



# AGREEMENTS FOR SALE ONTARIO

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## Notes

**AGREEMENTS FOR SALE IN ONTARIO - DEFINITIONS**  
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**WHAT IS AN AGREEMENT FOR SALE?:** An Agreement for Sale ("AFS") is an agreement between a Buyer ("Buyer") and an owner of real property ("Seller") whereby the Buyer pays a deposit on the purchase price, with the balance paid over a period of time on terms as negotiated and agreed between them. Which of the parties takes care of the ongoing costs of ownership is also a matter of negotiation and agreement. The crucial manner in which this kind of arrangement differs from any other (for example a purchase by way of assumption of mortgage or a vendor take back mortgage) is that control of the property immediately passes to the Buyer but title remains in the owner's name until the full amount of the purchase price is paid.

The question is: when would this kind of arrangement be beneficial and how precisely would it work? Like any other business dealings between people, various factors play into what makes any particular contractual arrangement ideal or advisable. Some of these factors are explored below.

**BACKGROUND:** This way of financing a purchase was, at one time, actually quite well known in Ontario. Here is why. Historically, banks would extend mortgage financing based on a down payment requirement that was much more substantial than it is currently. Often the requirement approached 50% of the purchase price. That is simply the way, at one time, it used to be. Since only a small segment of the population was in a position to make this size of down payment, an alternate arrangement was used to facilitate purchase transactions that allowed for a much lower down payment. This was the AFS.

Now, of course, the landscape has changed and banks can lend up to 80% and more of the purchase price. There are many that would disagree with the wisdom of allowing for mortgages up to 95% of the purchase price but the general consensus is, in effect, that this is a much better arrangement than the 50% down payment scenario.

As a result, Agreements For Sale became the forgotten financing tool. Why would you need to use an AFS when you could now get your financing from a bank likely at a better rate and on better terms? That fact is you would not.

However, consider the fact that there are still Buyers that would like to purchase properties but, despite the broader availability of bank financing, still may not qualify for such lending. How, then, can a Buyer come to own property that is financed with bank money? The answer is that this can be achieved by assuming a mortgage that is already registered on title. Now, if mortgages were fully assumable (in the sense that they could be assumed without the bank's approval), then Sellers could simply transfer title in their property to a Buyer and the Buyer would take on all of the responsibility of ownership including a direct relationship with the bank as owner / lender.

However, the most important thing to note in all of this is that, in Ontario, an institutional mortgage is not automatically assumable without the lender's consent. A bank mortgage can typically be assumed only when the intended purchaser first qualifies with the existing lender. The AFS is a strategy for a Buyer to purchase property without engaging a direct relationship with the bank and by financing the purchase with what could be called Seller financing, as opposed to bank financing. The AFS circumvents the problem of the non-assumable mortgage and can be useful whether you are buying or selling.

**HOW THE AGREEMENT FOR SALE WORKS:** The process begins in the usual manner with the offer and acceptance of an otherwise typical agreement of purchase and sale. The difference is that the transaction is stated to be proceeding by way of Agreement for Sale. The basic premise is that, under such arrangement, the Buyer makes a deposit of a certain negotiated amount of money with the balance payable under a financing structure which could be called the "Unpaid Seller's Equity". For example, if the sale price was \$200,000.00 and the deposit was \$10,000.00, the Unpaid Seller's Equity would be \$190,000.00. The Buyer makes payments to the Seller under the AFS, on terms agreed to, and the Seller continues to make payments to her bank. Control of the property passes to the Buyer at the time the deposit is paid but title (and the mortgage with the bank) remains in the Seller's name.

In terms of documentation, the standard Ontario Real Estate Association (or Toronto Real Estate Board) form of agreement of purchase and sale can be used provided it is clearly stated that the transaction is proceeding by way of Agreement For Sale and the Agreement For Sale is attached as a schedule. The AFS is key and must be well drafted to encompass both the terms of the Seller's financing, as well as each party's rights and obligations and what remedies are available in the event of default by either the Buyer or the Seller.

Profit to the Seller arises from the margin on the sale price and / or on the interest rate. That is, any excess in the sale price over its fair market value, on the one hand, and, on the other, the higher interest rate payable on the Unpaid Seller's Equity over his interest payable on the mortgage on title to the bank.

**THE FORM OF AGREEMENT:** You will find that proceeding by way of AFS is not the norm in Ontario. In order to use this strategy, you will have to understand very clearly how it works, when it works, and how to make this information available and clear to potential Buyers, Sellers and, perhaps more challengingly, to their lawyers.

Begin by having a form of AFS that is specifically and purposefully drafted. With this in hand and fully understood, an investor, whether Seller or Buyer, will have the knowledge and credibility to market the concept to others. As well, depending on whether you are a Buyer or a Seller, you may wish to differently negotiate certain aspects of the arrangement and, therefore, this needs to be considered if one is intending on using a template.

The AFS document needs to address all aspects of the Buyer / Seller relationship including assignability, insurance, taxes, maintenance and repairs, default, remedies, payouts, renewals, interest rates and how they are calculated, and, numerous other details. If there is an existing mortgage, which there likely will be, the term of the AFS, or time frame within which the Buyer must pay out the Seller's Equity in full, should coincide with the term of the existing mortgage. That way, when the mortgage is due, the AFS is due as well. There should, as well, be a clause that allows for a renewal of the AFS that is tied to any renewal of the existing mortgage.

In Ontario, very few, if any, lawyers will have a sophisticated version of the Agreement For Sale. The strategy, in Ontario, is just not currently in use to any significant degree at all. Therefore, it is strongly advisable that the investor with knowledge in the area maintain control of the drafting of the AFS document. Your lawyer ought to prepare the AFS, regardless of whether you are the Buyer or the Seller.

**THE ESSENTIAL DIFFERENCE OF AN AFS:** The difference between an AFS and an assumption of mortgage is the timing of the closing or, more clearly stated, the timing of when title changes. With an AFS, title remains in the Seller's name and the Seller continues to make the mortgage payments to the bank. The bank's records do not change. Title changes only once the Seller's equity is paid in full which occurs, usually, when the Purchaser is in a position to arrange bank financing. The existing mortgage is then paid out, the Seller receives his or her profit, the notice documents are discharged, title is transferred into the Purchaser's name and the new mortgage is registered. Just like any typical closing.

**CONCERN OF THE BUYER:** With title not being in the Buyer's name, there are a number of factors, indeed risks, that need to be addressed. Firstly, in order to prevent the Seller from disposing of the property in breach of the arrangement, notice of the AFS or other form of document should be registered on title. Secondly, a Buyer will have to consider how to ensure financial obligations continue to be honoured such as mortgage, insurance, utility, realty tax, condominium fee and other payments. Thirdly, a Buyer must consider what remedies need to be provided for and how these are exercised in the event of default by the Seller. All of this must be clearly outlined in the AFS and, therefore, much thought must be given to ensure appropriate and sufficient language is utilized. Also, consideration must be given to whether the use of an AFS triggers the so called "due on sale" clause in the existing mortgage. The point here is that a Buyer needs to have good legal advise and properly drafted documents in order to ensure things go smoothly and, if not, what remedy can be invoked quickly so that the investment is preserved.

Crucially important to the Buyer is the matter of insurance. Since the nature of the Buyer's interest in the property is different from that of an owner, special consideration must be given to the unique nature of the AFS transaction to ensure that such interest is properly and adequately protected. You will need to have a clear conversation with your insurance broker and retain one that understands this kind of transaction.

**CONCERNS OF THE SELLER:** The primary concern for the Seller is whether the Buyer will have the ability to make good on his or her obligation to make monthly payments towards the Seller's equity. This is a question of due diligence on the part of the Seller and is entirely within the Seller's control. In the event of default by the Buyer, the bottom line remedy is legal action similar to a foreclosure. The important point here is that the AFS needs to be very clear as to what precisely is the remedy available to the Seller so that a Court will have clarity in making a determination on the issue. A Seller will want to be able to get control of the property as quickly, as efficiently and as cost effectively as possible. That said, using the courts to recover property after a defaulted AFS will be time consuming and expensive to a Seller.

Also, consideration must be given to the possibility that a Buyer might not treat the property as would a prudent owner. What if construction liens are registered against title for failure to pay for materials or services provided to the property? Again, it is a matter of having a contract that addresses the issue and provides remedies that are clear and enforceable.

**WHY AN AFS IS ATTRACTIVE TO A SELLER:** Firstly, the market for Buyers is increased since the scenario allows for purchases that do not require new financing. Many Buyers do not qualify for any kind of bank financing. Banks have various policies and formulae that they use in order to qualify, or not qualify, a prospective borrower. By using the AFS arrangement, the Seller becomes the lender and determines whether or not he or she wishes to take on the Buyer as a borrower. This gives the Seller bargaining power that could give rise to a higher purchase price or, just as important, allow for the sale of a property that might be difficult to sell for any number of reasons.

Secondly, a Seller can eliminate any mortgage pay out penalties by deferring the final transfer of ownership to coincide with the date when that mortgage matures.

Thirdly, a Seller in financial difficulties may be able to achieve a better result than by disposing of the property in the usual manner. He or she may have experienced difficulties in managing the property in terms of tenancies, repairs, etc. Cash flow may have become a problem and, perhaps, the Seller is having trouble meeting financial obligations. Also, a Seller may have little or no equity in the property. He may have bought at the height of the boom. Prices have fallen. The high ratio mortgage now has a principal balance larger than the fair market value of the home. The Seller's equity may, in fact, be less than zero. Often, a Seller may find herself in a situation where she is not able to devote the time and resources necessary to get the investment back on its feet. In such a situation, a Seller will have minimal ability to do what is necessary to sell the property in the normal way for a fair price. The leverage of an AFS may give the Seller the ability to sell the property at a higher price. Although the receipt of profits, if any, is deferred until final transfer of title, it may make a lot of sense to enter into some kind of alternate arrangement that will (i) transfer the burden of ownership on to someone else and (ii) potentially eliminate any losses that would otherwise be sustained.

Thirdly, an AFS transaction allows a conservative Seller investor to achieve a higher degree of predictability on the return to expect from a property investment since the capital appreciation is locked in at the time the AFS is signed. Of course, when properties rapidly rise or fall in value as they have done, for example, in Alberta in the recent past, a Seller might miss substantial equity appreciation or, conversely, lock in a huge gain.

In any event of all other factors, it eliminates any real estate commissions and mortgage pay out penalties, allows a Seller to defer capital gains taxes and earn a better return on equity than that offered by banks.

In addition, the AFS arrangement is very much like a regular transfer of ownership since the incidence and responsibilities of ownership are, in effect, passed on to the Buyer. The Buyer is responsible for all the usual costs of ownership including realty taxes, condominium fees, utilities, insurance, etc. The Buyer will treat the property like it was his or her own and will, in addition, assume all the tenancy obligations and other responsibilities of property management.

And lastly, while essentially all of the obligations of ownership pass on to the Buyer, title does not. Title remains with the Seller until all monies owing, plus interest, are paid in full.

In summary, an AFS gives the investor Seller a larger market for Buyers, a reduction of the costs typically associated with a regular sale, a predictable return on investment, and the ability to reduce loss while, at the same time, passing the burden of ownership on to someone else while still retaining title.

**PAYOUTS:** Consideration should be given to the matter of pay out of the Seller's Equity; when should this occur, should there be a pre-payment privilege and, if so, on what terms. If a Seller is interested in a long term interest spread income generator, it may be appropriate to insert a pre-payment penalty provision. With normal bank financing, the mortgage is set for a specific term of years and pre-payment cannot occur without a penalty, typically the greater of three months interest or the interest differential. Therefore, perhaps at a minimum, a Seller may want the Buyer to pay any payout penalties on the existing mortgage. At the extreme, a Seller may want pay out penalties on her existing mortgage AND pay out penalties on the AFS. On the other hand, the parties may want to consider no interest penalty at all.

One of the attractive features of the AFS might be that a Seller is different from a bank and has much more flexibility in terms of financing that can be arranged. A Buyer whose financial situation improves substantially will be able to get institutional financing, pay out the Seller's Equity and pay the lower interest rate offered by the bank. On the other hand, this may never occur and a Seller must be mindful of the possibility that the Buyer will not be in a position to pay out the Seller's Equity in accordance with the terms of the AFS. The AFS must contemplate such a scenario and provide resulting remedies that are simply and easily enforced.

**WHY AN AFS IS ATTRACTIVE TO A BUYER:** An AFS allows a Buyer to purchase property without the need to qualify for bank financing. The Buyer looks to the Seller to provide the financing and, in the result, essentially negotiates the terms of that financing with the Seller. A Buyer should bear in mind that such financing, like any other private financing, typically comes at a higher cost. With that in mind, it remains a matter entirely open to negotiation. For example, a Buyer could fairly negotiate for a reduced interest rate in exchange for a higher purchase price, which can be a very good bargain since the balance of the Seller's equity will be paid in the future when the market value of the property may, likely, have increased.

Secondly, as outlined above, in a situation where the Seller is experiencing financial difficulties with the property and is motivated to sell at a time when a regular sale will result in the Seller losing money, a Buyer will have a degree of leverage in negotiations. This leverage is balanced against the Seller's leverage in offering to finance the transaction.

Thirdly, although there is no immediate transfer of title, the Buyer gets effective control of the property, along with the other incidences of ownership as described above. The Buyer can move in to the property, rent it out, assign her interest in the AFS to someone else such as a tenant or other Buyer, lease-option the property to a tenant Buyer, sell an option without a lease, etc. [In theory, the Buyer could also sell her interest to a subsequent Buyer where she might get some money immediately and the balance secured by way of a subordinated agreement for sale or other security that charges her Buyer's interest in the property. I say in theory because this truly is treading in new territory. The point being, however, if one has an interest in property (as in our scenario under an AFS), that interest can be sold and secured, provided there is no contractual prohibition on so doing].

**COMMENTS ON POTENTIAL TAX TREATMENT:** Any profit made by way of an AFS is, of course, taxable and will be taxed either as a capital gain or as income, again depending on one's personal situation. Interest income is typically assessable in the tax year in which it is received. The CRA might allow capital gains to be taken into account over a number of years similar to the way profits received through a vendor take back mortgage are treated. Of course, this being a tax matter, one should get specific advice from a tax adviser versed in these issues.

**SUMMARY:** An AFS is certainly a valid investment strategy when properly implemented. As always, good results will be achieved through education, due diligence and clear communication between parties. If you have any questions or comments, **please contact Robert Di Vincenzo, Barrister & Solicitor, at 416-962-2666. I would be very happy to talk to you further.**

## AGREEMENT FOR SALE – When You Are The Buyer

MADE THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BETWEEN:

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(hereinafter called the "Seller");

of the First Part

- and -

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(hereinafter called the "Buyer");

of the Second Part

The Seller has agreed to sell to the Buyer and the Buyer has agreed to purchase from the Seller (collectively, 'the parties'), subject to the Permitted Encumbrances, the Encumbered Premises, at the times and in the manner set forth below, and subject to the stipulations and conditions contained in the Agreement of Purchase and Sale between the parties, attached as Schedule "B", which stipulations and conditions are further set out in this Agreement for Sale (hereinafter the "Agreement" or "Agreement for Sale");

NOW THEREFORE, in consideration of the premises and the sums to be paid and the covenants to be observed as set out in the Agreement, the Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

- a) This Agreement for Sale shall operate until all Indebtedness is paid in full to the Seller and all obligations whose performance is secured by this Agreement for Sale are performed, in the manner provided in this Agreement for Sale.
- b) Unless there is something in the subject matter or context inconsistent therewith, in this Agreement the following expressions shall have the following meanings:

**"Agreement for Sale"** (sometimes referred to as 'the Agreement') means the covenants, agreements and provisions contained in this Agreement for Sale, and where the context permits includes any and all renewals, extensions and amendments thereto made in writing from time to time.

**"Business Day"** means a day of the week other than Saturday, Sunday or any other day which is a statutory or municipal holiday in the municipality where the premises are situate.

**"Condominium Act"** means the Condominium Property Act, S.O. 1998, chapter 19, as amended and/or restated from time to time.

**"Encumbered Premises"** (sometimes referred to as 'the premises') means the land municipally and/or legally described in paragraph 2, together with all buildings, structures and improvements built upon or made to the land from time to time, all fixtures described herein and all other appurtenances thereto.

**“Indebtedness”** means the aggregate of:

- i) the Principal Amount, (sometimes referred to as the balance owing), and
- ii) all interest thereon and compound interest as provided in this Agreement, and
- iii) any amount, cost, charge, expense and interest that has been added to the Indebtedness under the terms of this Agreement, and
- iv) any other amount, cost, charge, expense and interest otherwise due and payable to the Seller hereunder or secured by this Agreement.

**“Interest Adjustment Date”** is calculated as one month before the first payment date.

**“Interest Rate”** means the rate of interest described in paragraph 2.1 hereof.

**“Land Titles Act”** means the Land Titles Act, R.S.O. 1990, chapter L.5, as amended and/or restated from time to time.

**“Construction Lien Act”** means the Construction Lien Act, R.S.O. 1990, c. C 30, as amended and/or restated from time to time.

**“Maturity Date”** means the day of set out in paragraph 2.1.

**“Permitted Encumbrances”** means those financial and non-financial encumbrances and registrations of any sort whatsoever as further set out in Schedule “A” or in that copy of title attached as Schedule “A”.

**“Person”** includes and individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.

**“Principal Amount”**, sometimes referred to as ‘the balance owing ‘, means the amount of the Unpaid Seller’s Equity.

**“Taxes”** means all taxes, rates, assessments, levies, local improvement charges, school taxes, liens and penalties, municipal, local, parliamentary or otherwise that now are or may hereafter be imposed, charged or levied upon or with respect to the Encumbered Premises or any part thereof, and all taxes or charges levied in lieu thereof, and includes (without limitation) all municipal utilities and services rates and charges and other charges that may be added to the tax roll for or otherwise howsoever made a charge upon the Encumbered Premises.

**“Term”** means the term of this Agreement, being the period of time commencing on the Interest Adjustment Date and ending on the Maturity Date.

**“Transfer”** means any sale, transfer, assignment, conveyance or other disposition of the Encumbered Premises, in whole or in part, or of any interest therein.

**“Transferee”** means any buyer, transferee or assignee.

- c) In the event that the Encumbered Premises are or become registered under the Condominium Act, or are proposed to be registered under the Condominium Act, it is agreed that the following definitions and provisions shall apply to this Agreement:

**“Bylaws”** means the bylaws from time to time in force for the Condominium.

**“Condominium Corporation”** means the corporation created by the registration of the Condominium Plan.

**“Common Expenses”** means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Bylaws, including without limitation reserve fund levies.

**“Condominium Plan”** means the condominium plan registered under the Condominium Act by which the Encumbered Premises became condominium units and associated common property interests.

**“Insurance Trustee”** means the insurance trustee (if any) appointed pursuant to the Bylaws.

2. THE VARIABLES OF THIS AGREEMENT ARE:

- a) Legal Description: \_\_\_\_\_
- b) Municipal Address: \_\_\_\_\_
- c) Completion Date: \_\_\_\_\_
- d) Deposit Already Paid: \$ \_\_\_\_\_
- e) The Balance Owing, (sometimes referred to as the Principal Amount)  
\$ \_\_\_\_\_
- f) Balance of Cash on Closing: \$ \_\_\_\_\_
- g) Total Purchase Price: \$ \_\_\_\_\_

2.1 THE DETAILS OF THE BALANCE OWING ARE:

- a) Amount: \$ \_\_\_\_\_
- b) Interest Rate: \_\_\_\_\_
- c) Interest Adjustment Date: \_\_\_\_\_
- d) Payment Amount: \$ \_\_\_\_\_
- e) First Payment Date: \_\_\_\_\_
- f) Frequency of Payments: \_\_\_\_\_
- g) Maturity Date: \_\_\_\_\_

2.2 THE PARTIES' ADDRESSES

- a) The Seller's address is: \_\_\_\_\_  
\_\_\_\_\_

The seller will, if requested to do so by the buyer, change the seller's address with any encumbrancee, insurance company, taxing authority or other person or entity in any way connected to the premises.

- b) The Buyer's address is: \_\_\_\_\_  
\_\_\_\_\_

### 3. ENCUMBRANCE AND CHARGE

And for the better securing to the Seller the repayment in the manner herein set out of the Principal Amount and interest (and all other obligations of the Buyer hereby secured) the Buyer hereby encumbers to the Seller all the Buyer's estate and interest in the Encumbered Premises.

### 4. INTEREST

The Principal Amount shall bear interest at the Interest Rate both before and after default, demand, maturity and judgment until paid.

### 5. COVENANT FOR PAYMENT OF PRINCIPAL AND INTEREST & PREPAYMENT (IF ANY)

The Buyer will pay to the Seller at the address noted herein or at such other place in Canada as the Seller may from time to time designate in writing in lawful money of Canada the Principal Amount with interest thereon, or on so much thereof as shall from time to time remain unpaid, at the rate (herein called the "Interest Rate") as set out above, calculated and compounded semi-annually, not in advance, both before and after default, demand, maturity and judgment, until paid, and computed from the date of the first advance of the principal as follows:

- a) The Principal Amount with interest thereon, or on so much thereof as shall from time to time remain unpaid, at the Interest Rate calculated and compounded semi-annually from the Interest Adjustment Date, shall become due and be paid by equal consecutive monthly instalments as set out in paragraph 2.1(d) above from and including the date set out in paragraph 2.1(e) above, and on the monthly anniversary of the first payment date, each and every month in each and every year to and including the Maturity Date.
- b) Provided the buyer is not in default under the terms of this Agreement, the buyer shall have the right to pay out the Agreement any time without notice, bonus or penalty.

#### **OR**

- b) The Provided the buyer is not in default under the terms of this Agreement, the buyer shall have the right to pay out the Agreement at any time upon payment of a prepayment charge equal to 3 months interest on any permitted financial encumbrance.

#### **OR**

- b) Provided the Buyer is not in default under the terms of this Agreement, the buyer shall have the right to prepay the whole of the Indebtedness at any time upon payment of a prepayment charge equal to three months interest on the unpaid seller's equity.

### 6. COMPOUND INTEREST

All interest on becoming overdue, and any amount, cost, charge or expense that has been added to the Indebtedness under the terms of this Agreement, shall be treated (as to payment of interest thereon as aforesaid) as principal and shall bear compound interest at the Interest Rate, both before and after default, demand, maturity and judgment until paid, to be calculated and compounded semi-annually not in advance with rests half-yearly commencing six months from the Interest Adjustment Date and on the first day of every sixth month thereafter in each and every year until paid, and all such interest and compound interest shall be added to the Indebtedness and secured by this Agreement. If any of the monies hereby secured are not paid when due, the Buyer will, so long as any part thereof remains unpaid, pay interest thereon from day to day.

## 7. APPLICATION OF INSTALMENTS

The payment amount set out in paragraph 2.1(d) hereof are to be applied firstly to the interest component of the Indebtedness and the balance of the said payment amount shall be applied to the principal component of the Indebtedness; except, however, in the case of default by the Buyer the Seller may then apply any payments received during the period of default to any part of the Indebtedness in whatever order it may elect notwithstanding any contrary stipulation by the Buyer.

## 8. COVENANT TO PAY

The Buyer covenants with the Seller that the Buyer will pay the Indebtedness to the Seller as and when provided herein without any deductions, set-off, abatement or counterclaim. If more than one Person signs this Agreement as Buyer, such Persons are jointly and severally liable to pay, perform and observe all of the Buyer's obligations herein.

## 9. TAXES

The Buyer covenants with the Seller to be responsible for and to pay the Taxes promptly as they fall due and before the date on which any penalty becomes chargeable thereon, and will forthwith provide the Seller with evidence satisfactory to the Seller of payment thereof. The seller agrees to send the buyer all tax bills or other notices or communications related to taxes as soon as the seller receives them.

## 10. INSURANCE

The Buyer will, at his or her expense, forthwith insure and, during the currency of this Agreement, keep insured against loss or damage by fire, each and every building or structure now or hereafter erected upon the Lands, in the sum of the full insurable value thereof and the Buyer will not do or suffer anything to be done whereby the said policy or policies may be vitiated and will pay all premiums and sums of money necessary for such purpose when due, and if the Buyer shall neglect to keep the said buildings or structures of any or them insured as aforesaid, then the Seller may insure the said buildings or structures in the manner aforesaid and all sums so expended by the Seller, shall be deemed to be secured hereby and charged upon the Lands and shall, without demand therefor, together with interest at the rate aforesaid calculated from the time or times of advancing the same, be repaid by the Buyer to the Seller. In the case of commercial properties this obligation to insure shall also include boiler, plate glass, rental, business interruption, and public liability insurance in amounts satisfactory to the seller. In the case of condominium properties this obligation to insure shall include fire and such other peril coverage as the Seller may require and also third party liability coverage, all such coverage to extend to both the mortgaged unit and the common property, in such amounts and in such form as the Seller may from time to time require. Evidence of the renewal of such insurance shall be produced to the Seller at least Ten (10) days before the insurance then existing or any portion thereof shall expire, otherwise the Seller may insure as provided elsewhere in this Agreement.

All sums received by virtue of any insurance policy or policies may, at the option of the Buyer, either be forthwith applied in or towards substantially rebuilding, reinstating and repairing the said buildings or structures, or applied in or toward payment of the last installment of principal falling due under this Agreement, and in case of a surplus in or toward payment of the installment next preceding in point of time of payment, and so on until the whole of the principal hereunder shall be paid, and in case of a surplus, then in payment, either totally or partially as the case might be, of the interest and other charges owing under this Agreement.

If the seller is required by the terms of any permitted encumbrance to maintain a policy of insurance, then the seller covenants with the buyer to, at the seller's expense, maintain such policy in good standing and add the buyer as a named insured. If the seller fails to maintain such policy of insurance, the buyer may, but is not obligated to, maintain such policy. Any payments by the buyer pursuant to this clause that are the responsibility of the seller may be set off against the indebtedness.

## 11. WASTE, MAINTENANCE, REPAIR AND INSPECTION

The Buyer covenants and agrees with the Seller that the Buyer will not permit waste to be committed or suffered on the Encumbered Premises and the Buyer will not remove or attempt to remove from the Encumbered Premises any building, structure or improvement forming part of the Encumbered Premises and the Buyer shall refrain from doing anything or allowing anything to be done which would result in an impairment or diminution of the value of the Encumbered Premises. The Buyer will maintain such buildings, structures, or other improvement in good order and repair to the satisfaction of the Seller. The Seller may, whenever it deems necessary, enter upon and inspect the Encumbered Premises and review such records and information relating thereto and may require the Buyer, at its sole expense, to effect such repair or remediation of which the Buyer is notified by the Seller, or the Seller may effect such repairs or remediation as it deems necessary and the Buyer shall execute all consents, authorizations and directions that are required to permit any such inspection, review, repair or remediation, and the cost thereof and of such inspection, review, repair or remediation, together with interest thereon at the Interest Rate, shall be payable forthwith by the Buyer to the Seller and shall be added to the Indebtedness and secured by this Agreement.

If the Buyer shall neglect to keep the Encumbered Premises in good condition and repair, or shall commit or permit any act of waste on the Encumbered Premises (as to which the Seller shall be the sole judge) or shall attempt to remove any building, structure or improvement forming part of the Encumbered Premises, all monies hereby secured shall, at the option of the Seller, forthwith become due and payable, and in default of payment of same and interest, as in the case of payment before maturity, the powers of entering upon and leasing or selling hereby given to the Seller and all other remedies herein contained may be exercised forthwith.

## 12. ALTERATIONS

The Buyer shall be entitled to make alterations, additions, renovations or improvements of any kind to the Premises (the "Work"), whether these may be considered minor or major, provided always that the Buyer, before doing so, shall obtain any permits required by any governmental authority having jurisdiction in the matter and, in addition, shall fully comply with any and all governmental regulations affecting or relating to the Work.

## 13. PAYMENTS BY BUYER AND SELLER

The Seller may pay any or all premiums of insurance and any or all Taxes, condominium fees or levies, rates, liens, utility and heating charges which shall from time to time fall due and be unpaid in respect of the Encumbered premises, and such payments, together with all costs, charges, legal fees and disbursements, all appraisal costs and expenses, survey costs and expenses, costs of environmental reports and all other expenses whatsoever, which may be incurred in taking, recovering and keeping possession of the Encumbered Premises, and in negotiating this Agreement for Sale, investigating title and preparing and registering the Agreement and other documents related thereto and in payment of any other Indebtedness due under any other Agreement, encumbrance, lien or other charge ranking in priority or subsequent to this Agreement, and generally in any other proceedings taken in connection with or to realize or protect this security (and real estate commissions and other costs incurred in leasing or selling the Encumbered Premises or in exercising the power of entering, lease and sale herein contained) shall be, with interest at the Interest

Rate, a charge upon the Encumbered Premises in favour of the Seller and secured by this Agreement. All amounts paid by the Seller as aforesaid shall be added to the Indebtedness hereby secured and shall be payable forthwith with interest at the Interest Rate and in default of such payment the full Indebtedness under this Agreement including all such amounts, shall immediately become due and payable at the option of the Seller, and all remedies, rights and powers conferred in this Agreement shall be exercisable.

In the event that there is a mortgage(s) or financial encumbrance(s) (the 'mortgage(s)') registered against the encumbered premises, which mortgage(s) will not be discharged by the seller on execution of this agreement, then, the Seller promises that he will pay to the mortgagee(s) all payments due under any mortgage when the same falls due. If the Seller does not make all required payments when due, or if there are arrears, ('the payments'), the buyer may pay all payments otherwise due under the agreement directly to the mortgagee(s), instead of to the seller, or if there is a default by the Seller to the extent that a mortgagee(s) commences enforcement proceedings, the buyer may also pay any amounts outstanding on the mortgage(s) and in which case any payment made by the buyer pursuant to this paragraph shall be deducted from amounts payable to the Seller by the Buyer under this agreement.

Buyer may, at his sole option, choose to take responsibility for and make any or all payments for any matter discussed in this paragraph 'Payments by Buyer and Seller'. Seller will assist and cooperate with buyer in setting up or amending payment procedures to facilitate buyer making any or all payments

#### 14. NO MERGER ON JUDGMENT

It is hereby agreed that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Seller's right to interest at the rate and times herein provided; and further that said judgment shall provide that interest thereon shall be computed at the Interest Rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

#### 15. POSSESSION

The Buyer covenants and agrees with the Seller that upon default by the Buyer in the payment of the Indebtedness or in the performance or observance of any covenant, proviso or condition contained in this Agreement, the Seller may at its sole option and at such time or times as it may deem necessary and without the concurrence of any Person, enter into possession of the Encumbered Premises and may complete the construction thereof, repair any buildings, structures or improvements forming part of the Encumbered Premises, inspect, take care of, and lease the Encumbered Premises for such term and subject to such provisions as it may deem advisable or expedient (including providing any leasehold improvement the Seller deems necessary, in its sole discretion, to lease the Encumbered Premises), collect the rents of, and manage the Encumbered Premises as it may deem expedient, and all costs, charges and expenses incurred by the Seller in connection with the exercise of any such rights (including without limitation allowances for the time, service and effort of any officer of the Seller or other person appointed for the above purposes and including legal fee and disbursements on a full indemnity basis) and shall, together with interest thereon at the Interest Rate, be added to the Indebtedness and secured by this Agreement and shall be forthwith payable by the Buyer to the Seller. Any lease made by the Seller while in possession of the Encumbered Premises shall continue for the full term and any permitted renewals thereof notwithstanding the termination of the Seller's possession.

#### 16. DEFAULT AND REMEDIES

In any event of default,

- a) It shall and may be lawful for, and the Buyer hereby grants full power, right and license to the Seller with notice to enter, seize and distrain upon the Encumbered Premises or any part thereof and by distress warrant to recover as rent reserved as in the case of demise of the Encumbered Premises, as much of the Indebtedness as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, and in like cases of distress for rent;
- b) The Seller may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Encumbered Premises and a solicitor to examine and report upon the title to the same;
- c) The Seller may, with or without entry into possession of the Encumbered Premises or any part thereof, and whether before or after such entry into possession, appoint a receiver or manager, or receiver and manager (herein called the "Receiver") of the Encumbered Premises or any part thereof and of the rents and profits thereof or of only the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any Receiver with or without appointing another in his stead and, in making any such appointment or removal, the Seller shall be deemed to be acting as the agent or attorney for the Buyer. Upon the appointment of any Receiver or Receivers from time to time, the following provisions shall apply:
  - i. a statutory declaration of an officer of the Seller as to default under this Agreement shall be conclusive evidence thereof for the purposes of the appointment of a Receiver;
  - ii. every Receiver shall be the agent or attorney of the Buyer (whose appointment as such shall be revocable only by the Seller) for the collection of all rents and profits falling due and becoming payable in respect of the Encumbered Premises or any part thereof whether in respect of any tenancies created in priority to this Agreement or subsequent thereto, or otherwise;
  - iii. every Receiver may, in the discretion of the Seller, be vested with all or any of the powers and discretions of the Seller;
  - iv. the rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Seller may have;
  - v. the Seller may from time to time fix the remuneration for every Receiver, who shall be entitled to deduct the same out of revenue or sale proceeds of the Encumbered Premises;
  - vi. every Receiver shall so far as concerns responsibility for its acts or omissions, be deemed the agent or attorney of the Buyer and in no event the agent of the Seller;
  - vii. Every Receiver shall have full power to manage, operate, amend, repair or alter the Encumbered Premises and the buildings and improvements thereon or any part thereof in the name of the Buyer for the purpose of obtaining rental and other income from the Encumbered Premises or any part thereof.
- d) The Seller may, at the Seller's option, proceed by action, suit or other proceeding, in any Court of competent jurisdiction, obtain a judgment, decree or order for specific performance, rescission, cancellation, or determination of this Agreement, or for any other relief the Court has power to grant for the said default, including an allowance for use and occupation by the Buyer which shall be at least equal to all monies paid under this Agreement; and
- e) None of the foregoing rights and remedies shall be exclusive of or dependent on any other such right or remedy and any one or more of such rights and remedies may from time to time be exercised independently or in combination.

## 17. TRANSFER AND DISCHARGE

On the Buyer paying the Purchase Price with interest as aforesaid in the manner aforesaid and all other sums that may be payable under this Agreement, the Seller will convey and assure and cause an estate in fee

simple to the Lands to be conveyed and assured to the Buyer by a Transfer or Transfers under the Land Titles Act, subject to the conditions, reservations and exceptions contained in the original grant from the Crown and in the existing Certificate of the Title to the Lands and to the encumbrances as set out in the copy of title attached as Schedule "A" and to such other instruments or encumbrances as may be made, caused or suffered by or through the Buyer. The Seller will discharge any financial encumbrances as set out in Schedule "A" that are not the Buyer's or the responsibility of the Buyer or being assumed by the Buyer, but, only on receipt of the full balance of the Indebtedness. The Transfer or Transfers shall be prepared by the Seller's solicitors at the expense of the Seller. The Seller will provide the transfer on conditions wide enough for the Buyer to place a new mortgage if that is the Buyers requirement. The Buyer shall be responsible for and pay the cost of registration of such Transfer.

Where, as at the Interest Adjustment Date the unpaid seller's equity minus the balance of mortgage(s) registered on title is less than \$50,000, the Buyer has the right to call for the Seller to provide a fully executed transfer of land at the same time this Agreement is executed. Such transfer is to be held in trust by Buyer's lawyer, and not used until the Buyer has paid the purchase price plus interest and any other sum that may be owing under this Agreement.

#### 18. WAIVER

It is understood and agreed that a waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof or of the obligations secured by this Agreement shall apply to the particular instance or instances and at the particular time or times only. No such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Agreement and of the obligations secured thereby shall survive and continue to remain in full force and effect.

#### 19. ASSIGNMENT

This Agreement may be assigned by the Buyer without the consent of the Seller, provided such assignment is for all of the Buyer's interest herein. There shall be no further assignment thereafter, unless consented to in writing by the Seller. The Seller will convey the Lands to the assignee on the payment of the unpaid Principal and Interest.

#### 20. EXTENSION AGREEMENTS AND RENEWALS

It is understood and agreed that any agreement for the extension of the time for payment of the Indebtedness or any part thereof and any renewal of the term of this Agreement made at, before or after maturity, altering the term, Interest Rate (whether increased or decreased), the amount of the payments of principal, interest or other monies owing and secured by this Agreement or any other provision, covenant or condition hereof, whether made with the Buyer named herein or a subsequent owner of the Encumbered Premises (and whether or not consented to by the Buyer named herein or any assignee if made with a subsequent owner), need not be registered in any land registry office but shall be effectual and binding upon the Buyer and upon every subsequent Seller, encumbrance or other person claiming an interest in the Encumbered Premises or any part thereof.

The Buyer shall, forthwith on request therefor by the Seller, provide or cause to be provided to the Seller, at the Buyer's expense, all such postponements and other assurances as the Seller may require to ensure or confirm the effect and priority of any such extension or renewal agreement.

The Seller has a mortgage, (or mortgages), on the property and covenants with the Buyers, that if the Buyers are not in default, then, as the existing term of the mortgage matures, the Seller will, but only if the Lender offers a renewal of the mortgage to the Seller, provide the buyers a copy of the Lender's Renewal Offer. The Buyers shall then choose a renewal term, advise the Seller in writing and the Seller will forthwith renew

the mortgage on the term chosen by the Buyers. The Seller covenants to extend the term of the Agreement for Sale for the same term as the Buyer has selected for the mortgage renewal. The extended Agreement for Sale shall be in all respects the same as the original Agreement for Sale.

## 21. SET-OFF

In the event there is any existing financing which is the responsibility of the Seller to pay, and in the further event that the Seller is collecting from the Buyer monies from which the Seller would then pay such items as insurance, taxes, condominium fees and the like (collectively including financing "the items"), then the Seller hereby and pursuant to this document gives the Buyer permission to contact the payees of the said items and hereby directs the payees to provide the information to the Buyer on the status of the said individual accounts for the items.

The Buyer may, if the Seller is not paying same, pay the said items and set-off all payments against the Indebtedness.

## 22. POWER OF ATTORNEY

The Buyer hereby irrevocably appoints the Seller as attorney for the Buyer for the purposeonly of enabling the Seller to execute a discharge of any document registered on title to the Property in the event that the Buyer abandons the property or is in default and remains in default for 45 days after notice of such default is given by the Seller to the Buyer.

The Seller hereby grants to and appoints the Buyer to act as the Seller's Attorney to execute any and all documents that are contemplated herein or are necessary to further and better carry out the obligations, requirements, rights, covenants and other provisions herein including, but not limited to, an Agreement of Purchase and Sale, Transfer of Land, or to otherwise sell, lease, insure, or to set up, change or maintain bank accounts and mortgage the lands and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given. The Seller shall sign a Power of Attorney document in registerable form, in favour of the Buyer; said Power of Attorney may, at buyer's discretion, be filed at the Ontario Land Registration Office having jurisdiction over the Property.

## 23. METHOD OF PAYMENT

THE BUYER will, at his of her option, make payments to the Seller as required herein, by post-dated cheques or pre-authorized withdrawal form. There is a \$10.00 fee for each dishonoured cheque or payment.

## 24. SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be severable from and shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

## 25. NOTICE

Notice, if required, may be served upon the Buyer:

- a) by sending it through the post by a prepaid priority post letter addressed to the Buyer at the address set out in paragraph 2(b) or its last known address or in the case of a company to its registered office in Ontario,

and any notice so served shall be deemed to have been served at the expiration of the third Business Day after posting; or

- b) by delivering it addressed to the Buyer at the address set out in paragraph 2(b) or its last known address or in the case of a company to its registered office in Ontario, and any notice so served shall be deemed to have been served at the time of delivery; or
- c) by any means whereby actual notice is given to the Buyer.

But nothing in this paragraph shall require the Seller to give notice to the Buyer.

Notice, if required, may be served upon the Seller by a pre-paid priority post letter addressed to the Seller at the Seller's address or by any means whereby actual notice is given to the Seller.

## 26. SUCCESSORS AND ASSIGNS

Every reference in this Agreement to a party hereto shall extend to and include the heirs, executors, administrators, successors and assigns of such party. This Agreement shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

## 27. GOVERNING LAW

This Agreement shall be interpreted and governed according to the Law of the Province of Ontario.

## 28. ACKNOWLEDGEMENT

The parties acknowledge receipt of a true copy of this Agreement.

## 29. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year set out above.

SIGNED, SEALED AND DELIVERED )  
by the above named and in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Buyer

**SCHEDULE “A”  
PERMITTED ENCUMBRANCES**

**SCHEDULE “B”  
COPY OF AGREEMENT OF PURCHASE AND SALE**

**SCHEDULE "C"  
POWER OF ATTORNEY**

## POWER OF ATTORNEY

I/We, (name) \_\_\_\_\_, of (full address) \_\_\_\_\_, (name of city, town) \_\_\_\_\_, Ontario, being the registered owner(s) of an estate in fee simple, subject to registered encumbrances, liens and interests, if any, do hereby appoint:

attorney on my behalf to execute any and all documents relating to the following lands (the “Lands”):

## PLAN \_\_\_\_\_ BLOCK

LOT or UNIT \_\_\_\_\_ (Unit # if Condominium)

including, but not limited to, an Agreement of Purchase and Sale and Transfer of Land and any other documents required to sell, lease, manage, insure, mortgage, deal with any lender or any renewal(s) or mortgage, or any lender matter whatsoever and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or are owing to me in respect of the Lands, and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Lands or on any other person in respect of the same, and for the taking and maintaining possession of the Lands, and for protecting the same from waste, damage, or trespass.

In witness whereof, I have hereunto subscribed my name this \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_

SIGNED by the above named  
in the presence of:

---

Witness

---

## Witness

**SCHEDULE "D"**  
**AUTHORIZATION TO RELEASE INFORMATION**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( the mortgage lender)

RE: Mortgage to (name) \_\_\_\_\_  
Mortgage # (if available) \_\_\_\_\_

I/We, the undersigned, the registered owners of the property located at \_\_\_\_\_, which we have mortgaged to you, hereby authorize the release of any and all information relating to the said mortgage to:

\_\_\_\_\_  
\_\_\_\_\_

Please provide your full cooperation.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_,

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name, please print)

\_\_\_\_\_  
(name, please print)

\_\_\_\_\_  
(SIN #)

\_\_\_\_\_  
(SIN #)

\_\_\_\_\_  
Witness