

AGREEMENT OF PURCHASE AND SALE (the "Agreement" or "APS")

BETWEEN

THE CORPORATION OF THE TOWN OF TILLSONBURG

(the "Vendor")

-and-

1677123 Ontario Inc

(the "Purchaser")

WHEREAS the Vendor is the owner, in fee simple, of the lands and premises described in Schedule "A" (the "Property");

NOW THEREFORE IN CONSIDERATION of the mutual covenants and premises in this Agreement, the parties agree as follows:

SECTION I - GENERAL

1. The Purchaser agrees to purchase the Property and the Vendor agrees to sell the Property according to the terms of this Agreement.
2. In consideration of the agreement referred to in the preceding paragraph, the Purchaser shall pay to the Vendor a Purchase Price calculated at **Fifty Thousand dollars(\$50,000.00)**. The estimated area of the Property is **1.05** acres. The final total Purchase Price shall be determined by the actual lot area of the Property confirmed by on Ontario Land Surveyor.
3. The Purchase Price shall be paid as follows:
 - (a) **Five Thousand Dollars (\$5,000)** deposit is payable by the Purchaser by certified cheque upon Acceptance of this Agreement, to be held on an interest free basis by the Solicitor for the Vendor as a deposit pending completion of this transaction on account of the Purchase Price on completion, or if this Agreement is not completed through no fault of the Purchaser, the deposit shall be returned to the Purchaser; and
 - (b) the balance of the Purchase Price, subject to adjustments, shall be paid to the Vendor on the Completion Date, by certified cheque or bank draft.

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SECTION II - PURCHASE OF PROPERTY

4. Irrevocable Date

- (a) This APS shall be irrevocable and open for acceptance by the Vendor until 6:00 p.m. on **the 26th day of October, 2021** ("Acceptance"), and when accepted shall constitute a binding contract of purchase and sale, otherwise the APS shall be null and void and all deposit monies paid shall be returned to the Purchaser without deduction.
- (b) Acceptance shall mean the date upon which the Mayor and Clerk of the Town of Tillsonburg, or such other persons as the Vendor may authorize from time to time, sign and execute this APS subsequent to the requirement that the Council of The Corporation of the Town of Tillsonburg has passed a resolution or by-law authorizing and approving the sale of the Property to the Purchaser pursuant to the terms of this APS.
- (c) The parties agree and acknowledge that negotiation of this APS is not a valid and binding agreement until accepted by the Council of The Corporation of the Town of Tillsonburg. The Chief Administrative Officer of the Town of Tillsonburg, or his or her designate, shall negotiate the terms of this APS in good faith. However, the negotiation of the terms of this APS by the Chief Administrative Officer of the Town of Tillsonburg, or his or her designate, in no ways binds The Corporation of the Town of Tillsonburg until such time as this APS is authorized and approved by the Council of The Corporation of the Town of Tillsonburg.

5. Council Approval

- (a) This transaction is subject to compliance with Section 270 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended and the approval of the Council of The Corporation of the Town of Tillsonburg in its sole and absolute discretion by resolution or by-law.

6. Deed/Transfer

- (a) The Vendor agrees to deed or transfer the Property to the Purchaser subject to the terms of this Agreement.

7. Completion Date

- (a) The closing of this transaction shall take place **at the same time as the scheduled closing for the adjacent lands already under an Agreement of Purchase and Sale with the Town, following the registration of the Plan of Subdivision for the Van Norman Innovation Park and by November 30, 2021**, or such other date as mutually agreed upon (the "Completion Date") at which time possession of the Property in "as is, where is" condition shall be given to the Purchaser other than as provided in this APS. The Vendor acknowledges that it has the right and authority to sell the Property.

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8. Documents, Reports and Information

- (a) The Vendor will produce and deliver to the Purchaser within fourteen (14) days of Acceptance of the APS any documents, reports or information in its possession in respect to the Property. The Purchaser agrees to return all of the above documentation to the Vendor if this transaction is not completed.

SECTION III - CONDITIONS, REPRESENTATIONS AND WARRANTIES

9. "As Is" Condition

- (a) The Purchaser acknowledges that it is acquiring the Property in an "as is" condition and that it must satisfy itself **by October 29th, 2021** regarding the condition of the Property including, but not limited to, all existing physical conditions of this Property, environmental conditions, fitness for any purpose, suitability for construction, soil bearing capacity for any building proposed, and the availability of municipal services and utilities necessary for the Purchaser's proposed use of the Property. The Purchaser acknowledges that the Vendor shall not be responsible for any physical deficiencies of the Property or for any past, present or future environmental liabilities and hereby waives any claims against the Vendor in respect of any environmental liabilities on the Property. The Purchaser agrees to sign a release and indemnity in favour of the Vendor on or before closing with respect to matters set out in the preceding sentence. If the Purchaser is for any reason whatsoever dissatisfied with the Property, it shall deliver written notice to that effect to the Vendor by no later than the time specified herein, and this Agreement shall be terminated and the deposit shall be returned to the Purchaser without interest or deduction. If the Vendor is notified that the condition of the Property is not satisfactory, then the Purchaser shall, prior to receiving its deposit monies back and prior to being entitled to a full release from the Vendor with respect to this Agreement, restore the Property to its original condition as it existed prior to such testing or inspection by the Purchaser, at the Purchaser's sole expense. If the Purchaser fails to deliver written notice to the Vendor within the time specified herein regarding this condition, this condition shall be deemed to have been waived by the Purchaser.

10. Other Conditions

- (a) This APS and completion of this transaction is subject to the conditions set out in Schedule "B".

11. Investigation by the Purchaser

- (a) The Purchaser acknowledges having inspected the Property prior to executing the APS and understands that upon Acceptance by the Vendor, and subject to any conditions herein, there shall be a binding agreement of purchase and sale between the Purchaser and the Vendor. It shall be the Purchaser's responsibility to provide, at its own expense, any soil bearing capacity tests or environmental inspection, as may be required or desired, and the Vendor shall grant the

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Purchaser access for such testing or inspection at all reasonable times, on reasonable notice, for the purpose of conducting reasonable inspections.

12. Future Use

- (a) The Vendor and the Purchaser agree that there is no condition, express or implied, representation or warranty of any kind that the future intended use of the Property by the Purchaser is or will be lawful except as may be specifically stipulated elsewhere in this Agreement.

13. Provision of Plans

- (a) The Purchaser agrees and covenants that prior to the issuance of a building permit, the Purchaser shall provide to the Town of Tillsonburg a plan showing the location of the building(s) and outside storage, the front elevation of the building(s), the exterior building materials, the landscaping treatment and the screening of outside storage. The provisions of this paragraph shall survive closing.

14. Reasonable Assistance

- (a) The Vendor agrees to provide reasonable assistance and co-operation to the Purchaser in obtaining the necessary approvals for the development of the Property subject to the Purchaser's compliance with all relevant building codes, by-laws, land use controls, any other statutory requirements and payment of the fees provided for in the Town of Tillsonburg's current fees by-law.

15. Development Covenants and Restrictions

- (a) The Property shall be subject to the development covenants and restrictions more particularly set out in Schedule "E" attached to this APS, which shall survive the completion of this transaction and run with the Property. The development covenants and restrictions shall be registered on title by the Vendor. In the event that the said covenants and restrictions are not registered on title to the Property on or before closing, the Purchaser covenants and agrees to consent to the registration of the covenants and restrictions after closing.

16. Property Not for Resale

- (a) The Purchaser covenants that it is purchasing the Property for the construction of a building and not for the purpose of resale of vacant land.

SECTION IV - PRIOR TO COMPLETION DATE

17. Purchaser May Inspect the Property

- (a) The Purchaser, its agents and contractors shall be permitted to inspect the Property and any buildings as frequently as is reasonably necessary between the date of Acceptance and the Completion Date at reasonable times and upon reasonable notice to the Vendor.

18. Insurance

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- (a) Pending closing, the Vendor shall hold all insurance policies and the proceeds thereof in trust for the parties as their interest may appear and in the event of damage to the Property. The Purchaser may elect to either receive the proceeds of the insurance and complete the purchase or to cancel the APS and have all the deposit monies paid to the Vendor returned together with all interest earned thereon without deduction.

SECTION V - COMPLETING THE TRANSACTION

19. Deed/Transfer

- (a) The Deed or Transfer of the Property will be prepared at the expense of the Vendor in a form acceptable to the solicitors for the Purchaser and the Purchaser will pay all Land Transfer Tax, Harmonized Sales Tax and other costs in connection with the registration of it.

20. Electronic Registration

- (a) The parties agree that the transaction shall be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c.L.4 as amended. The parties acknowledge and agree that the delivery and release of documents may, at the discretion of the lawyer: a) not occur contemporaneously with the registration of the transfer/deed and other registrable documentation, and b) be subject to conditions whereby the lawyer receiving documents and/or money will be required to hold them in trust and not release them except in accordance with the terms of a written agreement between the lawyers entered into in the form of the Document Registration Agreement adopted by the Joint LSUC-OBOA Committee on Elective Registration of Title Documents.

21. Survey or Reference Plan

- (a) The parties acknowledge that a survey may be required and a Reference Plan may be registered on title and may be used to provide a registrable description of the Property and any easements.

22. Letters and Reports from Officials of the Vendor

- (a) On or before the requisition date, the Vendor agrees to provide to the Purchaser, if requested, at the Vendor's expense, letters or reports from the Building and Zoning Department of the Town of Tillsonburg and the Fire Chief of the Town of Tillsonburg regarding the status of compliance with all codes, by-laws, rules and regulations with respect to the Property and any buildings located thereon.

23. Examination of Title

- (a) Title to the Property shall be good and marketable and free from all encumbrances except for any service easements or rights-of-way to be reserved in favour of the Vendor and for any easements or rights-of-way registered on title and any minor encroachments shown on the survey or Reference Plan delivered to the Purchaser.

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- (b) The Purchaser is allowed **until one week prior to closing** to examine the title to the Property. If on or before this date the Purchaser furnishes the Vendor in writing with any valid objections: to the title; to any undisclosed outstanding work orders; to undisclosed non-compliance with the municipal by-laws or covenants and restrictions which run with the land and cannot be resolved before the Completion Date; as to any objection of which the Vendor shall be unable to remedy or correct by the Completion Date and which the Purchaser will not waive, then this APS shall, notwithstanding any intermediate acts or negotiations, be terminated and the deposit shall be returned to the Purchaser without deduction and the Vendor and the Purchaser shall not be liable for any costs, damages, compensation or expenses.

24. Easements

- (a) The Purchaser agrees to grant an easement to the Vendor for a turning circle over Parts 7 and 8 on the draft reference plan contained in Schedule "A" attached hereto, which easement shall include the terms contained in Schedule "C" attached hereto. The Purchaser and Vendor agree that this provision shall survive and not merge on the closing of this transaction.
- (b) The Purchaser agrees to grant an easement for a laneway and underground services 10 meters in width over the lands next to the westerly border of Parts 6 and 8 of the draft reference plan contained in Schedule "A" attached hereto, to be described by a new reference plan, in favour of Parts 3 and 4, which easement shall include the terms contained in Schedule "D" attached hereto. The Purchaser and Vendor agree that this provision shall survive and not merge on the closing of this transaction.

25. Vendor to Discharge all Encumbrances

- (a) The Vendor agrees to obtain and register at its own expense, on or before the Completion Date, a discharge of all liens, encumbrances, agreements and mortgages now registered against the Property and not assumed by the Purchaser. The Vendor further covenants and agrees to discharge, on or before the Completion Date, any and all liens, chattel mortgages, assignments or any other security interest given by the Vendor against its personal Property.

26. Adjustments

- (a) The Vendor agrees that all deposits, if any, held by the Vendor not including interest thereon shall be credited to the Purchaser in the Statement of Adjustments prepared for the Completion Date.
- (b) Any rents, mortgage, interest, taxes, local improvements, water and assessment rates shall be apportioned and allowed to the Completion Date, the day itself to be apportioned to the Purchaser.

27. Deliveries by the Vendor To The Purchaser on Closing

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- (a) The Vendor covenants and agrees to deliver to the Purchaser on the Completion Date, all such deliveries to be a condition of the Purchaser's obligation to close this transaction, the following:
- (i) a deed/transfer of the Property;
 - (ii) any survey or reference plan of the Property in the possession of the Vendor;
 - (iii) a Statutory Declaration by an authorized officer of the Vendor stating that accurateness and truthfulness of all of the representations and warranties;
 - (iv) a Statutory Declaration by an authorized officer of the Vendor as to possession of the Property in a form acceptable to the solicitors for the Purchaser;
 - (v) a Statutory Declaration by an authorized officer of the Vendor that it is not now, and upon completion will not be, a "non-resident person" within the meaning and for the purpose of Section 116 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) as amended;
 - (vi) certified copies of all appropriate certificates, by-laws and other documents of Vendor authorizing the transaction herein; and
 - (vii) such further documentation and assurances as the Purchaser may reasonably require to complete the transaction contemplated by the APS.

28. Harmonized Sales Tax

- (a) The parties hereto acknowledge and agree that the transaction contemplated herein is subject to the Harmonized Sales Tax (HST) under the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the "Act") and that the Purchase Price does not include HST. The Vendor shall provide the Purchaser with its HST Business Number. The Purchaser shall pay to the Vendor any HST imposed under the Act payable in connection with the transfer of the Property to the Purchaser, or as it may direct, unless the Purchaser or its nominee, or its assignee, provides:
- (i) a certificate on or before the Completion Date containing a representation and warranty to the Vendor that:
 - (1) it is registered for the purpose of the HST on the Completion Date and specifying the HST registration number;
 - (2) it will self-assess the HST on its GST/HST return or file the prescribed form pursuant to subsection 228(4) of the Act in connection with the purchase of the Property;
 - (3) the Property transferred pursuant to this APS is being purchased by the Purchaser, or its nominee or assignee, as principal for its own account and is not being purchased by the Purchaser as agent, trustee or otherwise on behalf of or for another person, and does

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not constitute a supply of residential complex made to an individual for the purpose of paragraph 221 (2)(b) of the Act;

- (4) an indemnity, indemnifying and saving harmless the Vendor from any HST payable on this transaction and penalty and interest relating to HST; and
- (5) a notarial true copy of its HST registration confirmation.

SECTION VI - MISCELLANEOUS

29. Entire Agreement

- (a) There is no representation, warranty, collateral agreement or condition affecting this Agreement of the Property other than expressed herein.

30. Tender

- (a) Any tender of documents or moneys hereunder may be made upon the solicitor acting for the party upon whom tender is desired, and it shall be sufficient that a negotiable, certified cheque or bank draft may be tendered instead of cash.

31. Time of Essence

- (a) Time shall be of the essence of this Agreement.

32. Planning Act

- (a) This Agreement shall be effective only if the provisions of Section 50 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended are complied with.

33. Notices

- (a) All notices in this Agreement shall be in writing and shall be deemed to have been given if delivered by hand or mailed by ordinary mail, postage prepaid, addressed to the solicitor for the person to whom such notice is intended to be given at the following address:

Solicitors for the Vendor:

Duncan, Linton LLP
ATTENTION: Adrian Rosu
45 Erb Street West
Waterloo, ON N2J 4B5
Fax: (519) 886-8651

with a copy delivered to:

The Corporation of the Town of Tillsonburg
ATTENTION: Development Commissioner

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204-200 Broadway
Tillsonburg, ON N4G 5A7
Fax: 519-842-9431

Solicitors for the Purchaser:

ATTENTION: Michael F. Langtry
5390 Munro Court
Burlington, ON
Fax: (905) 6812814

If mailed, such notices must also be given by facsimile transmission on the date it was so mailed. If so given, such notices shall be deemed to have been received on the first business day following the date it was delivered or marked mailed out.

34. Successors and Assigns

- (a) The Purchaser shall be permitted to assign all of its right, title and interest in and to this APS with the Vendor's written approval, which shall not be unreasonably withheld, including assignment to another corporation with the same shareholders as the Purchaser. Subject to the restrictions in the preceding sentence, the Vendor agrees to engross the Transfer/Deed of Land as directed by the Purchase on the completion Date as the Purchaser may elect, and the Vendor agrees to complete the transaction contemplated by this APS on the Completion Date with such assignee or nominee. The Purchaser is released from all liability hereunder, if it assigns its interest in this APS. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

35. Schedules

- (a) The following Schedules shall form an integral part of this Agreement:
 - (i) Schedule "A" Description of the Property;
 - (ii) Schedule "B" Conditions;
 - (iii) Schedule "C" Easement;
 - (iv) Schedule "D" Easement; and,
 - (v) Schedule "E" Development Covenants.

36. Acceptance by Fax or Email

- (a) The Purchaser and Vendor acknowledge and agree that the communication of this Agreement of Purchase and Sale may be transmitted by way of facsimile or electronic mail, and that they agree to accept such signatures and documents to be legal and binding upon them.

37. Counterparts

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- (a) This Agreement may be signed in any number of counterparts, each of which is considered to be an original, and all of which are considered to be the same documents.

38. Severability

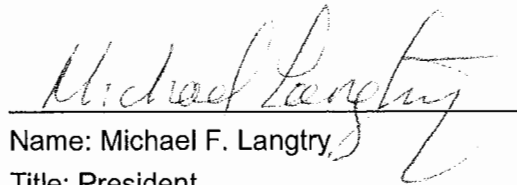
- (a) If any provision of this Agreement, or the application thereof to any circumstances, shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement, or the application thereof to other circumstances, shall not be affected, and shall be valid and enforceable.

IN WITNESS WHEREOF the Purchaser has executed this Agreement:

Dated at Burlington, Ontario this ____ day of October, 2021.

**

Per:



Name: Michael F. Langtry

Title: President

I/We have authority to bind the Corporation.

The Vendor hereby accepts this Agreement according to its terms.

Dated at Tillsonburg, Ontario this _____ day of _____, 2021.

IN WITNESS WHEREOF the Vendor has executed this Agreement:

**The Corporation of the Town of
Tillsonburg**

Stephen Molnar
Mayor

Michelle Smibert
Clerk

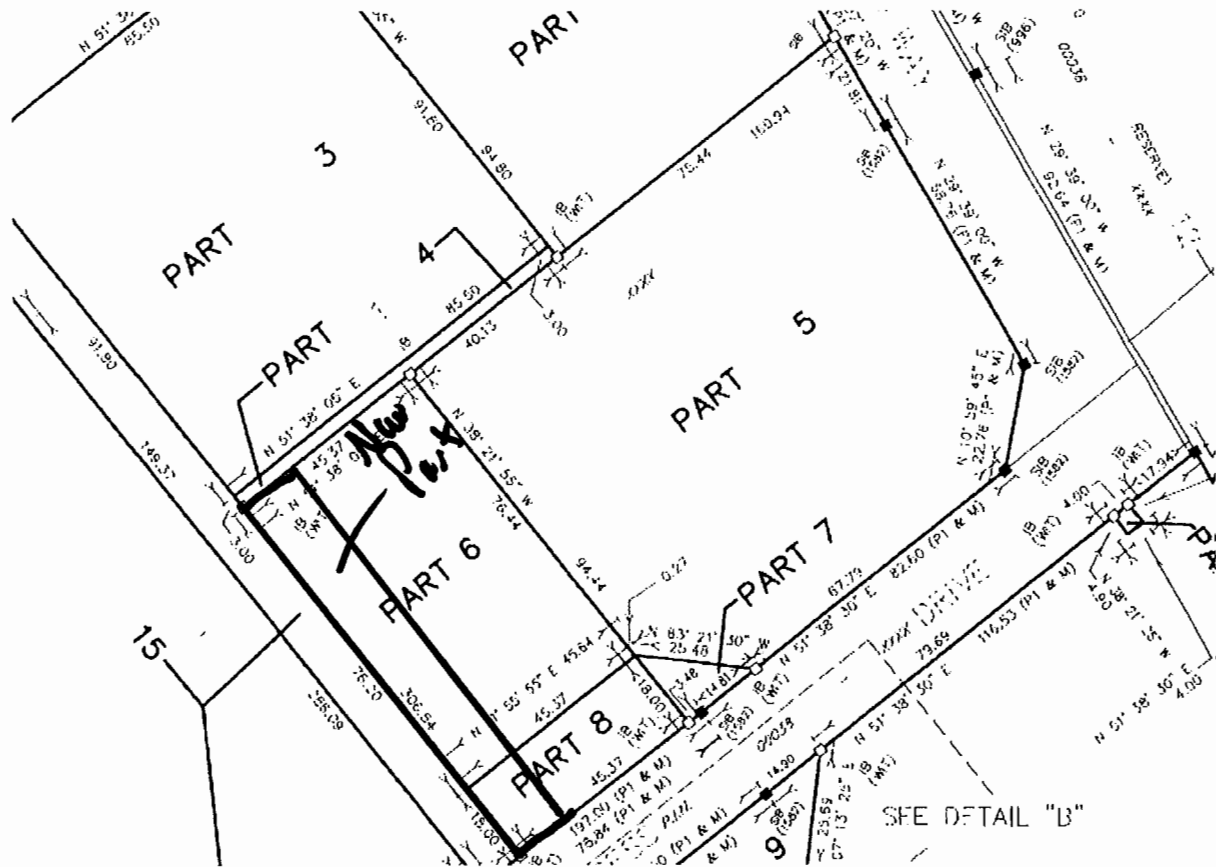
We have authority to bind The Corporation
of the Town of Tillsonburg.

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SCHEDULE "A" - LEGAL DESCRIPTION OF THE PROPERTY

ALL AND SINGULAR that certain parcel or tract of land and premises situated, lying and being in the Town of Tillsonburg in the County of Oxford, being comprised of part of Lot 2 Concession 5 North of Talbot Road (1.05 acre parcel), and described as Parts 6 and 8 on the draft reference plan (to be deposited):



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SCHEDULE "B" – PURCHASER CONDITIONS

1. The transaction of purchase and sale contemplated herein shall be subject to the fulfillment of the following terms and conditions on or before October 29th, 2021, which terms and conditions are for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser. If the conditions are not fulfilled or waived then the deposit shall be returned and Agreement arising from the offer shall be at an end and all parties released from their obligations:

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SCHEDULE "C" - EASEMENT

TERMS AND PROVISIONS OF THE EASEMENT:

1. The Owner hereby grants, conveys and confirms to The Corporation of the Town of Tillsonburg (the "Town"), its successors and assigns the free, uninterrupted and undisturbed right of way and easement to enter upon the lands herein described at any time for the purposes of constructing, installing and maintaining a turning circle, for private and public motor vehicles, at the end of Progress Drive, and with the further and continuing right to the Town, its successors and assigns, and its servants, agents and workers to enter upon the lands at any time to construct, repair, correct, operate, replace and maintain at all times in good condition and repair the turning circle and for every such purpose the Town shall have access to the said lands at all times by its agents, servants, employees and workers. All such rights of the Town granted herein shall cease and no longer affect the lands described herein, and the Town shall, without charge, provide a registrable release, upon the Town determining that the lands described herein are not required for highway or municipal purposes and the Town determines that the easement is no longer required.

3. The Owner covenants with the Town to keep the lands herein described free and clear of any trees, buildings, structures or other obstructions which may limit the use, operation, repair, replacement or maintenance of the easement and to use the lands herein described only in a manner and for purposes not inconsistent with the exercise of the rights created by this indenture and without limiting the generality of the foregoing, only as a yard, lawn, garden, flowerbed, roadway, driveway or parking area and the Owner agrees not to do or suffer to be done anything which might injure any of the works of the Town hereon. The term "building" as set out herein shall specifically include any window sills, chimney breasts, cornices, eaves or other architectural features projecting from the first floor of the building but shall not include window sills, chimney breasts, cornices, eaves or other architectural features projecting from the second floor of the building by less than two (2) feet and such second floor projections shall be specifically authorized and allowed to encroach upon the lands herein described.

4. The Town, by the acceptance and registration of the within easement, agrees to be bound by the terms and provisions contained herein.

5. The burden and benefit of this easement shall run with the lands herein described and shall extend to and be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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Seller's Initials_____

SCHEDULE "D" - EASEMENT

TERMS AND PROVISIONS OF THE EASEMENT:

1. The Transferor hereby grants, conveys and confirms to the Transferee, its successors and assigns, in perpetuity, the free, uninterrupted and undisturbed right of way and easement to be used and enjoyed by the Transferee for access and passage by pedestrians and vehicles over the lands and to enter upon the lands herein described at any time for the purposes of constructing, installing and maintaining a laneway for such access and passage.
2. The Transferor further grants, conveys and confirms to the Transferee, its successors and assigns, in perpetuity, the free, uninterrupted, and undisturbed right of way and easement for the construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction, and repair of underground services, which include, but are not limited to, storm water lines and pipe and associated pipes and equipment for the collection and transportation of water, together with the right of ingress and egress for all purposes necessary or incidental to the exercise and enjoyment of the rights herein granted.
3. The Transferee acknowledges and agrees to maintain the easement over the lands in a good state of repair, including, but not limited to, snow removal, salting, sanding, and maintenance and repair, and all such costs shall be paid by the Transferee.
4. The Transferor hereby covenants and agrees not to block, fence, or otherwise impede access to the easement, including where the easement meets abutting lands.
5. The Transferee hereby covenants and agrees to indemnify and save harmless the Transferor, as well as its officers, directors, and employees from and against any and all liabilities, costs, damages, penalties, and expenses arising out of the negligent use of this easement by the Transferee or its officers, directors, employees, or workmen.
6. The Transferor covenants with the Transferee to keep the lands herein described free and clear of any trees, buildings (including building projections such as window sills, chimney breasts, cornices, eaves, and other architectural features), swimming pools, structures, or obstructions as may be necessary for the use, operation, repair, replacement, or maintenance of the easement and to use the lands herein described only in a manner and for purposes not inconsistent with the exercise of the rights created by this indenture and, without limiting the generality of the foregoing, only as a yard, lawn, garden, flowerbed, roadway, driveway, or parking area, and the Transferor agrees to not do or suffer to be done anything which might injure any of the works of the Transferee thereon.
7. The Transferee, by the acceptance and registration of the within easement, agrees to be bound by the terms and provisions contained herein.
8. The burden and benefit of this agreement shall run with the lands herein described and shall extend to and be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

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SCHEDULE "E"
DEVELOPMENT COVENANTS

1. Title Control

- (a) The owner or owners of the property (the "Owner") upon which these development covenants attach (the "Property") covenants and agrees that it may not use the Property for its intended use and may not retain ownership of the Property unless the Owner has constructed a building for such use including obtaining a building permit for a permanent building with a minimum building coverage of twenty percent (18%) of the total area of the Property. The Owner further covenants and agrees to commence construction of a permanent building on the Property which complies with the permitted uses of the Property's zoning within one (1) year of the date the Owner took title to the Property being the date of registration of transfer (the "Completion Date") and to substantially complete the construction of the said building in conformity with an approved site plan within two (2) years from the Completion Date of this transaction.
- (b) In the event that the Owner has not obtained a building permit in accordance with the provisions of subclause 1.a) above, the Owner may request from The Corporation of the Town of Tillsonburg (the "Town of Tillsonburg"), in writing, an extension of the time specified in subclause 1.a) above up to a maximum extension period of six (6) months, (such extension, the "Extended Time") upon payment by the Owner to the Town of Tillsonburg of a performance deposit equal to ten (10%) percent of the purchase price of the Property (the "Performance Deposit"). The Performance Deposit shall be refunded to the Owner, without interest, upon the Owner's compliance with and completion of the provisions of subclause 1.a) above within the Extended Time. In the event that the Owner fails to complete construction within the Extended Time, then the Town of Tillsonburg shall, in addition to its other rights and remedies as set out herein or otherwise, be entitled to retain the Performance Deposit as liquidated damages and not as a penalty, in partial or full satisfaction of the Town of Tillsonburg's damages.
- (c) If the Owner does not comply with the provisions of subclause 1.a) above within the periods therein specifically set out or within the Extended Time, the Owner, will, at the option of the Town of Tillsonburg by notice in writing to the Owner, re-convey good title to the Property to the Town of Tillsonburg, free and clear of all encumbrances, in consideration for payment by the Town of Tillsonburg to the Owner of 90% of the purchase price paid by the Owner to the Town of Tillsonburg for the conveyance of the Property in the first instance (the "Discounted Consideration"). The re-conveyance shall be completed within sixty (60) days of the notice set out in this subclause. The Town of Tillsonburg shall be allowed to deduct from the Discounted Consideration all of its reasonable costs, realty commission and legal fees incurred with respect to the original conveyance of the Property by the Town of Tillsonburg to the Owner, as well as the costs of the Town of Tillsonburg in re-acquiring the Property, including without limitation, realty commission, registration costs, land transfer tax, legal fees and such other costs as reasonably incurred by the Town of Tillsonburg. The Town of Tillsonburg shall not be required to pay for any improvements that may have been made, constructed, installed or performed by the Owner on the Property.

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- (d) Subject to subclause 1.c) above, the Owner covenants that it will not sell the Property or any part thereof to any person, firm or corporation without first offering, in writing, to sell the Property to the Town of Tillsonburg for consideration equal to or less than the consideration paid by the Owner to the Town of Tillsonburg in the original conveyance of the Property less the costs of the Town of Tillsonburg incurred in re-acquiring the Property, including without limitation, real estate commission, land transfer tax, registration costs, legal fees and such other costs as reasonably incurred by the Town of Tillsonburg, provided however that the Owner may sell or transfer the Property to a subsidiary or affiliate corporation as defined in the *Business Corporations Act*, R.S.O. 1990, c.B.16 as amended, provided such subsidiary assumes and confirms its acceptance of the within covenants and restrictions and expressly undertakes in writing to comply with them in such form as the Town of Tillsonburg may require. The Town of Tillsonburg shall have ninety (90) days from the receipt of an offer made by the Owner under this subclause, to accept such offer which acceptance shall be in writing. If the Town of Tillsonburg does not accept an offer to sell made by the Owner under the provisions of this subclause, the Town of Tillsonburg's right to repurchase the Property so offered shall terminate. However, the remaining provisions of this clause 1 as well as other provisions herein shall continue in full force and effect. The limitation contained in this subclause, will expire upon the Owner fulfilling all of the building requirements as set out in subclause 1.a) and 1.b) above.

2. Town of Tillsonburg Option on Vacant Portion of Land

- (a) The Town of Tillsonburg shall have the option to repurchase such vacant portion of the Property not used by the Owner for the construction building(s) thereon provided such land is not reasonably ancillary to the Owner's use and occupation of the said building.
- (b) This option shall only be exercisable if the Owner has not constructed permanent buildings with a minimum building coverage of thirty percent (30%) of the total area of the Property.
- (c) The option shall be exercisable by the Town of Tillsonburg for consideration equal to the per square foot consideration paid by the Owner to the Town of Tillsonburg in the original conveyance of the Property. Any costs incurred by the Town of Tillsonburg in re-acquiring the subject portion of the Property, including without limitation, real estate commission, land transfer tax, registration costs, legal fees and such other costs shall be at the cost of the Town of Tillsonburg.
- (d) This option expires ten (10) years from the Completion Date.

3. Development Standards

- (a) The Owner shall not construct and maintain a building unless the exterior of the wall or walls of any building or structure facing any municipal street is constructed of a minimum sixty (60) percent brick, precast stone, glass, pre-cast concrete or alternative non-steel materials including, but not limited to, stainless steel; decorative glazed terra cotta; ceramic veneer; precast concrete panel; aluminum; bronze; steel with protective glazed enamel; or, porcelain finish and subject to

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approval by the Town of Tillsonburg, in their sole and absolute discretion, acting reasonably, through the Town's Site Plan Approval process.

- (b) The Owner shall not use the Property unless any portion of any area of the Property to be used for open storage shall not be left so that any area is unenclosed, and any such areas shall be enclosed and designed so that the storage area is not visible from any municipal street. No storage shall be permitted within any set back area as set out in the Town of Tillsonburg Zoning By-Law, nor in front of any building or structure facing any municipal roadway.
- (c) The Owner hereby acknowledges that it is aware that the Property is designated as within a site plan control area. The Owner shall not commence any construction or use the Property until site plan approval has been obtained. The external building materials used on any building to be constructed on the Property must be approved in writing in advance by the Town of Tillsonburg as part of such site plan control approval process.

4. Assignment of Covenants

- (a) The Owner acknowledges and agrees that the covenants and restrictions herein shall run with the title to the Property. The Owner, for itself, its successors, heirs, and assigns in title from time to time of all or any part or parts of the Property will observe and comply with the stipulations, restrictions, and provisions herein set forth (the "Restrictions"), and covenants that nothing shall be erected, fixed, placed or done upon the Property or any part thereof in breach or in violation or contrary to the Restrictions or the provisions of the agreement of purchase and sale between the Owner and the Town of Tillsonburg and that the Owner will require every subsequent purchaser or every successor in title to assume and acknowledge the binding effect of this document, as well as, covenant to observe and comply with the Restrictions and other covenants herein, and the surviving provisions of this Agreement of Purchase and Sale.

5. Force Majeure

- (a) If the Owner shall be unable to fulfill, or shall be delayed or restricted in fulfilling any of the obligations set out herein due to any act or neglect of the Town of Tillsonburg or any of its employees, or due to strikes, walkouts, lockouts, fire, unusual delay by common carriers, or by any other cause beyond the Owner's reasonable control, then the time for fulfilling any such obligations shall be extended for such reasonable time as may be required by the Owner to fulfill such obligation.

6. Right to Waive

- (a) Notwithstanding anything herein contained, the Town of Tillsonburg and its successors shall have the power by instrument or instruments in writing from time to time to waive, alter or modify the herein covenants and restrictions with respect to their application to any part of the Property without notice to or approval from the Owner or notice to or approval from the owners of any other adjacent or nearby lands.

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