



**City of Kingston  
Information Report to Council  
Report Number 21-140**

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**To:** Mayor and Members of Council  
**From:** Lanie Hurdle, Chief Administrative Officer  
**Resource Staff:** Kate Lillicrap, Project Manager, Office of the CAO  
**Date of Meeting:** May 18, 2021  
**Subject:** Asset Transfer from Town Homes Kingston to Kingston  
Frontenac Housing Corporation

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**Council Strategic Plan Alignment:**

Theme: 2. Increase housing affordability

Goal: 2.1 Pursue development of all types of housing city-wide through intensification and land use policies.

**Executive Summary:**

On May 19, 2020, City staff brought [Report Number 20-126](#) to Council recommending that Council authorize and direct staff to take any necessary actions to facilitate the transfer of assets from Kingston Municipal Non-Profit Housing Corporation (THK) to the Kingston Frontenac and Housing Corporation (KFHC).

On May 19, 2020, Members of THK met and approved a resolution to approve the merger between THK and KFHC and the transfer of the assets of THK to KFHC. Subsequently, Members of THK, at the same meeting, also approved a resolution authorizing and directing the Board to take the necessary actions to transfer the assets of the THK to KFHC.

On December 1, 2020 City staff brought [Report Number 21-022](#) to Council for information purposes only. The purpose of this report was to provide Council with information on the steps taken to-date to secure a direction for the utilization of a restricted THK investment (Marguerite Fund).

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The purpose of this report is:

- to update Council on steps that have been taken towards a potential transfer of the assets of THK to KFHC
- to update Council on the remaining steps required to finalize such a transfer

The transfer of assets is being proposed for July 2, 2021.

Prior to any transfer, final support and approvals will be sought over the coming months by the following stakeholders:

- KFHC Board of Directors
- THK Board of Directors
- Membership of THK
- KFHC Shareholders
- City of Kingston Council

It is anticipated that final approvals will be sought by Council Members (in their various roles as Membership of THK, KFHC Shareholders and City of Kingston Council) on June 22, 2021.

**Recommendation:**

This report is for information only.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY CHIEF  
ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief  
Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

|   |              |
|---|--------------|
| Paige Agnew, Commissioner, Community Services                   | Not required |
| Peter Huigenbos, Commissioner, Business, Environment & Projects |              |
| Brad Joyce, Acting Commissioner, Corporate Services             |              |
| Jim Keech, President & CEO, Utilities Kingston                  | Not required |
| Desirée Kennedy, Chief Financial Officer & City Treasurer       | Not required |
| Sheila Kidd, Commissioner, Transportation & Public Works        | Not required |

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**Options/Discussion:****1. Background**

THK is a non-profit charitable organization that provides housing at affordable rents for low-to-moderate income households, and rent-g geared-to-income housing. THK was incorporated in 1986 and subsequently merged with 3 housing providers in 1994 and 1998. THK manages 397 apartment and townhouse units at a variety of locations within the City.

KFHC is a non-profit housing provider that manages 947 rent-g geared-to-income housing units. KFHC administers the Rent Supplement Program to an additional 450 units on behalf of the Service Manager. KFHC was transferred from a provincial to municipal responsibility in 2001 through Ontario's Social Housing Reform Act, 2000.

The Corporation of the City of Kingston owns, and is responsible for funding both housing providers, who in turn administer social housing based on local and provincial directives.

An operational review of THK was conducted by the Service Manager in May-June 2018. The review found numerous significant issues surrounding the operation of THK, including: 1) Health and Safety, 2) Governance and Organization and 3) Financial Stability.

Additional details on the concerns identified are available to Council in Closed Report 18-196 and Closed Report 18-216.

In November 2018, the Service Manager (the City of Kingston) and KFHC entered into a service agreement for the maintenance of all THK properties. This has resulted in improved maintenance services to THK buildings and tenants.

A 2018 operational review by KPMG provided an overview of the benefits of merging both municipally-owned THK and KFHC. Such a transaction was identified as an opportunity to provide long-term stability, consistency and management of services, tenants and finances.

On June 4, 2019 a Recommendation Report went to the Members of KFHC seeking approval for the expansion of the existing maintenance agreement with KFHC to include all business operations, financial management and general administration of THK.

In December 2019, the Service Manager developed a working group to further explore the options available for merging the assets of THK and KFHC. As part of this working group, Cunningham, Swan, Carty, Little & Bonham LLP was retained for expertise in the corporations and transactions law.

In 2020, it was determined by the working group that an 'asset transfer' was the preferred approach to merging the assets of THK and KFHC. The proposed asset transfer transaction envisions THK transferring all of its assets, liabilities and operational activities to KFHC. THK would be subsequently wound up and dissolved.

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## 2. Approval of the Transaction in Principle

In order to proceed with the proposed transfer of assets from THK to KFHC, approval of the transaction in principle was sought and obtained on by the following stakeholders:

- KFHC Board of Directors (January 27, 2020)
- THK Board of Directors (May 8, 2020)
- Membership of THK (May 19, 2020)
- KFHC Shareholders (May 19, 2020)
- City of Kingston Council (May 19, 2020)

Specifically, on May 19, 2020, City Council directed staff to take any further necessary actions to assist in the facilitation of the merger between THK and KFHC and the transfer of the assets of THK to KFHC.

## 3. Ministry Approval

Under section 162(3)(b) of the Housing Services Act, a transfer of assets requires the consent of the Ministry of Municipal Affairs and Housing (MMAH) where the assets are related to a housing provider which is deemed a “project in difficulty” and where the Service Manager has appointed directors to the board of the housing provider pursuant to that declaration.

On May 19, 2020 City Council authorized and directed staff to make the necessary application to the Province of Ontario to facilitate the transfer of assets from THK to the KFHC.

On July 14, 2020 City staff submitted to the MMAH a ‘business case’ outlining the intended transfer of assets from THK to KFHC and all required documentation to be considered/approved by the Ministry for such a transaction.

The Business Case submitted to the Ministry included:

- Council Report 18-376 – Status Update on Town Homes Kingston Project in Difficulty
- Council Report 19-076 – Status Update Town Homes Kingston (Q1, 2019)
- Council Report 20-126 – Asset Transfer from Town Homes Kingston to Kingston Frontenac Housing Corporation
- THK-KFHC Maintenance Agreement
- KPMG Audit Findings Report of Town Homes Kingston
- KPMG Housing Merger Study
- Town Homes Kingston Year End Financial Statements – 2019
- Letter to MMAH – Notification of Project in Difficulty – July 23, 2018
- Letter to MMAH – Pursuance of Asset Transfer – July 13, 2020
- Report to KFHC Shareholders – Transfer of Assets – May 19, 2020
- Report to Members of Town Homes Kingston – Amendment of Service Agreement between Kingston & Frontenac Housing Corporation and Town Homes Kingston – June 4, 2019
- Various Tenant Correspondence Letters advising of transfer and maintenance protocols

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- Town Homes Kingston Corporate Documents – By Law #1 and Letters Patent
- Town Homes Kingston Building Condition Assessment – 2017
- Town Homes Kingston Operational Review – May 2-3, 2018

Ministry approval for transactions of this nature are governed by regulations that permit transfers twice annually (July 1<sup>st</sup> and January 1<sup>st</sup>). The working group is targeting July 1, 2021 for the transfer of assets from THK to KFHC accordingly. If the July 1, 2021 deadline is not met for whatever reason, a request may be made to the Ministry for an alternate date for asset transfer.

*Please note:* due to the Canada Day civic holiday falling on July 1, 2021, the Ministry has confirmed that the actual transfer of assets would occur on July 2, 2021.

#### 4. Land Transfer Tax Exemption

Under the *Land Transfer Tax Act*, Land Transfer Tax (LTT) is payable on any conveyance of land at registration unless an exception applies. Under the *Housing Services Act*, and at the discretion of the MMAH, an exemption may be applied for in association with housing-related transfers.

The MMAH has shared with the working group that there are existing LTT exemptions in place for other Local Housing Corporations. As such, it is not anticipated that there will be an issue qualifying for this exemption should THK assets be transferred to KFHC.

LTT applications are made to the Legislation and Regulations Committee of Cabinet through MMAH, who will then make a recommendation to Cabinet. The MMAH has confirmed that if granted, the LTT exemption would be provided concurrently with the approval by the Ministry of the proposed asset transfer transaction.

At the time of this report, the business case is with the MMAH for consideration, however, no Cabinet date has been identified by the Ministry to formally review/approve the proposed asset transfer (and associated LTT exemption). The Province is aware of the intent to transfer assets on July 1, 2021 and the Ministry has advised that it has no concerns with meeting this deadline, given the straight-forward nature of this file.

#### 5. Asset Purchase Agreement

An asset purchase agreement has been drafted by Cunningham, Swan, Carty, Little & Bonham LLP and reviewed by KPMG and KFHC legal counsel (**Exhibit A**).

The asset purchase agreement includes due diligence investigations, such as satisfactory Ministry approvals (e.g., land transfer tax exemption), mortgage lender approvals and/or re-negotiation of mortgages, other contractual consents, other regulatory/governmental (including municipal) approvals or consent, absence of litigation or liability (actual or contingent).

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## 6. Promissory Note

A Promissory Note is a financial legal instrument that acts as an 'I-owe-you' by one party to pay another party a determinate sum of money at either a fixed or flexible date in the future.

In the case of a proposed transfer, KFHC must issue a Promissory Note to THK for the balance of the amount that will be paid in exchange for the assets and properties being acquired by KFHC net of liabilities of THK assumed by KFHC.

Cunningham, Swan, Carty, Little & Bonham LLP has drafted the Promissory Note on behalf of KFHC as part of the proposed asset transfer process.

As part of the next steps, the treatment of the promissory note will be considered for approval by Council in June 2021.

## 7. Appraisals and Building Condition Reports

In June 2020, KFHC completed Appraisals and Building Condition Reports for all THK properties.

## 8. Environmental Review

KFHC retained Pinchin Ltd to conduct Environmental Site Assessments and building material assessments. At this point all environmental due diligence work for the properties has been completed to facilitate the transfer of assets on July 2, 2021.

## 9. Review of Title/Off-Title Searches

Cunningham, Swan, Carty, Little & Bonham LLP conducted a review of title/off-title searches for THK properties.

Cunningham, Swan, Carty, Little & Bonham LLP prepared and delivered a Property Title Review Memorandum on November 25, 2020 to the working group (**Exhibit B**).

Preliminary title searches indicated there are leases registered against 37 Cassidy (with the City and between the City and a third party – Bob Martin).

## 10. KPMG Memorandum

On April 19, 2021 KPMG submitted to City staff a memorandum (**Exhibit C**) providing a summary of the investment portfolio of THK and a financial analysis of the individual mortgage and capital lease agreements held by THK.

### Investments

As of December 31, 2020, THK had investments with a fair market value of approximately \$2.6 million. Within this balance, there are restricted funds related to the capital reserve for rent

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geared to income (“RGI”) housing that must remain intact. Also included in this balance is the Marguerite Fund, which has been internally restricted by THK’s former Board of Directors. In late 2020, these funds were committed to playground and appliance replacements as per [Council Report 21-022](#).

Please note that the fair market value fluctuates with the market and as of the transfer date will be subject to market values on that date.

The majority of the unrestricted investment balance originated from the funds received through the re-mortgaging of Eldon Hall to generate cash to invest in a new capital project that never occurred.

### Mortgages

THK has six properties with mortgages totaling \$11.2 million as of December 31, 2020. These mortgages are held with different lenders, at various interest rates and maturities.

KPMG reviewed the terms and conditions of each mortgage agreement and has estimated the prepayment penalty if the mortgages were paid back as of December 31, 2020.

Based on KPMG’s analysis, it was noted that there is not a significant advantage to paying off any of the mortgages before the contracted maturity date, as the prepayment charge that would be incurred offsets any material savings of interest over the remaining terms of the debts.

With the unrestricted investment balance of approximately \$1.8 million, THK is limited to Rideau Street as the only mortgage in which there are sufficient funds to repay the full principal balance and penalty on prepayment, in the absence of any other sources of funds being redirected into THK for this purpose.

KPMG has noted that there are opportunity costs of the City of Kingston administrative and legal teams to consider the breach of contract for the prepayment of mortgages and proceed with the liquidation of investments.

### Other Liabilities

THK has two capital lease obligations (long-term HVAC leases) totaling \$1.2 million of principal and interest payments, expiring in 2031 and 2032. Interest rates payable on these leases are 3.871% and 4.388%, with approximately \$480,000 of total interest payable over the remaining terms. In short, the execution of these agreements on inception were very costly to THK in the long-term. Further, based on KPMG’s review of these contracts, it is not believed that prepayment clauses were contemplated in either of the agreements.

KPMG notes that there are future costs to come related to the repairs and maintenance of THK’s building portfolio, as outlined in the individual building condition assessments that were completed in 2020. These costs are not recorded as liabilities on THK’s financial statements as they have yet to occur and do not meet the definition of a liability for accounting purposes. Given



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the discretionary nature of these amounts, KPMG was unable to determine the associated costs and related timeframe of these costs in the future.

## **11. Next Steps**

In order to meet the July 1, 2021 asset transfer deadline, staff will report back to Council in June 2021, as member of THK and shareholders of KFHC to receive the necessary approvals to proceed with the proposed transaction.

In the interim, the working group will work to complete the items listed below:

### Due Diligence

All proactive due diligence investigations and reviews have been completed throughout the duration of the project. Given that due diligence is not a static process, investigations will continue until transaction closing date.

### Title Searches

Cunningham, Swan, Carty, Little & Bonham LLP, with required support from KPMG and KFHC legal counsel will finalize title search and lease reviews to ensure they can be assigned.

### Capital Lease Obligations

Given the costly nature of the two capital lease obligations held by THK, Cunningham, Swan, Carty, Little & Bonham LLP will be investigating the possibility of terminating these leases in advance of the 2031 and 2032 expiry dates. If this is found to be possible, and fiscally beneficial, this avenue will be pursued in advance of the transfer of assets from THK to KFHC.

### Asset Purchase Agreement

One of THK's property assets is 610 Montreal Street, a former City-owned property. In 2012, City Council approved the transfer of the property so that THK could relocate its offices from 37 Cassidy Street to 610 Montreal Street. The office space at Cassidy Street was then converted into additional affordable housing units. KFHC has not identified a need for 610 Montreal Street as part of their operations after the asset transfer date.

Through recent re-engagement with the Indigenous community and the City's Cultural Services staff, the 610 Montreal Street property has been identified as a potential location for an Indigenous Cultural space as per Council's strategic priorities. At the time of this report the engagement continues with the Indigenous community and a staff report will be coming to Council later this summer with an update on progress. In the meantime, this property can be transferred along with the other assets from THK to KFHC.

Council is the sole shareholder of KFHC assets; therefore 610 Montreal Street can be transferred back to the City from KFHC should it be required for an Indigenous Cultural space.

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Should the City not have a need for the property, Council could approve a future sale of the property by KFHC so that the sale revenue could be re-invested into affordable housing.

In order to ensure that 610 Montreal Street can still be acquired by the City of Kingston in the near future (once plans and approvals are in place), a clause will be added to the Asset Purchase Agreement that outlines the terms of when and how the property would be transferred back to the City. This clause will clearly indicate the timeframe within which the City must act in order to be eligible to receive the property and following which KFHC will have an opportunity to proceed with the sale of the property. Should KFHC proceed with the sale of the property after the timeline indicated in the Asset Purchase agreement, proceeds of the sale will need to be used for capital investments for the development of housing or large capital improvements will also indicate that , Once due diligence investigations have been completed, which indicate no apparent impediment to proceeding by way of asset transfer from THK to KFHC, and any final changes are made, the asset purchase agreement will be finalized.

#### Promissory Note

As part of the next steps, the treatment of the promissory note will be considered for approval by Council in June 2021.

Proposed terms for the Promissory Note may be expected to include recommendation for a forgiveness of the debt over time as long as the assets continue to be used as part of the housing portfolio of KFHC.

#### Preparation of Ancillary Documents

Final ancillary documentation required in advance and following the July 1, 2021 asset transfer date will be prepared and/or supported by Cunningham, Swan, Carty, Little & Bonham LLP.

#### **Existing Policy/By-Law:**

None

#### **Notice Provisions:**

None

#### **Accessibility Considerations:**

None

#### **Financial Considerations:**

None

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**Contacts:**

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**Other City of Kingston Staff Consulted:**

Kate Lillicrap, Project Manager, Office of the CAO

Ruth Noordegraaf, Director, Housing and Social Services

Mitchell Grange, Manager, Housing and Homelessness Programs

Alan McLeod, Acting Director, Legal Services & City Solicitor

Colin Wiginton, Cultural Director, Cultural Services

Jennifer Campbell, Manager, Cultural Heritage

**Others Consulted:**

Kingston Frontenac Housing Corporation

Cunningham, Swan, Carty, Little & Bonham LLP

KPMG LLP

**Exhibits Attached:**

**Exhibit A** – Draft Asset Purchase Agreement

**Exhibit B** – Property Title Review Memorandum

**Exhibit C** – KPMG Investment, Mortgage and Liability Memorandum

Dated [June \_\_, 2021]

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**KINGSTON MUNICIPAL NON-PROFIT HOUSING CORPORATION**

and

**KINGSTON & FRONTENAC HOUSING CORPORATION**

**ASSET PURCHASE AGREEMENT**

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EXHIBITS

Exhibit A

Form of Promissory Note

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THIS ASSET PURCHASE AGREEMENT is dated [June \_\_\_\_\_, 2021] and made between:

- (1) **KINGSTON & FRONTENAC HOUSING CORPORATION**, a corporation formed under the laws of the Province of Ontario (the “**Purchaser**”); and
- (2) **KINGSTON MUNICIPAL NON-PROFIT HOUSING CORPORATION**, a corporation formed under the laws of the Province of Ontario (the “**Seller**”).

**RECITALS:**

- (A) The Seller is a charitable corporation which owns and operates certain housing projects in Kingston, Ontario.
- (B) The Corporation of the City of Kingston is the Service Manager (as hereinafter defined) of the Seller pursuant to the *Housing Services Act* (Ontario) and the sole shareholder of the Purchaser.
- (C) The Seller wishes to sell the Purchased Assets (as hereinafter defined) and the Purchaser wishes to purchase the Purchased Assets, on and subject to the terms and conditions set out in this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

**Article 1  
Interpretation**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

“**Accounts Receivable**” means all accounts receivable, notes receivable, trade receivables, rights to receive payment, book debts and other amounts, due, owing or accruing due to the Seller arising out of, from or in connection with the Purchased Operations together with any security interest, letters of credit or other credit support documents granted in favour of the Seller as security therefor.

“**Acquired Properties**” means the Owned Properties.

“**Acquired Structures**” has the meaning specified in Section 5.14.

“**Agreement**” means this asset purchase agreement, the Disclosure Schedule and the exhibits attached to it or otherwise forming part of it, as the same may be amended, restated, replaced, supplemented or novated from time to time and the words Article and Section followed by a number or letter mean and refer to the specified Article or Section of this asset purchase agreement.

“**Assumed Contracts**” has the meaning specified in Section 2.1(f).

“**Assumed Liabilities**” has the meaning specified in Section 3.1.

“**Authorization**” means, with respect to any Person, any order, permit, approval, consent, waiver, licence or other authorization issued, granted, given or authorized by, or made applicable under the authority of, any Governmental Authority having jurisdiction over the Person.

**“Books and Records”** means all books of account, Financial Statements, historic documents relating to the Purchased Assets, sales and purchase records, cost and pricing information, customer, tenant and supplier lists and files, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections and all other documents, files, correspondence and other information of the Seller (whether in written, electronic or other form) relating to the Purchased Operations or the Purchased Assets.

**“Business Day”** means any day, other than a Saturday, Sunday or statutory or civic holiday in Kingston, Ontario.

**“Closing”** means the completion of the transaction of purchase and sale contemplated in this Agreement.

**“Closing Date”** means **July 2, 2021** or such earlier or later date as the Parties may agree in writing.

**“Closing Date Net Asset Value”** means the Net Asset Value of the Purchased Operations (whether positive or negative), based on the Draft Closing Financial Statements.

**“Closing Period”** means the period between the close of business on the date of this Agreement and the Closing.

**“Consent”** means any consent, approval, waiver or other authorization required under a Contract.

**“Contracts”** means all agreements, arrangements, understandings, commitments and undertakings (whether written, electronic or oral), to which a Person is a party or a beneficiary or pursuant to which any of its property or assets are or may be affected.

**“Damages”** has the meaning specified in Section 12.1.

**“Disclosure Schedule”** means the disclosure schedule attached to this Agreement.

**“Dispute”** has the meaning specified in Section 11.4.

**“Draft Closing Financial Statements”** has the meaning specified in Section 4.4(a).

**“Effective Time”** means 12:01 a.m. (Kingston time) on the Closing Date.

**“Employee”** means any full-time or part-time employee of the Seller employed in connection with the Purchased Operations including any such employee on disability (long-term or short-term), workplace safety and insurance workers’ compensation, pregnancy or parental or other statutory or approved leave.

**“Environmental Due Diligence Activities”** has the meaning specified in Section 7.8.

**“Environmental Authorization”** means all Authorizations issued pursuant to any Environmental Laws in connection with the operation of the Purchased Operations or the ownership and use by the Seller or by any other Person of the Purchased Assets and any other property and assets used by the Seller in connection with the Purchased Operations.

“**Environmental Laws**” mean all Laws relating to environmental matters, including any Laws having as a purpose or effect the protection of the environment, the prevention or reduction to acceptable levels of pollution or the provision of remedies in respect of damage arising therefrom.

“**Environmental Notice**” means any written directive or notice of infraction or written notice respecting any claim, investigation, proceeding or judgment from any Governmental Authority relating to non-compliance with or breach of any Environmental Laws or Environmental Authorizations by the Seller in connection with the Purchased Operations or the use or operation of the Purchased Assets by the Seller or any other Person.

“**Environmental Release**” means any emission, discharge, release, deposit, issuance, spray, injection, abandonment, escape, spill, leak, seepage, disposal or exhaust (other than exhaust from a vehicle) of an Environmentally Hazardous Substance, or other occurrence or event defined as such in any Environmental Laws.

“**Environmentally Hazardous Substance**” means any material or substance that could reasonably be expected to impair the quality of the environment or that causes or could reasonably be expected to cause an adverse effect on the environment for any use which can be made of it and as to which liabilities or standards of conduct are imposed pursuant to Environmental Laws, including any material or substance that is deemed pursuant to any Environmental Law to be “hazardous”, “toxic”, “deleterious”, “caustic”, “dangerous”, a “contaminant”, a “hazardous waste”, a “source of contaminant” or a “pollutant”.

“**Estimated Purchase Price**” has the meaning specified in Section 4.3.

“**Estimated Net Asset Value**” means an estimated net asset value of **[\$]**.

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Final Closing Financial Statements**” has the meaning specified in Section 4.4(e).

“**Final Net Asset Value**” has the meaning specified in Section 4.4(f).

“**Financial Statements**” means the annual audited financial statements of the Seller with respect to the Purchased Operations as at, and for, the financial years ended on the 31<sup>st</sup> day of December in 2018, 2019 and 2020, including the notes thereto, true, correct and complete copies of which have been provided to the Purchaser.

“**GAAP**” means accounting principles generally accepted in Canada including those set out in the CPA Canada Handbook at the relevant time.

“**Governmental Authority**” means any (a) federal, provincial, territorial, municipal, local or other governmental or public department, central bank, court, commission, board, arbitrator, tribunal, bureau or agency, (b) any subdivision or authority of any of the above, or (c) any quasi-governmental or private body exercising any regulatory, expropriation or tax authority under or for the account of any of the above.

“**Indemnified Person**” has the meaning specified in Section 12.4(a).

“**Indemnifying Party**” has the meaning specified in Section 12.4(a).

**“Indemnity Representative”** means (a) where the Indemnified Person is any Purchaser Indemnified Person, the Purchaser, or (b) where the Indemnified Person is any Seller Indemnified Person, the Seller.

**“Initial Notice”** has the meaning specified in Section 11.5(a).

**“Interim Financial Statements”** means the unaudited interim financial statements of the Seller with respect to the Purchased Operations for the period from December 31, 2020 to **[May 1, 2021]**, consisting of a balance sheet, statement of earnings (loss) and retained earnings and statement of cash flows.

**“Laws”** means any and all (a) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws, (b) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards of any Governmental Authorities, and (c) policies, guidelines and protocols to the extent they have force of law.

**“Lien”** means (a) any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), privilege, easement, servitude, pre-emptive right or right of first refusal, ownership or title retention agreement, restrictive covenant or conditional sale agreement, imperfections of title or encroachments relating to real property, and (b) any other encumbrance of any nature or any arrangement or condition which, in substance, secures payment or performance of an obligation.

**“Material Adverse Effect”** means any effects or changes that, when considered individually or in the aggregate, are materially adverse to (a) the business, condition (financial or otherwise) or results of operations of the Purchased Operations or Purchased Assets, or (b) the ability of the Seller to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

**“Material Contracts”** has the meaning specified in Section 5.15.

**“Net Asset Value”** means, without duplication, the value of the all assets of the Purchased Operations (excluding Excluded Assets) less all liabilities of the Purchased Operations (excluding Retained Liabilities).

**“Ordinary Course”** means, with respect to an action taken by a Person, that such action (a) is consistent with the past practices of the Person or its business, as the case may be, and is taken in the ordinary course of the normal day-to-day operations of the Person or its business, and (b) would be similar in nature to actions customarily taken in the ordinary course of the day-to-day operations of other Persons that are in the same line of business as such Person.

**“Owned Properties”** means the lands and premises set out and described in Section 5.14 of the Disclosure Schedule by reference to their municipal address and proper legal description.

**“Parties”** means the Seller, the Purchaser and any other Person who may become a party to this Agreement.

**“Permitted Encumbrances”** means (a) Liens for Taxes, assessments or governmental charges or levies which relate to obligations not yet due or delinquent, (b) easements, servitudes, encroachments and other minor imperfections of title which do not, individually or in the aggregate, detract from the value of or impair the use or marketability of any real property, and (c) Liens set out and described in Section 5.12 of the Disclosure Schedule.

“**Person**” means a natural person, partnership, limited partnership, limited liability partnership, syndicate, sole proprietorship, corporation or company (with or without share capital), limited liability company, stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority.

“**Personal Information**” means information that is protected by any Privacy Law.

“**Privacy Laws**” means the *Personal Information Protection and Electronic Documents Act* (Canada) and any similar Laws governing the protection of personal information.

“**Promissory Note**” has the meaning specified in Section 4.3(b).

“**Purchase Price**” has the meaning specified in Section 4.1.

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Purchased Operations**” means the operations carried on by the Seller on the Closing Date consisting primarily of the ownership, operation and provision of housing accommodation primarily to persons of low or modest income at rentals below the current rental market in Kingston, Ontario, the promotion of awareness and support for non-profit housing in Kingston, Ontario and raising of awareness of qualified tenants of their rights and responsibilities as tenants and as to the support services and awareness available to them.

“**Purchaser Indemnified Persons**” has the meaning specified in Section 12.1.

“**Reference Date**” means December 31, 2020, being the date of the most recent Financial Statements.

“**Required Consents and Authorizations**” means those Consents and Authorizations set out and described in Section 10.1(c) of the Disclosure Schedule.

“**Retained Liabilities**” has the meaning specified in Section 3.2.

“**Seller Indemnified Persons**” has the meaning specified in Section 12.3.

“**Tax Authority**” means the Canada Revenue Agency and any other Governmental Authority having taxing authority and their respective successors, if any.

“**Tax Returns**” means all returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in written, electronic or other form) and any amendments, schedules, attachments, supplements, appendices and exhibits thereto, which have been prepared or filed or are required to be prepared or filed in respect of Taxes.

“**Taxes**” includes any taxes, duties, assessments, imposts, fees, dues, withholdings, levies and other charges of any nature imposed by any Tax Authority and includes all interest, penalties, fines, additions to tax or other additional amounts imposed by any Tax Authority including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, withholding, business, property, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervailing and anti-dumping and all employment insurance, health insurance and Canada and other government pension



plan and other employer plan premiums, contributions or withholdings and all other taxes and similar governmental charges of any kind imposed by any Governmental Authority.

“**Tenant Leases**” means the leases entered into between the Seller, as landlord, and each residential tenant, as tenant, for residential premises located at each of the following Owned Properties:

- (a) 37 Cassidy Street, Kingston, Ontario;
- (b) 205 Rideau Street, Kingston, Ontario;
- (c) 257 Rideau Street, Kingston, Ontario;
- (d) 2075 Battersea Rd., Glenburnie, Ontario;
- (e) 710 Division, Kingston, Ontario;
- (f) 35 Eldon Hall Place and 55 Notch Hill Rd., Kingston Ontario; and
- (g) 357 Patrick Street, Kingston, Ontario.

“**Third Party Claim**” has the meaning specified in Section 12.4(a).

“**Transaction Documents**” means this Agreement and all other agreements, certificates and other instruments or documents delivered or given pursuant to this Agreement.

## **1.2 Gender and Number**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith,

- (a) words in the singular number include the plural and are to be construed as if the plural had been used and *vice versa*, and
- (b) words importing the use of any gender include all genders where the context or party referred to so requires, and the rest of the sentence is to be construed as if the necessary grammatical changes had been made.

## **1.3 Certain Phrases and Calculation of Time**

- (a) In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation” and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. If the last day of any such period is not a Business Day, such period will end on the next Business Day.
- (b) When calculating the period of time “within” which or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is to be excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

**1.4 Headings, etc.**

The inclusion of a table of contents, the division of this Agreement into articles and sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement.

**1.5 References to the Schedules and Exhibits**

The Disclosure Schedule and the exhibits form an integral part of this Agreement.

**1.6 Currency**

All monetary amounts in this Agreement, unless otherwise specified, are stated in Canadian currency.

**1.7 Knowledge**

Where any representation or warranty in this Agreement is expressly qualified by reference to the knowledge of the Seller, it is deemed to refer only to the actual knowledge which the Seller without the requirement of a due and diligent inquiry of as a prudent Person would have otherwise considered necessary or advisable as to the matters that are the subject of the representations and warranties. This stated understanding of the meaning and intent by reference to the knowledge of the Seller reflects the current management responsibilities exercised by the Purchaser in connection with the Purchased Assets and Purchased Operations and the mutual understanding of the Seller and Purchaser that the Purchased Assets and Purchased Operations are being transferred by the Seller and acquired by the Purchaser substantially on an “as is” basis.

**1.8 Statutory References**

Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and the regulations and ministerial orders made under that statute, as the same may, from time to time, be amended, re-enacted or replaced.

**1.9 Governing Law**

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Subject to the dispute resolution provisions of this Agreement, each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in such court or any argument that such court provides an inconvenient forum.

**Article 2  
Purchased Assets**

**2.1 Purchased Assets**

Subject to the terms and conditions of this Agreement, the Seller agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Seller on the Closing Date, effective as of the Effective Time, the undertaking and all property, assets and rights owned by the Seller and

used in connection with the Purchased Operations, as a going concern, whether real or personal, movable or immovable, tangible or intangible, of every kind and description and wheresoever situate other than the Excluded Assets (collectively, the “**Purchased Assets**”) including the following:

- (a) the Owned Properties together with the buildings, structures, improvements and appurtenances situate thereon;
- (b) all machinery, equipment, furniture, computer hardware, furnishings, accessories and spare parts used in connection with the Purchased Operations;
- (c) all inventory and all supplies and packaging material used or consumed by the Seller in the Purchased Operations;
- (d) the Accounts Receivable;
- (e) the Tenant Leases;
- (f) Contracts entered into by the Seller in connection with the Purchased Operations including all leases of personal property, all contracts for the provision of goods and services (whether as buyer or seller) and all licences, under which the right to use or market any product, service, technology, information, computer hardware or software or other property has been granted, licensed or otherwise provided to or by the Seller, or under which the Seller has been appointed or any Person has been appointed by the Seller as an agent, distributor, licensee or franchisee for any of the foregoing listed in Section 2.1 of the Disclosure Schedule (collectively, the “**Assumed Contracts**”);
- (g) the Books and Records;
- (h) all claims of the Seller relating to the Purchased Operations or the Purchased Assets, whether choate or inchoate, known or unknown, contingent or otherwise;
- (i) to the extent transferable, all Authorizations issued to the Seller in connection with the Purchased Operations or the use and ownership of the Purchased Assets and any pending applications for, or renewals of, any such Authorizations including those listed in Section 2.1 of the Disclosure Schedule;
- (j) all prepaid expenses and deposits relating to the Purchased Operations, if any; and
- (k) the goodwill of the Purchased Operations, including the right of the Purchaser to:
  - (i) represent itself as carrying on the Purchased Operations in continuation of and in succession to the Seller; and
  - (ii) use any words indicating that the Purchased Operations is so carried on, including all of the Seller’s right, title and interest in and to the name “Town Homes Kingston” or any variation of it, together with the rights, if any, and telephone facsimile numbers, e-mail addresses and internet domain names used in connection with the Purchased Operations,

all in accordance with the terms of this Agreement.

## 2.2 Excluded Assets

The Purchased Assets do not include any of the following property, assets, rights and interests of the Seller (collectively, the “**Excluded Assets**”):

- (a) all cash on hand or on deposit with banks or other depositories, undeposited cheques, other cash equivalents, certificates of deposit, money market instruments and rights in and to bank accounts of the Seller;
- (b) all income tax instalments paid by the Seller and the right to receive any refund of income taxes paid by the Seller and all other governmental refunds attributable or relating to periods or portions of periods prior to the Closing Date;
- (c) **[other excluded assets]**.

## 2.3 Assignment of Assumed Contracts

- (a) Nothing in this Agreement is to be construed as an attempt to assign any Assumed Contract or Tenant Lease (or any benefits or obligations thereunder) which is not assignable in whole or in part without all necessary Consents, unless such Consent has been given. In accordance with the provisions of Section 7.5, the Seller will use its commercially reasonable efforts to obtain such Consents and the Purchaser will cooperate with the Seller in obtaining such Consents. Whether or not the Consents are obtained, the Seller will take all actions described in Section 2.3(b) to preserve the full benefit of the Assumed Contracts and Tenant Leases for the Purchaser.
- (b) So that the Purchaser may realize the full benefit of the Assumed Contracts and Tenant Leases which are not assigned at Closing, if any, the Seller will, from and after the Closing Date, at the request and expense and under the direction of the Purchaser, in the name of the Seller or otherwise as the Purchaser specifies:
  - (i) hold such Assumed Contracts and Tenant Leases (and all rights and benefits thereunder) in trust for the benefit of the Purchaser;
  - (ii) take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, necessary or proper in order that the obligations of the Seller may be performed in such manner that the value of such Assumed Contracts and Tenant Leases are preserved and enure to the benefit of the Purchaser, and that the collection of moneys due and payable under the Assumed Contracts and Tenant Leases are received by the Purchaser; and
  - (iii) promptly pay over to the Purchaser all moneys collected by or paid to the Seller in respect of every such Assumed Contract, licences and Tenant Leases.

## Article 3

### Assumed Liabilities and Retained Liabilities

#### 3.1 Assumed Liabilities

Subject to Closing, the Purchaser agrees to discharge, perform and fulfil all of the obligations and liabilities of the Seller with respect to the Purchased Operations and the Purchased Assets (other than the “**Retained Liabilities**”) (collectively, the “**Assumed Liabilities**”) including::

- (a) all liabilities accrued or recorded as liabilities on the Final Closing Financial Statements;
- (b) obligations or liabilities of the Seller under the Assumed Contracts and Tenant Leases arising in respect of the period from and after the Effective Time and not relating to any default existing prior to or as a consequence of Closing;
- (c) obligations and liabilities arising with respect to Authorizations acquired by the Purchaser but only to the extent that such obligations and liabilities arise and relate to the period from and after the Effective Time; and
- (d) any other obligations expressly assumed under this Agreement.
- (e) **[other assumed liabilities.]**

### 3.2 Retained Liabilities

Except for the Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil any liabilities and obligations, contingent or otherwise, of the Seller or related to the Purchased Operations or the Purchased Assets (collectively, the “**Retained Liabilities**”), including:

- (a) liabilities incurred or accruing due prior to the Effective Time under the Assumed Contracts and Tenant Leases, except and only to the extent reflected in the Final Closing Financial Statements;
- (b) liabilities of the Seller under Contracts that are not Assumed Contracts;
- (c) any liability of the Seller in respect of, or in connection with, any past Employee;
- (d) obligations and liabilities arising with respect to Authorizations which have not been acquired by the Purchaser; and
- (e) **[other liability, if any, that the Seller will retain.]**

### 3.3 Assumption of Contractual Liabilities

Notwithstanding anything in this Agreement, the Purchaser shall not assume and shall have no obligation to discharge any liability or obligation under any Contract or Tenant Lease which is not assignable in whole or in part without Consent, unless such Consent has been obtained, or unless the Seller has performed its obligations under Section 2.3(b) and the value of such Contracts and Tenant Leases has enured to the Purchaser.

## Article 4 Purchase Price

### 4.1 Purchase Price

The purchase price payable by the Purchaser to the Seller for the Purchased Assets (the “**Purchase Price**”) shall, subject to adjustment in accordance Section 4.4, be an amount equal to **[Cdn. \$]**.

**4.2 Allocation**

The Seller and the Purchaser agree to allocate the Purchase Price (and any adjustments thereto) among the Purchased Assets in accordance with the provisions of Section 4.2 of the Disclosure Schedule and to execute and file all Tax Returns and prepare all financial statements, returns and other instruments on the basis of such allocations as finalized.

**4.3 Payment of the Purchase Price**

At the Closing, the Purchaser shall pay to the Seller [Cdn. \$] (the “**Estimated Purchase Price**”) by:

- (a) the assumption of the Assumed Liabilities in an amount equal to [Cdn. \$]; and
- (b) the balance of the Estimated Purchase Price shall be paid by delivery of a promissory note issued by the Purchaser to the Seller (the “**Promissory Note**”) in the form attached as Exhibit A.

**4.4 Adjustment of Purchase Price**

- (a) Within 120 days following the Closing Date, the Purchaser shall prepare and deliver to the Seller unaudited financial statements of the Purchased Operations prepared as at the Closing Date, together with a schedule setting out the Closing Date Net Asset Value (collectively, the “**Draft Closing Financial Statements**”). The Draft Closing Financial Statements are to be prepared in accordance with GAAP applied on a basis consistent with past practice. The Seller will provide the Purchaser and its representatives access, upon every reasonable request, to all work papers and accounting books and records relating to the Purchased Operations in the possession of the Seller to assist the Purchaser in the preparation of the Draft Closing Financial Statements.
- (b) Within 30 days following receipt of the Draft Closing Financial Statements, the Seller shall notify the Purchaser in writing if it has any objections. The notice of objection must contain a statement describing the basis of each of the Seller’s objections and each amount in dispute. The Purchaser shall provide the Seller access, upon every reasonable request, to all work papers of the Purchaser, accounting books and records of the Purchased Operations and the appropriate personnel to verify the accuracy, presentation and other matters relating to the preparation of the Draft Closing Financial Statements. The Seller is deemed to have accepted the Draft Closing Financial Statements as the final closing financial statements if it does not deliver a notice of objection containing the required information to the Purchaser within the specified period of 30 days.
- (c) If the Seller disputes the Draft Closing Financial Statements, the Parties shall work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 20 days after delivery of the notice of objection by the Seller to the Purchaser. If the Parties fail to reach a resolution as to the amount of Closing Date Net Asset Value, the dispute will be submitted for determination to an independent firm of chartered accountants mutually agreed to by the Seller and the Purchaser (and, failing such agreement within a further period of two Business Days, such independent firm of chartered accountants shall be \_\_\_\_\_). The determination of the accountants with respect to the amount of Closing Date Net Asset Value will be final and binding upon the Parties and will not be subject to appeal, absent manifest error. The appointed accountants are deemed to be acting as experts and not as arbitrators.

- (d) The Seller and the Purchaser will each bear the fees and expenses of their respective auditors, if any, in preparing or reviewing, as the case may be, the Closing Date Net Asset Value and Draft Closing Financial Statements. If an accounting firm is retained to resolve such dispute, the costs and expenses of such firm will be borne equally by the Seller and the Purchaser. However, the Seller and the Purchaser will each bear their own costs in presenting their respective cases to such firm.
- (e) Immediately following the 30 day period referred to in Section 4.4(b) or the resolution of any dispute in accordance with Section 4.4(c), the Purchaser shall deliver to the Seller the final closing financial statements, together with the final Closing Date Net Asset Value (the “**Final Closing Financial Statements**”) which will be final and binding upon the Parties and will not be subject to appeal, absent manifest error.
- (f) If (i) the Closing Date Net Asset Value as set out in the Final Closing Financial Statements (the “**Final Net Asset Value**”) is greater than the Estimated Net Asset Value, the Purchaser shall pay to the Seller the difference between the two amounts, and (ii) the Final Net Asset Value is less than the Estimated Net Asset Value, the Seller shall pay to the Purchaser the difference between the two amounts. Subject to Section 4.4(g), any such payment will be made by adjustment to the Promissory Note within two Business Days of delivery of the Final Closing Financial Statements.
- (g) The determination and adjustments to Net Asset Value in accordance with the provisions of this Section 4.4 do not limit or affect any other rights or causes of action which the Parties may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.

#### **4.5 Fair Market Value**

It is the intention of the Parties hereto that the purchase and sale of the Purchased Assets shall take place at fair market value. The Seller and the Purchaser agree that in the event that any governmental taxing authority having jurisdiction shall assert by assessment, reassessment or otherwise, that the fair market value of the Purchased Assets as of the date hereof is an amount different than the Purchase Price, or issues or proposes to issue assessments or reassessments of additional liability for taxes or any other subject by reason of asserting that the fair market value of the Purchased Assets is greater than or less than the Purchase Price, then the Purchase Price shall be increased or decreased by the difference so determined; but only to the extent that the Purchase Price so revised is accepted by the taxing authority, the Seller and the Purchaser, or, failing such acceptance, is established by a court having jurisdiction in the matter after all rights of appeal have been exhausted or all times for appeal have expired without appeals having been taken by such taxing authority, the Seller or the Purchaser. The Parties undertake to make whatever adjustments and payments may be necessary between them to give full recognition to the revised Purchase Price as and from the date of this Agreement

#### **4.6 Tax Matters**

- (a) The Purchaser is liable for and shall pay all federal, provincial and harmonized sales taxes, goods and services taxes and all other Taxes or other like charges properly payable by a buyer upon and in connection with the conveyance and transfer of the Purchased Assets by the Seller to the Purchaser.
- (b) All amounts payable by the Purchaser to the Seller pursuant to this Agreement do not include any goods and services, harmonized sales, sales, retail sales, use, consumption, personal property, customs, excise, stamp, transfer, or similar taxes, duties or charges

(collectively “**Sales Taxes**”) and all Sales Taxes are the responsibility and for the account of the Purchaser. If the Seller is required by applicable Laws to collect any Sales Taxes from the Purchaser, the Purchaser shall pay such Sales Taxes to the Seller concurrent with the payment of any amount payable pursuant to this Agreement, unless the Purchaser qualifies for an exemption from any such applicable Sales Taxes, in which case the Purchaser shall, in lieu of payment of applicable Sales Taxes to the Seller, deliver to the Seller such certificates, elections, or other documentation required by applicable Laws and prepared to the satisfaction of the Seller, acting reasonably, to substantiate and effect the exemption claimed by the Purchaser. The Seller shall remit all Sales Taxes to the relevant Governmental Authority in accordance with applicable Laws.

- (c) The Parties will use their commercially reasonable efforts to minimize (or eliminate) any Sales Taxes as are applicable to the purchase and sale of the Purchased Assets, including any taxes payable under the *Excise Tax Act* (Canada) by, among other things, making such elections and taking such steps as may be provided for under *Excise Tax Act* (Canada) (including making a joint election in a timely manner under Section 167 of Part IX of the *Excise Tax Act* (Canada)).
- (d) The Seller and the Purchaser will jointly elect under Section 22 of the *Income Tax Act* (Canada), and any corresponding provincial tax act provisions with respect to the sale, assignment, transfer and conveyance of the Accounts Receivable, and will designate and allocate therein that portion of the applicable portion of the Purchase Price referred to in Section 4.2. The Parties will execute and file, within the prescribed periods, the prescribed election forms and any other documents required to give effect to the foregoing and will also prepare and file all of their respective Tax Returns in a manner consistent with such allocation.
- (e) The Purchaser and the Seller will, if applicable, execute and file a joint election under subsection 20(24) of the *Income Tax Act* (Canada) and the corresponding provisions of any applicable provincial taxing statute or regulation, within the prescribed time periods, to have the provisions of such subsection apply to the obligations in respect of undertakings to which paragraph 12(1)(a) of the *Income Tax Act* (Canada) applies. The parties acknowledge that the Seller is transferring assets to the Purchaser which have a value equal to the elected amount as consideration for the assumption of such obligations.

## **Article 5**

### **Representations and Warranties of the Seller**

The Seller represents and warrants as follows to the Purchaser and acknowledges and confirms that the Purchaser is relying upon the representations and warranties in entering into this Agreement, purchasing the Purchased Assets and assuming the Assumed Liabilities.

#### **5.1 Incorporation and Corporate Power**

The Seller is a corporation incorporated, organized and existing under the laws of the Province of Ontario and has the corporate power and authority to own and operate its property and assets, carry on its business and enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is a party.



**5.2 Corporate Authorizations**

The execution, delivery and performance by the Seller of this Agreement and each of the Transaction Documents to which it is a party:

- (a) have been duly authorized by all necessary corporate action on the part of the Seller; and
- (b) do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of its constating documents, shareholders' agreements, by-laws or resolutions of its board of directors or shareholders.

**5.3 No Conflict with Authorizations, Laws, etc.**

To the knowledge of the Seller, except as set out in Section 5.3 the Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and each of the Transaction Documents to which it is a party do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any Authorization held by the Seller or necessary to the ownership and use of the Purchased Assets or the operation of the Purchased Operations;
- (b) result in or require the creation of any Lien upon any of the Purchased Assets;
- (c) result in a breach or a violation of, or conflict with, any judgement, order or decree of any Governmental Authority; or
- (d) result in a breach or a violation of, or conflict with, any Law applicable to the Seller.

**5.4 No Conflict with Contracts**

To the knowledge of the Seller, except as set out in Section 5.4 of the Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and each of the Transaction Documents to which it is a party, do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, or conflict with, any Contract binding on or affecting the Seller or the Purchased Operations; or
- (b) result in or give any Person the right to seek, or to cause (i) the termination, cancellation, amendment or renegotiation of any Contract binding on or affecting the Seller or the Purchased Operations, (ii) the acceleration of any debt or other obligation of the Seller, or (iii) the forfeiture or other loss, in whole or in part, of any benefit which would otherwise accrue to the Seller in connection with the Purchased Operations or the Purchased Assets.

**5.5 Required Authorizations**

To the knowledge of the Seller, there is no requirement for the Seller to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Authority as a result of, or in connection with, or as a condition to the lawful completion of, the transactions contemplated by this

Agreement or any of the Transaction Documents, except for the filings, notifications and Authorizations set out in Section 5.5 of the Disclosure Schedule.

**5.6 Required Consents**

To the knowledge of the Seller, there is no requirement for the Seller to make any filing with, give any notice to, or obtain any Consent of, any Person who is a party to a Contract binding on or affecting the Seller as a result of, or in connection with, or as a condition to the lawful completion of, the transactions contemplated by this Agreement or any of the Transaction Documents except for the filings, notifications and Consents set out in Section 5.6 of the Disclosure Schedule.

**5.7 Execution and Binding Obligation**

This Agreement and each of the Transaction Documents to which the Seller is a party have been (or will be) duly executed and delivered by the Seller and constitute (or will constitute) legal, valid and binding obligations of the Seller enforceable against it in accordance with their respective terms.

**5.8 Qualification**

The Seller is qualified, licensed or registered to carry on business in the Province of Ontario.

**5.9 Compliance with Laws**

The Seller is conducting and has conducted the Purchased Operations in all material respects in compliance with all applicable Laws in all respects.

**5.10 Authorizations**

The Seller owns, possesses or lawfully uses in the operation of the Purchased Operations all Authorizations which are necessary for it to conduct the Purchased Operations or for the ownership and use of the Purchased Assets and the other property and assets used by the Seller in connection with the Purchased Operations. Each Authorization is valid, subsisting and in good standing, the Seller is not in material default or breach of any Authorization and no proceedings are pending or, to the knowledge of the Seller, threatened to revoke or limit any Authorization. All Authorizations are assignable to the Purchaser and renewable by their terms or in the Ordinary Course without the need for the Seller or the Purchaser to comply with any special rules or procedures, agree to any materially different terms or conditions or pay any amounts other than routine filing fees. No affiliate of the Seller owns or has a proprietary, financial or other interest (direct or indirect) in any Authorization.

**5.11 Sufficiency of Assets**

The Purchased Assets include all rights, assets and property necessary for the conduct of the Purchased Operations after the Closing substantially in the same manner as it was conducted prior to the Closing.

**5.12 Title to the Purchased Assets**

Except for the Excluded Assets, the property and assets included in the Purchased Assets (a) constitute all or substantially all of the assets used by the Seller in carrying on the Purchased Operations and (b) include all or substantially all of the assets set forth or reflected on the Financial Statements other than assets acquired since the Reference Date or disposed of in accordance with this Agreement since the Reference Date. The Seller has good and marketable title to, and legal and

beneficial ownership of, the Purchased Assets free and clear of all Liens except for Permitted Encumbrances.

**5.13 No Options, etc.**

Except for the Purchaser under this Agreement and the City of Kingston's contingent option to purchase the real property municipally known as 375 Patrick Street, Kingston Ontario, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege (whether by law, contractual or otherwise) capable of becoming such for the purchase or other acquisition from the Seller of any of the property and assets forming a material part of the Purchased Assets.

**5.14 Owned Property**

The Seller is the absolute registered and beneficial owner of, and has good and marketable title to, the Owned Properties free and clear of all Liens other than Permitted Encumbrances. The Seller is not now and has never been the owner or lessee of, or subject to any agreement, option or right to own or lease, any real property or any interest in any real property used in connection with the Purchased Operations, other than the Owned Properties. To the knowledge of the Seller, all of the buildings, improvements and fixtures (including fences, if any) on the Owned Properties (collectively, the "**Acquired Structures**") were constructed in accordance with all applicable Laws and the Seller has adequate rights of ingress and egress to, from and over the Owned Properties for the operation of the Purchased Operations in the Ordinary Course. To the knowledge of the Seller, none of the Owned Properties nor any Acquired Structures, nor their use, operation or maintenance for the purpose of carrying on the Purchased Operations, violate any restrictive covenant or any provision of any applicable Law. No condemnation, rezoning, dedication or expropriation proceeding is pending or, to the knowledge of the Seller, threatened against any of the Owned Properties or the Acquired Structures, and to the knowledge of the Seller, there is no plan, study, notice of intent or pending by-law which, if implemented, would change the zoning of any of the Owned Properties or adversely affect the ability of the Seller to carry on the Purchased Operations in the Ordinary Course.

**5.15 Material Contracts**

To the knowledge of the Seller, except for the Contracts set out in Section 5.15 of the Disclosure Schedule (the "**Material Contracts**") and the Tenant Leases, the Seller is not a party to or bound by any Contract material to the Purchased Operations or the ownership of the Purchased Assets including:

- (a) any Contract for the purchase or sale of materials, supplies, equipment or services for the Purchased Operations (i) involving in the case of any such Contract, the payment by the Seller of more than **[\$]** in aggregate in any 12-month period or (ii) which contains minimum purchase commitments or requirements or other terms that restrict or limit the purchasing or selling ability of the Seller;
- (b) any Contract relating to the Purchased Operations that expires, or may be renewed at the option of any Person other than the Seller so as to expire, more than one year after the date of this Agreement;
- (c) any Contract relating to the Purchased Operations for capital expenditures in excess of **[\$]** in the aggregate;

- (d) any confidentiality, secrecy or non-disclosure Contract relating to the Purchased Operations or any Contract relating to the Purchased Operations limiting the freedom of the Seller to engage in any line of business, compete with any Person, solicit any Person, operate its assets at maximum production capacity or otherwise restricting its ability to carry on the Purchased Operations;
- (e) any Contract relating to the Purchased Operations pursuant to which the Seller is a lessor or lessee of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
- (f) any Contract relating to the Purchased Operations with any affiliate of the Seller or any other Person with whom the Seller does not deal at arm's length within the meaning of the Tax Act;
- (g) any Contract relating to grants or other forms of assistance received by the Seller in respect of the Purchased Operations from any Governmental Authority; or
- (h) any Contract relating to the Purchased Operations made outside of the Ordinary Course.

True, correct and complete copies of all Material Contracts and Tenant Leases have been provided to the Purchaser.

**5.16 No Breach of Material Contracts and Tenant Leases**

To the knowledge of the Seller, it has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not alleged to be in default or breach of, any Material Contract or Tenant Lease. To the knowledge of the Seller, each of the Material Contracts and Tenant Leases is in full force and effect, unamended, and to the knowledge of the Seller, no party is in breach of any of its covenants thereunder and there exists no default or event of default or event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or circumstance, would become a breach of, or a default or event of default under, any Material Contract or Tenant lease. Except as set out in Section 5.16 of the Disclosure Schedule, the Seller has no knowledge of any consent or notice is required for a valid assignment to the Purchaser of any Material Contract.

**5.17 No Breach of Other Contracts**

To the knowledge of the Seller has not violated or breached in any material respect any of the terms or conditions of any Contract (excluding Material Contracts) forming part of the Purchased Assets and to the knowledge of the Seller, all the covenants to be performed and the obligations to be fulfilled by any other party to such Contract have been fully performed and fulfilled in all material respects.

**5.18 Related Party Transactions**

Except as set out in Section 5.18 of the Disclosure Schedule, all Contracts, binding upon or affecting the Seller and relating to the Purchased Operations or forming part of the Purchased Assets have been entered into on an arm's length basis (within the meaning of the *Income Tax Act* (Canada)).

**5.19 Accounts Receivable**

All accounts receivable forming part of the Purchased Assets are (a) shown on the financial Books and Records, (b) to the knowledge of the Seller, are actual and *bona fide* receivables resulting from the ordinary and usual conduct of the business of the Seller, (c) subject to customary trade terms and (d) collectible without set-off or counterclaim. Any reserves provided for such accounts receivable in the financial Books and Records of the Seller have been computed in accordance with GAAP applied on a consistent basis.

**5.20 Books and Records and Internal Financial Controls**

All accounting and financial Books and Records relating to the Purchased Operations and the Purchased Assets have been fully, properly and accurately kept and are complete in all material respects.

**5.21 Financial Statements**

The Financial Statements and the Interim Financial Statements have been prepared from and using the Books and Records in accordance with GAAP applied on a basis consistent with those of previous fiscal years are complete and accurate and present fairly:

- (a) the assets, liabilities, sales, income, losses, retained earnings, accruals, reserves, adjustments and financial condition of the Seller;
- (b) the results of operations of the Seller; and
- (c) the changes in financial position of the Seller,

all as at the dates and for the periods specified in such statements. True, correct and complete copies of the Financial Statements and the Interim Financial Statements have been provided to the Purchaser.

**5.22 Insurance**

The Purchased Assets and all other property and assets used in the Purchased Operations are insured against loss or damage by all insurable hazards and risks on a replacement cost basis. Section 5.22 of the Disclosure Schedule is a list of insurance policies which are maintained by or on behalf of the Seller in connection with the Purchased Operations. The Seller is not in default with respect to any of the provisions contained in the insurance policies, the payment of any premiums under any insurance policy, and has not failed to give any notice or to present any claim under any insurance policy in a due and timely fashion. True, correct and complete copies of all insurance policies held by or on behalf of the Seller in respect of the Purchased Operations and the most recent inspection reports received from insurance underwriters, if any, have been provided to the Purchaser.

**5.23 Litigation**

Except as set out in Section 5.23 of the Disclosure Schedule, there are no actions, suits or proceedings, at law or in equity, by any Person (including the Seller), nor any arbitration, administrative or other proceeding by or before (or to the knowledge of the Seller any investigation by) any Governmental Authority, current or pending, or, to the knowledge of the Seller, threatened against or affecting, the Purchased Operations, any of the Purchased Assets or any other property or assets used by the Seller in connection with the Purchased Operations. No event has occurred or

circumstance exists which may give rise to or serve as a valid basis for the commencement of any action, suit, proceeding, arbitration or investigation by or against the Seller, the Purchased Operations, any of the Purchased Assets or any other property or assets used by the Seller in connection with the Purchased Operations.

**5.24 Taxes**

- (a) The Seller has prepared and filed all Tax Returns within the prescribed period with the appropriate Tax Authority in accordance with applicable Laws. The Seller has reported all income and all other amounts and information required by applicable Law to be reported on each such Tax Return. Each such Tax Return is true, correct and complete in all material respects.
- (b) The Seller has paid, within the prescribed period, all Taxes and instalments of Taxes, which are required to be paid to any Tax Authority pursuant to applicable Law and which are capable of forming or resulting in a Lien (other than a Permitted Encumbrance) on the Purchased Assets or becoming a liability or obligation of the Purchaser. No deficiency with respect to the payment of any Taxes or Tax instalments has been asserted against it by any Tax Authority. Since the Reference Date, the Seller has not (i) incurred any liability for Taxes, (ii) engaged in any transaction or event which would result in any liability for Taxes, or (iii) realized any income or gain for tax purposes, other than, in each case, in the Ordinary Course. Adequate provision has been made in the Books and Records for all Taxes payable for all taxable periods ending on or before the Closing Date, and where no taxable period ends or is deemed to end on or immediately prior to the Closing Date, for all Taxes in respect of any time or event prior to the Closing Date.
- (c) The Seller has duly and timely withheld and collected all Taxes required by applicable Law to be withheld or collected by it and has duly and timely remitted to the appropriate Tax Authority all such Taxes as and when required by applicable Law.
- (d) There are no proceedings, investigations or audits pending or, to the knowledge of the Seller, threatened against or affecting the Seller in respect of any Taxes. No event has occurred or circumstance exists which may give rise to or serve as a valid basis for the commencement of any such proceeding, investigation or audit. There are no matters under discussion, audit or appeal with any Tax Authority relating to Taxes. All Tax Returns of the Seller for taxation years ending on or before [date] have been assessed by the relevant Tax Authority.
- (e) The Seller is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).
- (f) The Seller is registered charity with the Canada Revenue Agency and registration number 897423141 RR 0002.

**5.25 Environmental Matters**

- (a) In the past three years, the Seller has not received any Environmental Notice with respect to a matter relating to the Purchased Operations, the Purchased Assets or any other property or assets used by the Seller in carrying on the Purchased Operations which has not been remedied, corrected or cured.
- (b) No order, direction or notice or other mandatory communication from a Government Authority has been issued in respect of the Purchased Operations, the Owned Properties, the Purchased Assets or any other property or assets used by the Seller in carrying on the

Purchased which has not been complied with nor has the Seller been charged with or convicted of an offence for non-compliance with any applicable Environmental Laws.

- (c) To the knowledge of the Seller, it is not in default in filing any report or information with any Governmental Authority in respect of the Purchased Assets, the Owned Properties, or the Purchased Operations as required pursuant to any applicable Environmental Laws.
- (d) To the knowledge of the Seller, there is no Environmental Release nor any presence of, any Environmentally Hazardous Substance at, on, from or under any of the Owned Properties.
- (e) To the knowledge of the Seller, no unbudgeted works or additional expenditure is required or planned in relation to the Purchased Operations, the Purchased Assets, the Owned Properties or any other property or assets used by the Seller in carrying on the Purchased Operations to ensure compliance with applicable Environmental Laws or Environmental Authorizations.
- (f) True, correct and complete copies of all environmental reports, surveys, assessments and investigations and budgeted works and expenditures concerning the Purchased Operations, the Purchased Assets, the Owned Properties and any other property or assets used by the Seller in carrying on the Purchased Operations in the possession of the Seller have been provided to the Purchaser and all necessary steps required to comply with the recommendations contained in such reports, surveys, assessments and investigations have been completed.

**5.26 Employee Matters**

- (a) The Seller is not a party to, subject to, or affected by, any current (i) written employment Contract with a Person engaged in the Purchased Operations, (ii) verbal employment Contract with a Person engaged in the Purchased Operations, (iii) written Contract with a Person acting as an agent, independent contractor or dependent contractor providing services to the Seller in connection with the Purchased Operations, or (iv) certification order or any collective agreement.
- (b) There are no Employees currently employed by the Seller.
- (c) The Seller has observed and complied with the provisions of all applicable Laws respecting past employment, including employment standards Laws as well as Laws relating to human rights, occupational health and safety, workplace safety and insurance, labour relations and pay equity.
- (d) In the past three years, the Seller has not received any written remedial order, notice of offence or conviction under occupational health and safety, pay equity or employment standards Laws. The Seller has performed all its financial obligations under such Laws which are owed to past Employees and the Governmental Authority having jurisdiction over such matters.
- (e) There are no charges or complaints pending, or to the knowledge of the Seller, threatened with respect to or relating to the Seller before any Governmental Authority in relation to past unlawful employment practices. The Seller has not received any written notice from any such Governmental Authority responsible for the enforcement of labour or employment Laws of an intention to conduct an investigation of the Seller or any of its business

concerning its past employment practices, wages, hours and terms and conditions of employment and no such investigation is, to the knowledge of the Seller, threatened.

**5.27 Privacy Laws**

To the knowledge of the Seller, it has conducted and is conducting the Purchased Operations in compliance in all material respects with all applicable Privacy Laws including in connection with its collection, use and disclosure of Personal Information. The Seller has not received any written complaint or notice of any breach or violation of any such Privacy Laws. To the knowledge of the Seller, all Personal Information of the Seller relating to the Purchased Operations:

- (a) has been collected, used or disclosed with the consent of each individual to which such Personal Information relates (if such consent is required under applicable Privacy Laws);
- (b) has been used only for the purposes for which the Personal Information was initially collected or for a subsequent purpose for which consent was subsequently obtained; or
- (c) has been collected, used or disclosed for a purpose in respect of which consent may, under applicable Privacy Laws, be implied.

**5.28 No Brokers' Fees, etc.**

The Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or any of the Transaction Documents.

**5.29 Full Disclosure**

To the knowledge of the Seller, neither this Agreement nor any Transaction Document to which the Seller (or any of its directors or officers) is a party (a) contains or will contain any untrue statement of fact, or (b) to the knowledge of the Seller, omits or will omit any fact necessary in order to make the statements contained herein or therein not misleading.

**Article 6  
Representations and Warranties of the Purchaser**

The Purchaser represents and warrants as follows to the Seller and acknowledges and confirms that the Seller is relying on the representations and warranties in entering into this Agreement and selling the Purchased Assets to the Purchaser:

**6.1 Incorporation and Corporate Power**

The Purchaser is a corporation incorporated, organized and existing under the laws of the Province of Ontario and has the corporate power and authority to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is a party.

**6.2 Corporate Authorization**

The execution, delivery and performance by the Purchaser of this Agreement and each of the Transaction Documents to which it is a party:

- (a) have been duly authorized by all necessary corporate action on the part of the Purchaser; and



- (b) do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of its constating documents, shareholders' agreements, by-laws or resolutions of its board of directors or shareholders.

**6.3 No Conflict with Authorizations, Laws, etc.**

Except as set out in Section 6.3 of the Disclosure Schedule, the execution, delivery and performance by the Purchaser of this Agreement and each of the Transaction Documents to which it is a party do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):

- (a) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any Authorization held by the Purchaser or necessary to the ownership of the Purchased Assets;
- (b) result in or require the creation of any Lien upon any of the Purchased Assets;
- (c) result in a breach or a violation of, or conflict with, any judgement, judicial order or decree of any Governmental Authority; or
- (d) result in a breach or a violation of, or conflict with, any Law applicable to the Purchaser.

**6.4 Required Purchaser Authorizations**

There is no requirement for the Purchaser to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Authority as a result of, or in connection with, or as a condition to the lawful completion of, the transactions contemplated by this Agreement or any of the Transaction Documents, except for the filings, notifications and Authorizations set out in Section 6.4 of the Disclosure Schedule.

**6.5 Execution and Binding Obligation**

This Agreement and each of the Transaction Documents to which the Purchaser is a party have been (or will be) duly executed and delivered by the Purchaser and constitute (or will constitute) legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms.

**6.6 Tax Status**

The Purchaser is registered under Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and the registration number is [●].

**Article 7  
Covenants of the Parties**

**7.1 Access for Due Diligence**

Subject to compliance with applicable Laws, during the Closing Period the Seller shall (a) give the Purchaser and its accountants, legal advisers and other representatives, during normal business hours, full access to personnel, premises, suppliers, customers, Books and Records, Tax Returns, Tenant Leases, Contracts and all other Purchased Assets and (b) provide the Purchaser with such

information relating to the Purchased Operations and the Purchased Assets as the Purchaser may reasonably request. At the request of the Purchaser, the Seller will execute or cause to be executed, such consents, authorizations and directions as may be necessary to enable the Purchaser and its representatives to obtain access to all files and records maintained by Governmental Authorities or other Persons in respect of the Purchased Assets and the Purchased Operations. No investigation made by the Purchaser or its representatives will affect the Purchaser's right to rely on any representation or warranty made by the Seller in this Agreement or in any Transaction Document.

**7.2 Conduct of Business Prior to Closing**

- (a) During the Closing Period, the Seller shall conduct the Purchased Operations in the Ordinary Course. Without limiting the generality of the foregoing, the Seller shall not, without the prior written consent of the Purchaser,:
- (i) sell, transfer or otherwise dispose of any assets of the Purchased Operations except assets which are obsolete and which, individually or in the aggregate, do not exceed \$ in book value;
  - (ii) grant or suffer any Lien upon any of the assets of the Purchased Operations other than a Permitted Encumbrance;
  - (iii) make any capital expenditures in respect of the Purchased Operations which individually or in the aggregate exceeded \$;
  - (iv) cancel any debts or claims owed to it in connection with the Purchased Operations or amend, terminate or waive any rights of value to the Seller in connection with the Purchased Operations;
  - (v) make any payment to an officer, director, former director or related party other than at the regular rates payable by way of salary or other remuneration for the reimbursement of expenses incurred in the ordinary course;
  - (vi) terminate any Material Contract other than due to its expiration in accordance with its terms and not as a result of the potential completion of the transactions contemplated by the Agreement;
  - (vii) write down the value of any assets owned or used by the Seller in the Purchased Operations, including inventory and capital lease assets, except on account of normal depreciation and amortization;
  - (viii) write off as uncollectible any Accounts Receivable or any part thereof in amounts exceeding \$ in each instance or \$ in the aggregate;
  - (ix) make any forward commitments for the Purchased Operations either in excess of the requirements of the Purchased Operations for normal operating purposes or at prices higher than the current market prices;
  - (x) compromise or settle any litigation or governmental action relating to assets owned or used by the Seller in connection with the Purchased Operations;
  - (xi) cancel or reduce any insurance coverage on the Purchased Operations or its property and assets;

- (xii) permit any of its facilities located at any of the Acquired Properties to be shut down for any period of time in excess of 12 hours;
  - (xiii) make any change in any method of accounting or auditing practice;
  - (xiv) make any change in the method of billing or the credit terms made available to the customers of the Purchased Operations; or
  - (xv) authorize, agree or otherwise commit, whether or not in writing, to do any of the foregoing.
- (b) In addition, the Seller shall:
- (i) use commercially reasonable efforts to preserve intact the current business organization of the Purchased Operations and maintain good relations with, and the goodwill of, suppliers, customers, tenants, creditors and all other Persons having business relationships with the Seller in connection with the Purchased Operations;
  - (ii) retain possession and control of the Purchased Assets and the other property and assets used by it in the Purchased Operations, maintain insurance coverage commensurate with existing coverage and preserve the confidentiality of any confidential or proprietary information of the Purchased Operations;
  - (iii) conduct the Purchased Operations in such a manner that, on the Closing Date, the representations and warranties of the Seller contained in this Agreement are true, correct and complete as if such representations and warranties were made on and as of such date; and
  - (iv) periodically report to the Purchaser concerning matters relating to the Purchased Operations.

### **7.3 Actions to Satisfy Closing Conditions**

- (a) The Seller shall take all such actions as are within its power to control and shall use commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 10.1 including ensuring that during the Closing Period and at Closing, there is no breach of any of its representations and warranties.
- (b) The Purchaser shall take all such actions as are within its power to control and shall use commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 10.2 including ensuring that during the Closing Period and at Closing, there is no breach of any of its representations and warranties.

### **7.4 Transfer of the Purchased Assets**

The Seller shall take all necessary steps and corporate proceedings to permit good and marketable title to the Purchased Assets to be duly and validly transferred and assigned to the Purchaser at the Closing, free of all Liens other than Permitted Encumbrances.

**7.5 Request for Consents**

The Seller shall use commercially reasonable efforts to obtain, prior to Closing, all Consents. The Consents shall be on such terms as are acceptable to the Purchaser, acting reasonably.

**7.6 Filings and Authorizations**

The Seller and the Purchaser, as soon as practicable after the execution of this Agreement, shall (i) make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to complete the transactions contemplated in this Agreement and in each of the Transaction Documents, and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all Authorizations necessary or advisable in order to complete the transactions contemplated in this Agreement and in each of the Transaction Documents. Subject to compliance at all times with applicable Laws and the other provisions of the Agreement, the Seller, and the Purchaser shall coordinate and cooperate with each other in exchanging information and supplying such assistance as is reasonably requested in connection with the foregoing including providing each Party with all notices and information supplied to or filed with or received from any Governmental Authority (except for notices and information which the Seller or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive and which may be filed on a confidential basis).

**7.7 Notice of Untrue Representation or Warranty**

During the Closing Period, the Seller shall promptly notify the Purchaser, and the Purchaser shall promptly notify the Seller, upon any representation or warranty made by it and contained in this Agreement becoming untrue or incorrect. Any such notification must set out particulars of the untrue or incorrect representation or warranty, and details of any actions taken to rectify the matters.

**7.8 Environmental Investigations and Due Diligence**

Without limiting the generality of Section 7.1, the Seller shall permit the Purchaser to conduct such interviews, tests and inspections in respect of environmental matters relating to the Purchased Operations and the Purchased Assets as the Purchaser deems necessary or advisable (collectively, the “**Environmental Due Diligence Activities**”). In addition, the Seller shall permit the Purchaser to carry out (or have its consultant or other representative carry out) an environmental audit/compliance review with respect to potential liability under Environmental Laws of the Purchased Operations, the Acquired Properties and the other Purchased Assets. The Seller shall cooperate with and provide the necessary authorizations and site access to the Purchaser and its environmental consultants for these purposes and the Seller may accompany the Purchaser and its consultants on any inspection or site visit.

**7.9 Books and Records**

The Seller shall deliver or cause to be delivered to the Purchaser at Closing all the Books and Records. The Purchaser shall retain all accounting Books and Records relating to the Purchased Operations and the Purchased Assets in its possession for a period of six years from the Closing Date or for such longer period as may be required by applicable Law, but the Purchaser is not responsible or liable to the Seller for any accidental loss or destruction of, or damage to, any such Books and Records. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Seller may inspect and make copies (at its own expense) of them for purposes of preparing its own Tax Returns at any time during normal business hours and upon reasonable

notice and without undue interference to the business operations of the Purchaser. The Purchaser may have its representatives present during any such inspection.

## **Article 8 Employees**

### **8.1 Employee Liability**

The Seller is responsible for and shall indemnify and hold harmless the Purchaser for and against any and all liability for:

- (a) salary, bonuses, vacation pay, commissions and other compensation and all liabilities under employee pension and benefit plans of the Seller relating to employment of Employees prior to the Effective Time;
- (b) all pay in lieu of notice, severance payments, damages for wrongful dismissal and all legal and other related costs in respect of the termination by the Seller of the employment of any Employee;
- (c) all claims for injury, disability, death or workers' compensation arising from, or related to employment in, the Purchased Operations prior to the Effective Time.

## **Article 9 Closing**

### **9.1 Date, Time and Place of Closing**

The completion of the transaction of purchase and sale contemplated by this Agreement will take place at the offices of Cunningham, Swan, Carty, Little & Bonham LLP, , Suite 300 – 27 Princess Street, Kingston, Ontario, at 12:00 p.m. (Kingston time) on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing by the Parties.

### **9.2 Closing Procedures**

Subject to satisfaction or waiver of the conditions of Closing by the relevant Party, at the Closing, the Seller shall deliver the instruments of conveyance described in Section 10.1(g)(v) to the Purchaser and upon such delivery the Purchaser shall assume the Assumed Liabilities and pay or satisfy the Purchase Price in accordance with Section 4.3.

### **9.3 Effective Time**

The transfer of ownership and possession of the Purchased Assets is deemed to take effect at the Effective Time on the Closing Date.

### **9.4 Non-Merger**

Except as otherwise expressly provided in this Agreement, the covenants, representations, warranties and other provisions of this Agreement will not merge on Closing but will survive (a) the execution, delivery and performance of this Agreement and any related transfer or conveyance documents, (b) the Closing, and (c) the payment of the Purchase Price. Notwithstanding such Closing or any investigation made by or on behalf of any Party, the Agreement will continue in full force and effect.

Closing will not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to Damages or other remedies.

## Article 10 Conditions of Closing

### 10.1 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the transactions contemplated by this Agreement is subject to the following conditions to be fulfilled or performed at or prior to Closing, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) Truth of Representations and Warranties. The representations and warranties of the Seller contained in this Agreement and in any Transaction Document to which it is a party shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Seller shall have executed and delivered a certificate of a senior officer to that effect.
- (b) Performance of Covenants. The Seller shall have fulfilled, performed or complied with all covenants contained in this Agreement and in any Transaction Document to which it is a party to be fulfilled, performed or complied with by it at or prior to Closing, and the Seller shall have executed and delivered a certificate of a senior officer to that effect.
- (c) Consents. All Required Consents and Authorizations shall have been obtained on terms acceptable to the Purchaser, acting reasonably.
- (d) Due Diligence. The Purchaser shall have completed its investigation of the Purchased Operations, the Seller's title to the Purchased Assets and all other matters it has deemed relevant and such investigation shall not have disclosed any matter which the Purchaser, acting reasonably, believes has or could reasonably be expected to have a to be materially adverse to its decision to acquire the Purchased Assets.
- (e) Material Adverse Effect. Since the date of this Agreement, there shall not have occurred in the opinion of the Purchaser any event, development or condition or any damage, destruction or loss (whether covered by insurance or not) that has, or could reasonably be expected to have, a Material Adverse Effect on the assets, business, financial condition, earnings, results of operations or prospects of the Purchased Operations or which could reasonably be expected to materially adversely affect the ability of the Purchaser to carry on the Purchased Operations after Closing substantially as such Purchased Operations is being conducted on the date of this Agreement.
- (f) Environmental Investigation. The Purchaser shall have been satisfied, in its sole and absolute discretion, with the results of the environmental audit/compliance review referred to in Section 7.8 and any remedial work completed in connection with it.
- (g) Deliveries. The Seller shall have delivered or caused to be delivered to the Purchaser the following:
  - (i) certified copies of (A) the articles and by-laws of the Seller, (B) the resolutions of the members and the board of directors of the Seller approving the entering into and completion of the transaction contemplated by this Agreement and the

Transaction Documents and (C) a list of the officers and directors authorized to sign agreements together with their specimen signatures, all in form and substance satisfactory to the Purchaser, acting reasonably;

- (ii) a certificate of status with respect to the Seller;
  - (iii) the certificates referred to in Section 10.1(a) and Section 10.1(b);
  - (iv) a purchase certificate issued by the Ontario Workplace Safety and Insurance Board in respect of the Seller and the Purchased Operations confirming that as at the Closing Date, the relevant board has no claim against the Seller in respect of any amounts payable under the relevant workers' compensation legislation in respect of the Purchased Operations or any of the Purchased Assets;
  - (v) necessary deeds, conveyances, transfers and assignments and any other instruments necessary or reasonably required to transfer the Purchased Assets or the Assumed Liabilities to the Purchaser with good (and in the case of the Owned Properties, marketable) title, free and clear of all Liens other than Permitted Encumbrances;
  - (vi) evidence, satisfactory to the Purchaser, of the release and discharge of the Liens specified in Section 10.1(g)(vi) of the Disclosure Schedule; and
  - (vii) any other Transaction Documents to be signed at Closing as reasonably requested by the Purchaser.
- (h) Change in Law. Since the date of this Agreement, no Law, proposed Law or any change in any Law or in the interpretation or enforcement of any Law shall have been introduced, enacted or announced, the effect of which could be to prevent or to increase materially the cost to the Purchaser from completing the transaction contemplated in this Agreement or any of the Transaction Documents or to prevent the operation of the Purchased Operations after Closing on substantially the same basis as currently operated.

## **10.2 Conditions in Favour of the Seller**

The obligation of the Seller to complete the transactions contemplated in this Agreement is subject to the following conditions to be fulfilled or performed at or prior to Closing, which conditions are for the exclusive benefit of the Seller and may be waived, in whole or in part, by the Seller in its sole discretion:

- (a) Truth of Representations and Warranties. The representations and warranties of the Purchaser contained in this Agreement and in any Transaction Document to which it is a party shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (b) Performance of Covenants. The Purchaser shall have fulfilled, performed or complied with all covenants contained in this Agreement and in any Transaction Document to which it is a party to be fulfilled, performed or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (c) Deliveries. The Purchaser shall have delivered or caused to be delivered to the Seller the following:

- (i) certified copies of (A) the articles and extracts from the by-laws of the Purchaser relating to the execution of documents, (B) the resolutions of the sole shareholder and the board of directors of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement and the Transaction Documents and (C) a list of its officers and directors authorized to sign agreements together with their specimen signatures, all in form and substance satisfactory to the Seller, acting reasonably;
- (ii) a certificate of status with respect to the Purchaser;
- (iii) the certificates referred to in Section 10.2(a) and Section 10.2(b);
- (iv) all necessary conveyances, assignments and assumption agreements evidencing the assumption by the Purchaser of the Assumed Liabilities; and
- (v) any other Transaction Documents to be signed at Closing as reasonably requested by the Seller.

## **Article 11 Termination and Dispute Resolution**

### **11.1 Termination**

This Agreement may be terminated at any time on or prior to the Closing Date:

- (a) by the Purchaser upon written notice to the Seller if, on the Closing Date, any of the conditions specified in Section 10.1 have not been satisfied in full;
- (b) by the Purchaser upon written notice to the Seller, if there has been a violation or breach by the Seller of any covenant, representation and warranty or other agreement contained in the Agreement such that any condition specified in Section 10.1 would be incapable of being satisfied by the Closing Date, and such violation or breach is not waived by the Purchaser or, in the case of a covenant breach, cured by the Seller within ten days or such longer period of time as may be required provided the Seller is diligently pursuing such cure after written notice thereof by the Purchaser;
- (c) by the Seller upon written notice to the Purchaser if, on the Closing Date, any of the conditions specified in Section 10.2 have not been satisfied in full;
- (d) by the Seller upon written notice to the Purchaser, if there has been a violation or breach by the Purchaser of any covenant, representation and warranty or other agreement contained in the Agreement such that any condition specified in Section 10.2 would be incapable of being satisfied by the Closing Date, and such violation or breach is not waived by the Seller, or, in the case of a covenant breach, cured by the Purchaser within ten days or such longer period of time as may be required provided the Purchaser is diligently pursuing such cure after written notice thereof by the Seller; or
- (e) by written agreement of the Parties.



## 11.2 Effect of Termination

- (a) If this Agreement is terminated pursuant to Sections 11.1(e) all obligations of the Parties pursuant to this Agreement will terminate without further liability of any Party to any other Party except for the provision of (i) Section 13.10 relating to public announcements, and (ii) this Section 11.2.
- (b) If the Agreement is terminated by a Party pursuant to Sections 11.1(a), 11.1(b), 11.1(c) or 11.1(d) and the right to terminate arose because of a breach of the Agreement by another Party (including a breach by the other Party resulting in a condition in favour of the terminating Party failing to be satisfied), then the other Party shall remain fully liable for any and all Damages suffered by the terminating Party as a result thereof.

## 11.3 Waiver of Conditions of Closing

If any of the conditions set forth in Section 10.1 have not been satisfied, the Purchaser may elect in writing to waive the condition and proceed with the completion of the transactions contemplated by this Agreement and, if any of the conditions set forth in Section 10.2 have not been satisfied, the Seller may elect in writing to waive the condition and proceed with the completion of the transactions contemplated by this Agreement. Any such waiver and election by the Purchaser or the Seller, as the case may be, will only serve as a waiver of that specific closing condition and the Party which has not been able to satisfy the waived condition will have no liability with respect to that specifically waived condition.

## 11.4 Dispute Resolution

Any controversy, dispute, claim, question or difference between the Parties arising out of or relating to or in connection with, this Agreement or any of the Transaction Documents including any indemnification claim pursuant to Section 12.7 (a “**Dispute**”) is to be resolved in accordance with the procedures set out in the following Sections 11.5, and 11.6 which are, subject to Section 4.4, the exclusive procedures for the resolution of any Dispute between the Parties.

## 11.5 Efforts to Settle Disputes

- (a) The Parties shall attempt in good faith to resolve any Dispute promptly by negotiation. However, at any time, a Party may give the other Party written notice (the “**Initial Notice**”) of any Dispute not so resolved. Within 15 days after delivery of an Initial Notice, the recipient Party shall deliver to the other a written response. Both the Initial Notice and the response must include a statement of that Party’s position, a summary of arguments supporting that position, and the name and contact particulars of the Person who will represent that Party and of any other Person who will accompany the representative. Within 30 days after delivery of the Initial Notice, the representatives of the Parties shall meet at mutually acceptable times and places, as often as they reasonably deem necessary, to attempt to resolve the Dispute.
- (b) All negotiations pursuant to this Section 11.5 are confidential and are to be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

## 11.6 Arbitration

If any Dispute is not resolved pursuant to Section 11.5, , then either Party may pursue binding arbitration by notice in writing to the other Party. Such Dispute shall be finally resolved by

arbitration in accordance with the *Arbitration Act, 1991* (Ontario) (the “**Arbitration Act**”), by a single arbitrator, in Kingston, Ontario, appointed by the Parties, or if the Parties fail to appoint an arbitrator within 10 Business Days of a Party delivering notice of arbitration to the other Party then upon application to a Judge of the local court for an order of appointment.. The arbitration will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. The arbitration will be conducted in the English language.

#### **11.7 Injunctive Relief**

Notwithstanding any other provision of this Agreement, a Party may seek injunctive relief (whether as a temporary restraining order, preliminary injunction or otherwise) or specific performance pending a decision of the arbitrator and this Article 11 will not apply to any such action or proceeding.

### **Article 12 Indemnification and Remedies**

#### **12.1 Indemnification by the Seller: General Matters**

The Seller shall indemnify, defend and hold harmless, the Purchaser, its employees, shareholders, directors, officers, representatives and related persons (collectively, the “**Purchaser Indemnified Persons**”) from and against, and shall pay to the Purchaser Indemnified Persons, on demand, the amount of, any loss, liability, obligation, claim, damages (including costs of investigation and defence and the full amount of all legal fees and other professional fees) but excluding incidental, and consequential damages and loss of profits and diminution of value (collectively, “**Damages**”), suffered by, imposed upon or asserted against, any of the Purchaser Indemnified Persons as a result of, in respect of, connected with, or arising out of:

- (a) any incorrectness or breach of any representation or warranty made by the Seller in this Agreement or in any Transaction Document, whether or not the Purchaser relied on or had knowledge of it;
- (b) any breach or non-fulfillment by the Seller of any covenant, condition or obligation of the Seller contained in this Agreement or in any Transaction Document;
- (c) any Retained Liabilities, including any alleged responsibility of the Purchaser in respect thereof;
- (d) any services provided by, the Seller prior to the Effective Time;
- (e) any breach or alleged breach of any Contract by the Seller which occurred prior to the Effective Time or any such breach or alleged breach which occurs after the Effective Time but arises out of continuation of a course of conduct which commenced prior to the Effective Time;
- (f) the Excluded Assets; or
- (g) any claim by any Person for brokerage or finder’s fees, commissions or similar payments based upon any agreement or understanding made or alleged to have been made by any such Person with the Seller (or any Person acting on its behalf) in connection with any of the transactions contemplated by this Agreement.

12.2 [Intentionally Deleted]

12.3 Indemnification by the Purchaser

The Purchaser shall indemnify, defend and hold harmless the Seller, its employees, members, directors, officers, representatives and related persons (collectively, the “**Seller Indemnified Persons**”) from and against, and shall pay to the Seller Indemnified Persons, on demand, the amount of any Damages suffered by, imposed upon or asserted against any of the Seller Indemnified Persons as a result of, in respect of, connected with, or arising out of:

- (a) any incorrectness or breach of any representation or warranty made by the Purchaser in this Agreement or any Transaction Document, whether or not the Seller relied on or had any knowledge of it;
- (b) any breach or non-fulfilment by the Purchaser of any covenant, condition or obligation of the Purchaser contained in this Agreement or any Transaction Document;
- (c) the performance by the Purchaser of the Assumed Liabilities; or
- (d) any claim by any Person for brokerage or finder’s fees, commissions or similar payments based upon any agreement or understanding made or alleged to have been made by such Person with the Purchaser (or any Person acting on its behalf) in connection with any of the transactions contemplated in this Agreement.

12.4 Indemnification Procedure: Third Party Claims

- (a) If any claim, assertion or proceeding is made or commenced by a third party (a “**Third Party Claim**”) against a Purchaser Indemnified Person or a Seller Indemnified Person, as the case may be (the “**Indemnified Person**”) in respect of which the Indemnified Person proposes to demand indemnification from a Party (the “**Indemnifying Party**”), the Indemnified Person shall give notice to that effect together with particulars of the Third Party Claim to its Indemnity Representative and the Indemnifying Party with reasonable promptness. The failure to give, or delay in giving, such notice will not relieve the Indemnifying Party of its obligations except and only to the extent of any prejudice caused to the Indemnifying Party by such failure or delay.
- (b) The Indemnifying Party may, by notice to the Indemnity Representative of the Indemnified Person given not later than 30 days after receipt of the notice described in Section 12.4(a), assume control of the defence, compromise or settlement of the Third Party Claim provided that:
  - (i) the Third Party Claim involves only money damages and does not seek any injunctive or other equitable relief;
  - (ii) if the named parties in any Third Party Claim include both the Indemnifying Party and the Indemnified Person, representation by the same counsel would, in the judgment of the Indemnity Representative of the Indemnified Person, still be appropriate notwithstanding any actual or potential differing interests between them (including the availability of different defences);

- (iii) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the judgment of the Indemnity Representative of the Indemnified Person, likely to establish a precedent, custom or practice adverse to the continuing business interests of the Indemnified Person; and
  - (iv) the Indemnifying Party, at the request of the Indemnity Representative of the Indemnified Person, provides reasonable assurance to the Indemnity Representative of its financial ability to defend the Third Party Claim and to provide indemnification in respect thereof.
- (c) If the Indemnifying Party assumes control of the Third Party Claim, it is conclusively established for purposes of this Agreement that the Third Party Claim is within the scope of, and entitled to, indemnification pursuant to this Article 12.
- (d) Upon assumption of control by the Indemnifying Party:
- (i) the Indemnifying Party shall actively and diligently proceed with the defence, compromise or settlement of the Third Party Claim at its sole cost and expense, retaining counsel reasonably satisfactory to the Indemnity Representative of the Indemnified Person;
  - (ii) the Indemnifying Party shall keep the Indemnity Representative of the Indemnified Person fully advised with respect to the status of the Third Party Claim (including supplying copies of all relevant documents promptly as they become available) and shall arrange for its counsel to inform the Indemnity Representative of the Indemnified Person on a regular basis of the status of the Third Party Claim; and
  - (iii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim unless consented to by the Indemnity Representative of the Indemnified Person (which consent may not be unreasonably or arbitrarily withheld or delayed).
- (e) The Indemnified Person and its Indemnity Representative may retain separate co-counsel at their sole cost and expense and may participate in the defence of the Third Party Claim (provided the Indemnifying Party continues to control such defence).
- (f) Provided all the conditions set forth in Section 12.4(b) are satisfied and the Indemnifying Party is not in breach of any of its other obligations under this Section 12.4, the Indemnified Person and its Indemnity Representative shall, at the expense of the Indemnifying Party, cooperate with the Indemnifying Party and use their commercially reasonable efforts to make available to the Indemnifying Party all relevant information in their possession or under their control (provided that it does not cause either of them to breach any confidentiality obligations) and shall take such other steps as are, in the reasonable opinion of counsel for the Indemnifying Party, necessary to enable the Indemnifying Party to conduct such defence provided always that:
- (i) no admission of fault may be made by or on behalf of any Purchaser Indemnified Person without the prior written consent of the Purchaser;
  - (ii) no admission of fault may be made by or on behalf of any Seller Indemnified Person without the prior written consent of the Seller; and

- (iii) the Indemnified Person and the Indemnity Representative are not obligated to take any measures which, in the reasonable opinion of the Indemnity Representative's legal counsel, could be prejudicial or unfavourable to the Indemnified Person.
- (g) If (i) the Indemnifying Party fails to give the Indemnity Representative the notice required in Section 12.4(b) or otherwise fails to comply with any of the conditions in Section 12.4(b) or (ii) the Indemnifying Party breaches any of its other obligations under Section 12.4, the Indemnity Representative of the Indemnified Person may assume control of the defence, compromise or settlement of the Third Party Claim and retain counsel as in its sole discretion may appear advisable, the whole at the Indemnifying Party's sole cost and expense. Any settlement or other final determination of the Third Party Claim will be binding upon the Indemnifying Party. The Indemnifying Party shall, at its sole cost and expense, cooperate fully with the Indemnity Representative of the Indemnified Person and use its commercially reasonable efforts to make available to such Indemnity Representative all relevant information in its possession or under its control and take such other steps as are, in the reasonable opinion of counsel for the Indemnity Representative, necessary to enable the Indemnity Representative to conduct the defence. The Indemnifying Party shall reimburse the Indemnified Person and its Indemnity Representative promptly and periodically for the costs of defending against the Third Party Claim (including legal fees and expenses), and shall remain responsible for any Damages the Indemnified Person and its Indemnity Representative may suffer resulting from, arising out of or relating to the Third Party Claim to the fullest extent provided in this Article 12.

## **12.5 Expiry of Liability**

- (a) Except as set out in Sections 12.5(b) and 12.5(c), liability for breaches or non-fulfilment of the representations, warranties, obligations, conditions and covenants of the Seller and the Purchaser contained in this Agreement and in any of the Transaction Documents will terminate two years following the Closing Date, except (i) in the case of fraud, intentional misrepresentation or deliberate or wilful breach, in which case liability will survive and continue in full force and effect without limitation of time, or (ii) to the extent that, during such period, the Indemnified Person or its Indemnity Representative has given notice to the Indemnifying Party of a claim in respect of any such representation, warranty, obligation, condition or covenant, in which case liability therefor will survive and continue in full force and effect until the final determination of such claim.
- (b) The representations and warranties of the Seller relating to the tax liability of the Purchased Operations including those set forth in Sections 5.24 (and the Seller's liability in connection therewith), will survive and continue in full force and effect for the benefit of the Purchaser until 90 days after the expiration of the last of the limitation periods contained in the *Income Tax Act* (Canada) and any other applicable tax Laws imposing tax on the Purchaser subsequent to the expiration of which an assessment or reassessment or other form or recognized document assessing liability for tax, interest or penalties thereunder for the period ended on the Closing Date cannot be issued to the Purchaser (such period to include any period extended by any agreement, waiver or arrangement with any Tax Authority, if such extension is requested, or consented to, in writing by the Seller).
- (c) The representations and warranties contained in Section 5.12 the Seller's liability in connection therewith will survive and continue in full force and effect indefinitely.
- (d) No Party or other Person is entitled to indemnification pursuant to this Article 12 unless such Party or other Person has given written notice of its claim for indemnification pursuant

to Section 12.4(a) or Section 12.7, as the case may be, within the survival periods specified in the foregoing provisions of this Section 12.5.

- (e) The Parties are aware of the provisions of the *Limitations Act*, 2002 (Ontario) and agree that (i) this agreement is a “business agreement” for purposes of that *Act*, and (ii) to the extent that the provisions hereof are found to be an agreement to vary or exclude a limitation period under that *Act*, such limitation period is deemed to have been suspended, extended, varied and excluded to the extent necessary to give full force and effect to the provisions of this Agreement.

## **12.6 Limitations on Liability**

- (a) The obligation of the Seller to indemnify any Purchaser Indemnified Person for Damages is subject to the following:
  - (i) the Seller shall have no liability in this Agreement or in any of the Transaction Documents and no Damages may be recovered from them unless the claims of any Purchaser Indemnified Person exceed, in the aggregate, **[\$]**; and
  - (ii) the liability of the Seller taken together, in respect of claims of any Purchaser Indemnified Person for Damages under this Agreement and the Transaction Documents shall not exceed, in the aggregate, the outstanding principal balance of the promissory note delivered by the Purchaser at Closing for the balance of the Purchase Price in addition to the assumption of the Assumed Liabilities.
- (b) The limitations set forth in Section 12.6 shall not apply to any claim for indemnification connected to a breach of any provisions (such as covenants) that should enjoy unlimited liability such as the tax or environmental representations and warranties nor in the event of fraud, intentional misrepresentation or wilful breach.

## **12.7 Procedures for Indemnification – Direct Claims**

A claim for indemnification for any matter not involving a Third Party Claim must be asserted by notice (setting out in reasonable detail the factual basis for the claim and the amount of potential Damages arising from it) to the Party from whom indemnification is sought within the periods specified in Section 12.5 of this Agreement and will be subject, at all times, to the provisions of Sections 12.6, *mutatis mutandis*.

## **12.8 Indemnification Sole Remedy**

The rights and remedies that a Party may have against the other Parties for a breach of any representation, warranty, covenant or obligation under this Agreement or any Transaction Document, except for any Damages that are the result of fraudulent conduct, wilful misconduct or intentional misrepresentation or omission, are exclusively governed by this Agreement. The Purchaser shall have the right to set-off any claims made against the Seller pursuant to the terms of this Agreement against the Promissory Note. To the extent permitted by applicable Law, any further claims and remedies (other than claims for specific performance, injunctive relief or other equitable remedy which do not include claims for monetary damages), irrespective of the nature, amount or legal basis, are hereby expressly waived and excluded.

12.9 Agency for Non-Parties

Each Party hereby accepts each indemnity in favour of its indemnified Persons who are not Parties as agent and trustee for and on their behalf. A Party may enforce an indemnity in favour of any of that Party's indemnified Persons on behalf of each such Person.

**Article 13**  
**Miscellaneous**

13.1 Notices

Any notice, consent, waiver or other communication given under this Agreement or any Transaction Document must be in writing and shall be given by delivering it (personally or by nationally recognized courier) or sending it by facsimile or electronic mail addressed:

(a) to the Purchaser at:

- 
- Attention: •
- Facsimile: •
- Email: •

(b) to the Seller at:

- 
- Attention: •
- Facsimile: •
- Email: •

Any such communication is deemed to have been duly given (a) if delivered personally, on the day of delivery, (b) if sent by a nationally recognized courier service (delivery receipt requested) with charges paid by the sender, on the later of (i) the first Business Day following the date of dispatch, or (ii) the scheduled day of delivery by such service, (c) if sent by facsimile (with confirmation of transmission), on the day so sent if the day is a Business Day and the transmission was sent prior to 5 pm (Kingston time) and otherwise on the next Business Day, and (d) if sent by electronic mail on the date so sent, if the day is a Business Day and the email was sent prior to 5 pm (Kingston time) and otherwise on the next Business Day. In the case of electronic mail, receipt of each communication must be confirmed by the recipient by the end of the next Business Day or, if not so confirmed, must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that such email notice shall be deemed to have been given on the date stipulated in (d) above. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

**13.2 Entire Agreement**

This Agreement together with the Schedules and Exhibits attached hereto, and the Transaction Documents constitute the entire agreement between the Parties and supercede all prior agreements, understandings, negotiations and discussions relating to the subject matter thereof, whether oral or written. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties relating to the subject matter hereof except as specifically set forth in this Agreement and the Transaction Documents. None of the Parties has relied or is relying on any other information, discussions or understandings in entering into and completing the transactions contemplated in this Agreement. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any Transaction Document, the provisions of this Agreement will govern.

**13.3 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by each of the Parties.

**13.4 Waiver**

The failure or delay by a Party in enforcing, or insisting upon strict performance of, any provision of this Agreement does not constitute a waiver of such provision or in any way affect the enforceability of this Agreement (or any of its provisions) or deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement. Any waiver by a Party of any provision of this Agreement is effective only if in writing and signed by a duly authorized representative of such Party.

**13.5 Severability**

If any provision of this Agreement is determined by an arbitrator or a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect, without amendment.

**13.6 Assignments**

- (a) This Agreement will become effective when executed by the Parties and thereafter will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
- (b) Neither this Agreement nor any of the rights, duties or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Parties. Any attempt to assign any of the rights, duties or obligations in this Agreement without such written consent is void.

**13.7 Third Party Beneficiaries**

Except as otherwise expressly provided in this Agreement, the Parties do not intend that this Agreement benefit or create any legal or equitable right, remedy or cause of action in, or on behalf of, any Person other than a Party and no Person, other than a Party, is entitled to rely on the provisions of this Agreement in any proceeding. Without limiting the generality of the foregoing, the consent of a Seller Indemnified Person or a Purchaser Indemnified Person is not required for any



amendment or waiver of, or other modification to, this Agreement or any Transaction Document including any rights of indemnification to which such Person may be entitled.

**13.8 Time of the Essence**

Time is of the essence in this Agreement.

**13.9 Further Assurances**

From time to time after the Closing, each Party will, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances and perform or cause to be performed such further and other acts or things as may be reasonably required to give effect to, and carry out the intent of, this Agreement and each of the Transaction Documents, including for purposes of effectively transferring the Purchased Assets to the Purchaser.

**13.10 Announcements**

No press release or other public announcement with respect to this Agreement or any of the Transaction Documents or any transaction contemplated therein is to be made by a Party unless and until the text of the announcement and the time and manner of its release have been approved by the other Party.

**13.11 Counterparts**

This Agreement may be executed in any number of separate counterparts (including by facsimile, email, electronic signature or other electronic means) and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Parties by facsimile or other means of recorded electronic transmission and such transmission (including in PDF form) with an acknowledgement of receipt shall constitute delivery of an executed copy of this Agreement to the receiving Party.

**13.12 Language**

The Parties confirm having requested that this Agreement and all notices or other communications relating to them be drawn-up in the English language only. Les Parties aux présentes confirment avoir requis que cette convention et autres communications s'y rapportant soient rédigés en langue anglaise seulement.

*[rest of page intentionally left blank]*

**IN WITNESS WHEREOF** the Parties have executed this Asset Purchase Agreement.

**KINGSTON MUNICIPAL NON-PROFIT  
HOUSING CORPORATION**

Per: \_\_\_\_\_

Name:

Title:

**KINGSTON & FRONTENAC HOUSING  
CORPORATION**

Per: \_\_\_\_\_

Name:

Title:

DRAFT

(Signature Page for Asset Purchase Agreement.)

MEMORANDUM

TO: Kingston & Frontenac Housing Corporation

FROM: Cunningham, Swan, Carty, Little & Bonham LLP

DATE: April 30, 2021

RE: Title Review of Real Properties To Be Acquired From Kingston Municipal Non-Profit Housing Corporation

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We have completed our preliminary searches and wish to advise you of the following matters.

**Property: 205 Rideau Street, Kingston**

**LEGAL DESCRIPTION**

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT FARM LT A CON WEST GREAT CATARAQUI RIVER KINGSTON PT 4, 5, 6, 13R10643 T/W FR570758; S/T FR570758E; KINGSTON; THE COUNTY OF FRONTENAC”

**EASEMENTS**

As noted in the legal description for the property, the title is “S/T [Subject to] FR570758E” and T/W [Together With] FR570758. Instrument No. FR570758E is a Transfer of the property registered March 5, 1992 wherein the legal description notes the existence of the following easements:

“RESERVING an easement over Part 5 on Reference Plan 13R-10643 in favour of the Corporation of the City of Kingston to enter, construct, operate, repair and maintain a watermain to serve subscribers and residents in the municipality and to restore the lands to their original condition after each entry.

TOGETHER WITH EASEMENTS over Parts 3, 7, and 8 on Reference Plan 13R-10643 in favour of Rideaucrest Non-Profit Housing Corporation for the free uninterrupted right of entry, egress and passage at all times to and from the property herein transferred to it for persons, vehicles and equipment.”

**RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FR562290, registered October 4, 1991, is a Site Plan Control Agreement between Rideaucrest Non-Profit Housing Corporation and The Corporation of the City of Kingston relating to the construction of a ‘home for the aged complex’.

## MORTGAGES ON TITLE

Instrument No. FR576386 is a Charge/Mortgage of land registered June 11, 1992 in favour of CIBC Mortgage Corporation and noting a principal amount of \$5,427,520, as amended by Instrument No. FR603385, registered September 10, 1993 (amending certain provisions of the Charge/Mortgage). Instrument No. FR576387 is a General Assignment of the Rents in favour of CIBC Mortgage Corporation pursuant to the Charge/Mortgage.

**We note that one of the provisions of this mortgage is a restriction on a change in beneficial ownership.**

Instrument No. FR686384 is a Transfer of Charge relating to Instrument No. FR576386 registered May 3, 1999 transferring the interest therein from CIBC Mortgage Corporation to Canada Mortgage and Housing Corporation. Instrument No. FR686385 is a General Assignment of the Rents in favour of Canada Mortgage and Housing Corporation registered May 3, 1999 pursuant to the aforementioned Charge/Mortgage of Land.

Instrument no. FR686386 is an Agreement between Kingston Municipal Non-Profit Housing Corporation and Canada Mortgage and Housing Corporation amending and extending the Charge/Mortgage registered May 3, 1999.

### **Property: 257 Rideau Street, Kingston**

## LEGAL DESCRIPTION

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT FARM LT A CON WEST GREAT CATARAQUI RIVER KINGSTON AS IN FR437011 SRO; KINGSTON; THE COUNTY OF FRONTENAC”

This property is limited to the surface rights only (i.e. SRO). The mineral rights have been separately parcelized as PIN 36001-372 (LT) and record The Kingston and Pembroke Railway Company as the registered owner of same.

## EASEMENTS

There are no easements noted in either the thumbnail legal description for the property or the document pool, however the legal description is “as in FR437011”. Instrument No. FR437011 notes the existence of the following easements:

“SUBJECT TO an agreement with the City of Kingston for the installation and maintenance of a thirty inch (30”) sewer from Rideau Street across the said lands, as referred to in Instrument No. 197034.

AND SUBJECT TO an agreement with the Kingston Public Utilities Commission for a hydro pole line across the said lands, as referred to in Instrument No. 197034”.

While the location of the aforementioned easements are not precisely described, Instrument No. FR197034 has a Plan of Survey attached, dated August 7, 1969 prepared by David Humphries, O.L.S. which indicates that the sewer crosses the norther limit of the subject property and the hydro pole line crosses the eastern portion of the property (copy enclosed).

### **RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FR449165 is a Site Plan Control Agreement entered into between Kingston Municipal Non-Profit Housing Corporation and The Corporation of the City of Kingston registered April 27, 1987 relating to the construction of a 39-unit townhouse development on the subject property.

Instrument No. FR453381 is a Sewer Connection Agreement registered June 17, 1987 providing for the connection of a sewer lateral to the existing sanitary sewer trunk in Rideau Street upon payment of the sum of \$1,705.19 and on the understanding that the Owner shall maintain the sewer lateral at his own expense in accordance with Section 4 of By-Law no. 14, "A By-Law Relating to Sewers and Drains".

Instrument No. FC13183 is a Notice of a Housing Provider Operating Agreement between The Corporation of the City of Kingston as Service Manager and Kingston Municipal Non-Profit Housing Corporation as Housing Provider, pursuant to the Social Housing Reform Act, 2000. The Agreement relates to the delivery of rent-geared-to-income assistance and the appointment of Kingston Municipal Non-Profit Housing Corporation as the Central Waiting List Manager under the Agreement. **Additionally, the Agreement contains certain restrictions on the disposition and/or encumbrance of a property designated a housing project.**

Instrument No. FC48432 is a Notice of an Amending Agreement, registered October 24, 2007 amending the Housing Provider Operating Agreement registered as Instrument No. FC13183 such that all references contained therein to Kingston Municipal Non-Profit Housing Corporation as the Centralized Waiting List Manager were amended to read the Service Manager.

### **MORTGAGES ON TITLE**

Instrument No. FR452935 is a Charge/Mortgage of Land registered June 11, 1987 in favour of Sun Life Assurance Company of Canada and noting a principal amount of \$3,163,960. Instrument No. FR452936 is a General Assignment of Leases and Rents registered June 11, 1987 in favour of Sun Life Assurance Company of Canada pursuant to the aforementioned Charge/Mortgage.

Instrument Nos. FR677974, FR677975 and FR677976, all registered April 1, 1998, are a Transfer of Charge, transferring the interest in Instrument No. FR452935 from Sun Life Assurance Company of Canada to Canada Mortgage and Housing Corporation, a General Assignment of Rents in favour of Canada Mortgage and Housing Corporation and an Agreement between Kingston Municipal Non-Profit Housing Corporation and Canada Mortgage and Housing Corporation amending and extending the Charge/Mortgage of Land.

Property: 37 Cassidy Street, Kingston

## LEGAL DESCRIPTION

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT FARM LT 5 CON WEST GREAT CATARAQUI RIVER KINGSTON PT 1 & 2, 13R8663 S/T INTEREST OF THE MUNICIPALITY; KINGSTON ; THE COUNTY OF FRONTENAC”

Title to the subject property contains the qualification “S/T INTEREST OF THE MUNICIPALITY”, which may refer to the Road Allowance shown underlying on Plan 19 and for which no By-law stopping up, closing and disposing of the municipality’s interest appears registered on title (if Plan 19 is a Registered Plan of Subdivision for purposes of the Planning Act).

## EASEMENTS

None Registered.

## RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS

Instrument No. FR493068 is a Development Agreement registered December 19, 1988 between Elizabeth Vamvouvakis, Petros Pakis, Basilios Papadakis, and Amelia Papadakis as Owner and The Corporation of the City of Kingston pursuant to Official Plan and Zoning Amendments sought to facilitate the construction of a commercial building and 54-unit residential development.

Instrument Nos. FR563121, FR569547 and FR573048, registered October 21, 1991, February 12, 1992 and April 22, 1992 respectively, are a Site Plan Control Agreement and subsequent amendments thereto, relating to the development of a multi-unit residential Apartment Building on the subject property.

Instrument No. FR634445, registered June 28, 1995, is a Portfolio Operating Agreement for Provincial Social Housing Programs between The Queen in Right of the Province of Ontario as represented by the Minister of Housing and Kingston Municipal Non-Profit Housing Corporation. The Agreement provides for operation of the housing portfolio (described as 37 Cassidy St) on a not-for-profit basis and the Ministry’s obligation to provide financial and other support. **The Agreement affects the property until June 1, 2028 and restricts sale or other disposition of the property without the Ministry’s consent.**

Instrument No. FC13183 is a Notice of a Housing Provider Operating Agreement between The Corporation of the City of Kingston as Service Manager and Kingston Municipal Non-Profit Housing Corporation as Housing Provider, pursuant to the Social Housing Reform Act, 2000. The Agreement relates to the delivery of rent-geared-to-income assistance and the appointment of Kingston Municipal Non-Profit Housing Corporation as the Central Waiting List Manager under the Agreement. **Additionally, the Agreement contains certain restrictions on the disposition and/or encumbrance of a property designated a housing project.**

Instrument No. FC48433 is a Notice of an Amending Agreement, registered October 24, 2007 amending the Housing Provider Operating Agreement registered as Instrument No. FC13183 such that all references contained therein to Kingston Municipal Non-Profit Housing Corporation as the Centralized Waiting List Manager were amended to read the Service Manager.

Instrument No. FC171657 is a Notice of a Municipal Contribution Agreement between The Corporation of the City of Kingston and Kingston Municipal Non-Profit Housing Corporation pursuant to Section 110 of the Municipal Act, 2001 relating to the provision of affordable housing at 37 Cassidy Street.

## **MORTGAGES ON TITLE**

Instrument No. FR573080 is a Charge/Mortgage of Land registered April 22, 1992 in favour of CIBC Mortgage Corporation and noting a principal amount of \$5,302,520, as amended by Instrument No. FR604104, registered September 23, 1993. Instrument No. FR573081 is a General Assignment of Rents pursuant to the aforementioned Charge/Mortgage.

Instrument No. FR679241 is a Transfer of Charge registered May 27, 1998, transferring the interest in FR573080 from CIBC Mortgage Corporation to The Toronto-Dominion Bank. Instrument No. FR679242 a General Assignment of Rents pursuant to the aforementioned Charge/Mortgage in favour of The Toronto-Dominion Bank.

### **Property: 375 Patrick Street, Kingston**

## **LEGAL DESCRIPTION**

The thumbnail legal description of the property as provided in the Parcel Register reads:

“LT 142 – 149, 165 – 172 PL C22 KINGSTON S/T RESERVATIONS IN FR196928; KINGSTON; THE COUNTY OF FRONTENAC ”

Instrument No. FR196928 is a Transfer from Kingston and Pembroke Railway Company and Canadian Pacific Railway Company to Marathon Realty Company Limited whereby any mines, ores, metals, coal, slate, mineral oils, gas or other minerals in or under the subject lands were reserved in favour of Kingston and Pembroke Railway Company and Canadian Pacific Railway Company.

## **EASEMENTS**

None Registered.

## **RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FR539084 is a Site Plan Control Agreement registered October 2, 1990 between Kingston Municipal Non-Profit Housing Corporation and The Corporation of the City of Kingston relating to the construction of an 80-unit townhouse project.

Instrument No. FR700403 is an Option to Purchase the lands described as Part 1, 13R9809 for \$1 in favour of The Corporation of the City of Kingston. The Option relates to the Site Plan Agreement registered as Instrument No. FR539084 and an unfulfilled obligation to transfer a ‘parkette’ to the City. The Option provides that upon Kingston Municipal Non-Profit Housing Corporation entering any agreement for the sale, transfer or other disposition of the parkette, The Corporation of the City of Kingston shall receive 60 days’ notice to exercise its option.

Instrument No. FC13183 is a Notice of a Housing Provider Operating Agreement between The Corporation of the City of Kingston as Service Manager and Kingston Municipal Non-Profit Housing Corporation as Housing Provider, pursuant to the Social Housing Reform Act, 2000. The Agreement relates to the delivery of rent-g geared-to-income assistance and the appointment of Kingston Municipal Non-Profit Housing Corporation as the Central Waiting List Manager under the Agreement. Additionally, **the Agreement contains certain restrictions on the disposition and/or encumbrance of a property designated a housing project.**

Instrument No. FC48433 is a Notice of an Amending Agreement, registered October 24, 2007 amending the Housing Provider Operating Agreement registered as Instrument No. FC13183 such that all references contained therein to Kingston Municipal Non-Profit Housing Corporation as the Centralized Waiting List Manager were amended to read the Service Manager.

## **MORTGAGES ON TITLE**

Instrument No. FR544257 is a Charge/Mortgage of Land registered December 21, 1990 in favour of Firstline Trust Company and noting a principal amount of \$6,648,398, as amended by Instrument No. FR574493, registered May 11, 1992. Instrument No. FR574494 is a General Assignment of Rents in favour of Firstline Trust Company pursuant to the aforementioned Charge/Mortgage.

Instrument No. FR667681, registered June 13, 1997 is a Transfer of Charge, transferring the interest in Instrument No. FR544257 in favour of Canada Mortgage and Housing Corporation. Instrument No. FR667682 is a Re-Assignment of Rents in favour of Canada Mortgage and Housing Corporation. Instrument No. FR668934, registered July 2, 1997 is an Agreement amending and extending the mortgage terms originally set out in Instrument No. FR544257.

Instrument No. FR710878, registered March 11, 2002 is an Assignment of the Charge/Mortgage of Land registered as Instrument No. FR544257 in favour of Scotia Mortgage Corporation. Instrument No. FR710879 is a further Assignment of the General Assignment of Rents originally registered as Instrument No. FR574494. FR710880 is an Agreement further amending and extending the terms of Instrument No. FR544257.

Instrument No. FC36364, registered March 21, 2007 is a Transfer of Charge, transferring the interest in the Charge/Mortgage of land registered as Instrument No. FR544257 in favour of The Toronto-Dominion Bank. Instrument No. FR36365 is a Notice of a General Assignment of Rents in favour of The Toronto-Dominion Bank.

Instrument No. FC130590, registered February 6, 2012 is a Transfer of Charge, transferring the interest in the Charge/Mortgage of land registered as Instrument No. FR544257 in favour of Scotia Mortgage Corporation. Instrument No. FC130591 is a Notice of a General Assignment of Rents in favour of Scotia Mortgage Corporation. Instrument No. FC130613, registered February 7, 2012 is a Notice of an Amending Agreement between Kingston Municipal Non-Profit Housing Corporation and Scotia Mortgage Corporation amending the terms of the Charge/Mortgage of land originally registered as Instrument No. FR544257, including amending the maturity date to January 1, 2022.



**Property: 35 Eldon Hall Place/55 Notch Hill Road****LEGAL DESCRIPTION**

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT LT 17 CON 1 KINGSTON AS IN FR202063 & FR227907; S/T FR202063; S/T FR176033E; KINGSTON ; THE COUNTY OF FRONTENAC”

**EASEMENTS**

As noted in the legal description for the property, the title is “S/T [Subject to] FR176033E”. Instrument No. FR176033E is a Transfer of Easement registered November 21, 1967 in favour of The Corporation of the City of Kingston and The Public Utilities Commission of the City of Kingston wherein an easement was granted for maintenance of lines, poles and equipment over a strip of land ten (10) feet in perpendicular width running along the westerly limit and across the southern portion of the subject property.

As noted in the legal description for the property, the title is “S/T [Subject to] FR202063”. Instrument No. FR202063 is a prior Transfer of the subject property registered August 11, 1970 wherein an easement for the right to enter on, construct, repair and replace a sanitary sewer line was reserved in favour of the City of Kingston for a sanitary sewer line located approximately 175 feet north of the southern boundary of the subject property and running east to west.

**RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FC207900 is a Notice of Lease registered by Solar Power Network Inc. The Notice of Lease indicates that the lease is for a term of 20 years expiring on the day prior to the twentieth (20<sup>th</sup>) anniversary of the date of the first day of the commencement of installation of the Tenant’s Equipment on the Site.

**MORTGAGES ON TITLE**

Instrument No. FC232972 is a Charge/Mortgage of Land registered December 21, 2016 in favour of CIBC Mortgages Inc. and noting a principal amount of \$3,719,400. Instrument No. FC232973 is a Notice of a General Assignment of Rents in favour of CIBC Mortgages Inc. pursuant to the aforementioned Charge/Mortgage.

**Property: 710 Division Street, Kingston****LEGAL DESCRIPTION**

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT LT 24 CON 2 KINGSTON PT 1, 2, 3, 4, 5 13R7368 S/T FR448552; KINGSTON ; THE COUNTY OF FRONTENAC”

## **EASEMENTS**

As noted in the legal description for the property, the title is “S/T [Subject to] FR448552”. Instrument No. FR448552 is a prior Transfer of the subject property registered April 15, 1987 wherein the legal description notes the existence of the following easements:

“SUBJECT to an easement in favour of the City of Kingston over Part 3, 13R-7368.

AND SUBJECT to a right-of-way in favour of the Transferor and others entitled thereto over Parts 2, 3 and 5, Plan 13R-7368.”

Though not reflected in the foregoing, prior Instruments indicate the above-mentioned easement in favour of the City of Kingston is for sanitary sewer infrastructure.

## **RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FR208440, registered March 25, 1971 is an Agreement entered into between Howard C. Mayo and Louis H. Tepper, Trustee and The Corporation of the City of Kingston pursuant to the amendment of a zoning by-law allowing a change in density. The Agreement relates to a larger parcel of property from which the subject lands were later severed from.

Instrument No. FR273291, registered March 4, 1976 is an Agreement entered into between Active Finance and Investments Limited and Louis Henry Tepper and Geraldine Rose Tepper relating to the development of a 9-story apartment building. The Agreement relates to a larger parcel of property from which the subject lands were later severed from.

Instrument No. FR453382 is a Site Plan Control Agreement registered June 17, 1987 between Kingston Municipal Non-Profit Housing Corporation and The Corporation of the City of Kingston relating to the construction of an 11-unit townhouse project.

Instrument No. FC13183 is a Notice of a Housing Provider Operating Agreement between The Corporation of the City of Kingston as Service Manager and Kingston Municipal Non-Profit Housing Corporation as Housing Provider, pursuant to the Social Housing Reform Act, 2000. The Agreement relates to the delivery of rent-geared-to-income assistance and the appointment of Kingston Municipal Non-Profit Housing Corporation as the Central Waiting List Manager under the Agreement. Additionally, the Agreement contains certain restrictions on the disposition and/or encumbrance of a property designated a housing project.

Instrument No. FC48432 is a Notice of an Amending Agreement, registered October 24, 2007 amending the Housing Provider Operating Agreement registered as Instrument No. FC13183 such that all references contained therein to Kingston Municipal Non-Profit Housing Corporation as the Centralized Waiting List Manager were amended to read the Service Manager.

## **MORTGAGES ON TITLE**

Instrument No. FR452935 is a Charge/Mortgage of land registered June 11, 1987 in favour of Sun Life Assurance Company of Canada and noting a principal amount of \$3,163,960. Instrument No. FR452936 is a General Assignment of Leases and Rents in favour of Sun Life Assurance Company of Canada pursuant to the aforementioned Charge/Mortgage.

Instrument No. FR677974 is a Transfer of Charge registered April 1, 1998 transferring the interest in Instrument No. FR452935 in favour of Canada Mortgage and Housing Corporation. Instrument No. FR677975 is a Re-Assignment of the General Assignment of Rents registered as Instrument No. FR452936 in favour of Canada Mortgage and Housing Corporation.

Instrument No. FR677976 is an Amending Agreement, amending and extending the Charge/Mortgage of Land originally registered as Instrument No. FR452935.

### **Property: 2075 Battersea Road, Kingston**

## **LEGAL DESCRIPTION**

The thumbnail legal description of the property as provided in the Parcel Register reads:

“PT LT 33 CON 5 KINGSTON PTS 1-7, 9 & 10, 13R10545, PTS 1 & 3, 13R15128, EXCEPT PTS 1, 2 & 3, 13R16141; S/T FR690851; T/W FR690851; KINGSTON; TOGETHER WITH AN EASEMENT OVER PT LT 33, CON 5, PT 1, 13R20350 AS IN FC143206”

## **EASEMENTS**

As noted in the legal description for the property, the title is “S/T [Subject to] FR690851; T/W [Together With] FR690851”. Instrument No. FR690851 is the Transfer by which Kingston Municipal Non-Profit Housing Corporation acquired the subject property, registered November 10, 1999 wherein the existence of the following easements are noted:

TOGETHER WITH a right-of-way together with all others entitled thereto over Parts 8, 11 and 12, 13R-10545.

SUBJECT TO a right-of-way in common with all others entitled thereto over Parts 3, 7 and 9, 13R-10545.

As noted in the legal description for the property, the title is “TOGETHER WITH AN EASEMENT OVER PT LT 33, CON 5, PT 1, 13R20350 AS IN FC143206”. Instrument No. FC143206 is a Transfer of Easement registered August 3, 2012 wherein an easement was granted for the operation, maintenance, repair, removal and replacement of a groundwater well and distribution pipes and their appurtenances over Part 1, 13R20350.

## **RESTRICTIVE COVENANTS/SUBDIVISION AGREEMENTS/MUNICIPAL AGREEMENTS**

Instrument No. FR569425 is a Site Plan Control Agreement registered February 10, 1992 between The County of Frontenac Non-Profit Residential Corporation, The Corporation of the County of Frontenac

and The Corporation of the Township of Kingston relating to the construction of a multi-unit residential apartment building.

Instrument No. FR635767 is an Agreement under Section 2 of the Housing Development Act, being a Portfolio Operating Agreement for Provincial Social Housing Programs between The Queen in Right of the Province of Ontario as represented by the Minister of Housing and The County of Frontenac Non-Profit Residential Corporation. The Agreement provides for operation of the housing portfolio (described as 'Country Pine Apartments' 2075 Battersea Road) on a not-for-profit basis and the Ministry's obligation to provide financial and other support. **The Agreement affects the property until February 1, 2028 and restricts sale or other disposition of the property without the Ministry's consent.**

Instrument No. FR716108, registered August 29, 2002 is a Site Plan Control Agreement between The Corporation of the Frontenac Management Board, Kingston Non-Profit Housing Corporation and The Corporation of the City of Kingston relating to further development of the subject property.

Instrument No. FC175501, registered February 24, 2014 is a Site Plan Control Agreement between The Corporation of the County of Frontenac, Kingston Non-Profit Housing Corporation and The Corporation of the City of Kingston relating to further development of the subject property.

Instrument No. FR748580 is a Housing Provider Operating Agreement between The Corporation of the City of Kingston as Service Manager and Kingston Municipal Non-Profit Housing Corporation as Housing Provider, pursuant to the Social Housing Reform Act, 2000. The Agreement relates to the delivery of rent-geared-to-income assistance and the appointment of Kingston Municipal Non-Profit Housing Corporation as the Central Waiting List Manager under the Agreement. Additionally, **the Agreement contains certain restrictions on the disposition and/or encumbrance of a property designated a housing project.**

Instrument No. FR758968 is an Amending Operating Agreement, registered March 20, 2007 amending the Housing Provider Operating Agreement registered as Instrument No. FR748580 such that all references contained therein to Kingston Municipal Non-Profit Housing Corporation as the Centralized Waiting List Manager were amended to read the Service Manager.

## **MORTGAGES ON TITLE**

Instrument No. FR566914 is a Charge/Mortgage of Land registered December 16, 1991 in favour of CIBC Mortgage Corporation and noting a principal amount of \$4,383,706. Instrument No. FR567449, registered December 30, 1991 is a General Assignment of Rents pursuant to the aforementioned Charge/Mortgage in favour of CIBC Mortgage Corporation.

Instrument No. FR591178, registered February 3, 1993, is an Agreement Amending the Mortgage, noting a principal amount of \$4,485,693 and an interest rate of 8.453%.

Instrument No. FR678070 is a Transfer of Charge registered April 6, 1998 transferring the interest in Instrument No. FR566914, as amended by Instrument No. FR591178, to Royal Bank of Canada. Instrument No. FR701652, registered March 12, 2001 is an Assignment of the General Assignment of Rents registered as Instrument No. FR567449 in favour of Royal Bank of Canada.

Instrument No. FR701653 is a Transfer of Charge registered March 12, 2001 transferring the interest in Instrument No. FR566914, as amended by Instrument No. FR591178 to London Life Insurance Company. Instrument No. FR701654, registered March 12, 2001, is an Assignment of the General Assignment of Rents registered as Instrument No. FR567449, assigned by Instrument No. FR701652, in favour of London Life Insurance Company. Instrument No. FR701655, registered March 12, 2001 is an Agreement Amending Charge amending the amount secured to \$4,160,190.51, the rate to 6.49% and the maturity date to January 1, 2026.



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**PRIVATE AND CONFIDENTIAL**

Ms. Ruth Noordegraaf  
Director, Housing and Social Services  
Corporation of the City of Kingston  
216 Ontario Street  
Kingston, ON K7L 2Z3

April 19, 2021

Dear Ms. Noordegraaf:

**RE: Kingston Municipal Non-Profit Housing Special Work**

Thank you for the opportunity to continue to work with you, the Corporation of the City of Kingston and Kingston Municipal Non-Profit Housing (the "Entity"), in assisting the Entity with the due diligence surrounding the consideration of the Entity's transfer of assets to Kingston & Frontenac Housing Corporation.

As set out in our engagement letter dated April 9, 2021, this memo addresses the following items:

- Summary of the investment portfolio of the Entity
- A financial analysis of the individual mortgage and capital lease agreements

***Investment Portfolio***

As of December 31, 2020, the Entity has investments with a fair market value of approximately \$2.6 million. Within this balance, there are restricted funds related to the capital reserve for rent geared to income ("RGI") housing that must remain intact. Also included in this balance is the Marguerite Fund, which has been internally restricted by the Entity's former Board of Directors. In late 2020, these funds were committed to playground and appliance replacements as per Council Report 21-022.

Please note that the fair market value fluctuates with the market and as of the transfer date will be subject to market values on that date.



Please refer to the table below for the unrestricted balance that could be repurposed.

|                                   |  |  |              |
|-----------------------------------|--|--|--------------|
| <i>As at December 31, 2020:</i>   |  |  |              |
| Fair market value of investments: |  |  | \$ 2,559,584 |
| Less:                             |  |  |              |
| Capital reserve re: RGI housing   |  |  | \$ (419,805) |
| Marguerite Fund                   |  |  | \$ (255,000) |
| Unrestricted funds                |  |  | \$ 1,884,779 |

As noted above, the Marguerite Fund is an internal reserve meaning that with the approval of Council, the current internal restriction that was committed to in fiscal 2020 for playground and appliance replacements could be reversed and the funds would be transferred to unrestricted net assets and be available for other purposes. The market value of the Marguerite Fund as at March 31, 2021 amounted to \$253,228.

Based on our review of prior year activity, we note that the majority of the unrestricted investment balance originated from the funds received through the re-mortgaging of Eldon Hall to generate cash to invest in a new capital project that never occurred.

### ***Mortgages Payable***

The Entity has six properties with mortgages totaling \$11.2 million as at December 31, 2020. These mortgages are held with different lenders, at various interest rates and maturities.

KPMG reviewed the terms and conditions of each mortgage agreement and has estimated the prepayment penalty if the mortgages were paid back as of December 31, 2020.

Please refer to the table below for a breakdown of the mortgages.

| Property           | Maturity Date    | Interest Rate | As of December 31, 2020       |                                     |                                   |
|--------------------|------------------|---------------|-------------------------------|-------------------------------------|-----------------------------------|
|                    |                  |               | Principal balance outstanding | Interest remaining on mortgage term | Estimated Penalty on Prepayment * |
| Rideau Street      | February 1, 2023 | 2.390%        | \$ 378,198                    | \$ 10,200                           | \$ 9,200                          |
| Rideaucrest Towers | June 1, 2023     | 2.090%        | \$ 1,794,356                  | \$ 79,000                           | \$ 69,000                         |
| Eldon Hall         | January 1, 2024  | 2.964%        | \$ 3,319,226                  | \$ 124,200                          | \$ 100,000                        |
| Country Pines      | January 1, 2026  | 6.396%        | \$ 1,842,346                  | \$ 412,900                          | N/A                               |
| Patrick Street     | January 1, 2028  | 2.990%        | \$ 1,812,637                  | \$ 173,200                          | N/A                               |
| Cassidy Street     | May 1, 2028      | 5.972%        | \$ 2,131,839                  | \$ 502,000                          | \$ 466,000                        |
|                    |                  | <b>Total</b>  | <b>\$ 11,278,602</b>          |                                     |                                   |

*\*N/A = Mortgage agreement specified no prepayment clause*

Based on our analysis, we note that there is not a significant advantage to paying off any of the mortgages before the contracted maturity date, as the prepayment charge that would be incurred offsets any material savings of interest over the remaining terms



of the debts. Further, the above table does not factor in the present value of the remaining interest payments, which would further reduce the savings.

With the unrestricted investment balance of approximately \$1.8 million, the Entity is limited to Rideau Street as the only mortgage in which there are sufficient funds to repay the full principal balance and penalty on prepayment, in the absence of any other sources of funds being redirected into the Entity for this purpose.

We also note that there are opportunity costs of the City of Kingston administrative and legal teams to consider the breach of contract for the prepayment of mortgages and proceed with the liquidation of investments.

### ***Other liabilities***

The Entity has two capital lease obligations totaling \$1.2 million of principal and interest payments, expiring in 2031 and 2032. Interest rates payable on these leases are 3.871% and 4.388%, with approximately \$480,000 of total interest payable over the remaining terms. In short, the execution of these agreements on inception were very costly to the Entity in the long-term. Further, based on our review of these contracts, we do not believe that prepayment clauses were contemplated in either of the agreements.

We also note that there are future costs to come related to the repairs and maintenance of the Entity's building portfolio, as outlined in the individual building condition assessments that were completed in 2020. These costs are not recorded as liabilities on the Entity's financial statements as they have yet to occur and do not meet the definition of a liability for accounting purposes. Given the discretionary nature of these amounts, we are unable to determine the associated costs and related timeframe of these costs in the future.

### ***Summary***

The Entity continues to be highly levered with an overall high proportion of debt on the Statement of Financial Position as at December 31, 2020. However, based on our analyses, we do not believe that there is a significant benefit to liquating the Entity's investments to repay a relatively small proportion of the mortgages payable ahead of their contracted maturity dates. Conversely, in light of the significant amounts of interest to be paid in future years related to the current obligations under capital leases, we do believe that it would be prudent to investigate the potential settlement of these liabilities in advance of their maturities to minimize the overall cost of these agreements to the Entity.





Since the declaration of the Entity as a project in difficult by the City of Kingston in 2018, the new management team has made great progress in improving the overall financial position of the Entity generating significant operating cash flows in each of 2019 and 2020 to service the debts. Consideration of the debt service requirements for both the mortgages payable and capital lease obligations along with the future repairs that will be required to the building portfolio, will need to be factored into future cash flow projections to ensure the properties are self-sustaining.

Yours very truly,

Lori Huber, CPA, CA, Licensed Public Accountant  
*Partner*  
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