's Perspective:

See discussion under Schedule "B", below.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

Vendor's Perspective:

The Vendor is only obligated to deliver documents that are in its possession. This is an important limitation to its obligation to produce the documents listed as it ensures that the Vendor will not need to incur the cost or inconvenience of obtaining these documents unless they are readily available.

The Vendor is obligated to discharge any mortgages registered on title that are not being assumed by the Purchaser. It will be necessary to obtain a payout statement from the mortgagee that indicates the amount that will be required to obtain a discharge as of the closing date. When requesting the discharge statement you should request that it indicate a per diem amount in case the transaction is delayed. Where the mortgage is a private mortgage (i.e. not from one of the types of financial institutions listed in this section), it will be necessary for the mortgage to be discharged prior to the registration of the Transfer as a solicitor's undertaking is not given in this scenario.

Purchaser's Perspective:

The foregoing clause regarding discharging institutional mortgages reflects standard practice in Ontario. If the mortgage to be discharged is held by an individual or non-institutional lender, the Purchaser must insist the Vendor deliver a discharge in registrable form on or before closing. In some cases, the Purchaser may wish to insist upon an institutional mortgagee providing a registered discharge for closing, in which case the foregoing clause would need to be amended.

For a further discussion regarding surveys, see discussion under section 1 of Schedule "B", below.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for the property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**

Vendor's Perspective:

See discussion under Schedule "B", below.

Purchaser's Perspective:

If the Purchaser wishes to have an opportunity to inspect the Property and/or have its agents prepare a Property Inspection Report, this must be specifically provided for in the Agreement. In addition, the Agreement should be made conditional upon the Purchaser being satisfied with the results of the inspection and/or reports, failing which the Purchaser may terminate the Agreement. See further discussion regarding inspections under section 3 of Schedule "B", below.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller 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, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

Vendor's Perspective:

Although it is not common for significant damage to the property to occur prior to closing, insurance and pre-closing risk present an important issue that should be carefully considered by the Vendor. Although this section, as drafted, allows the Purchaser the option of terminating the Agreement or receiving the insurance proceeds and closing, in some instances a Vendor may be able to negotiate out the option to terminate so that the Purchaser is obligated to take the insurance proceeds and complete the transaction. Obviously, these provisions become more important if there is a long period of time between the execution of the Agreement of Purchase and Sale and the closing of the transaction.

Also see discussion under "Purchaser's Perspective".

Purchaser's Perspective:

At common law, the Purchaser would be liable for the buildings once the Agreement is fully executed and would need to insure the buildings from that time onwards. Therefore, it is important that this clause be included in the Agreement, so that the Vendor remains liable for the buildings until closing.

15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.

Vendor's Perspective:

See discussion under "Purchaser's Perspective"

Purchaser's Perspective:

This provision must be included in every Ontario purchase agreement. If not, any purchase agreement that requires the Vendor to obtain *Planning Act* consent would be void, as the agreement itself would violate the *Planning Act*. This clause provides, and the Purchaser will typically require, the Vendor to obtain any necessary consents, at its own expense.

16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of the Planning Act, R.S.O. 1990.

Vendor's Perspective:

The Vendor should assume responsibility for preparing the closing documents to control the content of the documents and to ensure that they are completed in a timely manner for closing.

Where the Planning Act statements are completed in a Transfer, that transfer and all previous transfers of the property are deemed to have been completed in accordance with the Planning Act. Obviously, it will be necessary for the Vendor's solicitor to verify that the conveyance will not be violating the *Planning Act* if it is completing the statements. It is important to note that the Transfer can still be registered even if the boxes are not completed.

Purchaser's Perspective:

The Purchaser should always have the ability to require the *Planning Act* statements to be included in the Transfer/Deed, as this will make future title searches easier, and thus improve the marketability of the Property.

17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

The Purchaser must always obtain either (i) a statutory declaration from the Vendor that it is not a non-resident of Canada under the Income Tax Act; or (ii) if the Vendor is a non-resident, a T2064 Certificate from the Minister of National Revenue which will set out a "certificate limit". If the purchase price exceeds this certificate limit, the Purchaser is required to pay 25 percent of the difference to the Receiver General. If the Purchaser does not receive either a statutory declaration or other proof of Canadian residency or a T2064 Certificate, the Purchaser is liable to pay 25 percent of the entire purchase price to the Receiver General. Therefore, it is extremely important that the proper steps are followed, and that the Agreement contains a clause which credits the Purchaser for any such liability under the Income Tax Act.

18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and 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 Buyer.

Vendor's Perspective:

See discussion under Schedule "B", below.

Purchaser's Perspective:

The standard form provision includes the basic items typically found in a simple commercial transaction. However, depending on the nature of the property being purchased, a more detailed adjustment provision is often required. See the additional discussion under Schedule "B" below.

19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

A "time of the essence" clause must appear in the Agreement, in order to allow the Purchaser or the Vendor to pursue its remedies if the other party defaults on its obligations on the time set for closing.

20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

In the event that a transaction is not to be completed in accordance with the terms of the Agreement, a party must demonstrate that it was ready, willing and able to complete the transaction in order to seek a remedy. Evidence of a party's ability to complete the transaction is demonstrated by "tendering" on the other party.

At common law, tender may only be made upon the party itself. This is usually logistically difficult, so it is important that the parties agree that tender may be made upon their respective solicitors. Also, in the absence of the clause regarding bank drafts or certified cheques, tender is required to be made by cash. Where the purchase price is large, this would be difficult and pose a potential security risk to the Purchaser.

21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

Under the *Family Law Act*, the owner of a matrimonial home may not sell the home without the consent of his/her spouse. This will not usually be an issue in the purchase of a commercial building. However, it is prudent to insist on the above warranty. If the Purchaser has knowledge that the property is a matrimonial home, it should insist on having the spouse consent to the sale, despite the above clause.

22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is subject of this transaction.

Vendor's Perspective:

The Vendor should attempt to delete this warranty on the basis that the Purchaser is conducting its own tests and inspections.

Purchaser's Perspective:

Although public concern over UFFI has lessened, a Purchaser should still insist on the broadest possible representation and warranty. If the Vendor resists giving the warranty in the form above, the Purchaser should obtain further information regarding UFFI before entering into the transaction and/or make the Agreement conditional upon satisfactory building and environmental inspections.

23. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the broker is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.

24. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

25. **AGENCY:** It is understood that the brokers involved in the transaction represent the parties as set out in the Confirmation of Representation below.

26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

Vendor's Perspective:

See discussion under "Purchaser's Perspective" below.

Purchaser's Perspective:

Although this provision ensures that the terms of any deal-specific schedule will prevail over the pre-printed terms of the OREA form, it is still preferable to amend any provisions of the OREA form which obviously conflict with the terms of the Schedule.

27. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

DATED at _____ this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

_____	_____		DATE _____
(Witness)	(Buyer/Authorized Signing Officer)	(Seal)	
_____	_____		DATE _____
(Witness)	(Buyer/Authorized Signing Officer)	(Seal)	
_____	_____		DATE _____
(Witness)	(Buyer/Authorized Signing Officer)	(Seal)	

I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

DATED at _____ this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

SCHEDULE "B"

DEFINITIONS

In this Schedule "B", "**Closing Date**" means the completion date specified in section 5 of the preprinted form to which this Schedule "B" is attached.

DEPOSIT

It is understood and agreed by the Vendor and the Purchaser that the deposit cheque will be held in the agent's real estate trust account and shall remain as deposit held in trust by the Vendor's agent in an interest bearing account or term deposit and any accrued interest thereon shall, subject to the following paragraph, be payable to the Purchaser on closing or any termination of this Agreement.

The deposit and earned interest shall be returned to the Purchaser forthwith in the event this transaction is not completed, unless the Purchaser is in default hereunder that entitles the Vendor to terminate this Agreement or the Purchaser wrongfully terminates this Agreement, in which event the deposit and earned interest thereon, shall be forfeited to the Vendor as liquidated damages and not as a penalty, without prejudice to any other remedies that the Vendor may have at law or in equity on account of such default or wrongful termination.

Vendor's Perspective:

The Vendor should insist on a high a deposit from the Purchaser to ensure the Purchaser has an incentive to complete the transaction. The Vendor wants the deposit to be certified funds from a reputable financial institution. The Vendor is permitted to retain the deposit as damages if the Purchaser is in default of its obligations under the Agreement of Purchase and Sale.

Purchaser's Perspective:

The Purchaser should attempt to change the last sentence, so that it provides that the deposit will be in full satisfaction of all claims by the Vendor against the Purchaser and that the Vendor shall have no other remedies against the Purchaser on account of the default or termination.

It is important that the clause require the Vendor to invest the deposit and pay any interest earned to the Purchaser. Otherwise, the Vendor is entitled to any interest earned on the deposit. Note that the standard form OREA clause on page 1 does not provide for interest to be paid to the Purchaser, and should be deleted or amended if possible.

LAND TRANSFER TAX AND RETAIL SALES TAX

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) and, if applicable, all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario)) payable in connection with the transfer of the Property and the Chattels, if any, pursuant to this Agreement.

Vendor's Perspective/ Purchaser's Perspective:

Retail Sales Tax is payable on closing at a rate of 8 percent of the value allocated to any chattels or other personal property. Land Transfer Tax must be paid at the prescribed rate on the value of consideration for the real property.

PROJECT DOCUMENTS

1. The Vendor covenants that within ● business days (except as otherwise provided below) after execution of this Agreement by both parties, it shall make available to the Purchaser all relevant financial and other information with respect to the Property, to the extent within its possession or control, including the following (the "Project Documents"):
 - (a) an up to date rent roll for the Property that includes all relevant lease particulars, including name of tenant, lease start date, all rent particulars, term of lease, renewal/extension particulars, and deposits/security particulars (the "**Rent Roll**"), copies of all executed leases, offers to lease and tenancy agreements and all ancillary documents thereto, including extension agreements and amending agreements and renewals (collectively the "**leases**"), including a list of all tenants;
 - (b) certified area measurements of the buildings on the Property (the "**Buildings**");

- (c) a copy of the existing survey of the Property (the “**Survey**”);
- (d) a list of and copies of all executed contracts and warranties with third parties (the “**Contracts**”);
- (e) copies of any previously completed soil tests, engineering reports and environmental studies including all such items previously requested by or provided to mortgagees;
- (f) financial statements for the most recently completed fiscal year of the Vendor for the operation of the Property together with operating statements and in respect of the period from the end of the last fiscal year to date;
- (g) a list of chattels being sold by the Vendor hereunder, if any (the “**Chattels**”);
- (h) copies of any plans or drawings for the Buildings, including electrical, mechanical and structural and any drawings and plans related to any alterations or additions contemplated;
- (i) all tenant files;
- (j) copies of all statements, bills and other backup in support of the expenses for the Property for the most recent complete fiscal year and the period from the end of the last fiscal year to date;
- (k) copies of all utility bills for the current and the immediately preceding calendar year;
- (l) outstanding applications or appeals and orders issued concerning real property taxes for the Property;
- (m) copies of current and past arrears reports for the Property for the last calendar year;
- (n) copies of realty tax assessment notices and tax bills relating to the Property for the current and immediately preceding calendar year;
- (o) all available information with respect to the common area, realty tax and operating expense recoveries and billings submitted to tenants for the current fiscal year of the Property and copies of 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;
- (p) the Vendor shall use commercially reasonable efforts to obtain estoppel certificates from each of the tenants confirming that their leases are in good standing, unamended with no defaults thereunder, such certificates to be delivered within ● days after execution of this Agreement by both parties;
- (q) details of all pending or threatened litigation, arbitration or other such proceedings involving the Property and all files of the Vendor relating to same; and
- (r) such other information as is reasonably required by the Purchaser, as requested by the Purchaser both before and after receiving the initial delivery of information and documentation from the Vendor.

Vendor’s Perspective:

The list of documents that the Vendor is obligated to produce should be drafted in direct consultation with your client as you do not want the Vendor to be obligated to produce documents which are not in its possession or easily ascertainable. The Vendor should resist the obligation to provide any information for which the Purchaser can conduct an independent title search or off-title inquiry. It is beneficial for the Vendor to identify and assemble the deliveries as early as possible as the conditional period and closing date will usually run from the date that the Purchaser receives the last of the Vendor’s deliveries.

The Vendor should always require the Purchaser to sign a confidentiality agreement in connection with the information being provided and require that the information be returned if the transaction does not proceed.

Purchaser’s Perspective:

The above provision contains certain deficiencies from a Purchaser’s perspective, including the following (numbering matches the Agreement):

(c) The clause only requires the Vendor to deliver an existing survey. This may be old, inaccurate and out-of-date, and may not show all current buildings and improvements. As such, it is of limited usefulness. A requirement for a current up-to-date survey showing all buildings and improvements, set back measurements, fences, easements and encroachments and other relevant is far preferable since it will allow the Purchaser to identify any potential issues prior to waiving its conditions (below). In addition, if the surveyor’s report is addressed to the Purchaser, the Purchaser may be able to pursue the surveyor if it suffers a loss as a result of errors or omissions in the survey. Obviously, the Purchaser would prefer to have the Vendor pay for the preparation of the survey, but this may be an issue for negotiation, since for complex commercial properties such costs can be considerable.

(e) Similarly, the Vendor should be required to prepare and deliver up-to-date soil tests, engineering reports, building inspections and environmental assessments. Previously completed test and studies may be out-of-date and factually inaccurate. In addition, such reports will not be addressed to the Purchaser, and therefore if they are deficient the Purchaser will not be entitled to seek a remedy against the reports' authors. At a minimum, the Purchaser should require that any existing reports be “signed over” to the Purchaser by their authors, so that the Purchaser will be entitled to rely on them.

(i) Where the revenue generated from the leases is important to the value of the property, the Purchaser may wish to include more detail regarding the information to be provided – e.g. originals and true copies of leases, amendments and any other documents regarding any tenancies, and a declaration or certificate regarding any oral tenancies. In addition, the Purchaser may wish to require that tenant estoppel certificates must be provided as a condition of closing, rather than merely requiring the Vendor to make best efforts. This may be particularly important for large, “anchor” tenants.

(j) The Purchaser should consider whether financial statements for the preceding fiscal year and current year's operating statements are sufficient. For a major purchase, the Purchaser should require that statements for several previous fiscal years are provided. The Agreement should provide that financial statements must be audited by a chartered accountant in accordance with generally accepted accounting principles.

DUE DILIGENCE PERIOD

2. The Purchaser's obligation to complete this transaction is conditional until ● days following the execution of this Agreement by both parties (the “Purchaser's Conditional Period”) upon the Purchaser being satisfied, in its sole and absolute subjective discretion, with its physical inspections of the Property, the availability of financing for the Property and its review of the Project Documents (the “Purchaser's Conditions”).

The Purchaser shall advise the Vendor, in writing, at least ● days prior to the end of the Purchaser's Conditional Period, as to which Contracts it wishes to assume. If the Purchaser fails to provide such notice, it shall be deemed to have elected not to assume any of the Contracts.

If the Purchaser elects or is deemed to have elected not to assume any of the Contracts, the Vendor agrees to terminate all Contracts other than assumed Contracts prior to closing at the Vendor's sole cost and to indemnify and save the Purchaser harmless from any and all claims or liability in connection thereunder.

The foregoing conditions are inserted for the sole benefit of the Purchaser and may be waived by it at any time prior to the expiry of the Purchaser's Conditional Period. The Purchaser shall notify the Vendor or the Vendor's solicitors in writing on or prior to the last day of the Purchaser's Conditional Period, that the Purchaser's Conditions have been satisfied or waived. If the Purchaser so notifies the Vendor that the Purchaser's Conditions have been satisfied or waived, then this Agreement shall be unconditional, subject to the further conditions below. If the Purchaser fails to notify the Vendor or the Vendor's solicitors within the Purchaser's Conditional Period that the conditions have been satisfied or waived or notifies the Vendor or its solicitors that the conditions have not been satisfied, this Agreement shall thereupon become null and void and the Purchaser shall be entitled to the return of all deposits it has paid with interest and without deduction.

Provided title is and will be on the Closing Date good and free from all encumbrances, except only for Permitted Encumbrances, said title to be examined by the Purchaser at its own expense. The Purchaser is not to call for the production of any title deed, abstract of title, proof or evidence of title other than those in the Vendor's possession or under its control or as provided herein. If, by the expiration of the Purchaser's Conditional Period, the Purchaser shall furnish the Vendor in writing with any valid objection to the title, which the Vendor shall be unable or unwilling to remove or correct and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations, be null and void and the deposit returned to the Purchaser and the Vendor shall not be liable for any costs or damages. Save as to any valid objection so made within such time or any objection going to the root of title or any objection to title arising after the Purchaser's solicitors conduct their search, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Property.

Vendor's Perspective:

The Vendor will generally want a short Conditional Period to limit the time for the Purchaser's due diligence and to allow sufficient time prior to closing to deal with any issues that need to be addressed as a result of the Purchaser's due diligence.

The Vendor should be cautious as to which Contracts it agrees to terminate and should ensure that it has a termination right and an appropriate time frame within which to exercise such termination right. Ideally, a Vendor would negotiate the right to terminate those Contracts that it wishes to terminate and to require the Purchaser to assume those Contracts that it does not terminate.

As the Vendor is permitting the Purchaser an opportunity to conduct its own due diligence, the Vendor should refuse to give any representations or warranties regarding the permitted use of the property under applicable zoning by-laws (as is provided in the standard OREA form).

The Vendor will want to ensure that the list of permitted encumbrances is as comprehensive as possible to limit the encumbrances that need to be addressed prior to closing.

Any “Authorization” given by a Vendor to the Purchaser to be submitted to third parties should specifically state that the Authorization does not constitute an authorization for such third party to conduct inspections.

See discussion under “Purchaser's Perspective”.

Purchaser's Perspective:

The Purchaser's requirement to complete the transaction should be at its "sole and absolute subjective discretion" or similar language, as is the case here. However, your client should be made aware that in certain cases the courts have generally held that, even with such language, a Purchaser cannot use a conditional clause to refuse to close a deal capriciously or in bad faith.

It is critical that the Agreement state that the condition is for the sole benefit of the Purchaser and may be unilaterally waived by it. Otherwise, the courts may hold that the condition may not be waived.

It is important that the Purchaser reviews all listed permitted encumbrances prior to executing the Agreement to ensure that none of them will materially affect its ability to own and operate the property as intended. Therefore, at minimum, the Purchaser should conduct a subsearch of title during the negotiation of the agreement and review any registered instruments that the Vendor has listed as permitted encumbrances. The Vendor will likely also include several general permitted encumbrances, which are typically similar to those set out in Section 10 of the OREA form. As discussed under that Section, these encumbrances may not always be acceptable, depending on the nature of the intended use of the property, and may need to be negotiated.

Where the Schedule contains a title clause such as the above, the standard form clause in Section 10 of the OREA form should be deleted to avoid confusion.

If the transaction is to be title insured, the Purchaser should ensure it gets a copy of the title commitment early and is given a chance to review and request changes to the endorsements, coverages and permitted encumbrances listed in the commitment.

Where chattels and personal property are being purchased along with the real property, the Purchaser must do the necessary searches under the *Personal Property Security Act* to ensure that no other parties claim a security interest in those items. If the searches identify any such security interests, the Purchaser must require the Vendor to obtain the necessary discharges or otherwise provide satisfactory evidence that the chattels are being transferred free and clear of any security interests or other encumbrances.

INSPECTIONS AND TESTING

3. During the Purchaser's Conditional Period, the Vendor shall provide access to the Property during normal business hours, provided that such access shall be subject to the rights of the tenants, and provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts not to so interfere) with the use, operation and enjoyment by the tenants of their leased premises.

The Purchaser shall be entitled to carry out any inspections or testing of the Property that it desires. All such inspections will be carried out on notice in writing to the Vendor and in the presence of a representative of the Vendor (if the Vendor so desires) whom the Vendor will make available to assist the Purchaser in conducting such inspections. Any invasive testing or inspections shall be subject to the Vendor's prior written consent, which will not be unreasonably withheld. The Vendor acknowledges that the Purchaser is planning to do a Phase II environmental inspection and that conducting such an inspection is acceptable, subject to the Vendor's review and approval of the plans for such inspection. Where possible, all tests of building systems and inspections requiring removal of any leasehold improvements will be conducted outside normal business hours. The Purchaser covenants and agrees to promptly repair or pay the cost of repair of any damage occasioned during and resulting from the inspection of the Property conducted by the Purchaser or its authorized representatives and to return the Property to the condition it was in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Vendor and the tenants harmless from and against all losses, costs, claims, third party claims, damages, expenses that the Vendor or tenants may suffer as a result of the inspection of the Property conducted by the Purchaser or its authorized representatives, or as a result of any unauthorized tests or inspections by any governmental authority. The provisions of this paragraph shall survive closing or other termination of this Agreement, notwithstanding any other provisions hereof. The Purchaser agrees that the Vendor shall be entitled to deduct from the Purchaser's deposit the amount of any losses, costs, claims, third party costs, damages or expenses that the Vendor or any tenant may suffer as a result of a breach of this paragraph by the Purchaser.

The Vendor shall provide written authorizations to governmental authorities having jurisdiction over the Property, authorizing them to release any information in their files to the Purchaser or its solicitors in connection with the Property, provided that no inspections by such authorities shall be permitted.

Vendor's Perspective:

The Vendor wants to control access to the property and limit the type of testing that can occur for a variety of reasons including (i) it interferes with the Vendor's or its tenant's business operations, (ii) it may jeopardize the confidentiality of the sale, and (iii) it does not want the Purchaser conducting intrusive testing on the property. The Vendor should insist on an indemnity for any losses sustained as a result of the Purchaser's testing and inspections.

Purchaser's Perspective:

The above inspection rights are fairly broad, which is important from the Purchaser's perspective. The Purchaser may also want access to the Vendor's employees, consultants and agents to discuss the condition of the property and other relevant matters. The Vendor is unlikely to agree to this without significant restrictions.

It is crucial that the Purchaser be provided with the Vendor’s authorization to obtain file information from the fire department, public health unit and other government authorities which will require such authorization. The Agreement should provide a timeline for the delivery of these items (e.g. three days after execution of the Agreement) to ensure that the Purchaser has time to obtain the necessary responses. Typically, neither party will want the government authority to inspect the property.

NEW OFFER TO LEASE

4. The Vendor shall provide the Purchaser with copies of any offers to lease proposed to be entered into after the date hereof. If the Purchaser waives all of the Purchaser’s Conditions, the Vendor shall not enter into any new leases or offers to lease without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed. If the Purchaser has not responded within ● business days of the Vendor’s request for approval (provided the Vendor has supplied a copy of the proposed lease or offer to lease), it shall be deemed to have approved same.

Vendor’s Perspective:

The Vendor needs to preserve the right to enter into new leases and continue to lease the property in the ordinary course in the event that the Purchaser does not waive its conditions.

Purchaser’s Perspective:

The Purchaser should attempt to remove the deemed approval clause. The Purchaser may also wish to specify that it has the right to approve any offers to lease entered into during the Purchaser’s conditional period, as well.

MANAGEMENT OF PROPERTY UNTIL CLOSING

5. The Vendor covenants to continue to manage, operate and maintain the Property until closing in a manner consistent with its current and past operations, including, subject to the obligations of the tenants under the leases, making all necessary day to day repairs and maintenance as may be reasonably required.

Vendor’s Perspective:

This clause should not be problematic to the Vendor as it will continue to operate the property in the ordinary course until the transaction is completed. If there is a specific repair or replacement required that the parties have factored into the purchase price, the Vendor should specifically exclude its obligation to complete such repair or replacement.

Purchaser’s Perspective:

It would be preferable to require the Vendor to operate the property in accordance with an objective standard – i.e. “operate and maintain the Property as would a prudent owner of a similar building and facility in the vicinity of the Property”.

REPRESENTATIONS AND WARRANTIES

6. The Vendor represents, warrants and covenants that:
 - (a) it is a corporation duly incorporated and subsisting under the laws of the Province of Ontario and has the corporate power, authority, right and capacity to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
 - (b) it has not received written notice of expropriation of any part of the Property;
 - (c) it is not a non-resident of Canada within the meaning of the *Income Tax Act*;
 - (d) there is no indebtedness to any person, firm or corporation which on or after the Closing Date may constitute a lien, charge or encumbrance on the Property or which would affect the Purchaser’s right, from and after the Closing Date, to own, occupy and obtain revenue therefrom;
 - (e) the Chattels are owned by the Vendor free and clear of all charges, liens and other encumbrances;

- (f) except with respect to the roof of the building located on the Property, it is not aware of any material defect or deficiency affecting the Buildings or the mechanical, electrical, HVAC, plumbing, fire protection, security systems and such systems are free and clear of all charges, liens and encumbrances;
- (g) with respect to the existing leases:
- (i) the Rent Roll is true and correct in all material respects. The Buildings are rented only to the tenants set forth in the Rent Roll and, so far as the Vendor is aware, there are no other parties who have any rights under leases, licences or other rights of occupancy save as set forth in the Rent Roll;
 - (ii) the copies of the existing leases which the Vendor has provided or will provide to the Purchaser for review are true and complete copies thereof;
 - (iii) the existing leases and written amendments that are provided to the Purchaser constitute all agreements between the Vendor (and, so far as the Vendor is aware, its predecessors in title) and the tenants of the Property, there are no amendments between the Vendor and any of the tenants not disclosed whether oral or written, or any material defaults by the Vendor of which the Vendor has received written notice under the existing leases; and there has been no prepayment of rents or deposits except as disclosed to the Purchaser;
 - (iv) to the best of the knowledge of the Vendor, the tenant under each lease is not in material default of any of its obligations as tenant under any such lease;
 - (v) the Vendor is not aware of any work that is required to be performed by the Landlord under the leases or of any improvements that are required to be provided to the tenants under the applicable leases;
 - (vi) no tenant is owed money by the Vendor under any of the leases, and there are no disputes between the Vendor as landlord (or its property manager) and any tenant under any lease;
 - (vii) except as disclosed to the Purchaser, the Vendor is not aware of any real estate or leasing commissions, tenant inducements, tenant allowances, capital contributions, tenant improvements or other concessions to tenants remaining to be paid or performed under or in respect of any of the leases;
- (h) the statements and information provided to the Purchaser present fairly the revenue and expenses and all significant facts related to the Property for the period reported on;
- (i) copies of all reports pertaining to any environmental assessment/audits relating to the Property, including any inspections, investigations and tests relating to the Property that were obtained by, or in the possession or control of, or carried out on behalf of, the Vendor or its representatives have been or will be provided to the Purchaser as part of the Project Documents;
- (j) the Vendor is not aware of any non-compliance by the Property with environmental laws and the Vendor is not aware of any environmental issues with respect to the Property. The Vendor is not aware of any hazardous materials on or about the Property;
- (k) the Vendor is registered pursuant to the provisions of Part IX of the *Excise Tax Act* (Canada) the "GST Act";
- (l) so far as the Vendor is aware, no building, structure or improvement located on the Property contains asbestos or any other hazardous, regulated or controlled substance under applicable environmental laws, nor are there any underground storage tanks located on the Property;
- (m) except as disclosed to the Purchaser in writing, there are no litigation proceedings or other proceedings against the Vendor or affecting the Property or the use thereof or entitlement to receive revenue therefrom before any court, commission, board, bureau or agency or arbitration panel, nor has the Vendor received written notice of any such litigation or other proceedings which are threatened;
- (n) as far as the Vendor is aware the Survey shows the current location of all buildings and other structures on the Property;
- (o) all Contracts are in good standing, unamended, and the Vendor is not aware of any material defaults thereunder;
- (p) the Vendor is not aware of any work orders having been issued by any governmental or regulatory authority relating to the Property or of any circumstances which could give rise to a work order;
- (q) the Vendor maintains, and is in good standing in respect of, such fire, boiler, public liability, property damage and rental insurance covering the Property as would be maintained by a prudent owner of a similar property and as required under the leases; and

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| (r) | the Vendor will continue to disclose or update the Project Documents as the Vendor becomes aware of any changes or modifications thereto. |
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Vendor's Perspective:

The Vendor should attempt to minimize those representations and warranties that it is providing, especially where the property is being purchased on an "as is" basis. All representations and warranties should be limited to the Vendor's knowledge, if possible. The Vendor should not represent and warrant any matter that the Purchaser can verify through its own due diligence.

The Vendor should be cautious on the timing of a representation and warranty as the Vendor usually needs to certify that the representations and warranties given in the agreement remain true as of the closing date, which may be a much later date.

Where there is a comprehensive list of representations and warranties in the Agreement, the Vendor should ensure that none of the closing documents (for example, statutory declarations, acknowledgements or certificates) contain any additional representations or warranties other than those which have been negotiated in the Agreement.

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

Although the extent of representations and warranties will depend on the relative bargaining power of the parties, a Purchaser would typically want to make them as broad and comprehensive as possible. For example, the Purchase should try to incorporate the following amendments to the above representations and warranties (numbered as per the Agreement):

- (d) This could be expanded to provide that the Vendor will forthwith discharge any construction liens;
- (f) The Purchaser should try to obtain a representation and warranty that is absolute and not qualified by the words "[the Vendor] is not aware of any material defect, etc." The representation and warranty should include the condition of the roof, as this is potentially one of the most costly items to repair.
- (g)(i) Delete the words "so far as the Vendor is aware";
- (g)(iii) Delete the words "of which the Vendor has received written notice". Note that the last portion of this subparagraph, regarding prepayments of rents and deposits is very important. The Purchaser does not want to find out after closing that a major tenant has prepaid some or all of its rent and that the Purchaser has no recourse against the Vendor for this lost income.
- (g)(iv), (v) and (vii) All of these representations and warranties are qualified as being to the best of the Vendor's knowledge or awareness. The Purchaser should try to make these absolute.
- (j) A thorough discussion of a Purchaser's potential liability for environmental issues is beyond the scope of this paper. Be aware, however, that in most transactions, the Purchaser should insist on a far more detailed and comprehensive representation and warranty regarding the environmental state of the property than is provided in this Agreement. Even more critical is the ability to perform the necessary environmental testing prior to waiving the Purchaser's condition, as discussed above. Finally, if the parties discover an environmental issue, specific clauses may have to be negotiated to determine how such issues are dealt with and who will bear the expense.
- (i) If possible, this representation and warranty should not be qualified as to the Vendor's awareness. Except in exceptional circumstances, a Purchaser should never agree to the presence of any asbestos on the Property, as the cleanup costs and potential liability can be significant. It may also be prudent to insert a representation and warranty that there is no toxic mould anywhere in the property, as this has recently become the subject increased attention and litigation.
- (n), (o) These representations and warranties should be made absolute, as discussed above.
- (p) This representation and warranty would more typically state that the Vendor has not received any work orders, and is not aware of any circumstances that could give rise to one.

There are many additional vendor's representations and warranties that a Purchaser may wish to include, depending on the nature of the property, its proposed use and other factors. For example:

- (i) The Vendor does not retain any interest in any adjoining lands (i.e. compliance with the *Planning Act*);
- (ii) Access to and egress from the property is satisfactory for the intended use;
- (iii) The property is adequately serviced with hydro, gas, water, sewers, telecommunications and other utilities;
- (iv) There is sufficient parking for the intended use;
- (v) All building, structures and improvements were constructed in accordance with all applicable permits, developments agreements and other governmental requirements, and are situated and comply with all zoning bylaws;
- (vi) The Vendor has and will transfer to the Purchaser all necessary licenses and permits to operate the business at the property;
- (vii) There are no existing or pending expropriation orders;
- (viii) The building is not designated under the *Heritage Act*.

The above is a partial list, and other representations and warranties may be appropriate in certain circumstances.

Note that even a very extensive list of representations and warranties offers limited protection to the Purchaser. After the Vendor pays off its creditors, it may not have the funds available to satisfy a claim for breach of warranty. In addition, there are often time limits and monetary limits on claims that may be brought. Therefore, it is always desirable that the Purchaser be given an opportunity to do its own inspections and due diligence.

7. The Purchaser represents, warrants and covenants that:
- (a) it is a corporation duly incorporated and subsisting under the laws of the Province of Ontario and has the corporate power, authority, right and capacity to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
 - (b) The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act*;
 - (c) The Purchaser will be a GST registrant under the GST Act on the Closing Date; and
 - (d) To the knowledge of the Purchaser, there is no outstanding suit, action, litigation, claim or legal proceeding, including appeals and applications for review, in progress relating to the Purchaser before any court, commission, board or arbitration panel which, if determined adversely to the Purchaser, would:
 - (i) prevent the Purchaser from satisfying the purchase price;
 - (ii) enjoin, restrict or prohibit the purchase of all or any material part of the Property as contemplated by this Agreement; or
 - (iii) prevent the Purchaser from fulfilling in any material respect its obligations contained in this Agreement or arising from this Agreement.

Vendor’s Perspective:

The above representations and warranties are minimal. The Vendor might also consider representations confirming the transaction does not violate applicable laws, the agreement has been validly executed by the Purchaser, the Purchaser has not commenced any bankruptcy proceedings or any other matter which is relevant to the Purchaser’s completion of the transaction.

Purchaser’s Perspective:

The Purchaser will typically want to limit these representations and warranties as much as possible.

- SURVIVAL OF REPRESENTATIONS AND WARRANTIES**
8. The representations and warranties contained in this Agreement shall not merge on closing but shall continue in full force and effect for the benefit of the party entitled thereto for a period of ● months following the Closing Date. The representations and warranties contained in this Agreement will cease to have effect ● months following the Closing Date except to the extent that written notice of a claim has been made thereunder prior to that date.

Vendor’s Perspective:

Generally, the Vendor’s representations and warranties are more extensive than the Purchaser’s and provide significantly more exposure if untrue. Accordingly, the Vendor will ideally want the representations and warranties to expire on closing, or live for as short a period as possible after closing.

See the discussion regarding the *Limitations Act, 2002* under “Purchaser’s Perspective”, below.

Purchaser’s Perspective:

The Purchaser will typically want to maximize the survival period of the representations and warranties, so that its ability to make a claim is not unduly limited. This may be particularly important for environmental matters, which may not become apparent until long after closing.

The new *Limitations Act, 2002* may affect the time period during which the Purchaser may make a claim for breach of warranty. Certain practitioners are recommending that comprehensive indemnity provisions and other complex mechanisms are included in purchase agreements to attempt to deal with these issues. This Agreement does not contain such provisions, and it remains to be seen how effective they will be.

VENDOR'S CLOSING DELIVERIES

9. On closing, the Vendor shall deliver to the Purchaser the following:
- (a) a Transfer/Deed of Land, in registrable form, in respect of the Property to the Purchaser, to be duly executed by the Vendor and contain the statements by Vendor and its solicitor under section 50(22)(a) and (b) of the *Planning Act* (Ontario);
 - (b) those keys (clearly marked) in the Vendor's possession that relate to the Property;
 - (c) a statutory declaration of an officer of the Vendor having personal knowledge attesting to the fact the Vendor is not at the time of execution of the aforesaid statutory declaration and will not at the Closing Date be a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
 - (d) a general assignment to the Purchaser of all leases in favour of the Purchaser containing the indemnity of the Vendor respecting matters arising thereunder prior to closing and the indemnity of the Purchaser respecting matters arising thereunder from and after closing;
 - (e) a notice to the tenants advising of the sale and directing the rent to be paid following closing to the Purchaser, or as it shall otherwise direct;
 - (f) the statement of adjustments, to be delivered to the Purchaser by the Vendor at least ● Business Days prior to the Closing Date and to have annexed to it details of the calculations used to arrive at all debits and credits on the statement of adjustments. The Vendor shall give the Purchaser's representatives reasonable access to all working papers and back-up materials in order to verify the statement of adjustments;
 - (g) a general conveyance of all Chattels;
 - (h) an assignment and transfer of the Vendor's interest in any outstanding guarantees, warranties and indemnities with respect to the Property as well as any permits or licenses required to operate the Property;
 - (i) an undertaking to re-adjust all items set out in the statement of adjustments if necessary;
 - (j) all postdated cheques in its possession or control, endorsed over to the Purchaser or to whomever it so directs and an undertaking to forthwith deliver to the Purchaser or to whomever it directs any cheques or other monies that come into its possession after closing;
 - (k) a general assignment of assumed Contracts containing the indemnity of the Vendor respecting matters arising thereunder prior to closing and the indemnity of the Purchaser respecting matters arising thereunder from and after closing;
 - (l) directions to the other parties under the Contracts respecting the performance of obligations under such Contracts from and after the Closing Date;
 - (m) all letters of credit and other security delivered by any Tenants as security deposits, to the extent not adjusted for in the Statement of Adjustments;
 - (n) originals (if in the possession of the Vendor) of all Contracts and leases and copies of all files and documents relating to the Property in the possession or control of the Vendor, including all tenant files;
 - (o) a statutory declaration of an officer of the Vendor confirming that the representations, warranties and covenants contained herein are true, correct and fulfilled as of the Closing Date, declaring as to the Vendor's continuous, open, exclusive, undisturbed and undisputed possession of the Property, confirming that the survey delivered hereunder indicates the boundaries of the Property as occupied and discloses the current extent of and location of all buildings, structures and other improvements on the Property;
 - (p) tenant estoppel certificates as provided for herein, provided that if the Vendor is unable to obtain such estoppel certificates from all tenants and sub-tenants occupying premises at the Property then the Purchaser agrees to accept a statutory declaration of an officer of the Vendor confirming the matters to be set out in such estoppel certificates for the remainder of the tenants and sub-tenants;
 - (q) evidence satisfactory to the Purchaser's solicitor that the Vendor has complied with any corporate requirements necessary to authorize the sale of the Property;
 - (r) where any transaction is to be completed by electronic registration, the Document Registration Agreement, executed by the Vendor's solicitor, in the form recommended from time to time by the Law Society of Upper Canada, amended to conform to this agreement; and

(s) such other documents and items as the Purchaser may reasonably require to ensure completion of the purchase contemplated.

Vendor's Perspective:

The Vendor's closing deliveries will be dictated by the content of the Agreement. The Vendor should not deliver any additional documents that were not contemplated by the Agreement.

With respect to estoppel certificates where there are a large number of tenants, the Vendor may consider reducing the obligation to a percentage of the rentable area in the property so that a failure to obtain an estoppel certificate from a smaller tenant does not interfere with the transaction.

Purchaser's Perspective:

Where the income from leases is a significant part of the value of the property, the Purchaser should require that estoppel certificates be delivered on closing. This is particularly important for major, "anchor" tenants. A compromise position may be that the Vendor is required to deliver estoppel certificates for major tenants, and the Purchaser is willing to accept a declaration by the Vendor with respect to other smaller tenants for which an estoppel has not been obtained.

The Purchaser may also wish to insist that the Vendor deliver evidence of its corporate authority to complete the Agreement, such as an officer's certificate enclosing all relevant by-laws, directors' and shareholders' resolutions, shareholder agreements and a certificate of incumbency confirming all authorized signing officers. Alternately, the Purchaser may accept an opinion from the Vendor's lawyer with respect to these matters.

If the Agreement does not provide for delivery of evidence of corporate authority, the Purchaser may be able to rely on the "indoor management rule", which limits the right of the Vendor to claim that it did not have the authority or capacity to enter into and complete the Agreement. Be aware, however, that the indoor management rule has limitations and does not apply in all transactions.

If necessary under any of the Contracts, the Vendor should be required to provide the other party's consent to the assignment of the Contract to the Purchaser.

PURCHASER'S CLOSING DELIVERIES

10. On closing, the Purchaser shall deliver to the Vendor:
- (a) a certificate from an officer of the Purchaser confirming that the Purchaser's representations and warranties are true as of closing;
 - (b) the general assignment of leases;
 - (c) an undertaking to re-adjust all items set out in the statement of adjustments if necessary;
 - (d) the general assignment of assumed Contracts;
 - (e) the balance due on closing;
 - (f) a direction with respect to the manner in which the Purchaser wishes to take title to the Property;
 - (g) the statutory declaration, covenant and indemnity with respect to GST;
 - (h) evidence of compliance with the *Investment Canada Act*, if applicable;
 - (i) evidence satisfactory to the Vendor's solicitor that the Purchaser has complied with any corporate requirements necessary to authorize the sale of the Property;
 - (j) where any transaction is to be completed by electronic registration, the Document Registration Agreement, executed by the Purchaser's solicitor, in the form recommended by the Law Society of Upper Canada, amended to conform to this agreement; and
 - (k) such other documents and items as the Vendor may reasonably require to ensure completion of the purchase contemplated.

Vendor's Perspective:

See discussion under "Purchaser's Perspective".

Purchaser's Perspective:

The items listed are fairly typical in a commercial transaction, but obviously may vary depending on the nature of the transaction.

ADJUSTMENTS TO THE PURCHASE PRICE

11. The adjustments for the Property shall include all current rents, including current basic rent and current additional rent and other charges (including recoveries of operating expenses, realty taxes and management fees) for the Property, prepaid rents (and interest accrued thereon, if any), prepaid monthly parking charges (and interest accrued thereon, if any), security deposits and last month rent deposits and interest accrued thereon, realty taxes, including local improvement rates and charges, water and assessment rates, prepaid amounts under Contracts, current amounts payable under Contracts, operating costs, utilities, utility deposits, fuel, licenses necessary for the operation of the Property and all other items normally adjusted between a vendor and purchaser in respect of the sale of a property similar to the Property. In addition, the adjustments for the Property shall include the other matters referred to in this Agreement stated to be the subject of adjustment and, notwithstanding the foregoing, shall exclude the other matters referred to in this Agreement that are specifically stated not to be the subject of adjustment.

All prepayments under Contracts agreed to be assumed by the Purchaser shall be adjusted on closing.

No rents in arrears will be adjusted, however, the arrears shall remain the property of the Vendor and the Purchaser shall use reasonable commercial efforts in assisting to collect same on the Vendor’s behalf without expense to the Purchaser.

Any tenant inducements, leasing commissions and landlord’s work (collectively the “**Tenant Allowances**”) outstanding at the Closing Date (whether due before or after the Closing Date), in respect of leases entered into prior to the waiver or satisfaction of the Purchaser’s Conditions shall be the responsibility of the Vendor and, unless paid or performed by the Vendor prior to the Closing Date, adjusted in favour of the Purchaser on the Closing Date. Any such Tenant Allowances in respect of leases entered into after the waiver or satisfaction of the Purchaser’s Conditions shall be the responsibility of the Purchaser and, if paid or performed by the Vendor prior to the Closing Date, adjusted in favour of the Vendor on the Closing Date.

Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

If at the Closing Date there are items with respect to which adjustments cannot finally be made until a later date, adjustments in respect of such items shall be made on a reasonably estimated basis at the Closing Date. The Vendor and Purchaser hereby undertake to adjust those items (and any other items which should have been adjusted on closing) as soon as the requisite information becomes available, but in any event within ● months after closing, after which time neither party shall be required to make any further adjustments.

Vendor’s Perspective:

The Vendor is responsible for preparing the statement of adjustments. The Vendor should ensure that the statement of adjustments is as comprehensive as possible as it is much easier to complete these adjustments on closing than deal with them post-closing. Special consideration needs to be given to adjustment items for properties with tenants as there may be prepaid rents, tenant allowances and other amounts that need to be addressed. It is common for a purchaser to request the back-up invoices or statements supporting the amounts provided in the statement of adjustments.

Purchaser’s Perspective:

See discussion under “Vendor’s Perspective”.

In the fourth subparagraph, it may be prudent to specify for greater certainty that the Purchaser is only responsible for Tenant Allowances under leases entered into after the waiver of the Purchaser’s condition where it consented to the leases, as required under Section 4 of Schedule B.

TAX APPEALS AND REFUNDS

The Vendor shall be entitled to continue any pending realty tax appeals or reassessments for the period prior to and following the Closing Date. The Purchaser agrees to cooperate in any such appeals or reassessments to a commercially reasonable extent without expenditure of money. The Vendor shall be entitled to receive any payment resulting therefrom where applicable to the year(s) ● up to the Closing Date, subject always to rights of tenants and as herein set forth. Any refund or reassessment for the ● calendar year (after deduction of reasonable third party out-of-pocket expenses in conducting any such appeal or reassessment, including any commissions payable to agents or consultants) shall be readjusted as of the Closing Date after the conclusion of any assessment appeal. The Vendor agrees to notify the Purchaser and consult with it in connection with all material matters, decisions, negotiations and settlements of such appeals or reassessments.

Vendor’s Perspective/Purchaser’s Perspective:

Tax appeals present a difficult issue in any transaction where there are outstanding appeals and must be addressed on a case-by-case basis. Where there are outstanding appeals, the Vendor will usually want to continue the appeal and receive any refund for the period prior to

closing as it was the party that over-paid the taxes. However, this will also mean that the Vendor will be responsible for any additional amount that may become owing as a result of the appeal. The Purchaser will want the benefit of any refunds for taxes paid post-closing. In addition, the Purchaser’s agreement to cooperate in ongoing appeals should not require it to expend money, as set out in this provision. A full discussion of the tax appeal issue is beyond the scope of this paper. However, consideration should always be given to this issue where appeals are outstanding.

NOTICES

12. Any and all written notices or other communication (the “**Communication**”) to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, facsimile or by mailing by registered mail with postage thereon, fully prepaid, in a sealed envelope addressed to the intended recipient as follows:

(a) to the Vendor, at:

●
 Attention: ●
 Facsimile No.: ●

with a copy to:

●
 Attention: ●
 Facsimile No.: ●

(b) to the Purchaser, at:

●
 Attention: ●
 Facsimile No.: ●

or such other addresses, facsimile number or individual as may be designated by a Communication given by a party to the other parties as aforesaid. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof if given by registered mail, on the 3rd business day following the deposit thereof in the mail and if given by facsimile, on the business day following the day on which it was transmitted by facsimile. If the party giving any Communication knows or reasonably knows of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery or by facsimile.

Vendor’s Perspective/Purchaser’s Perspective:

The notice provision should be mutual so that each party is able to serve notice in the same manner. All notices should be in writing. Notices that are served after regular business hours should be deemed to be served the following business day. The parties and their solicitors should consider whether notice to a party’s solicitor is acceptable.

CONDITIONS

13. The obligations of the Purchaser to complete the transactions contemplated by this Agreement on closing shall be subject to the following additional conditions:

- (a) on the Closing Date, all of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects on or before the times contemplated in this Agreement; and
- (b) on the Closing Date, the representations and warranties of the Vendor set out in this Agreement shall be true and accurate in all material respects as if made on and as of the Closing Date, and the Vendor shall have delivered to the Purchaser a certificate executed by an officer dated the Closing Date to this effect.

The conditions set out above are for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser, in its sole discretion, by written notice to the Vendor.

Vendor’s Perspective:

A condition is a clause that delays the Agreement from becoming binding on the party in whose favour it runs until a certain event has

occurred. A condition may be satisfied or, if not satisfied, may be waived by the party in whose favour it runs. The Vendor will want to limit any conditions to the Purchaser’s completion of the transaction. The foregoing conditions are standard in commercial transactions.

Purchaser’s Perspective:

As discussed under Section 2 of Schedule B above, it is important that the Agreement specifies that these conditions are for the Purchaser’s sole benefit and may be waived by it.

The Purchaser may wish to include some additional conditions of closing, for example:

- (i) There has been no material change to the conditions of the property and any chattels being purchased; and
- (ii) Any necessary approvals (e.g. *Competition Act*) have been obtained.

14.	<p>The obligations of the Vendor to complete the transactions contemplated by this Agreement on closing shall be subject to the following additional conditions:</p> <ul style="list-style-type: none"> (a) on the Closing Date, all of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects on or before the times contemplated in this Agreement; and (b) on the Closing Date, the representations and warranties of the Purchaser set out in this Agreement shall be true and accurate in all material respects as if made on and as of the Closing Date, and the Purchaser shall have delivered to the Vendor a certificate executed by an officer dated the Closing Date to this effect; <p>The conditions set out above are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor, in its sole discretion, by written notice to the Purchaser.</p>
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Vendor’s Perspective/Purchaser’s Perspective:

See discussion under Paragraph 13 above.

BULK SALES ACT	
15.	<p>This purchase and sale shall comply with the <i>Bulk Sales Act</i> and the parties will complete, deliver and file all necessary documentation to ensure such compliance.</p>

Vendor’s Perspective:

The purpose of the *Bulk Sales Act* (the “BSA”) is to protect the interest of all creditors, secured and unsecured, whose debtors have disposed of all or substantially all of their assets. The BSA applies to a “sale in bulk”, which is a sale of stock in bulk outside of the usual course of business or trade of the seller. The sale of real property, on its own, is not covered by the BSA, but where chattels are included, the BSA may apply. There are various ways to comply with the BSA. Reference should be made to the BSA for the various ways of complying with the BSA. The consequences of non-compliance with the BSA are severe as the transaction is voidable.

The Vendor should ascertain whether the BSA applies to the transaction as early as possible to ensure that it can be complied with prior to closing.

In many cases the Vendor will agree to provide an indemnity to the Purchaser in connection with any non-compliance under the BSA. Whether the Purchaser will accept an indemnity depends on the details of the transaction.

Purchaser’s Perspective:

Although strict compliance with the BSA would be preferable from the Purchaser’s viewpoint, it is often impractical. More typically, the Purchaser agrees to waive compliance in exchange for an indemnity from the Vendor against any claims that may arise from such non-compliance. A prudent Purchaser may not be willing to waive compliance where its investigations indicate a large number of unpaid trade creditors. In this situation, the best solution may be to require the Vendor to obtain a court order exempting the sale from the BSA.

ASSIGNMENT

16. The Purchaser shall have the right to assign its interest in this Agreement to any affiliated company or entity, provided that the assignee of this Agreement agrees in writing to be bound by, carry out and fulfill the terms and conditions hereof. Upon any such assignment and assumption, the Purchaser named herein shall be released from its obligations, covenants and liabilities under this Agreement. The Purchaser shall not otherwise be entitled to assign its interest in this Agreement without the prior written consent of the Vendor.

Vendor's Perspective:

Although common, an assignment clause should not automatically be accepted in the Agreement. The Vendor needs to be cautious about permitting an assignment as it wants to have a strong covenant in the event it needs to sue the Purchaser. If the Vendor is prepared to allow the Purchaser to assign the Agreement, it should insist that the Purchaser remain liable under the Agreement.

Purchaser's Perspective:

The Purchaser may try to negotiate an absolute right to assign the Agreement without consent. If the parties agree that the Vendor's consent is required, the Agreement should state that such consent will not be unreasonably withheld or delayed.

COUNTERPARTS

17. This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart.

Vendor's Perspective/Purchaser's Perspective:

This clause is important where there are a large number of signatories to the Agreement. It facilitates expeditious execution of the Agreement.

GST

18. The Vendor and the Purchaser acknowledge that the transaction contemplated under this Agreement is subject to the GST imposed under Part IX of the GST Act. If, on closing, the Purchaser is not registered under the GST Act, the Purchaser will pay to the Vendor GST on the purchase price under this Agreement calculated at the then applicable GST rate attributable to the taxable purchase of real property. If, on closing, the Purchaser is registered under the GST Act, the Purchaser will self-assess GST on the portion of the purchase price payable to acquire the taxable real property and remit GST directly to the Receiver General of Canada in accordance with paragraph 221(2)(b) and subsection 228(4) of the GST Act.

Purchaser hereby covenants that on closing the Purchaser will provide the following:

- (a) a statutory declaration of an officer of the Purchaser confirming that the Purchaser is a registrant for the purposes of the GST Act, including the Purchaser's GST registration number;
- (b) an undertaking to remit directly to the Receiver General of Canada, in accordance with paragraph 221(2)(b) and subsection 228(4) of the GST Act, the GST payable on the taxable purchase of real property in connection with the purchase and sale of the Property; and
- (c) an indemnity wherein the Purchaser shall indemnify and save harmless the Vendor from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of GST remittable or payable in connection with the Purchaser's undertaking in this Agreement to self-assess and remit GST.

Vendor's Perspective:

Under the *Excise Tax Act* (Canada), GST is applicable on the sale of land unless a specific exemption applies to the transaction, for example the sale of used residential housing, the sale of property by a public service body or certain sales of farm land. The Purchaser pays the GST and the Vendor collects it as agent for the tax department. GST is payable on commercial transactions and the Purchaser receives an offsetting input tax credit. Therefore, GST is always "in addition to" the purchase price in commercial transactions. Be very careful to delete the words "included in" if using a standard form of agreement of purchase and sale for a commercial transaction. The GST payable is seven

percent (7.0%) of the purchase price.

If the Purchaser is not registered for GST purposes, the Vendor is obligated on closing to collect and remit the GST payable for the transaction.

If the Purchaser is registered for GST purposes, the Purchaser shall be able to self-assess and remit the GST payable directly to the tax department. In addition to obtaining the deliveries listed in subparagraphs (a) to (c), the Vendor should independently verify the Purchaser's GST registration number.

The foregoing is a very brief discussion of GST. The application, collection and remittance of GST is a complex issue and caution should be exercised in drafting these provisions of the Agreement. **It is highly recommended that you obtain the advice of a tax lawyer where any questions arise concerning GST.**

Purchaser's Perspective:

If it is a newly incorporated company, the Purchaser must remember to register itself under the GST Act prior to closing. After closing, the Purchaser must report the purchase with its regular GST return. The Purchaser is entitled to an input tax credit equal to the amount of GST it would otherwise have had to remit; therefore, no money is actually paid to Revenue Canada with respect to the GST obligation.

As discussed above, if the Purchaser is not registered it must pay the GST in addition to the purchase price. If the purchaser is registered but does not comply with the self-assessment provisions under the GST Act, it will be liable under the indemnity given to the Vendor.