

## SCHEDULE "B"

### SECTION 1: EVIDENCE FOR SALE

1. The Purchaser acknowledges that the Vendor is a mortgagee of and is selling the lands and premises (described in the first page of this Agreement of Purchase and Sale, and hereinafter referred to as the "Property") to the Purchaser in exercise of the power of sale provisions contained in a Charge/Mortgage of Land (the "Mortgage") that the Vendor holds on the Property. It is understood that on the date of acceptance of this Agreement of Purchase and Sale (the "Agreement") there is default under the terms of the Mortgage which entitles the Vendor to exercise the power of sale. The only evidence of default, which the Purchaser may require, shall be a statutory declaration made by the Vendor setting forth the facts entitling the Vendor to sell the Property under power of sale, including the particulars of the notice of exercising the power of sale, the names of the persons upon whom service of the notice has been effected, and declaring that default under the Mortgage entitling the Vendor to exercise the power of sale has continued up to and including the date of acceptance of this Agreement.

### SECTION 2: CONDITION OF THE PROPERTY

2. The Purchaser shall purchase the Property as it exists at the date of acceptance of this Agreement, on an "as-is, where-is" basis, without representation, warranty or condition with respect to the fitness, condition, zoning or lawful use of the Property. The Vendor, its Agent, or anyone else on its behalf, makes no representations or warranty with respect to any defects in workmanship, state of repair, location of structures, walls, retaining walls or fences (free standing or otherwise). The Vendor shall have no responsibility whatsoever to remedy any defect, infraction, or encroachments by buildings or fences on to the Property or on to adjoining properties or streets, comply with any outstanding Municipal, Provincial or Federal or other work orders, or complete any unfinished work, whether existing as at the date of acceptance of the Agreement or coming into existence between the said date and the date of closing of the Agreement. The Purchaser acknowledges that he has relied entirely upon his own inspection and investigation with respect to title matters and the quantity, quality, fitness, condition and value of the Property.

### SECTION 3: TITLE

3(a) The Purchaser shall accept title to the Property, subject to, and whether complied with or not, any and all registered restrictions, agreements or covenants which run with the land, registered easements for the supply of utilities and services to the Property or through the Property to adjoining/adjacent properties or other easements, registered leases, rights-of-way, rights of re-entry, by-laws, standard subdivision or site plan agreements, (including any levies or charges payable thereunder), with the Municipality and/or Public Utility, and any encroachments; and if the Property is a condominium, the declaration, description, by-laws, rules and regulations of the condominium whether or not registered on title and subject to any special assessments or increase or potential increase in condominium common expenses, and any outstanding lawsuits, either by or against the Condominium Corporation, which the Purchaser hereby agrees to assume.

3(b) The Vendor shall only be required, on or before completion of this Agreement, to deliver a discharge, release or reassignment of any charge/mortgage of land, assignment, lien or other encumbrance now registered against the title to the Property which is in priority to the Mortgage. This obligation shall merge on completion of this Agreement, unless the Vendor, by its solicitor, has agreed, in writing, to the contrary. For further certainty, the Vendor shall not be required to deliver a discharge, release or reassignment of the Mortgage, or any charge/mortgage of land, assignment, lien or other encumbrance registered against the title to the Property which would be extinguished by completion by the Vendor of enforcement of its power of sale remedy under the Mortgage.

3(c) The Vendor shall not be required to furnish or produce any abstract, deed, declaration, municipal occupancy permit or survey or other document or evidence of title except those in its possession.

3(d) If a discharge of any charge/mortgage of land in priority to the Mortgage in favour of a chartered bank, trust company, credit union or insurance company which is not to be assumed by the Purchaser is not available in registrable form on the closing date, the Purchaser shall accept the undertaking of the Vendor to obtain such discharge in registrable form and to register same against the title to the Property, if the Vendor provides to the Purchaser a mortgage statement for discharge purposes executed by such mortgagee setting out the balance required to obtain such discharge, together with an executed direction directing payment to such mortgagee of the amount required to obtain such discharge out of the balance due on closing.

3(e) If the Vendor is selling a leasehold interest in the Property, then, in addition to the statutory declaration as to default, required of the Vendor in 1, above, the Vendor shall only be required to provide, on closing, an assignment of the lease, as executed by the Vendor, and it shall be the sole responsibility of the Purchaser to execute the assignment of lease on the Purchaser's behalf, and, at the Purchaser's sole cost and expense, to obtain any necessary approvals, including the execution of any document or documents evidencing such approval, from the lessor or other third parties, as are required by the terms of the lease or as the Purchaser may require.

#### **SECTION 4: TITLE INSURANCE**

4. The Vendor may be the beneficiary of a policy of insurance (the "Policy") relating to the validity, or enforceability of the Mortgage, or the title of the mortgagor(s) to the Property or the marketability of the Property, or any other matter, issue or thing relating to title to the Mortgage or the Property, or both. In this event, and provided that the Policy is issued by an insurer licensed to issue like policies of insurance in the Province of Ontario, the Vendor may, at its sole option, cause the Policy to be assigned to the Purchaser, at the Purchaser's sole and entire expense, as a full and complete answer to any issue raised by the Purchaser, and not otherwise provided for in the Agreement, which would, if raised by the Vendor, be an insured risk under the Policy. If the Policy is not transferable, the Purchaser agrees to accept in place of an assignment of the Policy, a new policy of insurance, in the same or similar form to the Policy, from the same insurer, issued to the Purchaser, at the Purchaser's sole and entire expense.

#### **SECTION 5: RIGHT TO EXTEND CLOSING and/or TERMINATE TRANSACTION**

5(a) In the event any issue is raised with respect to the state of title to the Property, the compliance of this Agreement, or the conveyance contemplated by this Agreement, with the *Planning Act*, R.S.O. 1990 c. P-13, or similar legislation, or the exercise of the power of sale by the Vendor, or if the conveyancing documents provided by the Bank on closing are either not acceptable to the local Land Registrar, or his

staff, for registration, or have not been pre-approved for registration by the local Land Registrar, or his staff, or both, the Vendor may at its option, by written notice delivered to the Purchaser or its solicitor at any time, on or before closing, extend the closing date for a period or periods of time not exceeding 90 days in total. If the Vendor is unable or unwilling to resolve any such issue by the expiry of the extension period or periods, if any, the Vendor at its sole option may terminate this Agreement, in which case the deposit shall be returned to the Purchaser, without recourse by the Purchaser for any costs, damages, losses or expenses incurred as a result of such an extension and/or termination, or otherwise.

5(b) In the event that the Vendor is unable to complete this Agreement as a result of:

- (i) any action or inaction taken by a prior or subsequent encumbrancer;
- (ii) any action taken by the present registered owner or the refusal of the present registered owner to take any action;
- (iii) any party having an interest in the Property redeeming the Mortgage prior to closing;
- (iv) a Court of competent jurisdiction preventing the completion of the within transaction by an interim, interlocutory or permanent injunction or otherwise (whether or not under appeal),

then the Vendor shall at its sole discretion have the right to terminate this Agreement and all the Vendor's obligations hereunder shall be at an end and the Vendor shall not be responsible for the Purchaser's

costs, damages, losses or expenses and the Purchaser's deposit shall be returned in full. This Agreement is conditional upon there being no redemption made prior to closing by the registered owner, subsequent encumbrancer, or other party entitled to redeem the Property.

#### **SECTION 6: FIXTURES/CHATELS**

6. Notwithstanding any other clauses set out in this Agreement, the purchase price herein shall not include any chattels presently located on, upon, around or forming part of the Property, and the Purchaser acknowledges that the following fixtures may have been installed by the registered owner of the Property on a rental basis, or have been financed by the registered owner, and be subject to a security interest, whether perfected or not:

- hot water heater
- water softener
- water filter
- gas heater (and all appurtenant attachments)
- cable television
- any kind of heating or cooling system

The Vendor, or anyone on its behalf, does not warrant the aforementioned items are owned, and does not guarantee title to the chattels and does not warrant the condition or state of repair of the chattels. The Purchaser must satisfy itself in this regard, and accept the fixtures and chattels on an "as-is, where is" basis. The Vendor shall not provide a bill of sale for any chattels or fixtures, and shall make no further adjustments or abatement in the purchase price with respect thereto. The Vendor will not remove and shall not be responsible for the removal of any chattels found on the Property prior to or on the date of closing. The Vendor shall have no obligation to remove any security interest in any chattels or fixtures that may be subject to a security interest, and the Purchaser will complete the closing of this Agreement, whether or not any chattels or fixtures are subject to a security interest, perfected or otherwise, and whether or not notice of any such security interest has been registered or deposited on title to the Property..

#### **SECTION 7: ADJUSTMENTS**

7. The Purchaser shall pay to the Vendor on closing, the balance of the purchase price, subject to adjustment for the current year's municipal taxes and the Vendor shall not be responsible for the payment of, and there shall be no adjustment for, development fees, imposts, lot levies, local improvement charges, or sewer charges. The Vendor and the Purchaser agree that the adjustment, if any, for the current year's municipal taxes shall be based upon 100% of the municipal taxes for the property for the year previous to the one in which this transaction is scheduled to close, unless as at the date of this Agreement the relevant municipality has issued the final tax bill for the subject property, for the year in which this Agreement is scheduled to close, in which latter case the said adjustment shall be on the basis of the said final tax bill. In either case, the day of closing shall be apportioned to the Purchaser. The Vendor and the Purchaser further agree that there will be no further adjustment for municipal taxes, and that the Vendor will not provide its undertaking to re-adjust any item relating to municipal taxes on the Statement of Adjustments. If the Property is a condominium, then the Vendor agrees to deliver to the Purchaser upon request a written consent to obtain an Estoppel Certificate directly from the Condominium Corporation. The Vendor shall not be obliged to deliver any further documentation of the Condominium Corporation nor an Estoppel Certificate.

#### **SECTION 8: POSSESSION**

8(a) Unless otherwise indicated on the first page of this Agreement, the Purchaser agrees to assume any existing tenancies in accordance with the terms of the tenancies. In the event the Purchaser requires vacant possession of the Property pursuant to the first page of this Agreement, and such vacant possession cannot be provided by the closing date, the Vendor may at its sole option, upon written notice to the Purchaser or its solicitor on or before closing, extend the closing date for any period or periods not

exceeding in total 90 days. If the Vendor is unable to provide vacant possession by the expiry of the extension period or periods, the Purchaser may accept the Property with the existing occupants or tenants, failing which this Agreement shall be terminated, in which latter event, the deposit shall be returned to the Purchaser, without recourse by the Purchaser for any losses or damages incurred as a result of said termination, or as a result of any one or more extensions under this clause.

8(b) In the event that the Property is occupied by one or more occupants or tenants, and the Purchaser requires vacant possession of the Property, the Purchaser hereby agrees to execute and deliver to the Vendor, within 3 days of acceptance of this Agreement, an undertaking and acknowledgment, that the Purchaser requires the Property or any part of it for the purpose of occupation by himself or herself, his or her spouse or child or parent of his or hers or of his or her spouse, in accordance with the provisions of Section 51 of the Mortgages Act, R.S.O. 1990, Chapter M.40.

8(c) Where the Purchaser agrees to assume all existing tenancies, the Vendor makes no representations whatsoever with respect thereto and the Vendor shall provide to the Purchaser on closing only documentation relating to those tenancies which it has in its possession. The Vendor shall not be required to provide any documentation signed by the tenants confirming the status of the tenancies or provide a notification to the tenants regarding future rent payments. The Vendor shall further not be obliged to credit on closing any current or pre-paid rental, or other adjustments in favour of the Purchaser other than for rent actually received by the Vendor.

#### **SECTION 9: ELECTRONIC REGISTRATION**

9(a) Where the Property is located within the jurisdiction of a Registry Office in which electronic registration of any or all of the Transfer/Deed of Land, the deposit or registration of the requisite declarations regarding any or all of default under the mortgage, service of the Notice of Sale, and compliance with the applicable legislation entitling a sale under power of sale, or any other documents associated with the transfer of the Property as provided for in this Agreement, has been implemented, (all of which documents aforesaid are individually and collectively hereinafter referred to as the "Sale Documents"), the Purchaser acknowledges and agrees that the Vendor, at its sole option, may elect not to provide the Sale Documents, or any of them in electronic form; and further agrees that the Vendor may, in its sole discretion, provide all or any part of the required documentation in paper form, in accordance with the applicable legislation. In the event that the Vendor elects to provide all or any part of the Sale Documents in paper form, the Purchaser agrees that the Vendor will not be liable for any delay resulting therefrom, and may exercise the rights of extension of the closing date of the Agreement pursuant to Section 5, above. It is further agreed by the Purchaser that if the Vendor requires an extension of the closing date as a result of providing all or any part of the Sale Documents in paper form, then that shall be deemed an event of the type contemplated by Section 5(a), above, entitling the Vendor to avail itself of the provisions of Section 5, *mutatis mutandi*.

9(b) Where the Property is located within the Jurisdiction of a Registry Office in which electronic registration of the Sale Documents has been implemented, and the Vendor is unable to complete the closing of the Agreement due to its inability to access the electronic registration system, for any reason whatsoever, including, but not limited to, and without limiting the generality of the foregoing, the negligence of the Vendor, its officers, employees, agents, or solicitors; war, whether declared or not, civil unrest or insurrection, power failure, failure of telecommunications or computer systems, or the like, or Act of God, then the Vendor may at its option, by written notice delivered to the Purchaser or its solicitor at any time, on or before closing, extend the closing date for a period or periods of time not exceeding 90 days in total. If the Vendor is unable or unwilling to resolve any such issue by the expiry of the extension period or periods, if any, the Vendor at its sole option may terminate this Agreement, in which case the deposit shall be returned to the Purchaser, without recourse by the Purchaser for any losses or damages incurred as a result of such an extension and/or termination.

9(c) Where the Property is located within the jurisdiction of a Registry Office in which electronic registration of any or all of the Transfer/Deed of Land, the deposit or registration of the requisite declarations regarding any or all of default under the mortgage, service of the Notice of Sale, and

compliance with the applicable legislation entitling a sale under power of sale, or any other documents associated with the transfer of the Property as provided for in this Agreement, has been implemented, the Purchaser and the Vendor agree that the completion of this Agreement shall not take place in escrow. The Vendor and the Purchaser agree that the Vendor is not required to enter into any escrow agreement with the Purchaser or the Purchaser's solicitor. On or before the day set for completion of this Agreement, the Vendor will advise the Purchaser of the identity of the Vendor's closing agent. The Purchaser will be obligated to deliver to the Vendor or the Vendor's closing agent the balance of the purchase price, in accordance with this Agreement, together with such further documents as are required to complete this Agreement, said funds and documentation to be released to the Vendor's closing agent free and clear of any and all terms, conditions, reservations or the like. The Purchaser and the Vendor agree that, forthwith after delivery to the Vendor or the Vendor's closing agent of the balance of the purchase price and such further documents as are required to complete this Agreement, the Vendor's closing agent will release the Transfer/Deed of Land, in electronic form, for registration by the Purchaser, at the Purchaser's expense, and that, after said release by the Vendor's closing agent, the funds and any other documentation delivered to the Vendor or the Vendor's closing agent in connection with this Agreement shall be the Vendor's to do with as it will, and the Vendor's obligations under this Agreement, except as expressly stated to the contrary elsewhere herein, shall be at an end.

#### **SECTION 10: CLOSING FUNDS**

10(a) The Purchaser agrees that the balance of the purchase price, due on closing, shall be paid only by way of certified cheque, drawn on a Canadian financial institution, or a bank draft issued by a bank as set out on Schedule I of the *Bank Act*, S.C. 1991, c. 46, as amended, from time to time. The Purchaser further agrees that it will honour, without fee, charge or set off, the Vendor's written direction, delivered on or before closing, to make the balance of the purchase price, due on closing, payable by way of one or more payment items, to one or more payees. The Vendor and the Purchaser agree that failure of the Purchaser to comply with the Section, shall be conclusive evidence of termination of the Agreement by reason of default of the Purchaser, and Section 11(d), hereof, shall apply forthwith.

#### **SECTION 11: GENERAL**

11(a) The Purchaser covenants and agrees not to register Notices of this Agreement, Assignment thereof, Caution, Certificate of Pending Litigation, or any other instrument or reference to this Agreement of his/her interest in the Property. If any such registration occurs, the Vendor may, at its option, terminate this Agreement and all deposit monies shall be forfeited as liquidated damages and not as a penalty. The Purchaser hereby irrevocably consents to a court order removing any such registrations and agrees to bear all costs in obtaining such order.

11(b) Notwithstanding any other clauses in this Agreement, the Vendor has no knowledge and makes no representation whatsoever as to whether the Property has been insulated with Urea Formaldehyde Foam Insulation or any other type of asbestos insulation, or whether the Property contains any other substances, liquid gases or materials which may be hazardous or toxic.

11(c) This Agreement, any amendments thereto, and any notices given pursuant to this Agreement of Purchase and Sale may be transmitted by telecopier or fax machine and shall be binding upon the parties hereto as if executed in the original. The Purchaser agrees to deliver an executed original agreement to the Vendor within two days of acceptance of this Agreement.

11(d) Upon termination of this Agreement by reason of default of the Purchaser, the deposit, together with any interest therein, shall be paid to the Vendor by the Vendor's agent, forthwith without any further direction or consent from the Purchaser being required, and the Purchaser shall not direct or cause or attempt to cause the Vendor's agent to do otherwise.

11(e) Where the provisions of this Schedule "A" conflict with or are inconsistent with any terms in the pre-printed, typed or written terms of the standard form of Agreement of Purchase and Sale to which this

Schedule "A" is attached, the parties agree that the provisions of this Schedule "A" shall govern and prevail.

11(f) The Purchaser covenants and agrees to pay to the Vendor on closing, in addition to the balance due on closing, any Goods and Services Tax ("GST") applicable to this transaction which may be imposed by relevant legislation of the Government of Canada on the sale of the Property (save for any GST on the amount of any real estate commission payable by the Vendor hereunder) and will indemnify the Vendor with respect thereto. The Vendor shall not be responsible to provide any certificates with respect to the applicability of GST to the transaction. Neither the covenant nor the indemnity contained in this paragraph shall merge on closing of this Agreement, and both shall survive closing of this Agreement.

11(g) The Vendor shall not be required to provide the covenant deemed to be included in the transfer/deed of land under section 5(1)3(ii) of the Land Registration Reform Act, R.S.O. 1990, Chapter L. 4, and, in accordance with section 5(4), the Vendor may annex a schedule to the transfer/deed of land expressly excluding such covenant.

11(h) The Purchaser shall not require the Vendor to make any statements contemplated by section 50(22) of the Planning Act, R.S.O. 1990, Chapter P.13. The Purchaser agrees to satisfy himself with respect to compliance with the Planning Act.

11(i) This Agreement shall not be assignable by the Purchaser without the express written consent of the Vendor, which consent may be unreasonably or arbitrarily withheld.

11(j) The term "Vendor" as used herein, shall have no inference or reference to the present registered owner of the Property.

11(k) No insurance shall be transferred on completion of this Agreement. If the Vendor is taking back a mortgage, the Purchaser shall deliver to the Vendor satisfactory evidence of adequate insurance to protect the Vendor's interest on completion of this transaction.

11(l) Should the Property be registered in the Registry system of Land Registration, the Purchaser agrees to pay the registration costs of the Deposit to be registered prior to or at closing.

11(m) Should the Vendor elect to provide the Sale Documents in paper form, in accordance with Section 9, above, and should the Registrar levy, assess, or collect a fee of any kind as a result of the Sale Documents being provided in paper form, the Purchaser agrees to pay said fee prior to or at closing.

11(n) The Purchaser acknowledges that the Vendor may be unable to deliver keys to the Property on the date of closing and agrees that the Vendor will provide only such key or keys as are in its possession, when reasonably available after closing.

11(o) The Vendor shall not be obligated to provide its statutory declaration, sworn or otherwise, as to its status as a Canadian resident for purposes of s. 116 of the Income Tax Act, and provision by it of a written statement to the effect that it is not a non-resident shall be accepted by the Purchaser as satisfactory evidence of same.

11(p) This Agreement shall be completed by no later than 4:30 p.m. on the date specified herein, or in any extension hereof, for completion.

11(q) If any term, provision, covenant, indemnity or condition of this Agreement, including, without limiting the generality of the foregoing, this Schedule "A", or its application to any person or circumstance shall to any extent be, or be found by a competent authority to be, invalid or unenforceable, the remainder of this Agreement or the application of such term, provision, indemnity or condition to persons or circumstances other than those to which it is, or is held to be, invalid or unenforceable, shall not be

affected thereby and each term, provision, indemnity or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11(r) The insertion of headings in this Schedule "A" is for convenience and ease of reference only, and shall not affect the interpretation.

11(s) Unless expressly provided for elsewhere in this Agreement, the Purchaser is not, prior to the completion of this Agreement, entitled to enter in, on, or upon the Property, for the purposes of inspection, or otherwise, without the express written consent of the Vendor, which consent may be arbitrarily withheld.

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Purchaser**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Purchaser**

**B & M Handelman  
Investment Limited "et al"**

**PER:** \_\_\_\_\_  
**Name:**  
**Title: President**