


TO: GENERAL COMMITTEE


SUBJECT: 36 MULCASTER STREET – CLARIFICATION TO OPTION TO PURCHASE

WARD: 2

PREPARED BY AND KEY CONTACT: A. MILLS, SENIOR REAL ESTATE SERVICES OFFICER X5051

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.Sc., P. Eng., GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the Mayor and City Clerk be authorized to execute a clarified and revised Option to Purchase Agreement with 1244947 Ontario Inc. for the purchase of 36 Mulcaster St., in the form attached as Appendix "A".
2. That the purchase price and direction of sale proceeds be in accordance with Council Motion 14-G-024.

PURPOSE & BACKGROUND

Report Overview

3. Staff had further discussion with 1244947 Ontario Inc. ("the Purchaser") regarding the form of the Option to Purchase Agreement that was attached in Appendix "A" of Staff Report LGL003-14. In doing so, both parties recognized that clarification and revisions to the negotiated terms and legal description contained in the agreement are required.
4. The purpose of this Staff Report is to seek Council authorization for the Mayor and City Clerk to execute a clarified Option to Purchase Agreement for 36 Mulcaster Street with the Purchaser.
5. On February 10, 2014, Council approved Motion 14-G-024 which authorized the following:
 - "1. That the Mayor and City Clerk be authorized to execute an Option to Purchase Agreement with 1244947 Ontario Inc. for the purchase of 36 Mulcaster Street in the form attached as Appendix "A" to this Staff Report LGL003-14, provided that:
 - a) The purchase price is the appraised value as determined by Andrew, Thompson & Associates Ltd., as presented concurrently to Council in a confidential memorandum.
 2. That the proceeds from the sale of 36 Mulcaster Street, net of legal and appraisal costs, be applied to the Parking Reserve."

ANALYSIS

6. The legal description contained in the original Option to Purchase received from the Purchaser referred to Part 1, Plan 51R-10642. The property itself, being PIN 5881700105, consists of both Part 1 and Part 2, Plan 51R-10642. Part 2 is subject to an access easement that permits the adjoining land owner on Collier St. to access the back of its property.
7. In the process of preparing the Option to Purchase for execution, the Purchaser indicated that it intended to purchase the entire property, including Part 2 (but excluding the Fire Fighters' memorial and Armouries building) and the failure to include the Part 2 in the legal description and diagram and exclude the Fire Fighters' Memorial in the diagram was an oversight.
8. The appraisal with respect to the property included both Parts 1 and 2 and excluded the Armouries building and Fire Fighters' Memorial.
9. Motion 13-G-140 which declared the lands surplus applies to the entire property, including Part 2, but excluding the Armouries building and Fire Fighters' Memorial.
10. Staff are requesting that Council clarify that the Mayor and City Clerk are authorized to execute an agreement for the purchase of the entire property, being Parts 1 and 2, Plan 51R-10642 (subject to the already authorized exclusion of the Armouries Building and Fire Fighters' Memorial).
11. The final form of the Option to Purchase also contains a number of additional clarifications, as follows:
 - a) A number of dates have been amended to reflect an extension of the time frame to account for the delay in having the Option to Purchase executed.
 - b) The time frame for creation of a reference plan has been extended from 30 days following execution of the Option to Purchase Agreement to prior to closing.
 - c) The purchase price is the appraised value as determined by the appraisal completed by Andrew, Thompson & Associates Ltd. and previously presented to Council.
 - d) Wording changes to clarify that the City's environmental responsibility applies only to the City's ownership of the property from October 30, 1991 to the completion date of the sale. The language, as originally written, could have been interpreted to apply to any time the property was owned by the City, which included time periods as far back to the 1800s, and which interpretation was not intended by the purchaser.

ENVIRONMENTAL MATTERS

12. The following environmental matter has been considered in the development of the recommendation:

The subject property has been used as a municipal parking lot since the City acquired ownership of the property in 1991. As a result, there is very little risk that environmental contamination occurred during this period of ownership. A clarification to the agreement makes it clear that the City's responsibility for indemnifying the purchaser for environmental mitigation applies only to contamination arising during this period of ownership. The language contained in the Purchaser's original Option to Purchase did not make this point as clearly as is desirable.

ALTERNATIVES

13. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could reject the Option to Purchase.

This alternative is not recommended as 36 Mulcaster has been identified for redevelopment, the purchase price will be fair market value, and Council will have an opportunity to approve the redevelopment plan.

FINANCIAL

14. There are no financial consequences in addition to those outlined in the original Staff Report LGL 003-14 arising as a result of the clarifications being recommended.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

15. The recommendation(s) included in this Staff Report support the following goals identified in the 2010-2014 City Council Strategic Plan:

 Create a Vibrant and Healthy City Centre



Option to Purchase
Use with OREA Form 104



This Option to Purchase dated this..... day of February..... 20. 14

OPTIONEE: 1244947 Ontario Inc.

OPTIONOR: The Corporation of the City of Barrie

Property: fronting on the west..... side of Mulcaster Street..... known municipally as 36 Mulcaster Street..... in the City..... of Barrie

and having a frontage of 47 meters..... more or less by a depth of 40 meters..... more or less and described as Part of Market Block, Plan 2, Barrie, being part of Part 1 on Plan 51R-10642 SIT No 1167938 WE

1. In consideration of the sum of: Five Thousand WE and Part 2 Dollars (CDN\$) 5,000.00

paid by the Optionee to the Optionor's Brokerage (the receipt whereof is hereby acknowledged) the Optionor grants to the Optionee the sole and exclusive Option, Irrevocable within the time for exercise herein limited, to purchase the property described above and owned by the Optionor.

PURCHASE PRICE: See Schedule Dollars (CDN\$)..... Dollars

On exercise of the Option, Twenty-Five Thousand..... Canadian dollars (\$Can. 25,000.00.....) shall be paid by bank draft or certified cheque to the Optionor's Brokerage, as a deposit, to be held by such Brokerage in trust pending completion or other termination of the Agreement arising out of the exercise of the Option hereby given. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

The sum of Five Thousand..... Canadian dollars (CDN\$ 5,000.00.....) already paid to the Optionor's Brokerage as consideration for the granting of this Option, as well as the sum paid upon the exercise of this Option shall be credited to the Optionee as a deposit and allowed as part of the Purchase Price.

Optionee agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A. and B..... attached hereto form(s) part of this Agreement.

2. Optionee and Optionor agree that all existing fixtures are included in the Purchase Price except those listed hereunder: None

and that the following chattels are included in the Purchase Price:
None

Unless otherwise stated in this Agreement or any Schedule hereto, Optionor agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

3. The Option hereby granted may be exercised by the Optionee until..... (a.m./p.m.) on the 5..... day of August..... September..... 20. 14....., and shall be exercised by a letter delivered to the Optionor, the Optionor's solicitor, WE the Optionor's Brokerage or left at the Optionor's Brokerage's usual place of business. In the event that such Option is not exercised in the manner aforesaid, this Option and everything herein contained shall be null and void and no longer binding upon any of the parties hereto and the Optionor shall be entitled to retain the said sum given as consideration for the granting of this Option. Upon the exercise of this Option by Optionee in the manner aforesaid, this Option and the letter exercising it shall then become a binding Agreement of Purchase and Sale between the parties and the same shall be completed upon the terms hereinafter set forth.

INITIALS OF OPTIONEE(S): WE INITIALS OF OPTIONOR(S): WE

4. This sale arising from this Option shall be completed on the See schedule day of _____, 20_____. Upon completion, vacant possession of the property shall be given to the Optionee unless otherwise provided for in this Agreement
5. The Optionee shall be allowed until 4:59 p.m. on the See schedule day of _____, 20_____ to: examine the title to the property, at the Optionee's own expense, to satisfy the Optionee that there are no outstanding work orders affecting the property; that its present use: C1-2 Commercial

..... may be lawfully continued; and that the principal building may be insured against risk of fire.

6. Provided that the title to the property is good and free from all restrictions, charges, liens, claims and encumbrances, except as otherwise specifically provided in this Agreement, and save and except for:
 - (a) any registered restrictions or covenants that run with the land, provided that such are complied with;
 - (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service, providing such have been complied with or security has been posted to ensure compliance and completion as evidenced by letter from the relevant municipality or utility supplier; and
 - (c) any minor easements for the supply of utility service to the property or to adjacent properties.
 if within the time for examining the title any valid objection to title, or any outstanding work order or deficiency notice, or to the fact that the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire, is made in writing to the Optionor or Optionor's solicitor, which Optionor is unable or unwilling to remove, remedy or satisfy, or ~~obtain insurance save and except against risk of fire (title insurance) in favour of the Optionee and any mortgagee, with all related costs at the expense of the Optionee,~~ and which Optionee will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end, and all money theretofore paid shall be returned without interest or deduction and Optionor and the Optionor's Agents shall not be liable for any costs or damages. Save as to any valid objection so made within such time, and except for any objection going to the root of title, Optionee shall be conclusively deemed to have accepted Optionor's title to the property. Optionor hereby consents to the municipality releasing to Optionee details of all outstanding work orders or deficiency notices affecting the property, and Optionor agrees to execute and deliver to Optionee or Optionee's solicitor such further authorizations in this regard as Optionee may reasonably require.
7. Optionee acknowledges having inspected the property prior to submitting this Option and understands that upon exercising this Option there shall be a binding Agreement of Purchase and Sale between Optionee and Optionor.
8. Optionor and Optionee agree that there is no condition, express or implied, representation or warranty of any kind that the future intended use of the property by Optionee is or will be lawful except as may be specifically stipulated elsewhere in this Agreement.
9. Optionee shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Optionor. If requested by Optionee, Optionor will deliver any sketch or survey of the property within Optionor's control to Optionee as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Optionee on completion, is not available in registrable form on completion, Optionee agrees to accept Optionor's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Optionor shall provide to Optionee a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Optionor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
10. All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Optionor. Pending completion, Optionor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Optionee may either terminate this Option and have all monies theretofore paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Optionor is taking back a mortgage or charge, or Optionee is assuming a mortgage or charge, Optionee shall supply Optionor with reasonable evidence of adequate insurance to protect the Optionor's or other mortgagee's interest on completion.
11. Provided that this Option shall be effective to create an interest in the property only if the subdivision control provisions of The Planning Act are complied with by Optionor on or before completion and Optionor hereby covenants to proceed diligently at his expense to obtain any necessary consent on or before completion.
12. Optionee shall be credited towards the Purchase Price with the amount, if any, which it shall be necessary for Optionee to pay to the Minister of National Revenue in order to satisfy Optionee's liability in respect of tax payable by Optionor under the non-residency provisions of the Income Tax Act by reason of this sale. Optionee shall not claim such credit if Optionor delivers on completion the prescribed certificate or his statutory declaration that he is not then a non-resident of Canada.
13. Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Optionee.

INITIALS OF OPTIONEE(S): del

INITIALS OF OPTIONOR(S): del

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INITIALS



14. The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
15. The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Optionor, and any mortgage or charge to be given back by the Optionee to the Optionor at the expense of the Optionee. If requested by Optionee, Optionor covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of The Planning Act, RSO 1990.
16. Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Optionor and Optionee or by their respective solicitors who may be specifically authorized in that regard.
17. Any tender of documents or money hereunder may be made upon Optionor or Optionee or their respective solicitors on the day set for completion of this sale. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
18. The Optionor warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, 1986, unless the Optionor's spouse has executed the consent hereinafter provided.
19. The Optionor represents and warrants to the Optionee that during the time the Optionor has owned the property, the Optionor has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of the Optionor's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
20. The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
21. **The Optionee is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
22. ~~The Optionor hereby appoints the Listing Brokerage as agent for the Optionor for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Optionor's Brokerage) has entered into a representation agreement with the Optionee, the Optionee hereby appoints the Optionee's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Optionor and the Optionee (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Optionee or the Optionor for the purpose of giving and receiving notices.~~ Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 1-705-739-4278 [For delivery of notices to Optionor] FAX No. 1-416-366-3992 [For delivery of notices to Optionee]

23. If there is conflict between any provision written or typed in this Option (including any Schedule to this Option) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This Option including any Schedules attached hereto, shall constitute the entire agreement between the Optionee and Optionor. There is no representation, warranty, collateral agreement or condition, whether direct or collateral or expressed or implied, which induced any party hereto to enter into this Option or on which reliance is placed by any such party, or which affects this Option or the property or supported hereby, other than as expressed herein. This Option shall read with all changes of gender or number required by the context.
24. Any reference to a time and date in this Agreement shall mean the time and date where the property is located.
25. If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Optionor will not collect HST if the Optionee provides to the Optionor a warranty that the Optionee is registered under the Excise Tax Act ("ETA"), together with a copy of the Optionee's ETA registration, a warranty that the Optionee shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Optionor in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Optionor agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the purchase price.

This Option Agreement shall be signed by all necessary Parties thereto no later than the 30th day of ~~August~~ May, 2013, after which time if not signed, it shall be null and void and all consideration money returned to the Optionee in full and without interest.

~~The Optionor agrees with the brokerage(s) with whom I have agreed to pay commission, in consideration for the brokerage's services in procuring the said Option, to pay the brokerage on the date of completion the commission set out in our Option Commission Agreement, together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), which commission and taxes may be deducted from the deposit. I hereby irrevocably instruct my solicitor~~

INITIALS OF OPTIONEE(S): pu INITIALS OF OPTIONOR(S): [Signature]

to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission and such fees from the proceeds of the sale prior to any payment to the Optionor on completion, as advised by the brokerage(s) to my solicitor.

[Handwritten Signature]
INITIALS

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

[Witness]
[Witness]
[Witness]
[Witness]
[Witness]

1244947 Ontario Inc.
[Optionor/Optionee] Per: *[Handwritten Signature]*
I have authority to bind the Corporation
[Optionor/Optionee]
[Optionor/Optionee]
The Corporation of the City of Barrie
[Optionor/Optionee] Per:
I have authority to bind the Corporation
[Optionor/Optionee]

DATE Jan 23rd /14
DATE
DATE
DATE
DATE

The Undersigned Spouse of the Optionor hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Optionee that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

[Witness] [Spouse] DATE

APPROVED FAX No. APPROVED FAX No.
(For delivery of notices to Optionor) (For delivery of notices to Optionee)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at a.m./p.m. this day of 20.....

INFORMATION ON BROKERAGE(S)

Listing Brokerage.....	Tel.No.
Co-op/Buyer Brokerage.....	Tel.No.

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Option to Purchase and I authorize the Brokerage to forward a copy to my lawyer.

[Optionor] DATE

[Optionor] DATE

Address for Service.....
Tel No.

Optionor's lawyer.....
Address.....
Tel No. FAX No.

I acknowledge receipt of my signed copy of this accepted Option to Purchase and I authorize the Brokerage to forward a copy to my lawyer.

1244947 Ontario Inc.
[Optionee] DATE

[Optionee] DATE

Address for Service c/o Feige Nawrocki LLP
Tel No.

Optionee's lawyer Feige Nawrocki LLP
Address 3300-130 Adelaide St. W. Toronto, Ont, M5H3P5
416-366-8833x240 416-366-3992
Tel No. FAX No.

<p>FOR OFFICE USE ONLY</p> <p>In: Co-operating Brokerage shown on the foregoing Option to Purchase. In consideration for the Co-operating Brokerage procuring the foregoing Option to Purchase, I hereby declare that all moneys received or receivable by me in connection with the Transaction or contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust.</p> <p>DATED as of the date and time of the acceptance of the foregoing Option to Purchase</p> <p>[Authorized to bind the Listing Brokerage]</p>	<p>COMMISSION TRUST AGREEMENT</p> <p>Acknowledged by:</p> <p>[Authorized to bind the Co-operating Brokerage]</p>
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[Handwritten Signature]
INITIALS

**SCHEDULE 'A'
TO THE
OPTION TO PURCHASE**

This Schedule is attached to and forms part of the Option to Purchase between

1244947 ONTARIO INC.

(Optionee)

And

THE CORPORATION OF THE CITY OF BARRIE

(Optionor)

for the property known municipally as 36 Mulcaster Street, in the City of Barrie, Province of Ontario

1.0 **PROPERTY:** The property included in this transaction is more particularly described as follows:

The Real Property municipally known as 36 Mulcaster Street, Barrie, Ontario, and hereinafter described as follows and shown as hatched in Schedule "B" hereto:

- Part of Market Block, Plan No. 2, Barrie, being Part of Part 1st on Reference Plan of Survey No. 51R-10642 consisting of a vacant parcel of land with approximately 47 meters frontage along Mulcaster Street and 40 meters frontage along Collier Street and municipally known as 36 Mulcaster Street, Barrie (the "Purchased Property"). The Purchased Property is depicted in the approximate location as shown on Schedule "B";
- The parties shall co-operate with one another to determine the precise boundary of the Purchased Property ~~within thirty (30) days after acceptance of this Option to Purchase~~. The Optionor shall retain an Ontario Land Surveyor to complete a reference plan describing the Purchased Property, including the precise area of the Purchased Property. *Prior to closing* Prior to instructing the Surveyor to deposit the reference plan on title, the Optionor shall provide a draft of the Surveyors reference plan to the Optionee and shall obtain the written approval of the Optionee of the size, and boundary locations of the Purchased Property. Once the written approval has been granted the reference plan shall be deposited. The Optionor shall provide a copy of the deposited reference plan to the Optionee and to the Optionee's solicitor within two days of the date on which the approved reference plan is deposited on title; and
- Excluded Property: The parties acknowledge and agree that the property municipally known as the "Armouries Building", the "Farmer's Market" and Fire Fighter's Memorial together with an appropriate setback therefrom shall be specifically excluded from the Purchased Property. This area is approximately shown on Schedule "B" attached hereto but the precise location will be determined when the reference plan is prepared.

2.0 **PURCHASE PRICE:** The Purchase Price shall be an amount based on fair market value as of the date of acceptance of this Option to Purchase ~~then in effect for equivalent properties or equivalent size in equivalent areas that have similar development potential as agreed upon by both the Optionor and the Optionee by no later than February 20, 2014. The Optionor may complete an independent appraisal of the Property by no later than February 11, 2014.~~

As determined by the City's appraisal.

3.0 **PAYMENT OF PURCHASE PRICE:** Optionee agrees to pay the balance of the purchase price as follows:

- a) All deposits shall be held in trust pending completion or other termination of this Agreement and shall be credited towards the purchase price on completion of this transaction. The Optionee and the Optionor hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Optionee as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Optionee agrees to accept the short-term rate for deposits withdrawn before maturity; and
- b) By paying the balance of the purchase price, subject to the usual adjustments and those described herein, by certified cheque to the Optionor on closing.

4.0 PRE-CLOSING DELIVERY OF DOCUMENTS: The Optionor shall, following execution of the Agreement, provide copies to the Optionee of such of the following documentation (collectively, the "Optionor Documentation") only as may be in its possession or under its control: all information, surveys, site plans, zoning by-laws, environmental reports and records and audits, tax bills, leases, management agreements, development agreements and plans, engineering and architectural drawings and plans and consultant reports, appraisal reports, copies of any service contracts affecting the Purchased Property, current insurance binder, realty tax bill, any outstanding work orders or notices, etc., and a list of all fixtures and chattels used in the operation of the Purchased Property. The Optionor agrees to provide the Optionor Documentation within seven (7) business days of the date of acceptance of this Agreement.

5.0 OPTIONEE'S INSPECTION AND TESTS: Following acceptance of this Agreement by the Optionor, the Optionee and its agent or employees shall have the right at the Optionee's expense to enter upon the Purchased Property for the purposes of inspecting the Purchased Property, preparing any necessary surveys or plans, and examining structures and systems, soil conditions, including the taking of soil tests by drilling and/or a Phase I and/or Phase II environmental site assessment; provided the Optionee, in undertaking such tests and inspections, shall reinstate the Purchased Property to its former condition following completion of such tests and inspections. This obligation shall survive termination of this Agreement. Optionee shall also be entitled to enter the building upon 24 hours prior notice to the Optionor for the purpose of inspection, measurement, preparation of plans, etc.

6.0 OPTIONOR'S REPRESENTATIONS AND WARRANTIES: The Optionors make the following representations and warranties as at the date hereof and continuously thereafter to and including the Closing Date, which representations and warranties shall not merge on Closing and which are also conditions of Closing this transaction and upon which the Optionee is relying and has relied in entering into this Agreement.

- (a) That the Purchased Property has been declared surplus by the Optionor in accordance with the *Municipal Act, 2001*;
- (b) That the Optionor has complied with all applicable policies and by-laws for surplus land disposition;
- (c) That there are no contracts or agreements, expressed or implied, written or oral affecting the Purchased Property to be assumed by the Optionee
- (d) That the Optionor is not aware of any pending or threatened environmental investigations, charges or litigation affecting the Property and will indemnify the Optionee for reasonable costs of any environmental mitigation required as a result of the ~~Optionee's~~ ^{Optionor's} release of Contaminants or Hazardous Substances (as those terms are defined in the *Environmental Protection Act*) on the Property during the Optionor's ownership of the Property. *for the period October 30, 1991 to the Completion Date.*
- (e) There is no litigation pending or threatened with respect to the Purchased Property before any criminal, civil, quasi-criminal or administrative body or tribunal having authority; Optionor has not received notice of any intention to expropriate from any authority having jurisdiction in that regard other than normal requests for road widenings and like dedications for public roads;
- (f) There are no leases or other occupancy agreements affecting the Purchased Property and Optionor has not entered into any cost sharing agreements with other land owners;
- (g) That all accounts for work and services performed and materials placed or furnished upon or in respect of the Purchased Property shall have been fully paid and satisfied on Closing and no one shall be entitled to claim a lien under any legislation relating thereto against the Purchased Property;
- (h) That as far as the Optionor is aware, there are no outstanding work orders or deficiency notices or any other written notice from any authority advising of any outstanding breach of any law, by-law, code or regulation;
- (i) Intentionally deleted;
- (j) Intentionally deleted;

ME

- (k) The Optionor has procured all requisite internal approvals and consents to authorize this Agreement and the sale of the Purchased Property, and has full authority to complete this transaction;
- (l) The Optionors are not aware, without making an independent investigation of any expropriation or condemnation proceedings pending or threatened against the Properties or any part thereof;
- (m) No other company or person has any right of first refusal or option to purchase the Properties; and
- (n) That the Optionee shall not be required to assume any obligations (including with respect to employees) except as set out herein.

The Optionor shall provide the Optionee with a certificate of the Optionor on closing setting out all of the above warranties and declaring same to be true and correct. The Optionor acknowledges and agrees that the representations, warranties and covenants herein shall be deemed to be material conditions of this agreement for the exclusive benefit of the Optionee and are to be fulfilled and/or performed by the Optionor at or prior to the Closing Date.

7.0 OPTIONOR'S PRE-CLOSING COVENANTS: The Optionor covenants and agrees as follows:

- a) The Optionor hereby consents to the municipality releasing to the Optionee details of all outstanding municipal work orders or deficiency notices affecting the Purchased Property (provided no inspections by municipal inspectors are permitted) and agrees to execute and deliver to Optionee this consent in writing and any such further authorizations in this regard as Optionee may reasonably require, within three (3) days of acceptance of this Offer;
- b) The Optionor shall, on an ongoing basis, advise and consult with the Optionee in connection with all information that supplements or amends the matters referred to in this Agreement. If any material warranted fact or matter described in this Agreement should become incorrect or inaccurate prior to closing the Optionor shall forthwith provide particulars thereof to the Optionee, whereupon the Optionee shall be entitled, in addition to any other remedy he may have, to elect to terminate this Agreement by notice in writing given fifteen days after receipt of all relevant particulars from the Optionor, and if the Optionee so elects to terminate then this Agreement shall be null and void and the deposits shall be returned to the Optionee and neither party shall be liable for any loss, costs or damages;
- c) To discharge at the Optionor's own expense any existing mortgages, construction liens, certificates of action and any other encumbrances, if any, registered against the Purchased Property save and except the Permitted Encumbrances.
- d) The Optionee shall be entitled at its expense and risk to make re-development applications for the Purchased Property to any applicable authority for official plan amendments, for re-zoning, for variances and consents, subdivision applications, for site plan approval and the like for its proposed uses of the Purchased Property (collectively, "re-development applications").
- e) Optionor agrees not to encumber the Purchased Property or enter into leases without permission of Optionee;
- f) Intentionally deleted;
- g) The Optionor agrees to insure, operate, manage and maintain the Purchased Property and the buildings until closing in a manner consistent with that prior to entering into this agreement. The building and any chattels purchased by the Optionee shall be in the similar condition on closing. Optionor shall be responsible for remediation of any spills or adverse change in the environmental condition of the Purchased Property which arise after acceptance of this agreement; and
- h) The Optionor agrees to procure vacant possession of the Purchased Property on or before the Completion Date.

8.0 ADJUSTMENTS: Adjustments shall be made as of closing for deposits, prepaid realty taxes, and prepaid utilities and other items ordinarily adjusted in a transaction of this nature. The parties shall undertake to re-adjust if necessary after closing with respect to all amounts adjusted for in the statement of adjustments. The request for any re-adjustment shall be accompanied by sufficient supporting documents to verify the need for the re-adjustment.

9.0 CLOSING DELIVERIES: The Optionor shall deliver to the Optionee on the closing date, in a form and with content acceptable to the Optionor and the Optionee, both acting reasonably:

- a) all deeds, transfers, bills of sale, assignments, undertakings and other documents necessary or reasonably required to transfer the Purchased Property to the Optionee;
- b) a certificate of the Optionor that the representations and warranties contained herein are true and correct at the closing date, and that there are no persons, firms or corporations entitled to register a construction lien against the Purchased Property or any part thereof;
- c) Declaration of possession of the Optionor which shall include evidence that possession of the Purchased Property has been undisputed and consistent with unencumbered title;
- d) Intentionally deleted;
- e) an assignment of any and all warranties and guarantees of workmanship and material received from anyone supplying equipment, work and materials to the Optionor with respect to the Purchased Property;
- f) Intentionally deleted; and
- g) such other documentation required by the Optionee or its solicitors as is reasonable for a commercial real estate transaction in Ontario.

10.0 ASSIGNMENT: The Optionor acknowledges being advised that the Optionee is a Trustee only on behalf of a company to be incorporated or nominated and has entered into this Agreement without any personal liability; and it is agreed between the parties that the Optionee may assign this agreement and the deposit to, or have the same adopted by, any company, person, firm or corporation, and upon notice thereof and a covenant of the assignee or adopting entity to the Optionor to be bound by the terms hereof, the Optionee named herein shall have no liability to the Optionor except to repair any damage arising from any of the Optionee's inspections or testing of the Purchased Property and save for any breaches of this Agreement by the Optionee at the time of assignment, and the Optionor agrees to complete this transaction with any such Assignee as if the Assignee were the Optionee named herein.

11.0 HST: Optionee represents that it and any beneficial owner is now or will by no later than the closing date be registered for the purposes of the Harmonized Sales Tax ("HST") in accordance with the applicable provisions in that regard pursuant to the Excise Tax Act of Canada, as amended. The Optionee agrees to deliver a Statutory Declaration on closing confirming its HST registration number and that of any beneficial owner, together with written proof of such registration, which shall preclude the Optionor from collection of HST from the Optionee on closing, subject only to any change in the law with respect thereto. The Optionee further covenants to deliver an indemnity in favour of the Optionor on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

12.0 FAX TRANSMISSIONS: It is agreed by the Optionee and Optionor that Offers, Counter-offers and Notices may be sent and received by facsimile transmission or email in portable document format and the Communication by such means will be legal and binding on all parties.

13.0 CRITICAL DATES:

Completion Date: The sale arising from the exercise of this Option shall be completed sixty (60) days after exercise of this Option by the Optionee (the "Completion Date"). If such date is a date on which the Land Registry Office is not open for business, the sale arising from the exercise of this Option shall be completed on the next business day on which the Land Registry Office is open for business.

Requisition Date: The title search date for the purposes of paragraph five on page two of the Standard print of this Option shall be 20 days prior to the Completion Date.

Extension of Option Exercise Date: The Optionor shall have the right to extend ~~February 5, 2015~~ ^{September} August 5, 2014 date set out in paragraph 3 on page one of this Agreement to ^{September} February 5, 2015 upon the written request of the Optionee provided that the Chief Administrative Officer of the Optionor is satisfied, acting reasonably, that the Optionee is proceeding diligently and in good faith with the Optionee's concept plan and other due diligence for the Property.

March

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14.0 **OPTIONOR'S CONDITIONS:** The Optionor's obligation to complete this transaction shall be conditional upon the Optionor being satisfied, in its sole and unfettered discretion, on or before the Completion Date (the "Optionor Condition Date") that:

- i) the Optionee's concept plan for the Optionee's proposed development of the Property and timeline are satisfactory to the Optionor; and
- ii) The Optionee agreeing to develop the Property in accordance with approved concept plans and timelines.

The aforesaid Optionor's Conditions are for the sole benefit of the Optionor, and may be waived in whole or in part upon notice in writing to that effect to the Optionee. The Optionor shall have the right to waive or give notice of satisfaction of the Optionor's Conditions at any time on or before the Optionor Condition Date. If the Optionor's Conditions have not been satisfied or waived by the Optionor Condition Date, the Optionor shall deliver notice to that effect to the Optionee prior to 6:00 p.m. on the Optionor Condition Date, in which case this Agreement shall be null and void and all deposit shall be returned to the Optionee with interest and without deduction save as herein provided and neither party shall be liable for any loss, costs or damages. If no such written notice is given, each of the applicable conditions aforesaid shall be deemed to have been not satisfied, fulfilled or waived by the Optionor as of the Optionor Condition Date, this Agreement shall be at an end, all deposits shall be returned and neither party shall have any further obligation to the other.



SCHEDULE 'B' TO THE OPTION TO PURCHASE

This Schedule is attached to and forms part of the Option to Purchase between

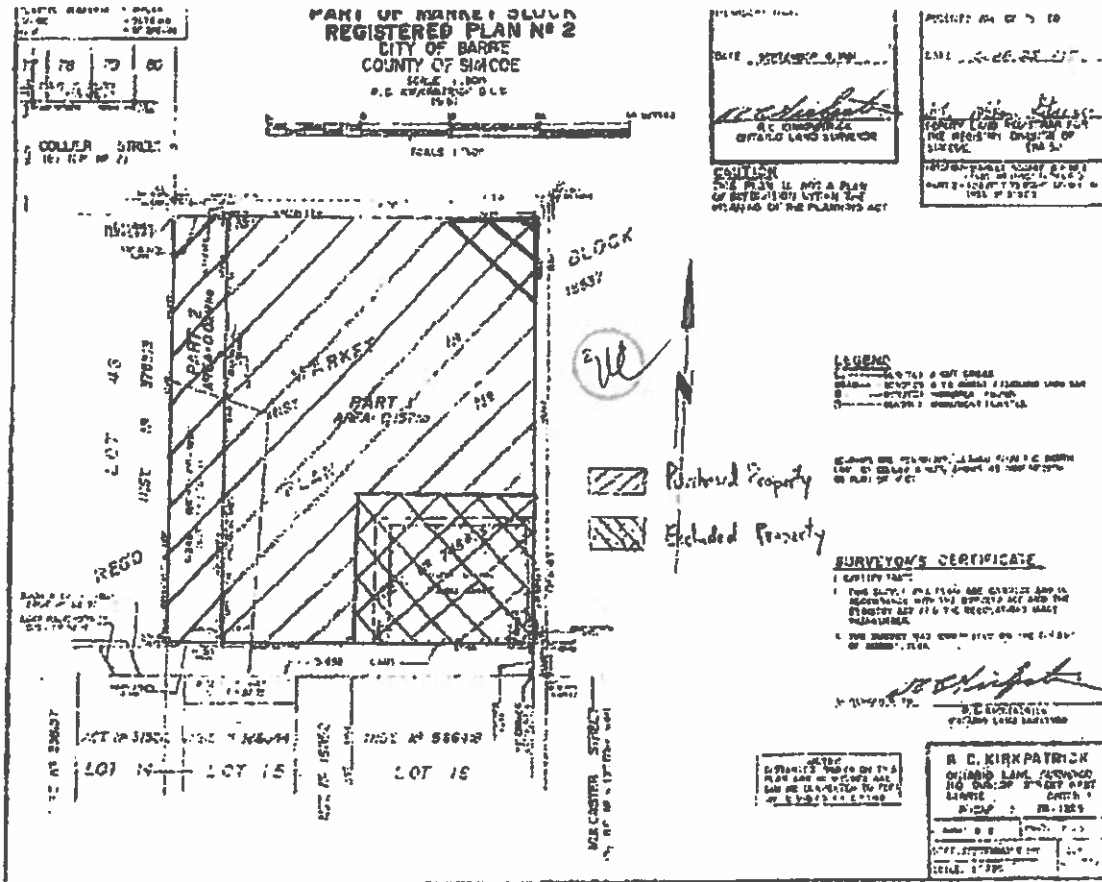
1244947 ONTARIO INC.

(Optionee)

And

THE CORPORATION OF THE CITY OF BARRIE (Optionor)

for the property known municipally as 36 Mulcaster Street, in the City of Barrie, Province of Ontario



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