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Agreement of Purchase and Sale Business in Leased Premises

Form 502

for use in the Province of Ontario

GENERAL USE: This form of Agreement of Purchase and Sale is the document that is used to state the Buyer's desire to purchase the assets of a business ("business"), and to negotiate the terms of the sale. It is often referred to as an "Offer". This document also allows the Buyer an opportunity to set out in detail all of the terms and conditions they wish to be part of their Offer when buying the Seller's "business". Some common examples of a Buyer's conditions include arranging financing for the business to be purchased and examining financial statements. After the Offer is prepared and signed by the Buyer, it is presented to the Seller for acceptance. The Seller, in turn, may want to make changes to the Offer for the Buyer to consider. This process can continue back and forth several times in an effort to reach an agreement.

This is the date that the document is created. This date is used to identify this Offer.

This Agreement of Purchase and Sale dated this..... day of 20.....

The names of the parties are found next together with the name of the business which owns the assets that are to be sold and bought. The location of the assets is inserted here. It is also set out that the Buyer will be purchasing the lease of the premises, the trade names and any goodwill.

Further this section sets out the Purchase Price which includes an amount for inventory.

BUYER:, agrees to purchase from
(Full legal names of all Buyers)

SELLER:, the following
(Full legal names of all Sellers)

all the assets of the Business known as.....(including the chattels, fixtures and inventory of the Business set out in Schedule "A" as are now located upon the premises and inspected and approved by Buyer) situated at the property known as(the "Business") together with the lease of the premises, and the trade name and goodwill of the Business (the "Assets").

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

which total Purchase Price includes the amount of \$.....in respect of inventory of the Business.

DEPOSIT: Buyer submits Dollars (CDN\$).....
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

by negotiable cheque payable to..... "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. 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.

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

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

1. IRREVOCABILITY: *The party submitting the Offer to the other side agrees to allow the other side until that deadline to accept the Offer. The submitting party is not permitted to withdraw their Offer prior to that time. The seal beside their signature shows that the submitting party has received something of value for this irrevocable Offer.*

1. IRREVOCABILITY: This offer shall be irrevocable by until on the day of 20....., after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.
(Seller/Buyer) (a.m./p.m.)

2. COMPLETION DATE: *This is the date that the transaction is scheduled to be completed. Unless there is a provision elsewhere in the Agreement, the property is to be vacant. This date is not to be on a weekend or a statutory holiday.*

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on theday of 20..... Upon completion, vacant possession of the premises shall be given to the Buyer unless otherwise provided for in this Agreement.

3. HST: *This section indicates how the Harmonized Sales Tax will impact the sale price. In a business transaction the parties agree to complete and file the appropriate election for Harmonized Sales Tax.*

3. HST: The parties hereto agree that this transaction shall be a taxable supply in accordance with the provisions of the Excise Tax Act (Canada), R.S.C. 1985, e-15, as amended. The Seller and Buyer agree to file the necessary Form electing not to have the Harmonized Sales Tax (HST) apply. The Buyer agrees to file the requisite election Form containing the prescribed information, together with a return for the Buyer's reporting period in which the transaction occurs, under the Excise Tax Act (Canada), as amended, on or prior to the date prescribed by such Act for making such election.

INITIALS OF BUYER(S):

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INITIALS OF SELLER(S):

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4. **NOTICES:** Under the Agreement there will be requirements to deliver notices to the other side. This provision highlights various methods that would be available to deliver these notices.

4. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller 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 (any of them, "Document") 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 or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: FAX No.:
Email Address: (For delivery of Documents to Seller) Email Address: (For delivery of Documents to Buyer)
..... (For delivery of Documents to Seller) (For delivery of Documents to Buyer)

5. **NON-COMPETITION:** The Seller and possibly the principal of the Seller agree not to compete with the Buyer for a certain period and within a certain geographical radius.

5. **NON-COMPETITION:** Seller and the undersigned.....jointly and severally covenant not to carry on or be engaged in or concerned with (either directly or indirectly in any manner whatsoever including without limitation as a principal, agent, partner or shareholder) any business competitive with or similar to the Business as presently carried on, within a radius of.....kilometers of the premises for.....months after completion. The aforesaid covenant shall survive the completion of the transaction provided for herein.

6. **SEARCHES:** There are a number of searches that a lawyer may undertake when working on a business purchase. This paragraph sets out the times for those searches to be done. These searches may include work orders or the use of the premises may be continued.

6. **SEARCHES:** Buyer shall be allowed until 6:00 p.m. on the day of..... 20..... (Requisition Date) to satisfy the Buyer that there are no outstanding work orders or deficiency notices affecting the property, and that its present use (.....) may be lawfully continued. If within that time any valid obligation to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such obligations, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Seller hereby consents to the municipality or other governmental agencies releasing to the Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute such further authorizations in this regard as Buyer may reasonably require.

7. **COVENANTS BY SELLER:** The Seller covenants that the Assets being sold are not encumbered and no one else has any interest in the assets except as noted. Further the Seller covenants that the Seller is a resident of Canada pursuant to the Income Tax Act and not in default with respect to any agreements related to Business. The Seller also covenants that there are no claims, actions or proceedings outstanding and the Seller is not aware of any possible ones. Some details of the lease is also set out here. Note there is a requirement to attach a copy of the lease to this form. There is also a covenant by the Seller respecting any employees. In addition the Seller covenants that the Business has been carried out in the ordinary course and the financial statements and information provided are true, accurate and correct in all material respects. Further the Seller covenants that there are no liabilities other than as set out in a Bulk Sales Act statement that is to be delivered to the Buyer. Finally there is a provision that the Seller covenants that the tangible Assets are being delivered in good conditions subject only to reasonable wear and tear.

7. **COVENANTS BY SELLER:** The Seller covenants;
(a) the Assets are now and shall at the time of completion be owned by Seller free and clear of all encumbrances, liens or charges and no other person has now or shall at the time of closing have any interest in the assets except

.....
.....
.....

(b) Seller is not now and shall not at the time of completion be a non-resident person within the meaning of Section 116 of the Income Tax Act (Canada);

(c) Seller is not in default of any agreements related to the Business and there are no actions, suits or proceedings against or on behalf of the Seller, pending or threatened, which may affect the Business, and the Seller is not aware of any existing grounds on which any such action, suit or proceeding might be commenced;

(d) there is a good, valid and subsisting lease of the premises for a term of.....years at a monthly rental of \$..... expiring on the day of....., 20..... (a copy of which lease is attached hereto);

(e) there are not now and shall not at the time of completion be any employees of the Business except the following, all of whom can be dismissed on the minimum applicable statutory notice period without further liability:

.....
.....
.....

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

(f) the Business has been carried on in the ordinary course and all financial statements and other information provided to Buyer are true, accurate and correct in all material respects and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and Seller shall, at the time of completion, have no liabilities, contingent or otherwise, except as reflected therein (none of which shall be inconsistent with past practice or materially adverse);
(g) no expenditures shall be made out of the ordinary course of business prior to closing and the Business shall be carried on up to the time of completion in the ordinary course and in a commercially reasonable manner with a view to preserving the goodwill of the Business; and
(h) the tangible Assets are now and shall at the time of completion be in good condition, subject only in the case of equipment to reasonable wear and tear.

8. **FURTHER COVENANTS BY THE SELLER:** *The Seller promises to comply with a number of different statutes and obtain a consent to an assignment of lease. Further the Seller covenants to indemnify the Buyer against any claims and liabilities that existed at the time of completion that were not disclosed in the financial statements.*

8. **FURTHER COVENANTS BY THE SELLER:** The Seller covenants;

(a) to comply with Section 6 of the Retail Sales Tax Act;

(b) to deliver to the Buyer at or before the time of completion the written consent of the lessor to the assignment of the lease of the premises to the Buyer, if such consent is required by the terms of the said lease; and

(c) to indemnify and save harmless the Buyer from and against all liabilities, claims and demands in connection with the purchased business existing or incurred as at the time of completion and not shown on the financial statements provided to the Buyer or expressly agreed to be assumed by the Buyer in this Agreement.

9. **BUYER REPRESENTATION AND WARRANTY:** *The Buyer is representing and warranting that the Buyer will not be a non-eligible person within the meaning of Investment Canada Act.*

9. **BUYER REPRESENTATION AND WARRANTY:** The Buyer represents and warrants that the Buyer is not now and shall not at the time of completion be a non-eligible person within the meaning of the Investment Canada Act.

10. **COVENANTS BY BUYER:** *The Buyer promises to pay all applicable retail sales tax and federal sales tax on completion.*

10. **COVENANTS BY BUYER:** The Buyer covenants to pay all applicable retail sales tax and federal sales tax on completion (or furnish appropriate exemption certificates) eligible in respect to this transaction.

11. **BUYER CONDITIONS:** *The Buyer must close subject to satisfaction of certain conditions.*

11. **BUYER CONDITIONS:** The Buyer's obligation to complete this transaction shall be subject to satisfaction of the following conditions (which may be waived in whole or in part by Buyer without prejudice to any claim for breach of covenant, representation or warranty):

(a) the representations and warranties of Seller shall be true at and as of completion as if given at that time;

(b) Seller shall have performed all covenants to be performed by Seller at or prior to the time of completion.

12. **INVENTORY:** *The Buyer or the Seller can ask that the inventory be counted after the close of business the day before the completion date and if it turns out that there is more or less than noted in the Purchase Price section above the Purchase Price will be adjusted.*

12. **INVENTORY:** Prior to completion, either party may elect by written notice to the other that the inventory shall be physically counted after the close of business on the day prior to completion and valued at Seller's cost thereof in which case the total Purchase Price shall be increased or decreased to the extent that the valuation so obtained is greater than or less than the amount set for inventory stated above. Failing such an election, neither Seller nor Buyer may dispute the amount of valuation of inventory.

13. **ADJUSTMENTS:** *Upon closing there will be a number of adjustments for items set out in the clause with the day of closing to be charged to the Buyer.*

13. **ADJUSTMENTS:** Any business taxes, insurance, rent, hydro, water, fuel, employee's wages and vacation pay and usual prepaid items being transferred to Buyer, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Buyer.

14. **DOCUMENT PREPARATION:** *Certain documents are to be prepared at the Seller's expense with any security documents to be prepared at the expense of the Buyer. Each party pays for the registration costs of their own documents.*

14. **DOCUMENT PREPARATION:** The Bill of Sale and other transfer documents are to be prepared at Seller's expense and any security documents are to be prepared at the expense of Buyer, and each party is to pay the costs of registration of their own documents.

15. **RISK:** *The Seller is responsible for the assets of the Business until completion.*

15. **RISK:** All the assets of the Business shall be and remain at risk of Seller until the completion of the transaction provided for herein.

16. **TENDER:** *Each side must be able to demonstrate that they are ready, willing and able to complete the transaction.*

16. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the *Canadian Payments Act (R.S.C., 1985, c. C-21)*, as amended from time to time.

17. **AGREEMENT IN WRITING:** *If there is a conflict or discrepancy between any of the pre-set (preprinted) clauses and anything that has been added to the Agreement, then added parts supersede the pre-set clauses. Further there no other agreements between the Buyer and Seller other than those contained in this Agreement.*

17. **AGREEMENT IN WRITING:** This offer when accepted shall constitute a binding agreement of purchase and sale, and time shall in all respects be of the essence of this Agreement. There is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein. If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.

INITIALS OF BUYER(S):

○

INITIALS OF SELLER(S):

○

18. **ELECTRONIC SIGNATURES:** This provision ensures compliance with the Electronic Commerce Act in that it is necessary that the parties to an agreement consent to the use of electronic signatures.

18. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act, 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

19. **TIME AND DATE:** Times and Dates are determined by the location of the property.

19. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the Business is located.

20. **SUCCESSORS AND ASSIGNS:** In the event one of the parties dies before closing their heirs and executors are bound by the Agreement.

20. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

The parties sign the Agreement under seal.

SIGNED, SEALED AND DELIVERED in the presence of:

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

(Witness)

(Buyer/Authorized Signing Officer)

(Seal) (Date)

(Witness)

(Buyer/Authorized Signing Officer)

(Seal) (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

(Witness)

(Seller/Authorized Signing Officer)

(Seal) (Date)

(Witness)

(Seller/Authorized Signing Officer)

(Seal) (Date)

The person signing below agrees to the non-competition provision above.

THE UNDERSIGNED

.....in consideration of Buyer entering into this Agreement, hereby executes this Agreement for the purpose of Clause 5.

SIGNED, SEALED AND DELIVERED in the presence of:

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

(Witness)

(Seal) (Date)

When all the parties have accepted the Agreement, then the last person to sign confirms when that happened.

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 this day of....., 20.....

(a.m./p.m.)

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)

Listing Brokerage

(Tel.No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel.No.)

(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

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

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

(Seller)

(Date)

(Buyer)

(Date)

(Seller)

(Date)

(Buyer)

(Date)

Address for Service

Address for Service

(Tel. No.)

(Tel. No.)

Seller's Lawyer

Buyer's Lawyer

Address

Address

Email

Email

(Tel. No.)

(Fax. No.)

(Tel. No.)

(Fax. No.)

FOR OFFICE USE ONLY

COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:


In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as 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.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

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Schedule A

Agreement of Purchase and Sale

- Business in Leased Premises

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER:

SELLER:

for the purchase and sale of

..... dated the day of, 20.....

Buyer agrees to pay the balance as follows:

EDUCATION ONLY
USE ONLY

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):