

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made as of the day of January, 2009

BETWEEN:

ANDRIN INVESTMENTS LIMITED

(hereinafter called the "Purchaser")

- and -

THE CORPORATION OF THE CITY OF KITCHENER

(hereinafter called the "Vendor")

WITNESSES THAT in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration.

1. DEFINITIONS AND SCHEDULES

1.1 In this Agreement the following words and terms shall have the designated meaning unless the context shall otherwise require:

"Agreement" or "this Agreement" means the within Agreement of Purchase and Sale.

"Authority" means any governmental agency, board, branch, department, or other authority whether provincial or municipal having or claiming jurisdiction over the Property and further includes the insurers of the Property.

"Buildings" means the buildings and other structures situate or to be situate on the Lands and includes without limitation, the electrical, elevating, heating, ventilating, air conditioning, plumbing, sprinkler, drainage and other mechanical and electrical systems and fixtures installed therein.

"Business Day(s)" means any day of the week excluding Saturday, Sunday and statutory holidays.

"Centre Block" means that parcel of lands and premises situate in the City of Kitchener legally described in Schedule "A" attached hereto.

"Centre Block Reference Plan" means the reference plan described in Section 5.2(b) hereto.

"City Lands" means that portion of the Centre Block within which it is intended

that the City Parking Facility be constructed in accordance with the Development Agreement together with accesses, walkways, and at-grade connections thereto, to be described as a part or parts on the Centre Block Reference Plan.

“City Parking Facility” means the below grade level of parking containing approximately 250 parking spaces as such will be defined and described in the Phase 1 Construction Contract and the Phase 2 Construction Contract to be constructed within the City Lands pursuant to and in accordance with the terms of the Phase 1 Construction Contract and the Phase 2 Construction Contract.

“Closing Date” or “Closing” means the Phase 1 Closing Date, the Phase 2 Closing Date or the Phase 3 Closing Date (all as defined in Article 7 hereof) as applicable.

“Commencement of Construction” means in connection with the Phase 1 and Phase 2 Project (having obtained any permits necessary in connection with the proposed demolition as required and construction required in connection therewith) the completion of the necessary excavation of that portion of the Lands necessary for the construction thereof provided the pre-conditions set out in the Development Agreement as applicable to such Phase have been satisfied and “Commence Construction” shall have a corresponding meaning.

“Development Agreement” means the Development Agreement to be entered into between the Vendor, as Owner, and the Purchaser, as Developer, pursuant to which the redevelopment of the Centre Block by the Purchaser (or a Related Person) is to be performed.

“Effective Date” means the earlier of:

- (i) the date that the Development Agreement is executed by both parties thereto; and
- (ii) November 30th, 2009.

“Lands” means Centre Block save and except the City Lands.

“Permitted Encumbrances” means the encumbrances described in Schedule “B” attached hereto.

“Person” includes an individual, a corporation, a limited partnership, a general partnership, a trust, a joint stock company, a joint venture, an association, a syndicate, a bank, a trust company and the municipal, provincial and federal governments and any agency thereof, and any other legal and business entity, and “Persons” shall have a corresponding meaning.

“Phase” means the Phase 1 Property, the Phase 2 Property or the Phase 3 Property, as the case may be.

“Phase 1 City Lands” means that portion of the City Lands within which it is intended that the Phase 1 City Parking Facility be constructed, in accordance with the Development Agreement to be described as a part or parts on the Centre Block Reference Plan.

“Phase 1 City Parking Facility” means that portion of the City Parking Facility to be constructed contemporaneously and in full integration with the Phase 1 Project pursuant to the Phase 1 Construction Contract.

“Phase 1 City Property” means the Phase 1 City Lands together with the Phase 1 City Parking Facility.

“Phase 1 Closing” or the “Phase 1 Closing Date” means the date for completion of the acquisition by the Purchaser of the Phase 1 Property in accordance with subsection 7.1(a) of this Agreement.

“Phase 1 Construction Contract” means the Construction Contract for the construction of the Phase 1 City Parking Facility situate within the Phase 1 City Lands and made between the Purchaser or a Related Person, as contractor, and the Vendor, as owner which Construction Contract shall provide for, *inter alia*, the payment of Fifty Thousand Dollars (\$50,000.00) on account of the value of the Phase 1 City Lands which amount shall be payable at the time of final payment under the Phase 1 Construction Contract.

“Phase 1 ECS Agreement” means the Easement and Cost Sharing Agreement between the Purchaser and the Vendor pursuant to which the Purchaser and the Vendor shall agree, *inter alia*, to certain mutual easements and rights, provide for the allocation of certain costs and expenses, provide for maintenance and repair of certain shared facilities and certain other rights as between the Phase 1 Property and the Phase 1 City Property in order to provide for the efficient functioning, operation and management of each of same.

“Phase 1 Lands” means that portion of the Lands upon and within which the Phase 1 Project is intended to be constructed in accordance with the Development Agreement to be described as a part or parts on the Centre Block Reference Plan.

“Phase 1 Project” means the development and construction of that portion of the Project to be constructed upon and within the Phase 1 Lands which development shall be carried out in accordance with the Development Agreement.

“Phase 1 Property” means the Phase 1 Lands together with all Buildings situate or to be situate thereon and therein from time to time.

“Phase 1 Purchase Price” means that portion of the Purchase Price payable in respect of the Phase 1 Property as set out in subsection 2.1(a) of this Agreement.

“Phase 2 City Lands” means that portion of the City Lands within which it is intended that the Phase 2 City Parking Facility be constructed, in accordance with the Development Agreement to be described as a part or parts on the Centre Block Reference Plan.

“Phase 2 City Parking Facility” means that portion of the City Parking Facility to be constructed contemporaneously and in full integration with the Phase 2 Project pursuant to the Phase 2 Construction Contract.

“Phase 2 City Property” means the Phase 2 City Lands together with the Phase 2 City Parking Facility.

“Phase 2 Closing” or the “Phase 2 Closing Date” means the date for completion of the acquisition by the Purchaser of the Phase 2 Property in accordance with subsection 7.1(b) of this Agreement.

“Phase 2 Construction Contract” means the Construction Contract for the construction of the Phase 2 City Parking Facility situate within the Phase 2 City Lands and made between the Purchaser or a Related Person, as contractor, and the Vendor, as owner which Construction Contract shall provide for, *inter alia*, the payment of Fifty Thousand Dollars (\$50,000.00) on account of the value of the Phase 2 City Lands which amount shall be payable at the time of final payment under the Phase 2 Construction Contract.

“Phase 2 ECS Agreement” means the amendment of the Phase 1 ECS Agreement pursuant to which the Purchaser and the Vendor shall agree, *inter alia*, to certain mutual easements and rights, provide for the allocation of certain costs and expenses, provide for maintenance and repair of certain shared facilities and certain other rights as between the Phase 1 Property, and the Phase 2 Property, the Phase 1 City Property and the Phase 2 City Property in order to provide for the efficient functioning, operation and management of each of same.

“Phase 2 Lands” means that portion of the Lands upon and within which the Phase 2 Project is intended to be constructed in accordance with the Development Agreement to be described as a part or parts on the Centre Block Reference Plan save and except that portion of such lands within which the Phase 2 City Parking Facility to be situate.

“Phase 2 Project” means the development and construction of that portion of the Project to be constructed upon and within the Phase 2 Lands which development shall be carried out in accordance with the Development Agreement.

“Phase 2 Property” means the Phase 2 Lands together with all Buildings situate or to be situate thereon and therein from time to time.

“Phase 2 Purchase Price” means that portion of the Purchase Price payable in respect of the Phase 2 Property as set out in subsection 2.1(b) of this Agreement.

“Phase 3 Closing” or the “Phase 3 Closing Date” means the date for completion of the acquisition by the Purchaser of the Phase 3 Property in accordance with subsection 7.1(c) of this Agreement.

“Phase 3 Lands” means that portion of the Lands upon and within which the Phase 3 Project is intended to be constructed in accordance with the Development Agreement to be described as a part or parts on the Centre Block Reference Plan.

“Phase 3 Project” means the development and construction of that portion of the Project and renovation of Buildings, as applicable, on the Phase 3 Lands to be constructed and renovated upon and within the Phase 3 Lands which development shall be carried out in accordance with the Development Agreement.

“Phase 3 Property” means the Phase 3 Lands together with all Buildings situate or to be situate thereon and therein from time to time.

“Phase 3 Purchase Price” means that portion of the Purchase Price payable in respect of the Phase 3 Property as set out in subsection 2.1(c) of this Agreement.

“Project” means the demolition of existing Buildings as necessary and the construction of new Buildings and, in the case of the Phase 3 Lands, renovation of existing Buildings, upon the Lands, by or on behalf of the Developer (save and except for the construction of the City Parking Facility), which construction shall constitute the complete development of the Lands (other than the City Lands), and which development shall be carried out in accordance with the Development Agreement.

“Property” means the Phase 1 Property, the Phase 2 Property and the Phase 3 Property collectively.

“Purchase Price” means the amount payable by the Purchaser to the Vendor pursuant to Section 2.1.

“Substantial Performance” means the Substantial Performance Date (as defined in the Phase 1 Construction Contract or the Phase 2 Construction Contract, as the case may be) and “Substantially Performed” shall have a corresponding meaning.

1.2 In this Agreement, all capitalized terms not otherwise specifically defined herein shall have the meanings attributed thereto in the Development Agreement.

1.3 Schedules

The Schedules referred to in this Agreement are deemed to form part of this Agreement and are incorporated by reference. Such Schedules are as follows:

Schedule “A” - Legal Description of the Lands
Schedule “B” - Permitted Encumbrances

2. PURCHASE

2.1 The Vendor agrees to sell through no agent and the Purchaser agrees to purchase the Property for a Purchase Price in lawful money of Canada of Three Million, One Hundred Thousand Dollars (\$3,100,000.00). The Purchase Price shall be allocated as follows:

- (a) for the Phase 1 Property, an amount equal to the product of \$6,000.00 and the number of residential units to be constructed within the Phase 1 Project pursuant to the Development Agreement;
- (b) for the Phase 2 Property, \$2,300,000.00 less the amount paid pursuant to subsection 2.1(a) on account of the Phase 1 Property;
- (c) for the Phase 3 Property, \$700,000.00; and
- (d) the Purchaser shall pay the Vendor the sum of \$100,000.00 as consideration for the transfer of that part of the Property which is intended to include that part of the Project containing the retail development at grade in the condominium to be developed along the King Street West frontage. The said sum shall be added to the Phase 1 Purchase Price in the event that such retail development is included within the Phase 1 Project or shall be added to the Phase 2 Purchase Price in the event that such retail development is included within the Phase 2 Project;

all of which shall be payable as set out in Sections 2.2, 2.3 and 2.4 hereof respectively.

2.2 The Phase 1 Purchase Price shall be paid or satisfied as follows:

- (a) Two Dollars (\$2) shall be paid by the Purchaser upon acceptance of this Agreement by cheque as a deposit to the Vendor's solicitors, to be held in trust by them on behalf of the parties as their respective interests may appear pending completion or termination of this Agreement and to be paid to the Vendor and credited on account of the Phase 1 Purchase Price at Closing.
- (b) The balance of the Phase 1 Purchase Price shall be paid to the Vendor by certified cheque of a Canadian chartered bank on the Phase 1 Closing Date subject to the adjustments provided for in Article 10 of this Agreement.

2.3 The Purchase Price for the Phase 2 Lands shall be paid or satisfied as follows:

- (a) Two Dollars (\$2) shall be paid by the Purchaser upon acceptance of this Agreement by cheque as a deposit to the Vendor's solicitors, to be held in trust by them on behalf of the parties as their respective interests may appear pending completion or termination of this Agreement and to be paid to the Vendor and credited on account of the Phase 2 Purchase Price at Closing.
- (b) The balance of the Phase 2 Purchase Price shall be paid to the Vendor by certified cheque of a Canadian chartered bank on the Phase 2 Closing Date subject to the adjustments provided for in Article 10 of this Agreement.

2.4 The Purchase Price for the Phase 3 Lands shall be paid or satisfied as follows:

- (a) Two Dollars (\$2) shall be paid by the Purchaser upon acceptance of this Agreement by cheque as a deposit to the Vendor's solicitors, to be held in trust by them on behalf of the parties as their respective interests may appear pending completion or termination of this Agreement and to be paid to the Vendor and credited on account of the Phase 3 Purchase Price at Closing.
- (b) The balance of the Phase 3 Purchase Price shall be paid to the Vendor by certified cheque of a Canadian chartered bank on the Phase 3 Closing Date subject to the adjustments provided for in Article 10 of this Agreement.
- (c) On or before the completion of this Agreement with respect to the Phase 2 Property, the Purchaser shall deliver to the Vendor a letter of credit in the amount of the Phase 3 Purchase Price and otherwise in form satisfactory to the Vendor and the Treasurer of the Vendor in their discretion acting reasonably which letter of credit may be drawn upon by

the Vendor if this Agreement fails to be completed in respect of the Phase 3 Property for any reason whatsoever. Such amount shall be payable to the Vendor as liquidated damages representing the Vendor's genuine pre-estimate of the damages which the Vendor shall be deemed to have suffered in the event of non-completion of this Agreement in respect of the Phase 3 Property, it being acknowledged by the Purchaser that the acquisition of the Phase 3 Property by the Purchaser and the development of the Phase 3 Project pursuant to the Development Agreement is an integral part of the agreement between the parties and that the Vendor would not have entered into the Development Agreement or this Agreement without the covenants and agreements of the Purchaser to acquire the Phase 3 Lands and construct the Phase 3 Project in accordance with the Development Agreement. This acknowledgement shall constitute a complete estoppel and defence to any action or proceeding commenced by the Purchaser to enjoin or otherwise prevent the Vendor from drawing upon such letter of credit or to recover the letter of credit and/or any or all amounts drawn by the Vendor thereon.

The Vendor covenants and agrees that the Vendor's only recourse against the Purchaser for non-completion of this Agreement in respect of the Phase 3 Property shall be to draw upon the letter of credit and the Vendor further covenants and agrees that in no event shall the Vendor be entitled to exercise any other rights or remedies which may be available to the Vendor at law in respect of such non-completion.

3. PURCHASER'S EXAMINATION

- 3.1 Subject and without prejudice to the Vendor's covenants set out paragraph 5.1(d) of this Agreement, no representations or warranties have been made or are made by the Vendor or anyone on its behalf as to the condition of the Property or its use or the zoning of the Property. The Purchaser acknowledges that it has inspected the Property and that the Property being conveyed to the Purchaser is sold on as "as is, where is" basis. The Purchaser agrees to accept the Property subject to any work orders, zoning or building code violations, deficiency notices, orders to comply and the like. The Purchaser agrees that other than as contained in this Agreement, no representation, warranty or condition is expressed or can be implied as to title, description, fitness for purpose, zoning, condition or quality of the Property or in respect of any other matter whatsoever and that the Purchaser agrees that it shall complete the transaction without abatement of the purchase price.

- 3.2 The Purchaser acknowledges and agrees that: (a) subject and without prejudice to the Vendor's covenant set out in paragraph 5.1(d) of this Agreement, it accepts the Property in an "as is" condition and that it has no claim against the Vendor relating to the condition or state of the Lands as at the date of this Agreement; and (b) subject and without prejudice to the Vendor's covenant set out in paragraph 5.1(d) of this Agreement, the Vendor has not made any representations regarding the Property or the use that can be made of same, the Purchaser having conducted or shall conduct such searches as it considers necessary to satisfy itself that it can use the Property for the purposes and uses intended by the Purchasers
- 3.3 Section 3.1 and 3.2 shall not merge on but shall survive Closing.

4. WARRANTIES AND REPRESENTATIONS

- 4.1 The Vendor warrants and represents to the Purchaser that:
- (a) the Vendor is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the Income Tax Act (Canada);
 - (b) no Person has been granted a right of first refusal or option to purchase the Property;
 - (c) the Vendor has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
 - (d) the execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Vendor and the consummation of the transactions contemplated by this Agreement by the Purchaser will be duly authorized by all necessary corporate action on the part of the Vendor;
 - (e) neither the entering into nor the delivery of this Agreement nor the completion by the Vendor of the transactions contemplated hereby will conflict with, or constitute a material default under, or result in a material violation of (i) any of the provisions of the constating documents or by-laws of the Vendor, or (ii) any agreement to which the Vendor is a party or by which it is bound, or (iii) any Applicable Laws;
 - (f) this Agreement has been validly executed and delivered by the Vendor and is a valid and legally binding obligation of the Vendor enforceable against the Vendor in accordance with its terms, subject to the limitations

with respect to enforcement imposed by Applicable Laws in connection with bankruptcy, insolvency, liquidation, reorganization or other laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available in the discretion of the court from which they are sought.

4.2 The Purchaser warrants and represents to the Vendor that:

- (a) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement;
- (b) the execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Purchaser and the consummation of the transactions contemplated by this Agreement by the Purchaser will be duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) neither the entering into nor the delivery of this Agreement nor the completion by the Purchaser of the transactions contemplated hereby will conflict with, or constitute a material default under, or result in a material violation of (i) any of the provisions of the constating documents or by-laws of the Purchaser, or (ii) any agreement to which the Purchaser is a party or by which it is bound, or (iii) any Applicable Laws;
- (d) this Agreement has been validly executed and delivered by the Purchaser and is a valid and legally binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, subject to the limitations with respect to enforcement imposed by Applicable Laws in connection with bankruptcy, insolvency, liquidation, reorganization or other laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies such as specific performance and injunction which are only available in the discretion of the court from which they are sought;
- (e) the Purchaser (i) is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act (Canada)* or the *Winding-up and Restructuring Act (Canada)*, (ii) has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, (iii) has not had any petition for a receiving order presented in respect of it, and (iv) has not initiated proceedings with respect to a

compromise or arrangement with its creditors or for its winding up, liquidation or dissolution;

- (f) the Purchaser is or will become a GST registrant under the *Excise Tax Act* (Canada) on or before the Phase 1 Closing Date.

5. **COVENANTS**

5.1 The Vendor covenants to and agrees with the Purchaser that:

- (a) at Closing no Person will be entitled to claim a lien under the Construction Lien Act against the Property or any part thereof save and except for any such lien arising as a result of the Purchaser's activities at the Property;
- (b) the Vendor shall deliver vacant possession of the Property to Purchaser on Closing
- (c) the Vendor will maintain the Property and the Buildings on the Phase 3 Lands as would a prudent owner prior to the Phase 3 Closing Date;
- (d) the Vendor will be responsible for the completion of any environmental remediation required for the Property to permit the development of the Project and to cause to be completed and filed a Record of Site Condition in respect of the Property. The Purchaser agrees to complete the remedial work required at the cost of the Vendor which cost will exclude normal excavation costs, tipping fees, and other costs which the Purchaser would normally incur in connection with the development of the Project. The Vendor may elect to complete the remedial work on its own behalf.
- (e) no development charges shall be payable by the Purchaser to the Vendor in connection with the development of the Project;
- (f) if development charges are imposed by the Region of Waterloo, the Vendor shall make submissions on behalf of the Purchaser that development charges not be imposed but without any guarantee of success;
- (g) no cash-in-lieu of parkland shall be payable in connection with the development of the Project;
- (h) prior to the transfer of title to the Property to the Purchaser, the Vendor shall permit the Purchaser to erect and maintain a temporary sales office pavilion and related parking along the King Street West frontage of the Property. The precise location of the temporary sales office and related

parking shall be mutually agreed upon between the parties acting reasonably. No additional payment shall be required to be made by the Purchaser to the Vendor in connection with the same. There shall be no direct cost to the Vendor for the construction of the sales pavilion. The Purchaser shall assume all risk associated with the construction and maintenance of the sales pavilion including, if requested, providing evidence of comprehensive liability insurance naming the Vendor as an additional named insured;

- (i) the Vendor will, in its capacity as Vendor, continue to assist the Purchaser in pursuing the approvals for development of the Project which may include, but are not limited to, site plan approval and any required minor variances. The Vendor further agrees that any application and/or permit fees payable by the Purchaser in connection with the obtaining of the requisite planning approvals for development of the Project shall be refunded to the Purchaser in accordance with the Vendor's policy in place at the time of execution of the Development Agreement between the parties hereto;
- (j) the Purchaser and its employees, agents, contractors and consultants shall, upon reasonable notice to the Vendor, have the right to enter upon Centre Block for the purpose of conducting such tests or investigations as the Purchaser may require or deem appropriate and shall for such purposes be permitted to make excavations, drillings, surveys, and take samples of the soils or other materials or substances located on Centre Block (collectively the "Investigations"). The Purchaser agrees that it shall, to the extent practicable and if required by the Vendor, restore Centre Block to the condition existing prior to the Investigations. The Purchaser shall accept sole responsibility for and pay all costs commissioned and authorized by the Purchaser with respect to the Investigations. The Purchaser shall indemnify the Vendor from and against all claims for unpaid costs incurred by the Purchaser and from and against any damage caused to Centre Block in this regard.
- (k) the Purchaser shall have the right to apply for all necessary rezoning, site plan approval and any other regulatory permits and approvals, for the Project. The Purchaser shall also have the right to make an application to have the title to Centre Block or the Lands converted from Land Titles Conversion Qualified to Land Titles Absolute (the "Conversion Application"). The Vendors shall co-operate with the Purchaser in the Conversion Application and the Purchaser's applications for rezoning and other required permits and approvals and shall execute and deliver all documents required in connection therewith on an immediate timely basis,

at no cost to the Purchaser. During the period that this Agreement is in effect, the Vendor hereby irrevocably appoints the Purchaser, or its duly authorized representatives, as its agent to make any and all submissions, applications and/or representations in respect of the Purchaser's proposed use of the Property for the Project to any Authority.

- (l) The Vendor will execute and deliver to any Authority and all utilities and other service providers, all development, collateral, site plan and other agreements and easements that may be required in connection with the Project on an immediate timely basis, at no cost to the Purchaser.

5.2 The Purchaser covenants to and agrees with the Vendor that:

- (a) the Purchaser shall in good faith use its reasonable commercial efforts to satisfy all of the conditions set out in Sections 6.2, 6.3 and 6.4 hereof respectively as soon as possible with respect to each Phase but in any event on or before the Phase 1 Closing Date, Phase 2 Closing Date and Phase 3 Closing Date respectively;
- (b) the Purchaser shall prepare or cause to be prepared in a timely manner at its own expense such reference plan or plans as may be necessary to separately describe the Phase 1 Lands, the Phase 2 Lands, the Phase 3 Lands, the Phase 1 City Lands, the Phase 2 City Lands and the easements contemplated by the Phase 1 ECS Agreement and the Phase 2 ECS Agreement (the "City Block Reference Plan") and to ensure that same, subject to the Vendor's prior written approval contemplated by Section 6.2(l) hereof, is registered prior to the Phase 1 Closing Date;
- (c) on or before the Phase 1 Closing Date or the Phase 2 Closing, as applicable, the Purchaser shall deliver to the Vendor all architects', engineers' and surveyors' certificates required pursuant to the Phase 1 ECS Agreement or the Phase 2 ECS Agreement as the case may be.

6. **CONDITIONS**

Vendor's Conditions

- 6.1 Each condition contained in Sections 6.2, 6.3 and 6.4 has been included for the Vendor's exclusive benefit and may be waived in full or in part by the Vendor such waiver to be binding upon the Vendor only if in writing and signed by either the Vendor or by its solicitors on its behalf.
- 6.2 The Vendor shall not be obligated to complete the sale of the Phase 1 Property on the Phase 1 Closing Date unless each of the following conditions as

applicable to the Phase 1 Property shall then have been fulfilled and complied with:

- (a) the Purchaser shall have caused the Architect to have prepared the Plans and Specifications for the Phase 1 Project in accordance with the terms and conditions of the Development Agreement and the Vendor, acting reasonably, shall have approved same in writing (except for any amendments thereto which may be required in the course of the development, which amendments shall be subject to the consent of both the Vendor and the Purchaser, acting reasonably);
- (b) the Purchaser shall have obtained all required governmental approvals (excluding demolition and building permits) and entered into all required agreements, in order to permit the construction of the Phase 1 Project in accordance with the Plans and Specifications as approved by the Vendor. Without limiting the generality of the foregoing, the Purchaser shall have:
 - (i) obtained all required amendments to the Official Plan of the City of Kitchener and the applicable zoning by-laws as may be required to permit the Phase 1 Project in accordance with the Plans and Specifications with all such amendments having become final and binding with any appeal periods having expired without any such appeal having been taken or all appeals having been taken and final decisions therefor having been rendered with no further right of appeal;
 - (ii) obtained site plan approval in respect of the Phase 1 Project in accordance with the Planning Act (Ontario); and
 - (iii) executed and delivered to the City of Kitchener and all other Authorities having jurisdiction and all utilities and other service providers, all development, collateral, site plan and other agreements and easements that may be required in connection with the Phase 1 Project;
- (c) the Purchaser shall have obtained all required demolition and building permits from the City to permit the Purchaser to Commence Construction of the Phase 1 Project;
- (d) the Vendor is satisfied, acting reasonably, that the Purchaser has arranged a Construction Mortgage sufficient to pay for the development and construction in connection with the Phase 1 Project and that all conditions precedent to the advance of funds required to Commence Construction in respect of such Phase have been satisfied;

- (e) the Purchaser has achieved that percentage of sales of residential condominium units within the Phase 1 Project sufficient to satisfy any precondition to the advance of funds as required by the Construction Mortgagee pursuant to the terms of its commitment letter;
- (f) on the Phase 1 Closing Date, all the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser in respect of the acquisition and sale of the Phase 1 Property shall have been complied with or performed in all respects on or before the times contemplated in this Agreement;
- (g) on the Phase 1 Closing Date, the representations and warranties of the Purchaser set out in Section 4.2 hereof in respect of the acquisition and sale of the Phase 1 Property shall be true and accurate in all respects and the Purchaser shall have delivered to the Vendor a certificate of the Purchaser executed by a senior officer of the Purchaser (without personal liability) dated the Phase 1 Closing Date to this effect;
- (h) on or before the Phase 1 Closing Date, the Purchaser and the Vendor shall have settled the Phase 1 ECS Agreement and the form of the easements to be registered pursuant thereto, the Purchaser shall have provided an agreement by its Construction Mortgagee as contemplated thereby and notice of the said agreement and the easements contemplated thereby shall have been registered contemporaneously with the Phase 1 Closing Date in priority to all mortgages, liens or encumbrances of the Phase 1 Property save and except for the Permitted Encumbrances;
- (i) on or before the Phase 1 Closing Date, the Vendor and the Purchaser shall have both executed and delivered the Development Agreement and there shall be no default by the Purchaser thereunder, as Developer, which is or which by passage of time could become an Event of Default pursuant thereto;
- (j) on or before the Phase 1 Closing Date, the Vendor and the Purchaser or a Related Person shall have both executed and delivered the Phase 1 Construction Contract and there shall be no default by the contractor thereunder;
- (k) on or before the Phase 1 Closing Date, the Purchaser shall have obtained the Vendor's prior written approval (which approval shall not be unreasonably withheld or delayed) to the final form of the Centre Block Reference Plan and shall have deposited same against title to Centre Block.

- 6.3 The Vendor shall not be obligated to complete the sale of the Phase 2 Property on the Phase 2 Closing Date unless each of the following conditions as applicable to the Phase 2 Property shall then have been fulfilled and complied with:
- (a) the Purchaser shall have caused the Architect to have prepared the Plans and Specifications for the Phase 2 Project in accordance with the terms and conditions of the Development Agreement and the Vendor, acting reasonably, shall have approved same in writing (except for any amendments thereto which may be required in the course of the development, which amendments shall be subject to the consent of both the Vendor and the Purchaser, acting reasonably);
 - (b) the Purchaser shall have obtained all required governmental approvals (excluding demolition and building permits) and entered into all required agreements, in order to permit the construction of the Phase 2 Project in accordance with the Plans and Specifications as approved by the Vendor. Without limiting the generality of the foregoing, the Purchaser shall have:
 - (i) obtained all required amendments to the Official Plan of the City of Kitchener and the applicable zoning by-laws as may be required to permit the Phase 2 Project in accordance with the Plans and Specifications with all such amendments having become final and binding with any appeal periods having expired without any such appeal having been taken or all appeals having been taken and final decisions therefor having been rendered with no further right of appeal;
 - (ii) obtained site plan approval in respect of the Phase 2 Project in accordance with the Planning Act (Ontario); and
 - (iii) executed and delivered to the City of Kitchener and all other Authorities having jurisdiction and all utilities and other service providers, all development, collateral, site plan and other agreements and events that may be required in connection with the Phase 2 Project;
 - (c) the Purchaser shall have obtained all required demolition and building permits from the City to permit the Purchaser to Commence Construction of the Phase 2 Project;
 - (d) the Vendor is satisfied, acting reasonably, that the Purchaser has arranged a Construction Mortgage sufficient to pay for the development and construction in connection with the Phase 2 Project and that all

conditions precedent to the advance of funds required to Commence Construction in respect of such Phase have been satisfied;

- (e) the Purchaser has achieved that percentage of sales of residential condominium units within the Phase 2 Project sufficient to satisfy any precondition to the advance of funds as required by the Construction Mortgagee pursuant to the terms of its commitment letter;
- (f) on the Phase 2 Closing Date, all the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser in respect of the acquisition and sale of the Phase 2 Property shall have been complied with or performed in all respects on or before the times contemplated in this Agreement;
- (g) on the Phase 2 Closing Date, the representations and warranties of the Purchaser set out in Section 4.2 hereof in respect of the acquisition and sale of the Phase 2 Property shall be true and accurate in all respects and the Purchaser shall have delivered to the Vendor a certificate of the Purchaser executed by a senior officer of the Purchaser (without personal liability) dated the Phase 2 Closing Date to this effect;
- (h) on or before the Phase 2 Closing Date, the Purchaser and the Vendor shall have settled the Phase 2 ECS Agreement and the form of the easements to be registered pursuant thereto, the Purchaser shall have provided an agreement by its construction lender as contemplated thereby and notice of the said agreement and the easements contemplated thereby shall have been registered contemporaneously with the Phase 2 Closing Date in priority to all mortgages, liens or encumbrances of the Phase 2 Property save and except for the Permitted Encumbrances;
- (i) the acquisition and sale of the Phase 1 Property has been completed on the Phase 1 Closing Date or such other date as the parties hereto shall have agreed to in writing;
- (j) the Commencement of Construction in respect of the Phase 1 Project occurred on or before the third anniversary of the Effective Date or such other date as the parties to the Development Agreement have agreed to in writing;
- (k) on or before the Phase 2 Closing Date, the Vendor and the Purchaser or a Related Person shall have both executed and delivered the Phase 2 Construction Contract and there shall be no default by the contractor thereunder.

- (l) on or before the Phase 2 Closing Date, the Purchaser shall have delivered to the Vendor the letter of credit contemplated by subsection 2.4(c) hereof.

6.4 The Vendor shall not be obligated to complete the sale of the Phase 3 Property on the Phase 3 Closing Date unless each of the following conditions as applicable to the Phase 3 Property shall then have been fulfilled and complied with:

- (a) the Purchaser shall have caused the Architect to have prepared the Plans and Specifications for the Phase 3 Project in accordance with the terms and conditions of the Development Agreement and the Vendor, acting reasonably, shall have approved same in writing (except for any amendments thereto which may be required in the course of the development, which amendments shall be subject to the consent of both the Vendor and the Purchaser, acting reasonably);
- (b) the Purchaser shall have obtained all required governmental approvals (excluding demolition and building permits) and entered into all required agreements, in order to permit the construction of the Phase 3 Project in accordance with the Plans and Specifications as approved by the Vendor. Without limiting the generality of the foregoing, the Purchaser shall have:
 - (i) obtained all required amendments to the Official Plan of the City of Kitchener and the applicable zoning by-laws as may be required to permit the Phase 3 Project in accordance with the Plans and Specifications with all such amendments having become final and binding with any appeal periods having expired without any such appeal having been taken or all appeals having been taken and final decisions therefor having been rendered with no further right of appeal;
 - (ii) obtained site plan approval in respect of the Phase 3 Project in accordance with the Planning Act (Ontario); and
 - (iii) executed and delivered to the City of Kitchener and all other Authorities having jurisdiction and all utilities and other service providers, all development, collateral, site plan and other agreements and easements that may be required in connection with the Phase 3 Project;

- (c) the Purchaser shall have obtained all required demolition and building permits from the City to permit the Purchaser to Commence Construction of the Phase 3 Project;
- (d) the Vendor is satisfied, acting reasonably, that the Purchaser has arranged a Construction Mortgage sufficient to pay for the development and construction in connection with the Phase 3 Project and that all conditions precedent to the advance of funds required to Commence Construction in respect of such Phase have been satisfied;
- (e) on the Phase 3 Closing Date, all the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser in respect of the acquisition and sale of the Phase 3 Property shall have been complied with or performed in all respects on or before the times contemplated in this Agreement;
- (f) on the Phase 3 Closing Date, the representations and warranties of the Purchaser set out in Section 4.2 hereof in respect of the acquisition and sale of the Phase 3 Property shall be true and accurate in all respects and the Purchaser shall have delivered to the Vendor a certificate of the Purchaser executed by a senior officer of the Purchaser (without personal liability) dated the Phase 3 Closing Date to this effect;
- (g) the acquisition and sale of the Phase 1 Property has been completed on the Phase 1 Closing Date or such other date as the parties hereto shall have agreed;
- (h) the Commencement of Construction in respect of the Phase 1 Project occurred on or before the third anniversary of the Effective Date or such other date as the parties to the Development Agreement shall have agreed to in writing;
- (i) the acquisition and sale of the Phase 2 Property has been completed on the Phase 2 Closing Date or such other date as the parties hereto shall have agreed in writing;
- (j) the Commencement of Construction in respect of the Phase 2 Project occurred on or before the fifth anniversary of the Effective Date or such other date as the parties to the Development Agreement shall have agreed to in writing.

Purchaser's Conditions

- 6.5 Each condition contained in Section 6.6, and 6.7 has been included for the Purchaser's exclusive benefit and may be waived in full or in part by the

Purchaser such waiver to be binding upon the Vendor only if in writing and signed by either the Purchaser or by its solicitors on its behalf.

- 6.6 The Purchaser shall not be obligated to complete the purchase of the Phase 1 Property on the Phase 1 Closing Date unless each of the following conditions as applicable to the Phase 1 Property shall then have been fulfilled and complied with:
- (a) the Vendor, acting reasonably, having regard to its interest as set out in this Agreement and any other agreement contemplated hereby shall have approved the Plans and Specifications for the Phase 1 Project (except for any amendments thereto which may be required in the course of the development, which amendments shall be subject to the consent of both the Vendor and the Purchaser, acting reasonably having regard to their respective interests as set out in this Agreement and any other agreement contemplated hereby);
 - (b) the Purchaser shall have obtained all required governmental approvals (excluding demolition and building permits) and all required agreements shall have been entered into by the Vendor and/or the Purchaser, as the case may be, in order to permit the construction of the Phase 1 Project in accordance with the Plans and Specifications as approved by the Vendor. Without limiting the generality of the foregoing:
 - (i) the Purchaser shall have obtained all required amendments to the Official Plan of the City of Kitchener and the applicable zoning by-laws as may be required to permit the development of the Phase 1 Lands and the Phase 2 Lands for not less than three hundred and eighty-five (385) residential units and to permit the Phase 1 Project in accordance with the Plans and Specifications with all such amendments having become final and binding with any appeal periods having expired without any such appeal having been taken or all appeals having been taken and final decisions therefor having been rendered with no further right of appeal;
 - (ii) the Purchaser shall have obtained site plan approval in respect of the Phase 1 Project in accordance with the Planning Act (Ontario); and
 - (iii) the Purchaser and/or the Vendor, as the case may be, shall have executed and delivered to the City of Kitchener and all other Authorities having jurisdiction and all utilities and other service providers, all development, collateral, site plan and other

agreements and easements that may be required in connection with the Phase 1 Project;

- (c) the Purchaser shall have obtained all required demolition and building permits from the City to permit the Purchaser to Commence Construction of the Phase 1 Project;
- (d) the Purchaser shall have arranged a Construction Mortgage sufficient to pay for the development and construction in connection with the Phase 1 Project on terms and conditions satisfactory to the Purchaser acting reasonably and that all conditions precedent to the advance of funds required to Commence Construction in respect of such Phase have been satisfied;
- (e) on the Phase 1 Closing Date, all the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor in respect of the acquisition and sale of the Phase 1 Property shall have been complied with or performed in all respects on or before the times contemplated in this Agreement;
- (f) on the Phase 1 Closing Date, the representations and warranties of the Vendor set out in Section 4.1 hereof in respect of the acquisition and sale of the Phase 1 Property shall be true and accurate in all respects and the Vendor shall have delivered to the Purchaser a certificate of the Vendor executed by a senior officer of the Vendor (without personal liability) dated the Phase 1 Closing Date to this effect;
- (g) on or before the Phase 1 Closing Date, the Purchaser and the Vendor shall have settled the Phase 1 ECS Agreement and the form of the easements to be registered pursuant thereto, the Vendor shall have provided an agreement by its mortgagee as contemplated thereby and notice of the said agreement and the easements contemplated thereby shall have been registered contemporaneously with the Phase 1 Closing Date in priority to all mortgages, liens or encumbrances of the City Lands;
- (h) on or before the Phase 1 Closing Date, the Vendor and the Purchaser shall have both executed and delivered the Development Agreement and there shall be no default by the Purchaser thereunder, as Developer, which is or which by passage of time could become an Event of Default pursuant thereto;
- (i) on or before the Phase 1 Closing Date, the Vendor and the Purchaser or a Related Person shall have both executed and delivered the Phase 1 Construction Contract and there shall be no default by the contractor thereunder;

- (j) on or before the Phase 1 Closing Date, the Purchaser shall have obtained the Vendor's prior written approval (which approval shall not be unreasonably withheld or delayed) to the final form of the Centre Block Reference Plan and shall have deposited same against title to Centre Block.

6.7 The Purchaser shall not be obligated to complete the purchase of the Phase 2 Property on the Phase 2 Closing Date unless each of the following conditions as applicable to the Phase 2 Property shall then have been fulfilled and complied with:

- (a) the Vendor, acting reasonably, shall have approved the Plans and Specifications for the Phase 2 Project in writing (except for any amendments thereto which may be required in the course of the development, which amendments shall be subject to the consent of both the Vendor and the Purchaser, acting reasonably);
- (b) the Purchaser shall have obtained all required governmental approvals (excluding demolition and building permits) and entered into all required agreements, in order to permit the construction of the Phase 2 Project in accordance with the Plans and Specifications as approved by the Vendor. Without limiting the generality of the foregoing:
 - (i) the Purchaser shall have obtained all required amendments to the Official Plan of the City of Kitchener and the applicable zoning by-laws as may be required to permit the development of the Phase 1 Lands and the Phase 2 Lands for not less than three hundred and eighty-five (385) residential units and permit the Phase 2 Project in accordance with the Plans and Specifications with all such amendments having become final and binding with any appeal periods having expired without any such appeal having been taken or all appeals having been taken and final decisions therefor having been rendered with no further right of appeal;
 - (ii) the Purchaser shall have obtained site plan approval in respect of the Phase 2 Project in accordance with the Planning Act (Ontario); and
 - (iii) the Purchaser and/or the Vendor, as the case may be, shall have executed and delivered to the City of Kitchener and all other Authorities having jurisdiction and all utilities and other service providers, all development, collateral, site plan and other agreements and events that may be required in connection with the Phase 2 Project;

- (c) the Purchaser shall have obtained all required demolition and building permits from the City to permit the Purchaser to Commence Construction of the Phase 2 Project;
- (d) the Purchaser shall have arranged a Construction Mortgage sufficient to pay for the development and construction in connection with the Phase 2 Project on terms and conditions satisfactory to the Purchaser acting reasonably and that all conditions precedent to the advance of funds required to Commence Construction in respect of such Phase have been satisfied;
- (e) on the Phase 2 Closing Date, all the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor in respect of the acquisition and sale of the Phase 2 Property shall have been complied with or performed in all respects on or before the times contemplated in this Agreement;
- (f) on the Phase 2 Closing Date, the representations and warranties of the Vendor set out in Section 4.1 hereof in respect of the acquisition and sale of the Phase 2 Property shall be true and accurate in all respects and the Vendor shall have delivered to the Purchaser a certificate of the Vendor executed by a senior officer of the Vendor (without personal liability) dated the Phase 2 Closing Date to this effect;
- (g) on or before the Phase 2 Closing Date, the Purchaser and the Vendor shall have settled the Phase 2 ECS Agreement and the form of the easements to be registered pursuant thereto, the Vendor shall have provided an agreement by its mortgagee as contemplated thereby and notice of the said agreement and the easements contemplated thereby shall have been registered contemporaneously with the Phase 2 Closing Date in priority to all mortgages, liens or encumbrances on the City Lands;
- (h) the acquisition and sale of the Phase 1 Property has been completed on the Phase 1 Closing Date or such other date as the parties hereto shall have agreed to in writing;
- (i) on or before the Phase 2 Closing Date, the Vendor and the Purchaser or a Related Person shall have both executed and delivered the Phase 2 Construction Contract and there shall be no default by the contractor thereunder.

7. CLOSING DATE

- 7.1 The Phase 1 Closing Date shall occur on the earlier of: (i) the first business day which is 30 days next following the last day of satisfaction or waiver of all of the conditions set out in Section 6.2 and Section 6.6 hereof; and (ii) the date that is the third anniversary of the Effective Date.
- 7.2 The Phase 2 Closing Date shall occur on the earlier of: (i) the first business day which is 30 days next following the last day of satisfaction or waiver of all of the conditions set out in Section 6.3 and Section 6.7 hereof; and (ii) the date that is the fifth anniversary of the Effective Date.
- 7.3 The Phase 3 Closing Date shall occur on the earlier of (i) the first business day which is 30 days next following the last day of satisfaction or waiver of all of the conditions set out in Section 6.4 hereof; and (ii) the date that is the sixth anniversary of the Effective Date.

8. CLOSING DOCUMENTS

- 8.1 All documents to be delivered by the Vendor to the Purchaser on Closing shall be in form and substance satisfactory to the Purchaser's solicitors acting reasonably. All documents to be delivered by the Purchaser to the Vendor on Closing shall be in a form and substance satisfactory to the Vendor's solicitors acting reasonably.
- 8.2 The cost of registering the conveyance of title to each Phase shall be at the Purchaser's expense. Each party shall pay the fees of its own solicitors.
- 8.3 The Vendor agrees to deliver the following to the Purchaser on or before Closing with respect to each Phase:
- (a) a registerable Transfer of all of the right, title and interest of the Vendor in and to the Phase;
 - (b) all available duplicate keys and master keys in the Vendor's possession for all locks contained in the Buildings situate within the Phase;
 - (c) a certificate of a senior officer of the Vendor that (i) the warranties and representations of the Vendor contained in this Agreement with respect to each Phase are true and effective at Closing, (ii) it acknowledges that the Purchaser relied upon such warranties and representations in completing this transaction, and (iii) such warranties and representations shall not merge on but shall survive the Closing in respect of such Phase for a

period one (1) year following the Closing (save with respect to any claim made by the Purchaser to the Vendor in writing on or before such date);

- (d) the Phase 1 ECS Agreement or the Phase 2 ECS Agreement, as the case may be;
- (e) the easements contemplated by the Phase 1 ECS Agreement or the Phase 2 ECS Agreement, as the case may be;
- (f) an undertaking by the Vendor to readjust the adjustments contemplated in Section 10.1;
- (g) the Development Agreement;
- (h) the Phase 1 Construction Contract or the Phase 2 Construction Contract, as the case may be; and
- (i) such further documentation relating to the completion of the transaction contemplated by this Agreement as the Purchaser may reasonably require.

8.4 The Purchaser agrees to deliver the following to the Vendor on or before Closing with respect to each Phase:

- (a) the Phase 1 ECS Agreement or the Phase 2 ECS Agreement, as the case may be;
- (b) the easements contemplated by the Phase 1 ECS Agreement or the Phase 2 ECS Agreement, as the case may be;
- (c) the certificate of a senior officer of the Purchaser contemplated by subsection 6.2(g), 6.3(g) or 6.4(f), as the case may be;
- (d) the undertaking by the Purchaser to readjust the adjustments as contemplated in Section 10.1;
- (e) the agreement from the Purchaser's construction lender as contemplated by the Phase 1 ECS Agreement or the Phase 2 ECS Agreement, as the case may be;
- (f) the statutory declaration and indemnity respecting goods and services tax contemplated by Section 8.5 of the Agreement;
- (g) the architects', engineers' and surveyors' certificates contemplated by subsection 5.2(c) of this Agreement;
- (h) the letter of credit contemplated by subsection 2.4(c) hereof;

- (i) the Development Agreement;
- (j) the Phase 1 Construction Contract or the Phase 2 Construction Contract, as the case may be; and
- (k) such further documentation relating to the completion of the transaction contemplated by this Agreement as the Vendor may reasonably require.

8.5 The Purchaser agrees to pay to the Vendor on closing all Goods and Services Tax ("GST") exigible on the purchase price herein. In the alternative, the Purchaser shall provide to the Vendor on or before closing, a statutory declaration of its authorized signing officer that the Purchaser is registered under Subdivision d of Division V of Part IX of the Excise Tax Act for the purposes of collecting and remitting GST, together with an indemnity in favour of the Vendor for any costs or expenses payable by the Vendor as a result of the Vendor's failure to collect GST from the Purchaser on Closing; such statutory declaration and indemnity to be in a form satisfactory to the Vendor's solicitor acting reasonably and shall include the registration number of the proposed transferee.

9. TITLE

9.1 The Purchaser is to be allowed until thirty (30) days prior to the Phase 1 Closing Date in which to examine the Vendor's title to the Lands at its own expense and if within that time any valid objection to title is made in writing to the Vendor which the Vendor shall be unwilling or unable to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations with respect to such objections be null and void and the deposit inclusive of accrued interest thereon if any shall be returned immediately to the Purchaser without deduction and neither party shall have any further rights or obligations hereunder. Notwithstanding the period of time limited in this Article for the examination of title, the Purchaser's right to make further requisitions on title and submit any valid objections with respect to title to any portion of the Lands is reserved if any document is registered against title to such Phase after the date for submission of requisitions as aforesaid but before the Closing for such Phase.

9.2 The Vendor's title to the Property shall be a good and marketable fee simple title and free from all liens, encumbrances, encroachments, restrictions and interests whatsoever save and except the Permitted Encumbrances. The Purchaser shall not call for the production of any title deed, abstract of title or other evidence of title other than such as may be in the Vendor's possession or under evidence of title other than such as may be in the Vendor's possession or under its control or as may be expressly provided for in this Agreement.

- 9.3 This Agreement is entered into subject to the express condition that it is to be effective only if the subdivision control provisions of the Planning Act (Ontario) are complied with.

10. ADJUSTMENTS

- 10.1 Realty taxes shall be adjusted in accordance with the usual practice as of the Closing of each Phase. Local improvement rates and charges shall be commuted and prepaid by the Vendor. If on Closing, there are any items in respect of which adjustments cannot finally be made until a later date, adjustments in respect of such items shall be made on an estimated basis on Closing of each Phase, and the Vendor and the Purchaser shall exchange written undertakings to readjust such items as soon as the required information necessary to make such adjustments is available, but in any event not later than sixty (60) days following the Closing of each Phase.
- 10.2 The Vendor shall cancel its existing insurance coverage in respect of each Phase effective as of the Closing Date for such Phase and the Purchaser shall insure each Phase from and after the Closing Date in respect of such Phase in accordance with the Development Agreement.

11. GENERAL

- 11.1 The Buildings situate on or within any Phase shall be and remain at the Vendor's risk until the Closing Date in respect of such Phase and the Vendor shall hold all fire insurance policies and the proceeds thereof in trust for the Vendor only pending such Closing. If the Buildings situate on or within any Phase are damaged on or before the Closing Date in respect of such Phase, then this transaction of purchase and sale shall be completed as herein required and the Vendor shall be entitled to receive the insurance proceeds, if any, payable in respect thereto.
- 11.2 Time shall in all respects be of the essence of this Agreement.
- 11.3 All schedules annexed or to be annexed to this Agreement shall have the same force and effect as if the information contained therein was included in the body of this Agreement.
- 11.4 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 11.5 Any heading, subheading or marginal note contained in this Agreement and the table of contents, if any, preceding this Agreement are inserted for convenience

and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.

- 11.6 The parties' representations, warranties, covenants and agreements contained in this Agreement shall not merge on but shall survive the Closing.
- 11.7 The parties agree that there are no representations, warranties, covenants, agreements, collateral agreement or conditions affecting the Property or this Agreement other than as expressed in writing in this Agreement.
- 11.8 Any tender of documents or money pursuant to this Agreement may be made upon the solicitor acting for the party on whom tender is desired and it shall be sufficient that a negotiable certified cheque of a Canadian chartered bank is tendered instead of cash.
- 11.9 This Agreement shall be read with all changes of gender and number required by the context and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns.
- 11.10 This Agreement and the Purchaser's rights and obligations thereunder shall be assigned by the Purchaser only to a person who is an original party to the Development Agreement or to whom the Development Agreement is assigned in compliance with the provisions thereof providing the assignee shall have executed an assumption of this Agreement upon terms acceptable to the Vendor, acting reasonably.
- 11.11 This Agreement may be executed in any number of counterparts and all such counterparts shall for all purposes constitute one agreement, binding on the parties hereto, provided each party hereto has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart.
- 11.12 If electronic registration ("E-Reg") is mandatory in the Land Titles Office in which the Property is registered, the following provisions shall prevail, namely:
 - (a) the Purchaser's solicitor and the Vendor's solicitor shall each be obliged to be authorized E-Reg users and in good standing with the Law Society of Upper Canada, and are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on April 15, 2002 or any replacement thereof (hereinafter referred to as the "DRA"), establishing the procedures and timing for completing this transaction, which DRA shall be exchanged between the

Vendor's solicitor and the Purchaser's solicitor no later than three (3) days before the Closing Date in respect of each Phase;

- (b) the delivery and exchange of all closing deliveries hereunder and the release thereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any closing deliveries will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the DRA.
- (c) It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by either party (the "Tendering Party") upon the other party (the "Receiving Party") when the solicitor for the Tendering Party has completed, in addition to all other requirements to effect a valid tender in accordance with the provisions of this Agreement and the DRA, all steps required by E-Reg in order to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has, wherever possible, electronically "signed" the Transfer/Deed of Lands and all other instruments to be registered against title to the Property at the time of Closing for completeness and granted "access" to the Receiving Party's solicitor.

11.13 Any and all notice required to be given or as may be given hereunder shall be deemed sufficiently given or made and shall be deemed to have been received by the addressee (i) on the date of delivery if delivered personally to the address specified below or (ii) on the date of transmission if delivered by facsimile transmission or if such day is not a Business Day, on the next working day thereafter:

in the case of the Purchaser to:
195 County Court Boulevard, Suite 300
Brampton, Ontario L6W 4P7
Attention: Peter Smith
Fax No.: 905.450.7939

in the case of the Purchaser's solicitor to:
Davis Webb LLP
Suite 800
24 Queen St. E.
Brampton, ON L6V 1A3
Attention: Neil G. Davis

Fax No.: 905.454.1876

in the case of the Vendor to:
City Hall, P.O. Box 1118
200 King Street West
Kitchener, Ontario N2G 4G7
Attention: Lesley MacDonald
Fax: 519.741.2702

in the case of the Vendor's solicitor to:
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2
Attention: Kenneth J. Yolles
Fax No.: 416.644.9359

or such other address as the parties hereinafter may in writing advise.

IN WITNESS WHEREOF the parties have duly executed this Agreement this
_____ day of _____, 20____.

ANDRIN INVESTMENTS LIMITED

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

THE CORPORATION OF THE CITY OF
KITCHENER

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

SCHEDULE "A"
LEGAL DESCRIPTION OF THE PROPERTY

PIN # 22316-0113

Alley, Plan 362, Lots 1-3, and 7-8, Plan 362, Lot 5, North Side of King Street, Plan 401, Part Lot 3W, Plan 401, as in Instrument No. 1282803, Parts 1 & 2, Plan 58R-4454, Parts 4, 5, & 7, Plan 58R-1391, Part Lot 7, Between Young St. and Ontario St., Plan 401, Parts 1 – 5, Plan 58R-12515, together with

Instrument No. 1495049, except easement therein, re: Parts 3 & 4, Plan 58R-5636, subject to and together with Instrument No. 1495048, except easement therein, re: Parts 5 & 7, Plan 58R-4454, subject to and together with Instrument No. 1495053, Except Easement therein re: Parts 1 & 5, 58R-4454, subject to spousal interest in Instrument No. 898846, City of Kitchener, Regional Municipality of Waterloo,

PIN # 22316-0013

Part Lot 3W, Plan 401, Parts 5 & 6, Plan 58R-13462, subject to Instrument No. A72006, Kitchener, Regional Municipality of Waterloo,

This Schedule is subject to being further refined.

SCHEDULE "B"
PERMITTED ENCUMBRANCES

This Schedule will reflect any interests on title to be assumed by the Purchaser and is currently being assembled.