

This Agreement made in duplicate the ____ day of _____, 20__.

BETWEEN:

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

(the "City")

OF THE FIRST PART

and

(the "Purchaser")

OF THE SECOND PART

PURCHASE AGREEMENT

WHEREAS

- A. The City wishes to sell the property (the "Property"), legally described as:
 Lot _____
 Block _____
 Plan 4435
 Yellowknife;
- B. The City has adopted disposal By-law No. 4675;
- C. The Purchaser wishes to purchase the Property in accordance with the terms and conditions contained herein;

NOW THEREFORE, this agreement witnesses that for and in consideration of the purchase price and the mutual covenants and agreements herein contained, the parties hereby covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, the following words and phrases when capitalized shall have the following meanings:

- a) **“Closing Date”** means _____, 20__ (6 months from the date of execution of this Agreement), unless otherwise agreed to in writing by both parties;
- b) **“Purchase Price”** means the sum of _____, not including the applicable Goods and Services Tax, subject to adjustments as set out in this Agreement;
- c) **“Non-refundable Deposit”** means 15% of the Purchase Price;
- d) **“Balance of the Purchase Price”** means 85% of the Purchase Price more or less, subject to adjustments, if any, as set forth herein, not including the GST, payable on the Closing Date by certified cheque or solicitor’s trust cheque;
- e) **“Goods and Services Tax”** means the Goods and Services payable by the Purchaser to the City pursuant to the *Excise Tax Act* (5% of the Purchase Price), subject to the terms of this Agreement;
- f) **“Possession Date”** means the date of execution of this Agreement;
- g) **“Development”** means the carrying out of any construction or excavation or other operations in, on, over or under land, or the making of any change in the use or the intensity of use of any land or building;
- h) **“Permitted Uses”** means a use, listed in a permitted use table, that shall be approved with or without conditions provided the requirements and regulations of Zoning By-law No. 4404, as amended, are satisfied;
- i) **“Conditionally Permitted Use”** means a use listed, in a conditionally permitted use table, that may be permitted by Council after due consideration is given to the impact of that use upon neighboring land and other lands in the City, subject to Zoning By-law No. 4404, as amended;
- j) **“Approved Development Permit”** means a document authorizing a development issued pursuant to the City of Yellowknife Zoning By-law No. 4404, as amended;
- k) **“Permitted Encumbrances”** means those encumbrances described in Schedule “A” attached hereto including, without restriction, the caveat respecting the Option Agreement as contemplated within this Agreement; and
- l) **“Option Agreement”** means the agreement set forth in Schedule “B” attached hereto.

1.2 The captions and headings in this Agreement are for convenience and reference only and shall not be considered when interpreting the provisions of this Agreement. All references in this Agreement to Articles, Sections and Schedules refer to the corresponding Articles, Sections and Schedules of this Agreement.

- 1.3 All references to currency shall be in Canadian dollars.
- 1.4 Any reference in this Agreement to a statutory enactment of any Government Authority shall include all amendments thereto and substitutions therefore from time to time.
- 1.5 This Agreement shall be interpreted and enforced in accordance with the laws of the Northwest Territories.
- 1.6 In the event that the Closing Date or any other dates stipulated in this Agreement is not a Business Day, the said Closing Date or such other dates shall be deemed to be the next following Business Day.

2. PURCHASE AND SALE

2.1 The Purchaser hereby agrees to purchase the Property subject only to the Permitted Encumbrances, and free and clear of all tenancies, for the Purchase Price and the City hereby agrees to sell the Property to the Purchaser in accordance with the terms and conditions herein set out.

2.2 The Purchaser hereby agrees that the Property may be subject to drainage and electrical/utility easements granted for the provision of municipal and electrical services and that such easements will be evidenced by registration of a caveat or caveats against the title to the Property. The Purchaser further agrees and covenants with the City, in the event that title to the Property is transferred to the Purchaser before the said caveat or caveats are registered, to execute such other documents as may be necessary to permit registration of the said easements with the Land Titles Office in the Northwest Territories

2.3 The Purchase Price is _____ **DOLLARS (\$.)**, plus applicable Goods and Services Tax (GST), and shall be paid as follows:

a. Upon execution of this Agreement:

_____ **DOLLARS (\$.)** the Non-refundable Deposit on the ____ day of _____ 20__, the receipt of which the City hereby acknowledges;

b. Within six months of execution of this Agreement:

_____ **DOLLARS (\$.)** representing the Balance of the Purchase Price; and

c. Goods and Services Tax means the Goods and Services Tax in the amount of \$_____, payable on the Closing Date by certified cheque or solicitor's trust cheque.

2.4 To the extent that this transfer of Property between the Purchaser and the City is subject to GST, it is understood and agreed between the parties that:

- a. if the Purchaser is not a registrant, the Purchaser shall be required to pay applicable GST to the City on the Closing Date;
- b. if the Purchaser is a registrant, the Purchaser shall not be required to pay GST to the City provided the Purchaser provides the City with its GST number and a duly executed copy of the GST undertaking attached as Schedule "C" hereto.

In either case, the Purchaser shall do or cause to be done such further acts, and execute and deliver or cause to be executed and delivered such further documents, as may be required for the Purchaser to fully comply with the requirements of applicable GST legislation.

3. CONVEYANCING MATTERS

- 3.1 Vacant possession of the Property shall be given to the Purchaser at 12:00 o'clock noon on the Possession Date, but the Purchaser shall not be entitled to obtain title to the Property until the Balance of the Purchase Price for the Property has been paid in full. The Purchaser shall be responsible for the payment of all property taxes on the Property as of the Possession Date and the purchase price shall be subject to adjustment for property taxes, if any, on the Closing Date.
- 3.2 If the City agrees to accept late payment of the Balance of the Purchase Price, the Purchaser shall pay interest at **21.6%** per annum to the City calculated daily from and including the Closing Date to but excluding the day that the Balance of the Purchase Price is paid in full.
- 3.3 Upon being granted possession of the Property, the Purchaser shall assume all risks and liabilities with respect to the Property.
- 3.4 The City is not obliged to accept payment of the Balance of the Purchase Price after the Closing Date, but the City may agree to accept late payment, subject to reasonable trust conditions.
- 3.5 The City shall provide a registrable Transfer of Land to the Purchaser when the Balance of the Purchase Price has been paid in full on reasonable trust conditions which will allow the transaction to close in accordance with the terms hereof, including the requirement to register the City's caveat or caveats respecting the Option Agreement.
- 3.6 In the event that the City fails to perform its obligations hereunder, the Purchaser's deposits shall forthwith be releasable to the Purchaser without interest. In the event that the Purchaser fails to perform its obligations hereunder, the City shall be entitled to retain the Purchaser's deposits as being automatically forfeited to the City on account of liquidated damages without prejudice to the City's ability to enforce any rights or remedies which the City may have under this Agreement, in law or in equity.

4. CONDITIONS OF THE PROPERTY

4.1 For the purposes of this Agreement, the parties agree that the Property is sold in an “**as is condition**” and the City makes no warranty or representation as to the developability of the Property, nor with respect to any soil conditions or other geotechnical considerations or services available to the Property, and the Purchaser further acknowledges that the Purchaser has inspected the Property and is aware of all physical and legal aspects pertaining to the Property, and that this agreement contains the entire agreement between the parties and cannot be modified in any way except by further agreement in writing, signed by each of the parties hereto.

5. IMPROVEMENTS TO THE LAND

5.1 The City and the Purchaser agree that the Purchase Price for the Property includes the following:

- a. Primary electrical power utilities (mains) adjacent to the Property; and
- b. The construction of a public road and storm drainage ditch adjacent the road where applicable. The Purchaser acknowledges that the decision whether and when to pave the road or to complete construction of any of the curbs, gutters or sidewalks shall be at the City’s sole discretion.

5.3 The City and the Purchaser agree that development of the Property access and installation of driveway culverts shall be the responsibility and at the sole cost of the Purchaser and shall form part of the Development Permit Application submission by the Purchaser. Culverts and site access shall be installed in accordance with the City of Yellowknife standards and be approved by the Department of Public Works prior to installation.

5.4 The City and the Purchaser agree that the Purchase Price for the Property does not include the following:

- a. The cost of trucked water and sewer services or electrical and cable services from the electrical mains to the Property or to any proposed buildings;
- b. Any cost associated with stripping, grading, drainage, landscaping or site finishing from subgrade to final grade that the City may require the Purchaser to do or that the Purchaser may determine to be necessary to facilitate its development.

6. DEVELOPMENT REQUIREMENTS AND OPTION

6.1 The Purchaser acknowledges that the City has only agreed to sell the Property because of the Purchaser’s expressed intention to construct its development thereon. Without a commitment to construct, the City would not sell the Property to the Purchaser. It is therefore a Condition Precedent of this Agreement and a fundamental obligation of the

- Purchaser to ensure that the development is built within the time stated and in compliance with the conditions of this Agreement and with the development standards, policies and by-laws of the City. The covenant of the Purchaser to so develop is a fundamental term of this agreement running with the Property in favour of the City and shall not merge on transfer of title.
- 6.2 The Purchaser covenants to obtain an **Approved Development Permit** for a *Permitted Use or Conditionally Permitted Use*, for KL – Kam Lake Light Industrial/Commercial Mix, on the Property **within twelve (12) months of the Possession Date**.
- 6.3 The Purchaser covenants to **complete construction of the development** on the Property within **twenty-four (24) months from the Possession Date**. The Purchaser further acknowledges, covenants, and agrees that if the Purchaser fails to satisfy this requirement, the City shall have the option to repurchase the Property in accordance with the Option Agreement attached hereto as Schedule “B”. Concurrently with this Agreement, the Purchaser shall execute and deliver the Option Agreement to the City and the City shall be entitled to register the Option Agreement against title to the Property by way of caveat.
- 6.4 Should any dispute arise as to whether the City is entitled to exercise the option to repurchase the Property granted hereunder, the Council for the City of Yellowknife may appoint a single Arbitrator to whom all questions of fact shall be referred for determination. The decisions of the Arbitrator shall be final and binding. Except as provided herein, the provisions of the *Arbitration Act* of the Northwest Territories shall apply.
- 6.5 In addition, the Purchaser covenants and agrees that it shall not sell, transfer, or lease the Property to any third party without first commencing and completing the construction of the Development in accordance with all applicable building permits, development permits, development agreements, by-laws, regulations, building and safety codes, and restrictions affecting the Property and the Development. The Purchaser further acknowledges that the City shall also have the option to repurchase the Property in accordance with the Option Agreement attached hereto as Schedule “B” in the event that the Purchaser sells, transfers or leases or purports to sell, transfer or lease, the Property prior to commencement and completion of the Development as required within this Agreement.
- 6.6 Notwithstanding anything contained in this agreement, if the Purchaser is not able to obtain an Approved Development Permit for its intended development, this agreement shall be terminated and all deposit monies paid by the Purchaser to the City shall be forfeited absolutely to the City as liquidated damages and not as a penalty.
- 6.7 For the purposes of this agreement, development of the Property shall be deemed to be complete when the principal building or structure has been erected, the principal use established and site grading completed in accordance with an Approved Development Permit to the satisfaction of the Director of the Department of Planning and

Development for the City of Yellowknife. For greater certainty, the principal building or structure shall be substantially completed subject only to minor deficiencies or seasonal work, in the opinion of the Director of the Department of Planning and Development for the City of Yellowknife, acting reasonably. Site preparation, landscaping, and the erection or establishment of accessory buildings, structures, and uses shall not be considered as development for the purposes of this agreement unless and until a principal building or structure has been developed as part of the Authorized Development in accordance with an Approved Development Permit.

- 6.8 The Purchaser hereby acknowledges that he has read and understands this Agreement and all Schedules attached hereto.
- 6.9 The Purchaser acknowledges that it is his responsibility to determine which building permits, development permits, by-laws, regulations, building and safety codes, and restrictions affecting the Property and the Development are relevant and applicable for the purposes of his purchase and development and it is his responsibility to read, gain understanding of and act in full accordance with the same.
- 6.10 Nothing in this Agreement waives and nullifies the Purchaser's obligations to comply with provisions of all applicable federal, territorial and municipal laws, including, but not limited to, the City of Yellowknife Zoning By-law No. 4404, as amended from time to time.

7. SECURITY FOR DEVELOPMENT REQUIREMENTS

- 7.1 On closing, the Purchaser will deliver to the City a Transfer of Land into the name of the City to be held in trust for use in accordance with the terms of this Agreement.
- 7.2 The City shall be entitled to register and maintain a caveat or caveats against title to the Property, to protect the City's interest therein and covenants contained in this Agreement to be performed by the Purchaser, until completion of the development and payment of all monies required to be paid hereunder.
- 7.3 At the request of the purchaser, upon completion of the development to the reasonable satisfaction of the Development Officer and upon the Purchaser complying with the terms and conditions of this Agreement, the City shall discharge any caveat it has filed under this Agreement, save those required for easements, and shall return to the Purchaser the unregistered Transfer of Land into the name of the City.

8. DEFAULT OF CONSTRUCTION OBLIGATIONS

- 8.1 If the Purchaser fails to obtain an Approved Development Permit and complete development within the times provided, the City may declare the Purchaser to be in default of its fundamental obligations under this Agreement. In that event, the City will have the right to:

4807-52nd Street
Yellowknife, NT X1A 2N4

Attention: Planning Administrator

b. to the Purchaser at: _____

Attention:

or such other address as either party may designate from time to time by written notice to the other. Any notice shall be delivered to and left at the address for notice of the party to whom it is to be given during normal business hours on a business day and shall have been deemed to be received on the date of delivery.

- 9.2 The City represents and warrants that it is not a non-resident within the meaning of the *Income Tax Act* of Canada, nor is it an agent or a trust for anyone with an interest in the Property who is a non-resident.
- 9.3 The terms of this Agreement shall not merge upon the transfer of the Property from the City to the Purchaser and shall be enforceable against the Purchaser, his heirs, executors, administrators, and successors in title.
- 9.4 The Purchaser shall not be entitled to assign this Agreement, either in whole or in part, without the prior written consent of the City.
- 9.5 Nothing contained herein shall preclude the City from resorting to any remedy provided by law in respect of any breach hereof or any right, interest or claim of the City hereunder, and the waiver of any term of this agreement in any instance shall not be deemed to be a general waiver of any other term of this agreement.
- 9.6 The City warrants:
 - a. that the Purchaser may enter upon the Property prior to the Possession Date to perform geotechnical testing only, subject to any Municipal Regulations or Policies that may apply and any operational requirements of the City for the installation of municipal infrastructure and other essential services for the subdivision;
 - b. that the City will manage the Property as a prudent owner from the date of this agreement to the Possession Date.
- 9.7 Time is of the essence with respect to the completion and fulfilment of all the terms, covenants, and conditions of this agreement.

- 9.8 In addition to anything else contained in this agreement, the Purchaser agrees that a copy of this agreement may be registered against the title of the Property by way of caveat until the required development of the Property has been completed, at which time the City will prepare a withdrawal and discharge of caveat document to be registered by the Purchaser at the Purchaser's own expense. Further, the City agrees to provide a postponement of the caveat registration in favour of any bona fide mortgage lender for the purchase of the Property or development of the Property.
- 9.9 This Agreement shall constitute the entire agreement between the parties and the parties acknowledge that there are no other representations, conditions, or warranties with respect to this Agreement other than those which are contained herein. The following schedules shall form part of this Agreement:
- i. Schedule "A" – the Property and Permitted Encumbrances;
 - ii. Schedule "B" – the Option Agreement;
 - iii. Schedule "C" – GST Undertaking;
 - iv. Transfer of Land.
- 9.10 Whenever the singular or masculine is used throughout this Agreement the same shall be construed as meaning the plural or feminine or a body corporate where the context or the parties so requires, and in the case of two or more purchasers, the covenants herein contained on their part shall be deemed joint and several.

IN WITNESS whereof this Purchase Agreement has been duly executed by the parties on the day and year first above written.

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

(seal)

Per: _____
PLANNING ADMINISTRATOR

WITNESS

PURCHASER

Signature

Signature

Print Name

Print Name

Signature

Signature

Print Name

Print Name

SCHEDULE "A"

PROPERTY AND PERMITTED ENCUMBRANCES

The Property

Lot _____
Block _____
Plan 4435
Yellowknife

Permitted Encumbrances

- a) Utility Right of Way/Caveat re: Electrical (if applicable)
- b) Caveat re: Option to Purchase (in favour of City)
- c) Municipal Drainage Easement (if applicable)

SCHEDULE "B" – THE OPTION AGREEMENT

This Agreement made in duplicate the ____ day of _____, 20__.

OPTION TO PURCHASE

BETWEEN:

(the "Grantor")

and

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

(the "Grantee")

WHEREAS:

A. Pursuant to a Purchase Agreement dated _____, 20__, between the Grantor and the Grantee (the "Purchase Agreement"), the Grantor purchased from the Grantee all those lands and premises legally described as follows:

Lot
Block
Plan 4435
Yellowknife

(the "Lands")

B. The Grantee agreed to sell the Lands to the Grantor on the express obligation and condition that the Grantor commence, diligently and continuously pursue, and complete development which is more particularly described within the Purchase Agreement and the Development Permit issued in favour of the Grantor respecting the Lands (the "Development Permit"), all which must have been substantially completed to the point of issuance of final inspection report by the City of Yellowknife and said report not being subject to any conditions that, when left unremedied, may be deemed to be injurious to health and safety, as determined by the Director of the Department of Planning and Development for the City of Yellowknife and in accordance with the terms, covenants and conditions set forth within the Purchase Agreement, the Development Permit and, if applicable, a Development Agreement, as well as in accordance with all applicable building permits, development permits, by-laws, regulations, building and safety codes, and restrictions affecting the Lands and the above-noted improvements (the "Development").

C. The Grantor has agreed to grant the Grantee the option to re-purchase the Lands upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the Grantee to sell the Lands to the Grantor, and in payment of the sum of ONE (\$1.00) DOLLAR to the Grantor by the Grantee, the receipt and sufficiency of which is hereby wholly acknowledged, it is hereby agreed that:

- 1) The Grantor hereby grants the Grantee the irrevocable option to purchase the Lands at and for the sum of the original Purchase Price, minus the 15% non-refundable deposit and less the outstanding balance owing under any mortgage or other financial charge registered against the Property, subject the following permitted encumbrances and any other matters identified herein:
 - (a) Mortgage/Financing Documents;
 - (b) Utility Right of Way/Caveat;
 - (c) Caveat re: Option to Purchase;
 - (d) Municipal Drainage Easement (if applicable)

- 2) This Option to Purchase may be exercised by the Grantee at any time before the second anniversary of the Closing Date or within 60 days following that date if:
 - i) the Grantor fails to obtain an Approved Development Permit on or before _____ 20__ **(12 months from the Possession Date)**;
 - ii) the Grantor fails to complete construction of the Development on or before _____ 20__ **(24 months from the Possession date)**; or
 - iii) the Grantor sells, leases, or otherwise transfers or purports to sell, lease, or transfer any interest in the Lands or any portion thereof prior to completion of the Development in accordance with the terms of the Purchase Agreement.

In such case, the Grantee shall be entitled to repurchase the Lands pursuant to the exercise of the option granted within this Option to Purchase.

- 3) The City shall exercise the option referred to above by sending a notice in writing by registered mail to the registered owner of the Property, at the address shown on the title at the Land Titles Office, stating the grounds on which the option is being exercised and such notice shall be deemed to have been received by the recipient on the third day following the sending of such notice by single registered mail.

- 4) Ten (10) days after notice of the City's intention to repurchase the Property has been mailed, the City will submit to the Land Titles Office the registrable land transfer documents held in escrow. Upon registration of the land transfer, the City will pay the option price less the amount required to discharge any encumbrances against the Property within seven (7) days of the receipt of the Certificate of Title for the Property.

- 5) The Grantee shall be entitled to register a caveat against the title to the Lands pursuant to this Option to Purchase. In this regard, the Grantor covenants not to take any steps whatsoever to discharge this registration including, without restriction, the service of any notice to take proceedings on such caveat. The caveat registered pursuant to this Option to Purchase will not be discharged unless the City is satisfied that all requirements pursuant to the Development have been met. The City retains the sole right in its discretion to discharge the caveat.

- 6) The Grantor shall indemnify and hold the Grantee harmless from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever, including but not restricted to all legal costs on a solicitor and his own client full indemnity basis, which may be paid by, incurred by, or asserted against the Grantee as a direct or indirect result of any act or omission of the Grantor which constitutes a breach of any term, covenant or condition under this Option to Purchase and the Purchase Agreement.

- 7) This Agreement may not be assigned by the Grantor, either in whole or in part, without the prior written consent of the Grantee.

- 8) This Agreement shall enure to the benefit of and be binding on all parties hereto and their respective successors and permitted assigns. Specifically, and without limiting the generality of the foregoing, this option shall bind on the Grantor and all future owners of the Lands.

IN WITNESS whereof this Option Agreement has been duly executed by the parties on the day and year first above written.

**THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE**

(Seal)

Per: _____
PLANNING ADMINISTRATOR

WITNESS

GRANTOR

_____))
Signature

_____))
Signature

_____))
Print Name

_____))
Print Name

)
)
_____) Signature
Signature
_____) Signature
Print Name) _____
Print Name

SCHEDULE "C" – GST UNDERTAKING

To: The Municipal Corporation of the City of Yellowknife
(the "City")

Re: Purchase of Lot __, Block __, Plan 4435, Yellowknife
(the "Property")

Municipal Address: _____

The undersigned Purchaser of the above-noted Property acknowledges that the Purchase Price does not include Goods and Services Tax ("GST") and that the City has not collected the GST with respect to the sale of the Property.

The Undersigned confirm that it is registered under Part IX (Goods and Services Tax), Division V, Subdivision "D" of the *Excise Tax Act* (Canada) and our registration number is _____ and hereby covenants and agrees that it will be responsible for any GST that may be imposed on the sale of the Property, and that it will, as required by law:

- 1) Register and/or file any documentation required pursuant to any GST legislation;
- 2) If any GST is or becomes payable respecting the sale of the said Property, the undersigned Purchaser shall pay the same to the Government of Canada and it shall indemnify and save harmless the City of and from any liability for or payment of applicable GST.

These undertakings shall survive the close and completion of the sale.

Dated at the City of Yellowknife in the Northwest Territories this ____ day of _____, 20__.

Per: _____

Per: _____

(c/s)

AFFIDAVIT OF EXECUTION

I, _____, of the City of Yellowknife, in the Northwest Territories, MAKE OATH AND SAY:

- 1. I was present and saw _____, the person(s) named in the within instrument who is/are personally known to me to be the person(s) named therein, duly sign and execute the same for the purposes named therein.
- 2. That the said instrument was executed at the City of Yellowknife in the Northwest Territories and that I am the subscribing witness thereto.
- 3. That I know the said _____ who is/are in my belief of the full age of nineteen years.

SWORN before me at the City of Yellowknife)
in the Northwest Territories this ____ day)
of, _____ 20___.)
_____) _____
_____))
A Commissioner for Oaths in and for the)
Northwest Territories.)
Commission expires: _____)

SEE DM#304521 for the Transfer of Land document.