

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

STAFF REPORT

DATE: May 18, 2021
TO: Committee of the Whole
FROM: Ken T. Kelly, Chief Administrative Officer
SUBJECT: Process for Sale of Business Park lots

RECOMMENDATION:

THAT Committee of the Whole recommends to Council to accept the process outlined in this report for the marketing, evaluation, and sale process for lots in Phase 3 of the Business Park.

BACKGROUND:

Council approved the award of the contract for real estate services on March 16, 2021. At that time staff indicated we would be bringing the results of the process back to Council for direction and decision.

DISCUSSION:

There has been serious interest in the business park phase 3 lots over the past 18 months. Interest has increased in the last few weeks. Many buyers are looking to purchase 2 lots or more. Prospective buyers include manufacturing looking to relocate to Almonte, new businesses looking to set up and existing local businesses considering a move or expansion.

These business park lands will play an important role in future prosperity and contribute to quality of life for Mississippi Mills residents by offering a variety of employment opportunities close to home. These lots will contribute to Mississippi Mills by generating additional building permit revenue and greater tax revenue once developed. The prospective tax revenue will vary depending on the buyers plans, building size etc. It is also important to consider how these businesses will positively impact the municipality through supplier or partner relationships with our existing businesses. New proposed businesses promotional value and impact on recreation and tourism etc. could also be important. For instance, if a new business is a destination or draw for business and individuals from other areas it could incrementally contribute to the strength of our existing businesses. For these reasons and more it is critically important that Council has all the information they need to make informed decisions when choosing buyers for these properties.

We are proposing the following process:

- All lots are listed with a posted date upon which offers will be accepted – what is known as a date for conveyance. This date has not been determined at this time but will likely be before the end of June, 2021. No offers will be accepted before this date.
- Along with their financial offer, prospective buyers would be required to provide an Executive Summary of their plans for the lot (or lots) that they are wishing to purchase. The Executive Summary should be no longer than 3 pages and should contain the following information:
 - Proposed deposit amount (40% of lot price minimum);
 - Description of Business, Industry, franchise/independent, market, domestic/export, etc.;
 - History of business (Owner resume for new proposed businesses);
 - Financial info – financial statements (audited preferred), or loan approval information;
 - Why they have chosen to locate their business in Almonte;
 - Type and size of structure to be built (approx. sq footage and value so that we can estimate building permit revenue and potential taxation);
 - Project timelines (When will construction will start, expected completion); and
 - Projective Employment plans short and long term (6 months, 2 years, 5 years).
- Offers will be presented to Council at an in-camera meeting that will be set a few days after offers close and provide time for analysis and development of presentation materials (Ian Graham of Innovation Realty will present the offers to Council).
- Council will consider offer prices along with the information in the executive summaries. Council will consider the impact the proposed business will have on the local network of businesses. They will decide which offers they would like to move ahead with. If there are multiple interesting offers for one lot Council may opt to go back to the buyers and ask if they will consider an alternate lot in the park.
- Once first choice buyers are selected, they will be required to provide a deposit. The Municipality will hold the deposit while they proceed with the steps outlined in the purchase agreement document. If they do not proceed in the timeline stipulated in the agreement document Council will return their deposit and put the land back up for sale. (See attachment – Purchase and Sale Agreement)

- Selected, prospective buyers must submit site plans within 180 days of receiving notice that their offer was accepted.
- Lots will not close until 21 days after the site plan agreement is executed.

We understand this process may dissuade some prospective buyers. Serviced business lands are at a premium in Mississippi Mills, and across the region. This process is proposed to eliminate buyers looking to purchase the lands for speculation and to sell later for a profit. It will also eliminate businesses without the financial backing to complete their plans on time. Mississippi Mills is seeking businesses that will contribute to the municipality with employment opportunities, commercial property tax revenue, and products or services that support our existing business community, within a reasonable timeframe.

FINANCIAL IMPLICATIONS:

The process used for evaluation will not have a financial impact on the Municipality. Staff hope that this process will be transparent, competitive and allow the Municipality to achieve the best value and prospects for future employment and tax revenue.

SUMMARY:

Staff need direction from Council on the preference for the sale of the business park lots. An evaluation process has been developed to gather more information for the consideration of Council in making decisions with regards to which offers it would like to accept and whom it wishes to work with in the development of the last phase of the business park.

Respectfully submitted by,



Ken T. Kelly,
Chief Administrative Officer

Reviewed by:



Tiffany Maclaren,
Community Economic & Cultural
Coordinator

ATTACHMENTS:

1. Proposed Purchase and Sale Agreement

**MUNICIPALITY OF MISSISSIPPI MILLS
COMMERCIAL/INDUSTRIAL LANDS**

AGREEMENT OF PURCHASE AND SALE

BETWEEN:

123456 ONTARIO LTD.

(the "Purchaser")

OF THE FIRST PART

AND:

**THE CORPORATION OF THE MUNICIPALITY
OF MISSISSIPPI MILLS**

(the "Municipality")

OF THE SECOND PART

1.1 STANDARD FORM AGREEMENT

1.1.1 The Purchaser acknowledges that this is the Municipality's standard form of agreement of purchase and sale for commercial/industrial land. Any addition, deletion or alteration made to this agreement by the Purchaser shall be clearly shown by highlighting or strikeout and initialed by the Purchaser, failing which this agreement shall be read as though such addition, deletion or alteration had not been made.

1.2 DEFINITIONS

1.2.1 In this agreement,

"Additional Terms" shall mean those additional terms to this Agreement as set out on Schedule "C" to this Agreement and that shall form a part of this Agreement;

"Closing Date" shall mean the date more particularly described in Schedule "A" on which the purchase and sale of the Lands is to be completed;

"Deposit" shall mean the sum more particularly described in Schedule "A" to be tendered with this offer on account of the Purchase Price;

"Irrevocable Date" shall mean the date more particularly described in Schedule "A" until this offer to purchase is open for acceptance by the Municipality;

"Lands" shall mean those lands owned by the Municipality more particularly described in Schedule "A";

"lot occupancy" means the sum of the individual gross floor areas of the building or buildings on the Lands expressed as a percentage of the area of the Lands;

"Option to Repurchase Agreement" means the agreement between the Purchaser and Municipality in the form of agreement more particularly described in Schedule "D";

"Permitted Encumbrances" means those agreements, easements, rights of way, or other restrictions, limitations, conditions or encumbrances affecting title to the Lands more particularly described in Schedule "A" that are now or will be at the Closing Date registered against title to the Lands;

“Purchase Price” shall mean the price to be paid by the Purchaser for the Lands as more particularly described in Schedule “A”;

“Purchaser’s Conditions” means those conditions as more particularly set out in Schedule “B” inserted in this agreement for the sole benefit of the Purchaser;

“Schedules” means Schedules “A”, “B”, “C” and “D” to this agreement that are to be read with and form a part hereof;

“Table of Critical Dates” means the following table of dates:

EVENT	TIMING	SECTION
Irrevocable Date	Minimum 14 days from date of agreement	Section 1.4.1 and Schedule A
Purchaser submits Site Plan application	Maximum 180 days after acceptance	Section 1.7.1
Purchaser executes Site Plan Agreement	Maximum 60 days after approval of Site Plan	Section 1.7.1
Date for examining title	7 days prior to Closing date	Section 1.13.2
Closing Date	21 days after Site Plan Agreement executed by Purchaser	Schedule A
Occupancy Permit	Maximum two (2) years after Closing Date	Section 1.11.1(g)

1.3 OFFER TO PURCHASE

1.3.1 The Purchaser hereby offers to purchase the Lands from the Municipality for the Purchase Price.

1.4 IRREVOCABLE OFFER

1.4.1 This offer to purchase shall be irrevocable by the Purchaser and remain open for acceptance by the Municipality until 4:00 p.m. on the Irrevocable Date

1.4.2 If this offer to purchase is not accepted by the Municipality on or before 4:00 p.m. on the Irrevocable Date, it shall immediately terminate and the Purchaser shall be entitled to the return of the Deposit in full without interest or deduction.

1.5 PAYMENT OF PURCHASE PRICE

1.5.1 The Purchaser shall pay the Purchase Price as follows:

- (a) the Deposit shall be tendered with this offer to purchase and shall be credited on account of the Purchase Price on the Closing Date; and
- (b) the balance of the Purchase Price shall be paid on the Closing Date, subject to all usual and proper adjustments, with the day of closing apportioned to the Purchaser.

1.5.2 All payments on account of the Purchase Price shall be made in lawful money of Canada, payable to the Municipality, or as it may otherwise direct in writing, and shall be by bank draft or cheque certified by a chartered bank, trust company, Province of Ontario Savings Office, credit union or caisse populaire.

1.6 HARMONIZED SALES TAX ("HST")

1.6.1 The Purchaser acknowledges that this transaction is subject to HST and that such tax and any other type of value-added or sales tax payable in connection therewith shall be in addition to the Purchase Price and shall be paid by the Purchaser.

1.6.2 The Municipality will not collect HST if the Purchaser provides to the Municipality on the Closing Date a warranty that the Purchaser is registered under the Excise Tax Act ("ETA"), together with a copy of the Purchaser's ETA registration, a warranty that the Purchaser shall self-assess, remit the HST payable and file the prescribed form, and shall indemnify the Municipality in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction.

1.7 CONDITIONAL ON SITE PLAN APPROVAL

1.7.1 This agreement shall be conditional on the Purchaser filing with the Municipality an application for site plan approval within the time prescribed on the Table of Critical Dates and obtaining site plan approval from the Municipality or, if necessary, from the Local Planning Appeal Tribunal on appeal:

- (a) from a refusal by the Municipality to grant such approval; or
- (b) in respect of any terms or conditions of any site plan approval imposed by the Municipality,

and entering into a site plan agreement with the Municipality as a condition of site plan approval pursuant to Section 41(7) of the *Planning Act*, within the time prescribed on the Table of Critical Dates.

1.7.2 If this condition is not satisfied within the time or times prescribed on the Table of Critical Dates and if both parties do not agree in writing to an extension, this agreement shall automatically terminate and neither party shall have any further obligations under this agreement, save and except the Deposit that shall be forfeited to the Municipality and not refunded to the Purchaser; provided that the Municipality shall agree to such reasonable requests from the Purchaser for extensions to the times prescribed above if the Municipality, acting reasonably, determines that the Purchaser is making a diligent effort to satisfy the condition and has been delayed for reasons beyond the Purchaser's control. This condition cannot be waived by either party.

1.7.3 The Purchaser shall have the right at any time or times prior to the Closing Date to enter on the Lands, by itself or with its contractors or agents, to conduct at its own expense and risk such further investigations or assessments of the Lands as the Purchaser deems necessary for the purpose of completing the site plan approval process, provided the Purchaser restores the Lands to their original condition upon completion of such investigations.

1.8 PURCHASER'S CONDITIONS

1.8.1 This Agreement shall be conditional on the Purchaser's Conditions being satisfied within the time and in the manner described therein. The Purchaser's Conditions are inserted for the sole benefit of the Purchaser and may be waived by the Purchaser in writing at any time. If the Purchaser fails or refuses to waive the Purchaser's Conditions approval within the time prescribed on the Table of Critical Dates, this agreement shall be at an end and the Purchaser shall be entitled to the return of the Deposit without interest or deduction and neither the Purchaser nor the Municipality shall have any further obligations under it.

1.9 ADDITIONAL TERMS

1.9.1 The Additional Terms set out on Schedule "C" to this Agreement shall form part of this Agreement and shall be enforceable by the parties in accordance with the terms and conditions set out therein.

1.10 MUNICIPALITY'S REPRESENTATIONS AND WARRANTIES

1.10.1 The Municipality represents and warrants to the Purchaser as follows:

- (a) The Municipality has the lawful authority to sell the Lands and all Council approvals have been given and all corporate authority exists for the Municipality to complete the transaction in accordance with its terms;
- (b) That to the best of the Municipality's knowledge and belief, during the period of its ownership of the Lands all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the Lands, no limitations or restrictions affecting the continued use of the Lands exist, other than those specifically provided for herein, no pending litigation respecting environmental matters, no outstanding Ministry of the Environment, Conservation and Parks Orders, investigations, charges or prosecutions regarding environmental matters exist, and there has been no prior use of the Lands as a waste disposal site; and
- (c) The Municipality shall provide to the Purchaser upon request, all documents, records and reports relating to environmental matters that are in the possession of the Municipality, and the Municipality shall provide such further authorizations as the Purchaser may reasonably require for the Ministry of the Environment, Conservation and Parks to release to the Purchaser, its agent or solicitor, any and all information that may be on record in the Ministry office with respect to the Lands.

1.10.2 All of the Municipality's representations and warranties shall survive closing.

1.11 PURCHASER'S REPRESENTATIONS AND WARRANTIES

1.11.1 The Purchaser represents and warrants to the Municipality as follows:

- (a) The Purchaser has inspected the Lands and agrees that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Purchaser and Municipality;

- (b) The Purchaser has made such inquiries and conducted such investigations as the Purchaser deems necessary and is satisfied that:
 - (i) the Purchaser's intended use of the Lands is a permitted use under the current zoning of the Lands;
 - (ii) there are now or will be at such time as the Purchaser requires them, such services available to the Lands having sufficient capacity as needed for the Purchaser's intended use of the Lands;
- (c) The Purchaser will be responsible for any present and/or future costs required to upgrade the existing services as may be required to satisfy the Purchaser's particular needs;
- (d) The Purchaser will be responsible for the cost of connecting all services from the front lot line of the Lands to any building constructed on the Lands;
- (e) The Purchaser will be responsible for obtaining the approval of any other utility needed to service the Lands;
- (f) The Purchaser shall submit an application to the Municipality for site plan approval for the Lands within the time prescribed on the Table of Critical Dates;
- (g) If the site plan is approved, the Purchaser shall substantially complete construction of a building or buildings on the Lands in accordance with the zoning for the Lands and obtain an occupancy permit therefor within two (2) years of the date of registration of the Transfer for the Lands to the Purchaser;
- (h) Prior to obtaining an occupancy permit for the building or buildings, the Purchaser shall not transfer the Lands or any part thereof to any third person without the prior written consent of the Municipality, which consent may be arbitrarily refused unless such transfer is for the purpose of securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage; and
- (i) The Purchaser shall not transfer any portion of the Lands unencumbered by a building to any third person prior to the 10-year anniversary of the date of registration of the Transfer for the Lands without the prior written consent of the Municipality, which consent may be arbitrarily refused.

1.11.2 All of the Purchaser's representations and warranties shall survive closing.

1.12 OPTION TO REPURCHASE AGREEMENT

1.12.1 This agreement shall be conditional on the Purchaser and Municipality entering into the Option to Repurchase Agreement prior to the Closing Date and the Option to Repurchase Agreement being registered against title to the Lands immediately following registration of the Transfer for the Lands from the Municipality to the Purchaser with no intervening registrations or the creation of any intervening rights in the Lands. This condition is inserted for the sole benefit of the Municipality and may be waived by it in writing at any time prior to the Closing Date.

1.13 TITLE TO THE LANDS

1.13.1 Title to the Lands as at the Closing Date shall be good and marketable and free from encumbrances of every nature or kind, except for:

- (a) any restrictions, limitations or conditions contained in the original grant from the Crown;

- (b) any restrictions, limitations or conditions imposed by any applicable building and zoning by-laws;
- (c) any minor easements for hydro, gas, telephone or like services to the Lands;
- (d) the Option to Repurchase Agreement; and
- (e) the Permitted Encumbrances.

1.13.2 The Purchaser shall have until 4:00 p.m. on the date for examining title to the lands as prescribed on the Table of Critical Dates within which to examine the title of the Lands and to submit requisitions with respect thereto. If the Municipality is unable or unwilling to remove or remedy any requisition, and if the Purchaser will not waive the requisition, then this agreement, despite any intermediate acts or negotiations in respect of any such objections, shall be at an end and the Deposit shall be returned to the Purchaser without interest or deduction and neither the Municipality nor the Purchaser shall be liable to the other for any matter in connection with this agreement. Save as to any valid objection made within the times above limited, and except for any objection going to the root of the title of the Municipality, the Purchaser shall be conclusively deemed to have accepted the Municipality's title to the Lands.

1.13.3 The Purchaser shall not call for the production of any title deed, abstract of title, proof or evidence of title, or survey, except as may be expressly permitted or required under the terms of this agreement.

1.14 CLOSING

1.14.1 This transaction shall be completed by no later than 4:00 p.m. on the Closing Date, provided that if on such day the Registry or Land Titles Office is not open, closing shall occur on the next day thereafter on which such office is open. Upon completion, vacant possession of the Lands shall be given to the Purchaser unless otherwise provided in this agreement.

1.15 TENDER

1.15.1 Any tender of documents or money required by this agreement may be made upon either of the parties or their respective solicitors on the Closing Date.

1.16 DOCUMENT PREPARATION

1.16.1 The Transfer shall be prepared in registerable form by and at the expense of the Municipality. The Purchaser at the Purchaser's expense shall prepare the land transfer tax affidavit. Unless any reasonable objection to doing so is made by the Municipality or Municipality's solicitor, the Municipality and Municipality's solicitor shall complete, at the request of the Purchaser, the statements contemplated by Section 50(22) of the *Planning Act*, R.S.O. 1990, as it may be amended and renumbered from time to time.

1.17 NOTICE

1.17.1 Any notice required by or permitted to be given under this agreement shall be in writing. Any notice to the Purchaser shall be given to the Purchaser at the address or facsimile number hereafter set forth, and any notice to the Municipality shall be given to the Municipality's solicitor at the address or facsimile number hereafter set forth.

1.17.2 Any notice forwarded by mail shall, if posted in Ontario, be deemed to have been received on the fourth day, excluding Saturdays, Sundays and statutory holidays, after its post mark and any notice forwarded by facsimile shall be subject to actual

receipt by the party to whom it is directed, with evidence of confirmation of transmission by the sender of such notice being sufficient evidence of receipt by the party to whom it is addressed. If transmission is completed on a Saturday, Sunday or statutory holiday, or after 5:00 P.M. on any other day, it shall be deemed to have been received on the next day which is not a Saturday, Sunday or statutory holiday.

1.18 TIME OF THE ESSENCE

1.18.1 Time shall be of the essence of this agreement provided that any day established by or pursuant to this agreement for the doing of an act by any party or by which a condition is to be satisfied which falls on a Saturday, Sunday or statutory holiday shall be extended to the next day thereafter which is not a Saturday, Sunday or statutory holiday.

1.19 PLANNING ACT

1.19.1 This Agreement shall be effective to create an interest in the property only if the Municipality complies with the subdivision control provisions of the Planning Act by completion and the Municipality covenants to proceed diligently at its expense to obtain any necessary consent by completion.

1.20 ENTIRE AGREEMENT

1.20.1 The parties agree that there is no representation, warranty, collateral agreement or condition affecting this agreement or the Lands or other assets referred to herein nor is there any such representation, warranty, collateral agreement or condition which induced the Purchaser to enter into this agreement, other than expressed herein in writing.

1.21 SEVERABILITY

1.21.1 Any Article, Section, Subsection or other subdivision of this Agreement or any other provision of this Agreement which is, or becomes, illegal, invalid or unenforceable shall be severed from this Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof or thereof.

1.22 AMENDMENTS

1.22.1 This Agreement may only be amended, modified or supplemented by a written agreement signed by all the parties to such agreement.

1.23 WAIVER

1.23.1 No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

[THIS SECTION INTENTIONALLY LEFT BLANK]

1.24 **ENUREMENT**

1.24.1 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, successors and assigns.

Executed under seal by the Purchaser at _____, Ontario on the ____ day of _____, 202__.

123456 ONTARIO LTD.

Per:

Name – John Smith

Title - President

I have authority to bind the corporation

The Municipality accepts this offer by executing the same under seal at Almonte, Ontario on the _____ day of _____, 202__.

**THE CORPORATION OF MUNICIPALITY OF
MISSISSIPPI MILLS**

Per:

Name: Christa Lowry

Officer: Mayor

Name: Ken Kelly

Officer: Chief Administrative Officer

We have authority to bind the Corporation.

ADDRESSES FOR NOTICES

Purchaser:

123456 ONTARIO LTD.

Mr. Ken Kelly
Chief Administrative Officer
The Corporation of The Municipality
of Mississippi Mills
P.O. Box 400
3131 Old Perth Road
Almonte, ON K0A 1A0
Telephone No: 613-256-2064
Facsimile No: 613-256-4887

Purchaser's Solicitor:

Municipality Solicitor:

David C. Munday
Cunningham, Swan,
Smith Robinson Building
Suite 300 – 27 Princess Street
Kingston Ontario K7L 1A3
Telephone No: 546-8074
Facsimile No: 542-9814

SAMPLE

SCHEDULE "A"

Lands:

Frontage: 00.00metres more or less

Depth: 00.00 metres

Area: .404 hectares (1.00 acres) more or less

Municipal Street: Main Street

Legal Description: Lot__Plan 27M-XX, Municipality of Mississippi Mills,
Lanark County

Rights-of way/Easements: None

Purchase Price: One Hundred Thousand dollars (\$100,000.00) calculated at the rate of **\$100,000.00** per acre based on an estimated area of **1.00** acres.

Deposit: Five Thousand Dollars (\$5,000.00), which the Purchaser acknowledges will be non-refundable if the Purchaser fails to satisfy the condition in Section 1.7.2 of this Agreement.

Irrevocable Date: _____, **202**_____.

Closing Date: _____, **202**_____, or Twenty one (21) days after the Purchaser executes a site plan agreement with the Municipality for the Lands, whichever comes last, but if this date falls on a Saturday, Sunday or statutory holiday, the Closing Date shall be on the next business day.

Permitted Encumbrances: *list other agreements, easements, rights of way, or other restrictions, limitations, conditions or encumbrances affecting title and surviving closing*

1. Option to Repurchase Agreement
2. Any municipal utility easements required as a condition of site plan approval

SCHEDULE "B"

Purchaser's Conditions

This agreement is conditional on the following:

1. The Purchaser arranging financing on terms satisfactory to the Purchaser, in the Purchaser's sole and absolute discretion.

Unless the Purchaser gives notice in writing delivered to the Municipality not later than 4:00 p.m. on the 15th calendar day following acceptance of this Agreement that these conditions have been fulfilled, this Agreement shall automatically be null and void and the deposit shall be returned to the purchaser in full without deduction. These conditions are included for the sole benefit of the Purchaser and may be waived at the Purchaser's sole option by notice in writing to the Municipality within the time period stated herein.

SCHEDULE "C"
ADDITIONAL TERMS

1.

SCHEDULE "D"

Option to Repurchase Agreement

(For information purposes only)

THIS OPTION TO REPURCHASE AGREEMENT made this _____ day of _____, 202__0

BETWEEN:

123456 ONTARIO LTD.

(the "Optionor")

OF THE FIRST PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

(the Municipality")

OF THE SECOND PART

WHEREAS the Optionor purchased from the Municipality those commercial/industrial lands more particularly described in Schedule "A" to this Agreement (the "Lands");

AND WHEREAS for the purpose of selling the Lands, the Municipality relied on representations made by the Optionor that:

- (i) the Optionor would construct a building or buildings on the Lands in accordance with a site plan approved by the Municipality and obtain an occupancy permit for it within twenty-four (24) months from the date of purchase of the Lands; or
- (ii) the Optionor would not sell, transfer or otherwise dispose of all or any part of the Lands prior to completion of the building or buildings without the prior written consent of the Municipality, except for the purpose of securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage;

AND WHEREAS for the purpose of securing its obligations, the Optionor has agreed to grant an option to repurchase the Lands to the Municipality in accordance with the terms of this agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties agree each with the other as follows:

In this agreement,

1. The Optionor hereby grants to the Municipality an option to repurchase the Lands (the "Option").
2. The Municipality may exercise the Option if:
 - (a) Within twenty-four (24) months of the date of registration of the Transfer of the Lands to the Purchaser, the Purchaser fails to obtain an occupancy permit for a building on the Lands having a minimum gross floor area of five thousand (5,000) square feet in accordance with an approved site plan; or
 - (b) Prior to obtaining an occupancy permit, the Purchaser sells, transfers or otherwise disposes of the Lands or any part thereof to any third person without the prior written consent of the Municipality, except for the purpose of

securing the Lands in favour of a *bona fide* commercial lender in connection with a builder's mortgage.

3. If the Municipality has the right to exercise the Option in accordance with Clause 2 above, it may exercise its right by written notice delivered to the Optionor and any other person who may appear from the abstract of title for the Lands to have an interest in the Lands as follows:
 - (a) If the Optionor has failed to obtain an occupancy permit as required in sub-clause 2(a) above, at any time prior to the earlier of
 - i. the date on which an occupancy permit is issued; or
 - ii. the ten (10) year anniversary of the date of registration of the Transfer for the Lands to the Optionor; or
 - (b) In the case of a sale, transfer or other disposition of the Lands contrary to sub-clause 2(b) above, at any time within 60 days from the date on which the Municipality is notified in writing that the Optionor has sold, transferred or otherwise disposed of the Lands.
4. The purchase price to be paid by the Municipality if it exercises the Option shall be an amount equal to ninety percent (90%) of the purchase price paid by the Optionor to originally acquire the Lands from the Municipality.
5. The purchase transaction shall close 30 days following the date the Municipality delivers notice exercising the Option (the "Closing Date").
6. The Municipality shall have the right, subsequent to delivery of notice exercising the Option to enter onto the Lands, by itself or by its agents or contractors, to conduct such environmental assessment of the Lands as the Municipality may, at its cost, determine necessary or prudent and, if dissatisfied with the results of such assessment, the Municipality shall have the right to not proceed with the purchase of the Lands.
7. The Optionor shall indemnify and save harmless the Municipality from any and all claims of every nature and kind which may be made against the Municipality whether for damages or otherwise as a result of the Lands containing as at the Closing Date any contaminant or pollutant within the meaning of the *Environmental Protection Act* (Ontario), or any other substances which may be considered hazardous or dangerous to the health of persons or to the environment under any other legislation of the Province of Ontario or Canada applicable therein. Without limiting the obligation of the Optionor aforesaid, such obligation to indemnify shall exist with respect to claims against the Municipality for damages to persons or property or for the costs of complying with any orders for clean up of the Lands which may be issued under any legislation or by any Court of competent jurisdiction in respect of any contamination existing at the Closing Date. This obligation of the Optionor to indemnify the Municipality shall survive the Closing Date.
8. The Municipality shall take title to the Lands at the time of closing free of all mortgages, liens and encumbrances existing against the Lands that were registered subsequent to the registration of this Option to Repurchase Agreement; provided that the Municipality shall pay the Option Price,
 - (a) Firstly, on account of any unpaid property taxes, interest and penalties for the Lands
 - (b) Secondly, to all persons, other than the Optionor, having an interest in the Lands according to their priority at law; and
 - (c) Thirdly, to the Optionor.

9. The Transfer of Land shall, except for the Land Transfer Tax Affidavit, be prepared in registerable form by and at the expense of the Optionor.
10. If the Municipality tenders the Option Price on the Closing Date and the Optionor fails or refuses for any reason to deliver to the Municipality a deed to the Lands in registerable form, the Municipality may deposit the Option Price with the solicitors for the Municipality for and on behalf of and in the name of the Optionor. Upon the deposit being made, the Municipality shall be deemed conclusively to be the owner of the land, and the Optionor hereby irrevocably constitutes and appoints the Chief Administrative Officer of the Municipality as its lawful attorney to execute all deeds and other documents necessary to complete the purchase and sale of the Lands.
11. It is the intention of the parties that the foregoing rights to re-purchase in favour of the Municipality shall create an interest in the Lands and, despite any decision by the Municipality to not exercise its right at a particular time, shall continue and be binding on all subsequent owners of the land until the rights expire at the prescribed time.
12. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have entered into this agreement as at the date first set out above.

SIGNED, SEALED AND DELIVERED

in the presence of :

123456 ONTARIO LTD.

Per: John Smith, President

I have the Authority to bind the Corporation

**THE CORPORATION OF THE MUNICIPALITY
OF MISSISSIPPI MILLS**

Christa Lowry - Mayor

Ken Kelly - Chief Administrative Officer

I/We have the Authority to bind the Corporation