



**The Law Society
of Manitoba**

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REAL ESTATE

Chapter 2

Conveyancing Practice: Residential
Forms and Precedents

May 2020

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1. Residential Form of Offer to Purchase

Note that this form is found on the [Real Estate Manitoba website](#).

[Document follows on next page]

RESIDENTIAL FORM OF OFFER TO PURCHASE(This form of offer to purchase is prescribed under *The Real Estate Brokers Act* for the purchase of single family residential houses)

SELLING BROKER

LISTING BROKER

SELLING SALESPERSON

LISTING SALESPERSON

CONFIRMATION OF REPRESENTATION

In representing the parties in the negotiations for the purchase and sale of the Property:

The Selling Broker represents (check applicable statement)

The Listing Broker represents (check applicable statement)

_____ the Buyer and does not represent the Seller

_____ the Seller and does not represent the Buyer

_____ the Seller and does not represent the Buyer

_____ the Buyer and does not represent the Seller

_____ both parties with the consent of each

_____ both parties with the consent of each

(Buyer's initials) _____ (Selling Salesperson's initials) _____

(Seller's initials) _____ (Listing Salesperson's initials) _____

To _____ (the "Seller")

Seller's address _____

I/We _____ (the "Buyer")

Buyer's address _____

offer to purchase, through the above named Broker(s), the Property upon the following terms:

SUBJECT MATTERS OF THIS OFFER

1. The Property (the "Property") is the following described land and all structures and improvements thereon (insert civic address or legal description):

- (a) There shall be included in or with the Property all fixtures and in particular all such electric light fixtures, heating and plumbing fixtures, T.V. antennas, satellite dishes and receivers and all related hardware, fitted carpets, curtain rods, drapery tracks, screen and storm windows and doors as are now on the Property, but excluding these fixtures:

- (b) All goods and chattels which are not fixtures shall be excluded excepting for the following which are included:

PURCHASE AND SALE PRICE AND PAYMENT

2. (a) The total purchase price to be paid by the Buyer to the Seller is \$ _____ payable as follows:

(i) A deposit of _____ \$ _____

(ii) By assumption of existing mortgage(s) having a (aggregate) balance of principal and interest on the Possession

Date ("Assumption of Mortgage(s) Schedule" must be attached) of _____ \$ _____

(iii) By net proceeds of a new mortgage to be arranged by the Buyer as follows: term _____ years;

annual interest rate not to exceed _____ %; monthly payments excluding taxes not to exceed \$ _____ \$ _____

(iv) By cash, certified cheque, bank draft or lawyer's trust cheque on or before the Possession Date of _____ \$ _____

(v) Other _____ \$ _____

TOTAL PURCHASE PRICE \$ _____

- (b) If part of the purchase price is to be paid from the proceeds of a new mortgage, payment of that amount may be delayed by the time required for registration of the mortgage to be completed by the Land Titles Office and reported to the mortgagee and, if so, that amount shall bear interest payable to the Seller at the same rate as the new mortgage until paid. The Seller shall have a lien and charge against the Property for the unpaid portion of the purchase price (with interest as aforementioned).

- (c) If the deposit is submitted by way of cheque or other payment instrument, it shall be made payable to the Listing Broker. If the deposit is submitted in cash, it shall be deposited by the Broker receiving it. The deposit, howsoever paid, will be held by the Broker holding it as trustee for the Buyer and same shall be returned to the Buyer without deduction, interest or other charge of any kind if this Offer is not accepted in accordance with its terms.

- (d) After this Offer has been accepted by the Seller, the deposit shall be held by the Listing Broker in trust, and the deposit shall, subject to the terms of this Offer, be paid or credited to the Seller as part of the purchase price when the Seller has carried out the Seller's entire obligations under this agreement.

POSSESSION

3. (a) Possession shall be given by _____ a.m./p.m. on the _____ day of _____, 20_____ (the "Possession Date");
- (b) Unless otherwise agreed to, such possession shall mean vacant of any persons occupying the Property and with all fixtures and goods and chattels not included in this transaction removed from the Property.

SELLER'S PROMISES AS TO THE STATUS OF THE PROPERTY

4. The Seller promises that:

(a) At the time of possession:

(i) the Property will be free from all encroachments by adjoining structures and improvements except:

(ii) The structures and improvements on the land will not encroach beyond the limits of the land or on any public utility right-of-way, except:

(iii) unless otherwise specified in this Offer, the Property and all included items will be in substantially the same condition they were in at the date of this Offer;

Buyer's initials _____ Seller's initials _____

(iv) the Property will comply with all restrictions and requirements registered against the title and all applicable zoning regulations, except:

(b) Additional promises:

SELLER'S PROMISES AS TO TITLE AND OWNERSHIP

5. The Seller promises that at the time of possession:

- (a) The Property will not be subject to any mortgage, encumbrance or other interest which is registered against the title to the Property or which is valid or enforceable against the Property without being so registered ("Claim"), excepting only for the following:
- (i) any mortgage herein agreed to be assumed as part of the purchase price;
 - (ii) any private or public building or use restriction caveat with which the Property complies;
 - (iii) any easement, the existence of which is apparent on inspection of the Property;
 - (iv) any public utility caveat protecting a right-of-way for a service to which the Property is connected;
 - (v) any Claim which it is the Seller's responsibility hereunder to remove as a condition of closing;
 - (vi) any Claim which may be caused by or is the responsibility of the Buyer; and
 - (vii) (Insert any other exceptions, including tenancies)

(b) All included fixtures and goods and chattels will be owned by the Seller free from any security or other interest (including any rental contract) except as follows:

and the Buyer shall assume responsibility for all such security or other interests from and after the Possession Date.

(c) The Seller will be or be entitled to be rightfully in actual and personal peaceable possession and occupation of the whole of the Property (except for any tenancies agreed to be assumed by the Buyer).

SELLER'S PROMISE REGARDING GOODS AND SERVICES TAX

6. The Seller promises that the supply of the Property and all included fixtures, goods and chattels by the Seller to the Buyer under this agreement is exempt from goods and services tax.

SELLER TO PROVIDE PROPERTY DISCLOSURE STATEMENT

7. (a) The Seller agrees to complete a Property Disclosure Statement in the prescribed form attached as Appendix A and deliver it to the Buyer or to the Selling Broker within _____ hours after acceptance of this Offer. On delivery of the Statement, it forms part of this agreement.
- OR
- (b) The Property Disclosure Statement completed by the Seller in the prescribed form and attached to this Offer forms part of this agreement.
(Strike out paragraph 7(a) or (b), whichever does not apply. Strike out all of section 7 if the Buyer does not require a Property Disclosure Statement)

CONDITIONS BENEFITING THE BUYER

8. This agreement is terminated unless the following conditions for the benefit of the Buyer are fulfilled or waived:

- (a) That, within _____ hours after delivery of the Property Disclosure Statement pursuant to paragraph 7(a), the Buyer be satisfied with that Statement.

For the purpose of paragraph 10(d), delivery to the Seller or the Listing Broker of a copy of the Statement containing the acknowledgement of the Buyer (each Buyer, if there is more than one) that he or she is satisfied with the Statement is deemed to be notice to the Seller this condition has been fulfilled.

(Strike out paragraph 8(a) if paragraph 7(a) is struck out.)

- (b) That any mortgage shown as to be arranged can be so arranged by the Buyer by _____ a.m./p.m. on the _____ day of _____, 20_____.

- (c) That by _____ a.m./p.m. on the _____ day of _____, 20_____, the Buyer obtain, at the Buyer's expense, an inspection of the property, satisfactory to the Buyer, by an inspector chosen by the Buyer.
- (d) (Others - if no others, state "None")

CONDITIONS BENEFITING THE SELLER

9. This agreement is terminated unless the following conditions for the benefit of the Seller are fulfilled or waived (if none, state "None"):

CONDITIONS GENERALLY

10. (a) The party responsible for fulfilment of a condition will exercise reasonable efforts to fulfil the condition.
- (b) Upon fulfilment of a condition, the benefited party shall give written notice of fulfilment.
- (c) If this agreement is terminated under any of paragraphs 8, 9 or 11(b)(i), then the Seller directs the Broker to return the deposit to the Buyer without deduction.
- (d) The party benefited by a condition may waive fulfilment of that condition, provided that such party does so in writing before the end of the time within which such condition is to be fulfilled. If the benefited party does not so waive and does not give notice of fulfilment with respect to such condition, then such condition will be deemed to be not fulfilled. Any written waiver or notification with respect to any condition for the benefit of the Buyer may be given to either the Seller or the Listing Broker and any written waiver or notification with respect to any condition for the benefit of the Seller may be given to either the Buyer or the Selling Broker.

Buyer's initials _____ Seller's initials _____

MUTUAL PROMISES AND GENERAL PROVISIONS

11. (a) All adjustments of taxes (including the current year's local improvement levies if any) and other adjustments if any will be made as at the commencement of the Possession Date.
- (b) (i) The Property until the time of possession shall remain at the risk and responsibility of the Seller. If the Property suffers substantial damage which is not repaired before the time of possession to substantially the same condition it was in prior to the damage occurring, the Buyer may terminate this agreement.
- (ii) The Buyer shall not be bound to assume, nor the Seller to transfer, any policy of insurance on the Property.
- (c) If either party (the "Defaulting Party") is in breach of their obligations hereunder then the other party (the "Aggrieved Party") shall be entitled to exercise whatever remedies the Aggrieved Party may have by virtue of the default. Where the Defaulting Party is the Buyer, the Seller shall be entitled to retain the deposit as the Seller's own property, but whether or not the Seller has then terminated or thereafter terminates the Seller's right and obligation to sell and the Buyer's right and obligation to purchase under this agreement by virtue of the Buyer's default, such retention of the deposit shall not itself constitute a termination of this agreement and shall not restrict the Seller from exercising any other remedies which the Seller may have by virtue of the Buyer's default, including the right to claim damages from the Buyer which the Seller sustains in excess of the deposit.
- (d) (i) Each of the Seller and the Buyer authorize each other, their respective solicitors, the Listing Broker and the Selling Broker to pay and deliver to their respective solicitors, any money or documents due in connection with this transaction and for so doing, this shall be their full and sufficient authority and the receipt of each such solicitor respectively shall be a good discharge therefor.
- (ii) In closing this transaction, the Seller's solicitor and the Buyer's solicitor may by agreement exchange trust conditions and undertakings to carry out the intention of the Seller and the Buyer.
- (e) (i) Time shall in all respects be of the essence hereof.
- (ii) This agreement shall be binding upon and shall enure to the benefit of the Seller and the Buyer and each of their respective successors, assigns and personal representatives.
- (iii) This agreement contains all of the promises, agreements, representations, warranties and terms between the parties relating to the transaction hereby contemplated, and:
- (A) anything not included in writing in this agreement will have no force or effect whatsoever;
- (B) any amendment made to this agreement will have no force or effect whatsoever unless it is in writing and signed by each of the parties hereto;
- (C) in making this Offer, the Buyer relies only on the Buyer's personal inspection of the Property, the Seller's promises and representations contained in this Offer and any Property Disclosure Statement that forms part of this agreement.
- (iv) The following will survive and continue in effect after the closing of this transaction:
- (A) the promises made in paragraphs 4(a)(iii), 5(b) and (c) and 6;
- (B) the representations and promise made in any Property Disclosure Statement that forms part of this agreement.
- Any exceptions or any additional promises or representations intended to survive closing are as follows (if none, state "None"):

(v) All references to times in this agreement mean Manitoba time.

REPRESENTATIONS BY BROKER

12. The Broker(s) or the authorized representative(s) of the Broker(s) have made the following promises, undertakings or guarantees to the Buyer (if none, state "None"):

If any such promise, undertaking or guarantee is made and breached, this will not, unless otherwise specified, constitute a breach by the Seller or by the Buyer of their obligations under this Agreement.

USE AND DISCLOSURE OF SALE INFORMATION

13. The Seller and the Buyer consent to the collection, use and disclosure of the personal information regarding the Property and this transaction by the Broker(s) for reporting, appraisal and statistical purposes. If the property is listed on the Multiple Listing Service of a real estate board or association, the Seller and the Buyer give the same consent to the board or association.

DEADLINE FOR ACCEPTANCE BY SELLER

14. This Offer, if not accepted by _____ a.m./p.m. on the _____ day of _____, 20____, shall expire.

OTHER TERMS

15. _____

BUYERS ARE STRONGLY URGED TO CONSIDER MAKING THEIR OWN ENQUIRIES WITH RESPECT TO ISSUES OF IMPORTANCE TO THEM, KEEPING IN MIND THAT THE SELLER'S KNOWLEDGE OF THE PROPERTY MAY BE INCOMPLETE OR INACCURATE. THIS OFFER IF ACCEPTED IS A LEGALLY BINDING CONTRACT: READ IT ALL BEFORE YOU SIGN. BOTH BUYERS AND SELLERS ARE ADVISED TO SEEK PROFESSIONAL ADVICE IF THEY HAVE ANY QUESTIONS REGARDING THE PROPERTY OR QUESTIONS OR CONCERNS REGARDING ANY PROMISES, REPRESENTATIONS OR UNDERTAKINGS.

Signed by the Buyer at _____ a.m./p.m. this _____ day of _____, 20____.

Witness

Buyer

Witness

Buyer

Name of Buyer's Solicitor

Buyer's initials _____ Seller's initials _____

ACCEPTANCE BY SELLER (with directions regarding commission)
The Seller hereby accepts the above Offer or accepts the above Offer subject only to the following amendments ("Counteroffer") which must be accepted by the Buyer by _____ a.m./p.m. on the _____ day of _____, 20_____. (if none, state "None");

By the Seller's signature below, the Seller acknowledges (and agrees) to pay to the Listing Broker above named an agreed commission of _____

(state in terms of percentage of total purchase price or dollars), plus applicable Goods and Services Tax. The Seller directs and authorizes the Listing Broker to retain and apply in payment of the commission which the Seller will owe to the said Broker in connection with the purchase and sale transaction the deposit or so much thereof as is required to pay such commission at the time specified in the listing agreement between the Listing Broker and the Seller or when permitted by applicable law. The Seller further directs and authorizes the Seller's solicitor named below to pay promptly to the Listing Broker any unpaid balance of the commission out of the sale proceeds as soon as the same are properly payable to the Seller. The Seller agrees not to revoke the foregoing directions and authorizations unless such revocation is agreed to in writing by the Listing Broker.

Signed by the Seller at _____ a.m./p.m. this _____ day of _____, 20_____.

_____ Witness	_____ Seller
_____ Witness	_____ Seller
_____ Name of Seller's Solicitor	

ACCEPTANCE BY BUYER OF COUNTEROFFER

The Buyer hereby accepts the above Counteroffer.

Signed by the Buyer at _____ a.m./p.m. this _____ day of _____, 20_____.

_____ Witness	_____ Buyer
_____ Witness	_____ Buyer

NOTE: If the Buyer wishes to accept the Counteroffer (if any) but subject to any additional terms or conditions, this will constitute a counter-counteroffer and the Buyer should submit an entirely new Offer to Purchase.

HOMESTEADS ACT

The parties are advised that if the Property is a "homestead" within the meaning of *The Homesteads Act*, and if the ownership of both spouses or common-law partners is not registered on the title to the Property, the spouse or common-law partner whose name is not on title but has homestead rights in the Property must consent to the disposition (below) or provide a Release of Homestead Rights in accordance with that Act.

HOMESTEADS ACT CONSENT TO DISPOSITION AND ACKNOWLEDGMENT

I, the spouse or common-law partner of the Seller, consent to the disposition of the homestead effected by this instrument and acknowledge that:

- ☐ I am the first spouse or common-law partner to acquire homestead rights in the property.
OR
☐ A previous spouse or common-law partner of my current spouse or common-law partner acquired homestead rights in the property but those rights have been released or terminated in accordance with *The Homesteads Act*.
- I am aware that *The Homesteads Act* gives me a life estate in the homestead and that I have a right to prevent this change of the homestead by withholding my consent.
- I am aware that the effect of my consent is to give up my life estate in the homestead to the extent necessary to give effect to this change of the homestead.
- I execute this consent apart from my spouse or common-law partner freely and voluntarily, without any compulsion on the part of my spouse or common-law partner.

_____ Name of spouse or common-law partner	_____ Signature of spouse or common-law partner	_____ Date
_____ Name of witness	_____ Signature of witness	_____ Date

A Notary Public in and for the Province of Manitoba.
A Commissioner for Oaths in and for the Province of Manitoba. My commission expires _____
or Other person authorized to take affidavits under *The Manitoba Evidence Act* (specify) _____

BROKER'S RECEIPT FOR DEPOSIT PAID IN CASH (not required if deposit paid by cheque)

_____ (insert name of Broker)
hereby acknowledges receipt of the above cash deposit, and undertakes to pay it over to the Listing Broker on the next business day following the acceptance of this Offer. (Delete undertaking if receipt given by Listing Broker.) Said deposit shall be held in trust by the Broker or Brokers receiving it as specified in paragraphs 2(c) and 2(d) of this Offer.

(Signature of Broker or Authorized Official or Salesperson)
Buyer's initials _____ Seller's initials _____

2. Offer to Purchase Commercial Real Estate

[Document follows on next page]



Brandon Real Estate Board
Manitoba Real Estate Association
Portage La Prairie Real Estate Board
WinnipegREALTORS®

OFFER TO PURCHASE REAL ESTATE – COMMERCIAL
(FOR USE IN THE PROVINCE OF MANITOBA)

LISTING BROKER _____
(name of Agency ["Broker"]) (name of Salesperson)

SELLING BROKER _____
(name of Agency ["Co-Operating Broker"]) (name of Salesperson)

CONFIRMATION OF REPRESENTATION: In representing the parties in the negotiations for the purchase and sale of the Property:

The Selling Broker represents (check applicable statement)	The Listing Broker represents (check applicable statement)
<input checked="" type="checkbox"/> The Buyer and does not represent the Seller	<input checked="" type="checkbox"/> The Seller and does not represent the Buyer
<input type="checkbox"/> The Seller and does not represent the Buyer	<input type="checkbox"/> The Buyer and does not represent the Seller
<input type="checkbox"/> Both parties with the consent of each	<input type="checkbox"/> Both parties with the consent of each
____ (Buyer's initials) ____ (Seller's initials)	____ (Seller's initials) ____ (Buyer's initials)
____ (Selling Salesperson's initials)	____ (Listing Salesperson's initials)

BUYER (the "Buyer"), _____ agrees to purchase from
(Full legal names of all Buyers)

SELLER (the "Seller"), _____
through the _____
(Full legal names of all Sellers)

BROKER(s) the PROPERTY described herein on the following terms:

Address _____

fronting on the _____ side of _____ in the _____
(city, town or municipality)

and having a frontage of _____ more or less by a depth of _____ more or less and legally

described as _____

(Legal description of land and/or Certificate of Title Number) (the "Property")

at and for the **PURCHASE PRICE** of: _____ Dollars Canadian

(CDN\$ _____) payable at _____, in Manitoba, as follows:
(city, town or municipality)

- A. An initial deposit delivered with this Offer, payable by cash/cheque/certified cheque to the Broker (to be refunded immediately to the Buyer in the event that the Offer expressed herein is not accepted by the Seller) in the amount of: \$_____.
- B. A further deposit payable three business days after satisfaction or waiver of all the Buyer's time related conditions in the amount of: \$_____.
- C. (i) By assumption of existing mortgage(s) having a(n) (aggregate) balance of principal and interest on the Possession Date ("Assumption of Mortgage(s) Schedule" must be attached) in the amount of: \$_____.
- (ii) By net proceeds of a new mortgage to be arranged by the Buyer as follows: term not less than _____ years; annual interest rate not to exceed _____%; with an amortization to be not less than _____, years: \$_____.
- D. By the Buyer executing a Seller take back Mortgage in favour of the Seller as follows: term not less than _____ years; annual interest rate not to exceed _____%; within an amortization to be _____ not less than years \$_____.
- E. The balance of the purchase price plus or minus adjustments (payable by solicitor's trust cheque or by certified cheque) to be paid to the Seller or his solicitor on or before the Possession Date. \$_____.

TOTAL PURCHASE PRICE

\$ _____

Upon acceptance of this Offer the deposit shall be held in trust by the Broker and shall be kept invested for the account of the Buyer pending completion or other termination of the agreement arising from the acceptance of this Offer. In the event the purchase is not completed by the Buyer by reason of the nonfulfillment or non-waiver by the Buyer of the Buyer's conditions as herein contained or by reason of the default of the Seller, the deposit shall be returned to the Buyer without deduction together with all interest earned thereon. In the event that the purchase is not completed by reason of the default of the Buyer, the deposit and interest earned thereon shall be forfeited immediately to the Seller and he may exercise whatever other remedies are available to the Seller at law.

Upon acceptance of this Offer, the Buyer shall have _____ working days in which to arrange new first mortgage financing on terms and conditions satisfactory to Buyer in his sole and absolute discretion, and to confirm in writing that he is satisfied with said financing. If, however, the conditions set forth in the commitment letter by the mortgage company (eg) appraised value and environmental property assessment are unsatisfactory, or if the mortgage company for whatever reason decides to withdraw causing the commitment to become null and void, then the Buyer shall be able to withdraw from this transaction upon written notice to the Seller of the mortgage company's withdrawal, which shall make this transaction null and void and all monies paid hereunder shall be returned to the Buyer with the interest which has been earned thereon and without any deduction whatsoever.

Other Financing Clauses:

If part of the purchase price is to be paid from the proceeds of a new mortgage, payment of that amount may be delayed by the time required for registration of the mortgage to be completed by the Land Titles Office and reported to the mortgagee and, if so, that amount shall bear interest payable to the Seller at the same rate as the new mortgage until paid.

SCHEDULE(S) _____ attached hereto form(s) part of this Offer.

1. **APPORTIONMENT:** If the Seller and Buyer have not agreed upon an allocation of the Purchase Price at the time of the execution of this Offer, the Seller and Buyer shall determine the agreed upon apportionment by the Due Diligence Date failing which the Buyer and Seller agree they can each use such apportionment as they determine appropriate.
2. **INCLUSIONS:** The Purchase Price shall include without limitation, if appropriate:
All buildings, structures, erections, improvements, appurtenances and fixtures situate in or upon the Property and all systems, machinery and equipment used or intended to be used in connection with the operation and maintenance thereof, including but not limited to, all electrical fixtures, panels and switch boxes, heating fixtures and equipment, air conditioning units and equipment (owned by the Seller), plumbing and bathroom fixtures as installed, screens, storm windows and doors, window blinds, partitions, power wiring and installations, pumps and compressors, washers, dryers, dishwashers, refrigerators, stoves and other household appliances if appropriate, all of which are now situate on the Property and are to be free and clear of all liens, mortgages, encumbrances and security interests (excepting however all tenants' fixtures and chattels now upon the Property and belonging to tenants at present occupying the building under lease to the Seller), except: (list mortgages, Personal Property Security Act Registrations, etc.)

2A. **OTHER CHATTELS AND/OR FIXTURES INCLUDED:** _____

2B. **CHATTELS AND/OR FIXTURES EXCLUDED:** _____

3. **RENTAL ITEMS:** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable: _____

4. **OFFER IS IRREVOCABLE:** This Offer shall be irrevocable by the Buyer until _____ a.m./p.m. on the _____ day of _____, _____ (month) _____ (year) after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full with interest accrued to date of return, if any.

5. **POSSESSION DATE:** This Offer shall be completed by no later than 6:00 p.m. on the _____ day of _____, _____ (month) _____ (year) ("Possession Date"). On Possession Date, vacant possession of the Property (subject to any

tenancies agreed to be assumed by the Buyer) shall be given to the Buyer unless otherwise provided for in this Offer.

6. **NOTICES:** Seller hereby appoints the Broker as his Agent for the purpose of giving and receiving notices pursuant to this Offer. Only if a Co-operating Broker represents the interests of the Buyer in this transaction, the Buyer hereby appoints the Co-operating Buyer Broker as his Agent for the purpose of giving and receiving notices pursuant to this

Offer. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided in the acknowledgement below, when transmitted electronically to that facsimile number or when an e-mail address is provided in the Acknowledgement below, when transmitted electronically with signature to that e-mail address.

7. **GST: If this transaction is subject to Goods and Services Tax ("GST"), then such tax shall be payable by the Buyer in addition to the Purchase Price.** The Seller will not collect GST if the Buyer provides to the Seller a statutory declaration whereby the Buyer represents and warrants that he is registered under the Excise Tax Act (Canada) ["ETA"], and will be so registered on Possession Date, together with the Buyer's ETA registration number, a representation and warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any GST payable. The foregoing representations and warranties shall not merge on Possession Date but shall survive the completion of the transaction. If this transaction is not subject to GST, Seller agrees to certify on or before Possession Date, that the transaction is not subject to GST.

8. **DUE DILIGENCE SEARCHES:** Buyer shall be allowed until 6:00 p.m. on the _____ day of _____ (Month) _____ (year) ("Due Diligence Date") to examine the title to the Property at his own expense and conduct such due

diligence inquiries thought appropriate by the Buyer, at his own expense to satisfy himself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use _____ may be lawfully continued and that all buildings on the Property may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the Property, and Seller agrees to execute and deliver such further authorizations and consents in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the Property by Buyer is or will be lawful except as may be specifically provided for in this Offer.

- 10A. **TITLE:** Seller represents and warrants that the title to the Property stands registered in the name of the Seller free and clear of all mortgages, liens, and encumbrances endorsed upon title and those statutory exceptions set forth in The Real Property Act of Manitoba title except as otherwise specifically provided in this Offer and save and except for (a) any registered restrictions or covenants that run with the Property providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any easements for the supply of domestic utilities or telephone services to the Property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the Property ("Permitted Encumbrances"). If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact 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 Seller and which Seller is unable or unwilling to remove, remedy or satisfy and which Buyer will not waive, this Offer, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned to the Buyer together with the accrued interest thereon until date of return, if any, without deduction and Seller, Broker and Co-operating Broker shall not be liable for any costs or damages. Save as to any valid objection so made by such day, the Buyer shall be conclusively deemed to have accepted the Seller's title to the Property.

- 10B. By acceptance of this Offer, the Seller covenants, represents and warrants with the Buyer, and confirms that the Buyer is relying upon the accuracy of each of such covenant, representation and warranty in connection with the purchase of the Property:

- (i) That there are not now and will not at the Possession Date be:
- (a) any agreement or option for the purchase of the Property other than the agreement resulting from the acceptance of this Offer;
 - (b) any right-of-way or other easement howsoever created upon, over or in respect of the Property other than permitted encumbrances;
 - (c) any subsisting lease or agreement for a lease affecting the Property, except those leases, particulars of which are set forth in the Schedule of Leases annexed and marked as Schedule _____ hereto;
- (ii) That at the Possession Date all accounts for work, labour and materials with respect to the Property shall have been fully paid and the time for filing liens pursuant to *The Builders' Lien Act* (Manitoba) shall have expired without any liens having been filed.
- (iii) The Seller warrants that he has no notice of or knowledge of any restrictions or covenants other than those registered against his title in any way adverse to his interest therein.
- (iv) There are no service or maintenance contracts or any other contracts relating to the Property to which the Seller is a party other than those which will be terminated by the Seller on or before the Possession Date.
- (v) That the Seller has not received any complaint, order or direction from any competent authority concerning the use of or condition of the Property under any applicable statute, law, by-law, regulation or ordinance affecting the use and occupation of or condition of same, other than any complaint, order or direction complied with by the Seller.
- (vi) That on the Possession Date the Seller shall have no engagements, undertakings, agreements and commitments to which it is then a party with respect to the Property other than the Permitted Encumbrances.
- (vii) To the Seller's knowledge the Seller has operated his business on the Property and received, handled, used, stored, treated, shipped and disposed of all environmental contaminants in compliance with all applicable environmental, health or safety laws, regulations, orders or approvals and no hazardous or toxic materials, substance, pollutants, contaminants or wastes are or have been released into the environment, or deposited, discharged, placed or disposed of at or near the Property in the conduct of the business of the Seller and, to the knowledge of the Seller, no part of the Property is being used by any person, firm or corporation; or has been used by any person, firm or corporation as a land fill or waste disposal site.

- (viii) To the Seller's knowledge, all applicable environmental, health or safety laws, regulations, orders or approvals have been and continue to be complied with by the Seller, and no hazardous or toxic materials, substances, pollutants, contaminants or waste are being released into the environment, or deposited, discharged, placed or disposed of, from, at or near the Property by the Seller; no above ground tanks are located above the Property and to the knowledge of the Seller, without having made particular enquiries, no underground tanks are located under the Property, nor have been located under the Property and subsequently removed or filled.
 - (ix) To the Seller's knowledge, no hazardous materials, wastes, pollutants or similar substances, as those terms are defined by current applicable laws and regulations, and no other materials have been or are used, stored, treated or otherwise disposed of, from, at or near the Property by the Seller, in violation of current applicable laws and regulations.
 - (x) To the Seller's knowledge the Building is not now and never has been insulated with friable asbestos insulation which is not encapsulated, nor has it contained aluminum wiring, polychlorinated biphenyl (PCB), hydrofluorocarbons, radon gas or urea formaldehyde foam insulation.
 - (xi) The Seller has the Property insured for its full insurable value on a replacement cost basis and such insurance is in full force and effect and will remain so until Possession Date expensed to the Seller.
 - (xii) The Seller, if a corporation, is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and is duly qualified in the Province of Manitoba to own the Property and conduct its business thereon and the Seller has good right, full corporate power and absolute authority to enter into this Offer and to sell, and assign and transfer the Property to the Buyer in the manner contemplated herein and to perform all of the Seller's obligations under this Offer. The Seller shall take, prior to the Possession Date, all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Offer and the sale and purchase of the Property by the Seller to the Buyer. The Agreement resulting from the acceptance of this Offer is a legal, valid and binding obligation of the Seller, and enforceable against it, in accordance with its terms.
 - (xiii) The Seller has no knowledge of any expropriation proceedings or any action, proceeding or investigation pending or threatened (or any basis therefor) which either affect or may affect the title of the Seller to the Property or the validity and enforceability of this Offer, or the ability of the Seller to carry out the terms of this Offer.
 - (xiv) On the Possession Date, all buildings, structures and improvements comprising the Property shall be wholly situate within the boundaries of the Property, the boundaries of the Property shall not conflict with those of adjoining properties and there shall be no encroachments of any improvements on, to or from the adjoining properties and the locations of the buildings, structures and improvements comprising the Property will comply and conform with all municipal government laws and regulations and other applicable regulations, and the building and other fixtures on the Property will not encroach upon any easement or utility right of way on the Property.
 - (xv) As of the Possession Date, all municipal taxes, rates, levies and assessments with respect to the Property and improvements thereon will have been paid in full by the Seller and to the knowledge of the Seller no local improvement levies or charges have been made in respect of the Property.
- 10C All of the representations and warranties contained in Section 10B shall survive the completion of the agreement resulting from the acceptance of this Offer and notwithstanding its completion, shall continue and remain in full force and effect for the benefit of the Buyer and shall not be merged or suspended by any document, transfer or conveyance delivered by the Seller hereunder or by the issuance of title to the Property in the name of the Buyer for a period of two years after the Possession Date, after which no claims may be brought by the Buyer with respect thereto.
- 10D The Seller acknowledges that any agreement resulting from acceptance of this Offer is conditional upon the representations and warranties contained in paragraph 10B being true and correct on the Possession Date and that the truth or correctness of each of them are conditions inserted herein exclusively for the benefit of the Buyer, as a condition precedent to the Buyer's obligation to complete the purchase, and any one or more of them may therefore be waived by the Buyer, at any time and agreement resulting from the acceptance of this Offer shall be amended to delete them ipso facto accordingly. If any of such conditions shall not be fulfilled on or before the Possession Date and any of them not so fulfilled shall not have been waived by the Buyer or if any representation or warranty in Section 10B is materially untrue, then unless the parties hereto agree in writing at or before the Possession Date, then at the option of the buyer, the agreement resulting from acceptance of this Offer shall be at an end and the Seller and the Buyer shall each be released from all obligations to the other under or pursuant to this Offer and resulting agreement, and the deposits and all monies paid by the Buyer hereunder and all interest earned thereon as herein provided shall be paid to the Buyer forthwith without deduction.
- 10E In the event that any of the conditions contained in this Offer or any schedule attached hereto shall not be fulfilled on or before the Possession Date, or such earlier period as may be provided for hereunder, then any party for whose benefit the condition has been included shall have the right to:
- (i) terminate the agreement resulting from the acceptance of this Offer and the Seller and the Buyer shall each be released from all obligations to the other under or pursuant to this Offer and the resulting agreement; or
 - (ii) waive compliance with the condition in whole or in part without prejudice to its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

If the agreement resulting from acceptance of this offer is terminated hereunder, the deposits paid by the Buyer hereunder, and all interest earned thereon as herein provided, shall be paid to the Buyer forthwith without deduction.

- 11. DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of evidence of title to the Property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any Surveyor's Building Location Certificate for the Property within Seller's control to Buyer as soon as possible and prior to the Due Diligence Date. If a discharge of any mortgage held by a mortgagee and which is not to be assumed by Buyer on Possession Date, is not available in registrable form on Possession Date, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, either by way of court order or mutual agreement a discharge in registrable form and to register same on title within a reasonable period of time after Possession Date, provided that on or before Possession Date Seller shall provide to Buyer a mortgage statement prepared by the Mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on Possession Date.
- 12. INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
- 13. INSURANCE:** All buildings on the Property and all other things being purchased shall be and remain until Possession Date at the risk and responsibility of the Seller. Pending completion, Seller 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, Buyer may either terminate this Offer and have all monies paid returned together with interest accrued thereon until date of return (if any) or else take the proceeds of any insurance, if available and complete the purchase. No insurance shall be transferred on Possession Date. If Seller is taking back a mortgage, or Buyer is assuming a mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on Possession Date.
- 14. THE CITY OF WINNIPEG CHARTER OR THE PLANNING ACT OF MANITOBA:** This Offer shall be effective to create an interest in the Property only if the Seller complies with the subdivision control provisions of The City of Winnipeg Charter or The Planning Act of Manitoba whichever applies, by Possession Date and Seller covenants to proceed diligently at his expense to obtain any necessary consent by Possession Date.
- 15. DOCUMENT PREPARATION:** The Transfer shall be prepared in registrable form at the expense of Seller, and the cost of registration of such transfer and any land transfer tax shall be borne by the Buyer. The mortgage to be given back (if any) by the Buyer to the Seller shall be prepared at the expense of the Buyer and registered at the expense of the Seller.
- 16. RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act (Canada) by reason of this sale. Buyer shall not claim such credit if Seller delivers on Possession Date (or within such period of time as may be prescribed by regulation or interpretation bulletin) the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
- 17. ADJUSTMENTS:** Any rents, security deposits or prepaid rental deposits, 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 Possession Date, the day of possession itself to be apportioned to Buyer.
- 18. TIME LIMITS:** 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 Seller and Buyer or by their respective lawyers who are specifically authorized in that regard.
- 19. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for possession. Money may be tendered by solicitors' trust cheque or bank draft or certified cheque by a Canadian Financial Institution. The solicitors' for the parties shall be entitled to impose reasonable trust conditions each upon the other, consistent always with the provisions hereof, in order to protect the interests of their respective clients.
- 20. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the Broker and/or Co-operating Broker is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 21. CONFIRMATION OF REPRESENTATION:** It is understood that the Brokers involved in the transaction represent the parties as set out in the Confirmation of Representation above.
- 22. NOMINEE:** The Buyer shall have the right to nominate in writing any person, firm or corporation, including a limited company to be hereinafter incorporated, to take title to the Property in its place and stead; and in such event each and every of the Buyer's covenants representations and warranties herein contained shall be assumed and discharged by such nominee. Provided further the Buyer shall not be released from the obligation of the Buyer under the Offer until Possession Date of this Offer except for any obligations of the Buyer which are specified herein to continue following Possession which obligations shall so continue to be in full force and effect in accordance with the terms thereof.
- 23. OFFER IN WRITING:** If there is any conflict or discrepancy between any provision added to this Offer (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 or discrepancy. This Offer including any Schedule attached hereto, shall constitute the entire Offer between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Offer other than as expressed herein. This Offer shall be read with all changes of gender or number required by the context.
- 24. ELECTRONIC TRANSMISSION:** The parties agree that this Offer and the acceptance hereof, together with any notices to be given pursuant to the Offer may be made by any unalterable electronic transmission.
- 25. HEADINGS:** The titles, captions or heading of the Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Offer.
- 26. COUNTERPARTS:** This Offer may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.
- 27. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and permitted assigns of the undersigned are bound by the terms herein.

DATED at _____ this _____ day of _____, _____
(month) (year)

SIGNED in the presence of:

(Witness)

(Date)

(Witness)

(Date)

(Witness)

(Date)

IN WITNESS whereof I have hereunto set my hand:

(Buyer if individual)

(Date)

(Buyer if individual)

(Date)

(Buyer if corporation – signing officer - I have the authority to bind the corporation)

(please print/type name and title)

(Date)

28. **ACCEPTANCE:** I/We hereby accept the above and agree to and with _____
(Buyer)

to duly complete the sale on the terms and conditions mentioned herein and to observe and perform the covenants and undertakings herein set out.

By the Seller's signature below, the Seller acknowledges (and agrees) to pay the Broker an agreed commission of _____ (state in terms of percentage of total purchase price or dollars) plus the current rate of GST and do direct and authorize him to retain and apply the deposits or so much thereof as is required to pay the said commission as and when such deposit becomes properly payable to me. I hereby irrevocably direct and authorize my solicitors to promptly pay any unpaid commission out of the sale proceeds. The Seller hereby charges and grants a security interest in the property to the Broker as security for payment of all present and future liability hereunder. Broker is entitled to register notice of this charge and security interest.

Date at _____ this _____ day of _____, _____
(Month) (Year)

SIGNED, in the presence of:

(Witness)

(Date)

(Witness)

(Date)

(Witness)

(Date)

IN WITNESS whereof I have hereunto set my hand:

(Seller if individual)

(Date)

(Seller if individual)

(Date)

(Seller if corporation – signing officer – I have authority to bind the corporation)

(Print/type name and title)

(Date)

PRIVACY:

Use and Disclosure of Sale Information

The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the Broker and/or the board(s) / association(s) (if the property was listed on an MLS® system) for reporting, appraisal and statistical purposes.

Seller's Authorization

Buyer's Authorization

ACKNOWLEDGEMENT

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

(Seller)

(Date)

(Seller)

(Date)

Address for Service: _____

Tel. No. _____

Fax No. _____

e-mail _____

Seller's Lawyer _____

Address _____

Tel. No. _____

Fax No. _____

e-mail _____

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

(Buyer)

(Date)

(Buyer)

(Date)

Address for Service: _____

Tel. No. _____

Fax No. _____

e-mail _____

Buyer's Lawyer _____

Address _____

Tel. No. _____

Fax No. _____

e-mail _____

3. 2019 Hot Topics in Real Estate – Albina Moran Paper comparing Residential Offer to Purchase to Commercial Offer to Purchase – Important Differences to Note

[Document follows on next page]

**THE RESIDENTIAL FORM OF OFFER TO PURCHASE (the “RO”) VERSUS
THE COMMERCIAL OFFER TO PURCHASE REAL ESTATE (the “CO”) –
IMPORTANT DIFFERENCES TO NOTE**

Albina P. Moran

Thompson Dorfman Sweatman LLP

I thought it would be useful to compare the RO prescribed under *The Real Estate Brokers Act* (Manitoba) with the CO prepared by the Brandon Real Estate Board, the Manitoba Real Estate Association, the Portage la Prairie Real Estate Board and Winnipeg Realtors.

For the purposes of this paper I am comparing the current prescribed form of RO and the CO dated April/2012. However, I want to point out that there is an older version of the CO that is still being used (often more than the 2012 version) which contains substantial differences from the 2012 version such as: the “or nominee” description of the buyer; the apportionment clause requires the parties to reach an agreement as a condition of the deal; and the survival of representations and warranties is for five (5) years.

There is also a third form of Offer to Purchase dated April/2013 prepared by The Manitoba Real Estate Association which states that “(it is to be used in the purchase of property other than single family residential houses or units)”. From a review of that offer, the main differences between it and the RO are that: it states that the sale of the property is inclusive of the seller’s interest in any mines and minerals; it requires you to address any tenancies, and it provides that unless otherwise stated; and the buyer is responsible for the Goods and Services Tax (“GST”) (including fixtures, goods and chattels).

I suggest you consider whether to use the CO since it does not adequately cover the issues required to be addressed in sophisticated commercial transactions. Many of us over the years have developed a form of commercial offer that we like to use and are familiar with. In a perfect world our clients would come to us before entering into an agreement. However, since that is often not the case, we may be presented with a standard form of CO and if we are fortunate, the CO is subject to our approval as to form and content.

In no particular order, the notable differences between the RO and CO that I want to highlight for your attention are the following:

1. **Nominee Clause:** The RO does not contain a nominee clause. However, as you know, a buyer in a residential offer may assign the agreement and sub-paragraph 11(e)(ii) of the RO provides that the agreement shall be binding and enure to the benefit of the seller and the buyer and their respective assigns. So often the buyer in a RO and even in a CO, despite containing a nominee clause (paragraph 22), is described as “Jane Doe and/or nominee”. As many of you know there is sufficient case law in Manitoba, *Westward Farms Ltd. and Deniau v. Cadieux* (MB Court of Appeal) and *Fung v. 3714994 Manitoba Ltd.* (MB Q.B.), which found that contracts using this phrase may be void for uncertainty.

2. **Deposit:** The deposit in a RO (paragraph 2) is not required to be invested and in fact states that “the deposit shall be returned to the buyer without deduction, interest or other charge of any kind...”. The CO specifically provides that the deposit shall be invested for the account of the buyer pending completion or other termination of the agreement. If the buyer doesn’t proceed with the transaction and isn’t in default with the terms of the offer, the deposit is returned to the buyer with interest. If the buyer is in default, the seller is entitled to retain the deposit with interest and may pursue other remedies available to the seller at law.
3. **Financing:** The condition of mortgage financing in the RO simply provides for three items to be specified: (a) the term of the mortgage; (b) the interest rate; and (c) the amount of the mortgage payments excluding taxes not to exceed a specified amount. The CO, on the other hand, gives the buyer a specified number of days to arrange mortgage financing, on terms and conditions satisfactory to the buyer in his sole and absolute discretion. If the conditions of a commitment letter such as the appraised value and environmental property assessment are unsatisfactory, or if the mortgage company for whatever reason decides to withdraw causing the commitment to become null and void, then the buyer shall be able to withdraw from the transaction upon written notice to the seller of the mortgage company’s withdrawal rendering the transaction null and void, and the deposit plus interest are returned to the buyer. Sometimes the condition of financing is included in both a RO (depending on the market) and CO as a potential “out” of the contract in that the buyer may be pre-approved for or not require financing.
4. **Apportionment of Purchase Price:** The RO is silent on this issue. However, the CO requires the buyer and seller to either agree to the allocation of the purchase price at the time of execution of the offer or by the expiry of the due diligence period failing which the parties can each use such apportionment as they determine appropriate. I wonder if this clause is often overlooked so we should watch for this.
5. **Inclusions:** The RO provides for inclusion of “all fixtures and in particular all such electric light fixtures, heating and plumbing fixtures, tv antennas, satellite dishes and receiver and all related hardware, fitted carpets, curtain rods, drapery tracks, screen and storm windows and doors as are now on the property, but excluding these fixtures”. Items such as fridges, stoves, etc. must be specifically itemized in the offer.

The CO has an exhaustive list of inclusions such as all buildings, structures, erections, improvements, appurtenances and uses the phrase “including but not limited to” and provides that all inclusions are to be clear of all liens, mortgages, encumbrances and security interests except those listed.

So in the RO you must specifically list what is included and excluded whereas the CO’s list is more detailed. You will in any event amend the clause to fit the transaction.

6. **Time of Possession:** In the RO the buyer specifies the time of possession which generally ranges from 12.01 a.m. to 8 or 9 a.m. The time of possession ultimately results in the transaction closing the day before the possession date. The CO provides for a closing time of “no later than 6 p.m.”, giving the buyer’s lawyer the entire day to close. Having said that, most commercial transactions will specify a time of day by which closing is to occur.
7. **GST:** In the RO the seller “promises” that the transaction is not subject to GST. The CO (paragraph 7) provides that if the transaction is subject to GST, it is payable by the buyer. However, even though the *Excise Tax Act* requires a seller to collect and remit GST, the seller will not collect the GST if the buyer provides a statutory declaration representing that he is registered under the *Excise Tax Act*, will be so registered on the possession date, listing the registration number, undertaking to self-assess and, most importantly, indemnifies the seller for any GST payable.
8. **Due Diligence:** There is no reference to due diligence in the RO. However, any specific due diligence is often listed in the conditions benefitting buyer section. This is where you will often see such conditions as subject to a home inspection, etc.

While the CO provides for due diligence searches, the nature of the searches listed are quite narrow and are limited to outstanding work orders, deficiency notices, and the present use of the property. As mentioned earlier this is one of the areas where I find the CO weak in that it does not provide for a number of due diligence investigations ordinarily undertaken in a commercial transaction such as building condition reports, environmental assessments, lease reviews, searches at The Residential Tenancies Branch.

9. **Covenants, representations & warranties:** In the CO (paragraph 10B) the seller makes certain covenants, representations and warranties but it does not clearly state when a statement is a covenant, representation or a warranty. Also most of the statements are qualified to be based either on the seller’s knowledge or his having received notice. This would seem to imply that the seller is only liable if he does not disclose that he is aware or has notice of an issue.

The seller in the RO makes similar statements but these are described as “promises”. There is also the property disclosure statement which may be given by the seller addressing the actual condition of the property. It is important to note however that the disclosure statement provides that the statements are based on the seller’s actual knowledge and the accuracy of his or her recollection. The responses do not constitute warranties, resulting in the seller only being liable if the statements are fraudulent or maybe negligent.

10. **Merger:** Paragraph 10C of the CO provides that all of the representations and warranties of the seller shall survive for a period of two (2) years after the possession date. So there is no merger on closing. This is another area where I take issue with the CO in that I personally don't see the need for the survival of the representations and warranties when the buyer has the opportunity to conduct her due diligence. Generally when I have the opportunity to negotiate a commercial offer I try to have the representations and warranties merge on closing or limit survival to a maximum of six (6) months from the closing date.

The only promises that survive closing in the RO are: the condition of items included in the sale to be in the same condition as at the time the offer was made; that all of the fixtures, goods and chattels are to be free and clear from any security; that the seller is in actual possession of the property except for any applicable tenancies; and, lastly, that the sale of the property is exempt from GST.

11. **Buyer's reliance on seller's representations:** Both the RO and the CO provide that the buyer is relying on the seller's promises or representations, as the case may be. However, the CO goes further to state that the seller acknowledges that the agreement resulting from the acceptance of the offer is conditional upon the seller's representations and warranties being true and correct on the possession date and a condition precedent to the buyer's obligation to complete the purchase. The CO goes on to state that these are conditions exclusively for the benefit of the buyer. So technically the buyer can terminate the transaction and have the deposit returned with interest if the seller's representations and warranties are not true on closing.

The RO does not contain a similar provision. However at common law the buyer may be relieved from closing the transaction if he discovers a misrepresentation or a breach of the seller's covenants prior to closing.

12. **Residency of Seller:** The CO in paragraph 16 provides that the buyer is to receive credit towards the purchase price for the amount payable by the seller under the non-residency provisions of the *Income Tax Act* (Canada) (the "ITA"). The buyer shall not claim such credit if the seller delivers on the possession date the prescribed certificate or a statutory declaration that the seller is not then a non-resident of Canada. The RO is silent on this issue and is usually addressed through trust conditions imposed by the buyer's lawyer requiring the seller to hold twenty-five percent (25%) of the purchase price to be held in trust pending receipt of a clearance certificate from the Minister of National Revenue confirming that no taxes are owing by the non-resident seller. The seller is also required to swear a statutory declaration that he or she is not a non-resident of Canada and will not be one on the possession date.

In *Kau* (the “Appellant”) and *Her Majesty The Queen* (July 31, 2018 – 2018 TCC 156, Russell, J.), the Ontario court ruled that the Appellant buyer was liable for the seller’s withholding tax. The Ontario residential form of offer to purchase contained the same language as paragraph 16 of the CO providing for a credit against the purchase price for the withholding tax unless a certificate or statutory declaration is delivered by the seller on closing. The Appellant had purchased a condominium from an apparent non-resident of Canada and on closing the Appellant’s lawyer did not require any monies to be withheld by the seller’s lawyer nor require the production of a clearance certificate. The buyer’s lawyer required the seller’s lawyer to provide satisfactory evidence of compliance with Section 116 of the Act. However, the seller’s lawyer provided a one sentence unsworn statement titled “affidavit” signed by the seller before a California Notary Public. The sentence read that “the seller was not a non-resident of Canada within the meaning of section 116 of the Act and nor will I be a non-resident of Canada at the time of closing.” The statement was declared before the notary. The seller did swear a declaration before the notary in California related to HST.

Subsection 116(5)(a) of the ITA provides that a buyer, unless after reasonable inquiry had no reason to believe that the non-resident person was not resident in Canada, is liable to pay as tax on behalf of the non-resident person. The court found that there were sufficient “red flags” that the seller after reasonable inquiry had reason to believe the seller was not resident in Canada. Those red flags were: a) the seller did not live in the condominium which was an investment property; b) the condo was rented to a tenant; c) the seller’s lawyer advised the buyer’s lawyer that the seller would be signing the closing documents in California; and d) the seller provided an unsworn statement as to his residency. The court ruled that the Appellant’s lawyer did not make reasonable inquiry on behalf of the Appellant based on the red flags and the responses received from the seller’s lawyer.

CONCLUSION

It is important to note the differences between all of the forms of offers that are being used. You should always read the entire offer to purchase no matter how familiar you are with them to ensure that your client can comply with the terms and conditions of the offer and that the terms and conditions accurately reflect the transaction as negotiated, especially if you are fortunate enough to have the offer subject to your approval as to form and content.

4. Option to Purchase Acreage

(See also Real Estate – Farm Land Transactions chapter for more substantive information.)

THIS AGREEMENT made in duplicate as of the 1st day of April, 20__.

BETWEEN:

_____, herein
called the "Optionor" and sometimes
called the "Vendor,"

OF THE FIRST PART,

- and -

_____, LTD., herein
called the "Optionee" and sometimes
called the "Purchaser,"

OF THE SECOND PART.

WHEREAS the Optionor is the registered owner of certain lands in the City of Winnipeg, in the Province of Manitoba, legally described in Certificate of Title Number _____

AND WHEREAS the Optionee desires to secure an option to purchase a part of the above lands, comprising approximately twenty-eight (28) acres, more or less, which said part is legally described in the letter of _____, Land Surveyors, dated November 10, 20__, a copy of which is attached hereto as Schedule "A" and the location of which is substantially as shown outlined in red on the plan that is attached and marked Schedule "B" hereto (which part is hereinafter referred to as the "Lands");

AND WHEREAS the Optionor is willing to grant to the Optionee an option to purchase the Lands for the price and upon and subject to the terms and conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the sum of SEVENTY-TWO THOUSAND EIGHT HUNDRED DOLLARS (\$72,800.00) now paid by the Optionee to the Optionor (the receipt of which sum is hereby acknowledged) and in consideration of the mutual covenants hereinafter set forth and provided, the parties hereto covenant and agree with each other as follows:

1. GRANT OF OPTION

1.01 The Optionor hereby grants to the Optionee the sole and exclusive option, irrevocable within the time hereinafter limited for acceptance, to purchase the Lands described in Schedule "A" and substantially as shown outlined in red on the plan that is annexed and marked Schedule "B" hereto for the price of SEVEN HUNDRED AND TWENTY-EIGHT THOUSAND DOLLARS (\$728,000.00) subject to adjustment of the said price upon determination of the acreage of the Lands as hereinafter provided and upon the terms and conditions hereinafter set forth.

2. TIME TO EXERCISE OPTION

2.01 This option may be exercised by the Optionee at any time up to and including the 31st day of March, 20__, by notice in writing to that effect delivered or mailed postage prepaid to the Optionor in care of

Winnipeg, Manitoba, and by paying to the Optionor at that time the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) on account of the purchase price.

2.02 The time within which the option may be exercised shall be extended from the 31st day of March, 20__ up to and including the 30th day of September, 20__, if the Optionee gives written notice thereof by delivering or mailing to the person and place as aforesaid notice of intention to extend the said time and by paying to the Optionor with such notice of intention to extend the sum of THIRTY-SIX THOUSAND, FOUR HUNDRED DOLLARS (\$36,400.00) and provided that if the time within which the option may be exercised has been extended as aforesaid the Optionee shall have successive rights to extend the date within which the option may be exercised for further consecutive periods of Six (6) months each by giving notice of the further extension as aforesaid and by paying with each notice of extension and as consideration for each extension the further sums of THIRTY-SIX THOUSAND, FOUR HUNDRED DOLLARS (\$36,400.00) each provided that in any event this option, if not exercised on or before the 1st day of April, 20__ shall be fully ended without notice and all monies paid by the Optionee to the Optionor for the grant of the option and for each successive extension thereof shall be retained by the Optionor free from every claim of the Optionee thereto.

2.03 The date of the delivery or the mailing as the case may be shall conclusively be deemed to be the date on which the option is exercised or the date on which the time for exercising the option is extended as the case may be.

- 2.04 The Optionee shall be bound to exercise the option herein granted within thirty (30) days after the date the plan of subdivision respecting the Lands is acceptable for registration by the Winnipeg Land Titles Office and the By-law to rezone the Lands is in force.

3. CONTRACT OF PURCHASE AND SALE

- 3.01 Upon the exercise of this option, this Agreement shall constitute a contract for the sale and purchase of the Lands upon the following terms and conditions, namely:

- (a) The purchase price of SEVEN HUNDRED TWENTY-EIGHT THOUSAND DOLLARS (\$728,000.00) shall be adjusted to be more or less on the basis of the gross area of the Lands which shall be calculated by a Manitoba Land Surveyor to be selected by the Vendor, and shall be calculated at the rate of TWENTY-SIX THOUSAND DOLLARS (\$26,000.00) per acre for the gross area of the Lands and is to be calculated proportionately at the said rate for any fraction of an acre included therein.
- (b) The Vendor shall convey the Lands to the Purchaser free and clear of any and all mortgages, charges, liens or encumbrances save and except:
 - (i) Plan No. , Winnipeg Land Titles Office,
 - (ii) Caveat No. , filed by Greater Winnipeg Gas,
 - (iii) Mortgage of Grant of user in Caveat No. registered as Number ,
 - (iv) Any Easement in favour of City of Winnipeg approved by Optionee,
 - (v) Any registration by, under or through the Optionee.
- (c) It is an express condition of this Agreement that subsection 1 and/or subsection 2 of section 637 of The City of Winnipeg Act shall be complied with. The Purchaser shall at its own expense apply for the consent of the City of Winnipeg for the conveyance of the Lands and shall satisfy any dedication requirements of the City of Winnipeg.
- (d) The Vendor shall not be liable to convey the Lands to the Purchaser if the consent of the City of Winnipeg thereto is not given and the failure of the Purchaser to secure the City's consent to the conveyance of the Lands or of any plan of subdivision shall not affect the Purchaser's liability to make any payment required for the extension of the date within which the option herein granted may be exercised or on the exercise of the option or on account of the purchase price nor the

right of the Vendor to retain all of said payments for its own account as and when received by it.

- (e) All sums paid by the Purchaser to the Vendor hereunder in respect of the price paid for the granting of the option and for any extension or extensions of the time within which the option might be exercised and for or on account of real estate taxes as provided in Section 4, shall (not) be applied as payment on account of the purchase price.

4. TAXES

4.01 Subject to this Section, all realty taxes including local improvement levies shall be adjusted between the parties hereto as of the date on which the option herein granted is exercised.

4.02 Notwithstanding anything contained in paragraph 4.01, the Purchaser shall be responsible to pay the amount by which the realty taxes including local improvements assessed against the Lands in each year during the currency of this option exceeds the realty taxes assessed against the Lands for the year 20__.

5.01 During the currency of the option herein granted the Optionee at its own cost and expense may/(shall):

- (a) make application to the City of Winnipeg for approval of a plan of subdivision of the Land and for rezoning of the Lands to permit the use thereof for single family residential and semi-detached residential dwellings and with the prior consent of the Vendor, for any other use thereof; and
- (b) commence and continue all proceedings as may be required to have the approval of the City of Winnipeg of a plan of subdivision of the Lands.

6.01 The Optionee during the currency of this option has the right from time to time to have access to the Lands for the purpose of making soil tests thereon and conducting land surveys at the sole risk, cost and expense of the Optionee provided and it is agreed by the parties that the Optionee shall maintain the Lands in safe condition during the conduct of any work in connection with such testing and surveying and shall leave the Lands in safe condition upon completion of any work for all persons entering thereon by restoring the surface of the Lands in good and safe condition, and the Optionee will and it hereby covenants and agrees to indemnify and save harmless the Vendor from and against all damages, claims and expenses arising out of or in any way attributable to the conduct of any such soil testing or surveying as may be carried out by the Optionee hereunder and provided

that if the option herein granted is not exercised within the time herein limited all such surveys and soil test reports shall become the property of the Optionor and shall be promptly delivered to the Optionor by the Optionee.

- 7.01 The Optionor will not lease, encumber, charge, sell or otherwise convey an interest in the Lands other than to the Optionee during the currency of the option herein granted.
- 8.01 This Agreement shall under no circumstances be construed as creating a partnership or joint venture between the parties hereto. The relationship between the parties is that of Optionor and Optionee, and Vendor and Purchaser respectively and neither party has any right or authority to represent or bind the other party in any manner whatsoever.
- 9.01 Time shall be of the essence of the option and of any agreement of purchase and sale arising upon the exercise of the option herein granted.
- 10.01 The Vendor shall not be liable for payment of any real estate agent's commission in connection with this option or any purchase and sale resulting from the exercise of the option.
- 11.01 If the option herein granted is not exercised within the time limited herein, all interest of the Optionee in the Lands shall be fully ended without notice and all monies paid by the Optionee to the Optionor for the grant of the option and for any extension or extensions thereof and for real estate taxes shall be retained by the Optionor free and clear of all claims of the Optionee.
- 12.01 The Vendor warrants that it has irrevocably during the currency of this option appointed Barrister and Solicitor, Winnipeg, its attorney to sign all consents and approvals required in connection with any proceedings taken hereunder by the Purchaser for the subdivision and rezoning of the Lands and for any required consent to convey and to convey the Lands in accordance with the terms of this Agreement. All notices required hereunder and all payments required to be made by the Purchaser to the Vendor for the option and for any extensions of the time within which the option might be exercised and payment of the purchase price shall be made by certified cheque payable to the attorney and shall be delivered to the attorney. The grant of power of attorney is annexed and marked Schedule "C" hereto.
- 13.01 The Schedules marked "A," "B" and "C" respectively hereto are hereby incorporated into and shall form part of this Agreement for all purposes.
- 14.01 The Optionee shall not during the currency of this option apply for or support any application for the rezoning of the Lands if as a part of or collaterally with any such rezoning it is proposed by any person including the City of Winnipeg to rezone any of the lands owned by the Optionor adjacent to the Lands and to which proposed rezoning the Optionor may object. The Optionor reserves to itself the right to appear in any proceedings for the rezoning of the Lands

and to object thereto and to any rezoning of its remaining lands in the circumstances aforesaid.

- 14.02 Subject to the Optionor's right to object to any rezoning as provided by Clause 14.01 the Optionor shall co-operate with the Optionee in all proceedings for the rezoning and subdividing of the Lands and shall sign and deliver all such consents and certificates as may be required in connection therewith and shall if required by the Optionee, appear at any public hearing or hearings and express its support of the rezoning and the subdividing of the Lands.
- 15.01 The parties hereto agree to execute such further and other documents and assurances as may be reasonably required to carry out the full intent of this Agreement except any agreement or document which imposes any liability on the Vendor.
- 16.01 The paragraph headings of this Agreement are inserted only for convenient reference and shall in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.
- 17.01 This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and each of them. This Agreement may be assigned by the Optionee without the prior consent in writing of the Optionor first having been obtained provided that the Optionee shall in every respect remain liable to the Optionor notwithstanding such assignment and the assignee shall execute an undertaking in favour of the Optionor agreeing to become liable to the Optionor in every respect as though it were a party hereto and except as provided in this paragraph, it shall not be assigned without the prior consent of the Optionor.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this ____ day of _____, 20__.

Per: _____

Per: _____

LTD.

Per: _____

Per: _____

5. Sample Pre-emptive Clause

In the event that the owner shall, during the currency of the option, receive a bona fide offer to purchase all of the option lands which the owner is prepared to accept, the owner may notify the optionee by a notice in writing of receipt of the offer accompanied by a copy of the offer and on the giving of such notice accompanied by the offer, the right of the optionee to exercise the option hereby granted shall be suspended and the optionee shall then be entitled, within thirty-five (35) days of the receipt of such notice, to purchase the option lands for the price and upon the same terms as those set forth in the offer. If the optionee fails to exercise its right to purchase the option lands on the terms of the said offer during the said thirty-five (35) day period the owner shall be at liberty to complete the sale of the option lands in accordance with the terms of the offer as notified to the optionee for a period of thirty (30) days after the expiration of the date within which the option lands could have been purchased by the optionee by reason of the offer. In the event that the owner fails to complete the sale to the offeror within that period of time, the option hereby granted shall be revived and continued. If the owner completes the sale to the offeror within the said period, the option hereby granted shall cease and terminate, and the owner shall forthwith repay to the optionee all sums paid by the optionee as the consideration for the option.

6. Sample Right of First Refusal Clauses

Form One

That the landlord shall not sell, transfer, assign, exchange, give, alienate or otherwise dispose of all or any part of its interest in the Demised Land except expressly subject to this lease and all its provisions, and in accordance with the following provisions of this clause:

The landlord may sell full title to all of its interest in the Demised Land if it has received a bona fide arm's length unassignable offer which it is willing to accept, of cash only payable within One Hundred and Eighty (180) days after acceptance of this offer (but for no other consideration and not as part of or in connection with another transaction and not containing any terms which the tenant cannot reasonably perform) and it has given the tenant a notice in writing (the "Notice of Offer") enclosing a copy of such offer and stating that the landlord will accept such offer if the landlord's interest is not sold within thirty (30) days of the delivery of the notice of offer to the tenant.

The tenant may at any time within thirty (30) days of receipt of the Notice of Offer give notice in writing to the landlord of the election of the tenant to purchase the landlord's interest in the Demised Land; such acquisition to be on the terms of such offer. If the tenant does not give the notice within the 30-day period, then the landlord may dispose of its interest in the Demised Land on the terms and conditions and to the offeror mentioned in the Notice of Offer within 180 days following expiry of the 30-day period mentioned above, but not otherwise. This right of first refusal shall continue to apply to any person who purchases the interest of the landlord hereunder or in the Demised Land from time to time.

Form Two

That the landlord shall not sell, transfer, assign, exchange, give, alienate or otherwise dispose of all or any part of its interest in the Demised Land except expressly subject to this lease and all its provisions, and in accordance with the following provisions of this subsection; the landlord may sell full title to all of its interest in the Demised Land (subject as aforesaid to this lease) if it has received a bona fide arm's-length unassignable offer which it is willing to accept, and it has given the tenant a notice in writing (the "Notice of Offer") enclosing a copy of such offer and stating that the landlord will accept such offer if its interest is not sold pursuant to the following provisions of this subsection. The tenant may at any time within thirty (30) days of receipt of the Notice of Offer give notice in writing to the landlord of the election of the tenant to purchase the landlord's interest in the Demised Land; such acquisition to be on the terms of such offer. If the tenant does not give the notice hereinbefore referred to within such 30-day period, then the landlord may dispose of its interest in the Demised Land on the terms and conditions and to the offeror mentioned in the Notice of Offer within a period of 180 days following expiry of the 30-day period mentioned above, but not otherwise.

Form Three

If the lessor receives an offer in writing to purchase the within land during the term of the lease, the lessor shall advise the lessee immediately and if the lessee makes the same offer on the same terms within 60 days of receiving the said notice, then the land shall be sold by the lessor to the lessee.

Form Four

Right of first refusal in co-tenancy agreement.

In the event that any investor (selling investor) shall receive in writing a bona fide offer for the purchase of the selling investor's undivided interest in the property and wishes to accept such offer, the selling investor shall forward a copy of the offer together with a notification in writing signed by the selling investor indicating the selling investor's wish to accept the offer to each other investor (the offeree investors) in the manner provided. Such notification to the offeree investors shall be deemed to be an offer to sell the selling investor's undivided interest to the offeree investors on the same terms and conditions as contained in the bona fide offer made to the selling investor.

The offeree investors shall have until 5:00 p.m. on the third full business day following the day upon which notice is received by them to accept the deemed offer. Communication of acceptance shall be made to the selling investor in the manner hereinafter provided. Any offeree investor not replying within the time stated shall be deemed not to have accepted the offer of the selling investor.

In the event that one or more of the offeree investors shall have agreed to purchase the undivided interest of the selling investor, then such acceptance shall form a binding agreement of purchase and sale between the selling investor and the accepting offeree investor(s) and the accepting offeree investor(s) are obliged to complete such offer pro rata among them according to their undivided interests in the _____ property, or as they may otherwise agree.

In the event that none of the offeree investor(s) accept the offer of the selling investor then the selling investor shall, subject to all terms hereof, be free to complete the purchase and sale contemplated in the original bona fide offer received by the selling investor on the terms and conditions as therein contained, provided the sale is to a Canadian resident and further provided that it is completed within SIXTY (60) DAYS from the time within which the selling investor is free to sell. If the sale is not completed within the SIXTY (60) DAY period, then the selling investor shall be obliged once again to offer the selling investor's undivided interest to the remaining investors as if the selling investor had received a new bona fide offer to purchase the selling investor's undivided interest and the foregoing provisions shall apply mutatis mutandis.

7. Conveyancing Checklists

PURCHASE/MORTGAGE Residential Property Checklist

NAME:

ADDRESS:

1. OPEN

- ☐ Check for Conflicts
- ☐ Open File
- ☐ Review Offer/Counter Offer/Calculations
- ☐ Homestead Releases included by Seller if Necessary
- ☐ Client Letter/Conflict Letter
- ☐ Diarize Dates: Possession Mortgage Expiry Date
- ☐ Get Title No./Description
- ☐ Check Taxes \$ G/N Paid/Unpaid Roll
- ☐ Obtain Title Search at LTO
- ☐ Intro Seller's Lawyer
- ☐ Closing Traditional or Protocol or NCP; Title Insurance or not
- ☐ Write Utility and Search Letters
- ☐ Write Local Improvement Levies
- ☐ Check for Survey & Zoning
- ☐ Determine Insurance Agent
- ☐ Mortgage Instruction (Bank)
- ☐ Obtain Client Description
- ☐ Marital Status
- ☐ Rental/New Address

Page 1

2. COLLECT/ASSESS

- ☐ Send Purchaser's Description to Seller's Lawyer
- ☐ Request Statement of Adjustments
- ☐ Order LTO Documents Plans
- ☐ Determine if New Survey Needed
- ☐ Order Survey
- ☐ Order Zoning
- ☐ Title Insurance
- ☐ Is Client to Assume TIPP
- ☐ Order Tax Certificate
- ☐ Receive/Review and Analyse Mortgage Instructions
- ☐ Add Additional Items (outstanding GST remittances?) to Checklist Arising for Mortgage Instructions
- ☐ Request Insurance Binder
- ☐ Prepare Closing Costs
- ☐ Review Caveats
- ☐ Get Water & Waste Utility Account Balance and Status
- ☐ Review all Utilities and Search Letters
- ☐ Plan Holdbacks or Trust Conditions
- ☐ Review Survey & Zoning/Title Insurance for Necessary Coverage
- ☐ Order Easement Plan

3. DOCUMENT PREPARATION

- ☐ Order to Pay - Cash
- ☐ Order to Pay - Cash and Mortgage
- ☐ Declaration as to Possession
- ☐ Mortgage
- ☐ TIPP Application if Client to Assume
- ☐ Draft Trust Conditions
- ☐ Review Documents - Mortgage & Transfer
- ☐ Set Appointment to Sign Mortgage/Transfer
- ☐ Advise Cash to Close
- ☐ Receive Insurance Binder
- ☐ If Protocol or NCP Closing, Prepare Appropriate Documents

Page 2

4. CLOSING (Traditional Closing)

- ☐ Trust Letter
- ☐ Funds Deposit
- ☐ Calculate/Issue Trust Cheque
- ☐ Review Incoming Trust Conditions
- ☐ RDA & Documents Registered at LTO
- ☐ Registrations Clear
- ☐ If Cash Deal, Advise Seller's Lawyer
- ☐ If Mortgage, Requisition Funds and Complete
- ☐ Mortgagee Report - #1 to Requisition Funds
- ☐ Pay/Disburse, Survey, Easement
- ☐ Issue LTO Cheque for Discharge

5. REPORT (Traditional Closing)

- ☐ Mortgagee Report - #1
- ☐ Receive Funds/Conditions/Issue \$
- ☐ Check Taxes & Water
- ☐ After 3 p.m. Title and Unaccepted Builders' Liens List Search before Advancing Funds
- ☐ Letter/Funds to Seller's Lawyer/Review Trust Conditions
- ☐ Do Draft Report Letter
- ☐ Do Draft Account
- ☐ Receive Discharge/Review # and Reg in LTO
- ☐ Obtain Order Certified Status of Title for Final Report
- ☐ Check Caveats etc. Against Title
- ☐ Mortgagee Final Report Enclosing Status of Title, Tax Cert.
- ☐ Draft Client Final Report Enclosing Status of Title
- ☐ Send Client Final Report Letter and Invoice for Fees and Disbursements
- ☐ Issue Return of Balance in Trust Account, if Surplus
- ☐ Transfer Funds to Pay Invoice for Fees and Disbursements
- ☐ Order Final Print Out/ Strip and Close File

SALE INSTRUCTIONS

NAME:

ADDRESS:

1. CHECK FOR CONFLICTS

- ☐ Open File
- ☐ Review Offer
- ☐ Client Letter
- ☐ Diarize Dates: Possession
- ☐ Legal Desc.
- ☐ Title No.
- ☐ Property Taxes \$ G/N Paid/Unpaid Roll #
- ☐ TIPP?
- ☐ Title Search
- ☐ Buyer's Lawyer
- ☐ Taxes, Zoning, Survey
- ☐ Duplicate Title
- ☐ Marital Status
- ☐ Mortgagee's Address to Write for Pay Out
- ☐ Client's New Address

2. COLLECT/ANALYSE/DOCUMENTS

- ☐ Utilities Search Letters
- ☐ Any Unregistered Rental Contracts or Loans to be Paid
- ☐ Mortgagor Pay Out/Assumption
- ☐ Seller's Lawyer
- ☐ Prepare Order to Pay
- ☐ Prepare Declaration as to Possession
- ☐ Prepare Transfer
- ☐ Review Assignments/Respond
- ☐ Cancel TIPP
- ☐ Client Appointment for Signing
- ☐ Advise Client to Read, Cancel and Pay Utilities

3. CLOSING(Traditional Closing)

- ☐ Check Taxes & Water for Payment
- ☐ Trust Letter
- ☐ Receive Funds/Close
- ☐ Review Trust Conditions
- ☐ Double-Check Calculations
- ☐ Diarize for Follow-up
- ☐ Letter to Mortgagee Send Funds/Receive Discharge
- ☐ Letter to Agent, Review Calculations, Send Commission Amount
- ☐ Issue Disbursement Cheque to Other Lawyer

Page 2

8. Sample Title Search

A Status of Title is what you will need when you do a Title Search. You can see a sample of the Status of Title in the PDF [Land Titles Online User Guide](#) found among the [Land Titles Office Training Materials](#).

[Document follows on next page]

DATE: 2011/12/14
TIME: 22:52

MANITOBA

TITLE NO: 9522705

STATUS OF TITLE

PAGE: 1

STATUS OF TITLE . . .	ACCEPTED	PRODUCED FOR..	BLACK WHYTE & CO. (WINNIPEG)
ORIGINATING OFFICE...	Winnipeg	ADDRESS	110 ALBERTA STREET WINNIPEG
REGISTERING OFFICE...	Winnipeg		MB R3A 4J4
REGISTRATION DATE....	1998/02/12		
COMPLETION DATE . . .	1998/02/16		
		CLIENT FILE...	113393 DAVIS
		PRODUCED BY...	SYSTEM for Series :
			1288196

LEGAL DESCRIPTION;

JOHN SAMUEL JONES OF WINNIPEG
IN MANITOBA

IS REGISTERED OWNER SUBJECT TO SUCH ENTRIES RECORDED HEREON
IN THE FOLLOWING DESCRIBED LAND

LOT 7 BLOCK 12 PLAN 38371 WLTO

IN RL 15 PARISH OF ST. JOSEPH

ACTIVE TITLE CHARGE(S):

1285811 WPG ACCEPTED	MORTGAGE	REG'D: 1998/02/12
FROM/BY: TO:	JOHN SAMUEL JONES	
CONSIDERATION:	SCOTIA MORTGAGE CORPORATION	
	\$169,444.85	NOTES:

ADDRESS(ES) FOR SERVICE:

EFFECT	NAME AND ADDRESS	POSTAL CODE
ACTIVE	JOHN SAMUEL JONES 3 SMITH STREET WINNIPEG MB	R3Z 0L0

ORIGINATING INSTRUMENT(S):

REGISTRATION NUMBER	TYPE	REG. DATE	CONSIDERATION	SWORN VALUE
1285810 WPG	T	1998/02/12	\$173,000.00	\$173,000.00
PRESENTED BY:	BLACK, WHYTE & CO			
FROM:	HELEN PARKER & JAMES CASH			
TO:	JOHN SAMUEL JONES			

FROM TITLE NUMBER(S):

9022389 WPG ALL

LAND INDEX

LOT	BLOCK	SURVEY PLAN
7	12	38371
NOTE: IN RL 15 PARISH OF ST. JOSEPH		

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA
STORAGE SYSTEM ON 2011/12/14 OF TITLE NUMBER 9522705

DATE: 2011/12/14
TIME: 22:52

MANITOBA

TITLE NO: 9522705

STATUS OF TITLE

PAGE: 2

STATUS OF TITLE ..	ACCEPTED	PRODUCED FOR..	BLACK, WHYTE & CO (WINNIPEG)
ORIGINATING OFFICE...	WINNIPEG	ADDRESS ...	110 ALBERTA STREET
REGISTERING OFFICE...	WINNIPEG		WINNIPEG MB R3A 4J4
REGISTRATION DATE....	1998/02/12		
COMPLETION DATE ..	1998/02/16		
		CLIENT FILE...	113393 DAVIS
		PRODUCED BY...	SYSTEM for Series : 1288196

LAND INDEX:

LOT	BLOCK	SURVEY PLAN
7	12	38371

NOTE: IN RL 15 PARISH OF ST.JOSEPH

ACCEPTED THIS 12TH DAY OF FEBRUARY, 1998
BY K.RAIN FOR THE DISTRICT REGISTRAR OF
THE LAND TITLES DISTRICT OF WINNIPEG.

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA
STORAGE SYSTEM ON 2011/12/14 OF TITLE NUMBER 9522705.

END OF STATUS OF TITLE 9522705 WPG *****

9. Transfer of Land

Remember that Transfers must be witnessed in accordance with the requirements of the *Real Property Act* – see sections 72.5-72.6.

[Document follows on next page]

TRANSFER Form 5P

☐ Transfer under Power of Sale ☐ Transfer of Mortgage ☐ Transfer of Leasehold Title ☐ Transfer of Encumbrance

1. TRANSFEROR(S) (Vendor(s))

see schedule☐

2. LAND DESCRIPTION

AFFECTED TITLE NO.(S)
MORTGAGE/ENCUMBRANCE NO.(S)

see schedule☐

3. ENCUMBRANCES, LIENS AND INTERESTS — The within document is subject to instrument number(s)

see schedule☐

4. TRANSFEREE(S) (Purchaser(s)) (full legal name, address for service and tenancy/estate/share acquired)

see schedule☐

5. CONSIDERATION

Receipt of \$_____ is acknowledged.

6. FAIR MARKET VALUE AND, IF APPLICABLE, LAND TRANSFER TAX EXEMPTION EVIDENCE

1. In accordance with Part III of *The Tax Administration and Miscellaneous Taxes Act*, I certify that the land affected by this transfer, as a whole, has a fair market value of \$ _____

2.

.....//

namesignaturedate (YYYY/MM/DD)

see schedule☐

7. EVIDENCE OF TRANSFEROR(S)

1. I am (one of) the within transferor(s) and I am of the age of majority.

2. I am (entitled to be) (the owner/one of the owners) of the described land.

3. I hereby transfer the (land/lease/mortgage/encumbrance) to the Transferee(s).

4. The registration of this transfer does not contravene the provisions of *The Homesteads Act* because (insert appropriate Homesteads Act evidence):

5.

.....//

witness signature name signature date (YYYY/MM/DD)

.....//

witness signature name signature date (YYYY/MM/DD)

Prior to signing and witnessing this document, please carefully review the notices in Box 8.

Insert name, position and address of witness below signature. See subsection 72.5(5) of *The Real Property Act*.

8. IMPORTANT NOTICES

WHO MAY BE A WITNESS to this document: Only those persons specified in section 72.5 of *The Real Property Act* may act as a witness to this document.

NOTICE TO WITNESSES: By signing as witness you confirm that the person whose signature you witnessed:

1. Is either personally known to you, or that their identity has been proven to you.

AND

2. That they have acknowledged to you that they:

(a) are the person named in this instrument;

(b) have attained the age of majority in Manitoba; and

(c) are authorized to execute this instrument.

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

SINGULAR INCLUDES PLURAL AND VICE VERSA WHERE APPLICABLE. In this document “I” or “me” is to be read as including all transferors whether individual or corporate.

9. FARM LANDS OWNERSHIP DECLARATION

The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* because:

(strike out inappropriate statement(s) and sign below:)

- 1. The within land is not farm land as defined in *The Farm Lands Ownership Act*.
- 2. The within farm land is exempt by Manitoba Regulation 325/87 R of *The Real Property Act* (i.e. it is 5 acres or less).
- 3. Including the land in this transfer, the transferee owns, in total, less than 40 acres of farm land.
- 4. The transferee is a Canadian citizen, permanent resident of Canada, agency of the government, municipality, and local government district, qualified Canadian organization, family farm corporation or a qualified immigrant as defined in *The Farm Lands Ownership Act*.
- 5. The interest in farm land is being claimed pursuant to a bona fide debt obligation.
- 6. The transferee is exempt by the Farm Lands Ownership Board (Order enclosed).
- 7. Other (specify section of *The Farm Lands Ownership Act*):
Particulars:

.....
name	signature	date (YYYY/MM/DD)
.....
name	signature	date (YYYY/MM/DD)

Transferee, Transferor, or Agent

10. HOMESTEADS ACT CONSENT TO DISPOSITION AND ACKNOWLEDGEMENT

For transfer of land or transfer of leasehold title only.
Note: For consent by widow(er) or surviving common-law partner, see section 22 of *The Homesteads Act*.

- I, the spouse or common-law partner of the transferor, consent to the disposition of the homestead effected by this instrument and acknowledge that:
- 1. ☐ I am the first spouse or common-law partner to acquire homestead rights in the property; or
☐ A previous spouse or common-law partner of the transferor acquired homestead rights in the property but those rights have been released or terminated in accordance with *The Homesteads Act*.
 - 2. I am aware that *The Homesteads Act* gives me a life estate in the homestead and that I have the right to prevent this disposition of the homestead by withholding my consent.
 - 3. I am aware that the effect of this consent is to give up my life estate in the homestead to the extent necessary to give effect to this disposition.
 - 4. I execute this consent apart from my spouse or common-law partner freely and voluntarily without any compulsion on the part of my spouse or common-law partner.

.....
name of spouse or common-law partner	signature of spouse or common-law partner	date (YYYY/MM/DD)
.....
name of witness	signature of witness	date (YYYY/MM/DD)

A Notary Public in and for the Province of Manitoba
A Commissioner for Oaths in and for the Province of Manitoba
My commission expires: _____
Or other person authorized to take affidavits under *The Manitoba Evidence Act* (specify): _____

11. INSTRUMENT PRESENTED FOR REGISTRATION BY (include address, postal code, contact person and phone number)

10. Declaration as to Possession (Seller)

NOTE: This is for a transaction that is closing under the *Western Law Societies' Conveyancing Protocol*. The provisions **identified by asterisk (*) and bold type** (or comparable variations thereof) are to be included in every Declaration as to Possession delivered under the Protocol.

The meaning of these declarations must be explained to, and affirmed by the maker before execution.

The Declaration as to Possession is to be made in duplicate and executed in accordance with *section 72* of *The Real Property Act*.

There is no requirement to obtain a Declaration as to Possession from a Buyer who is not financing the transaction through a new mortgage.

SAMPLE DECLARATION AS TO POSSESSION IN THE MATTER OF THE SALE/MORTGAGE OF:

[insert civic address of the Land]

TO: *[insert name of Buyer/Mortgagee]* I, *[insert full legal name]*, and I, *[insert full legal name]*, (each) of the _____ of _____, in the Province of Manitoba, do (severally) solemnly declare that:

*1. My full and correct legal name is as set out above.

*2. I am (one of) the registered owner(s) in fee simple in possession of the following lands and premises: (hereinafter the "Land").

*3. I am (one of) the seller(s)/mortgagor(s) of the Land and I am of the full age of 18 years.

*4. *[Cross out inapplicable sentences]* I have never had a spouse or common-law partner; **OR**

My co-declarant is my spouse or common-law partner and has homestead rights in the Land; **OR**

[Insert full legal name] _____ is the full and correct legal name of my spouse or common-law partner who has homestead rights in the Land and who consents to the disposition of the homestead in the Land to be effected by this transaction; **OR**

I have no spouse or common-law partner, and no other person has acquired homestead rights in the Land during my ownership; **OR**

The Land is not homestead property.

5. My lawyers, *[insert name of law firm or lawyer]*, have my full authority to do all things required to complete this transaction, including the making of any necessary amendments to correct any document signed by me which is to be registered in the Land Titles Office.

*6. I am rightfully in actual personal peaceable possession and occupation of the whole of the Land and have been so continuously since I became the/a registered owner of the Land, and I have never been disturbed in my possession of the Land or any part thereof.

*7. The names of all persons in actual occupation of or residing on the Land or any portion thereof and the nature of such occupation and residence are as follows:

[insert names]

*8. I know of no registered or unregistered claim of any person, corporation, municipality, or government, to or affecting the Land, whether adverse to my title thereto or otherwise, for a lease, option to purchase, easement, right-of-way, order of attachment, judgment, order for the payment of money, execution, builder's lien, charge, mortgage, encumbrance, order under the Bankruptcy and Insolvency Act (Canada), agreement for sale or other agreement affecting the Land, other than the agreement for sale of the Land to the buyer(s) named above, except:

*9. There has been no work done, services provided, or materials supplied for the erection, renovation or repair of any building or other improvement on the Land within the preceding 40 days or, if such is not the case, there are no outstanding accounts for such work, services or materials, except:

10. The electrical system and equipment, heating system, hot water tank and heater, and all other fixtures, chattels, and equipment comprising the Land are fully paid for and are not affected by any chattel mortgage, rental agreement, conditional sales contract or other charge or encumbrance whatsoever.

*11. All taxes on the Land are paid to the 31st day of December, 20____ and, except for the water account for the current period, there are no outstanding accounts owing to the Municipality which are capable of forming a lien on the Land.

12. The water meter reading, as of _____, 20__, was _____, and all accounts for water supplied to the Land up to the Closing Date will be paid by me or on my behalf. *[It is recommended, but not required, that this declaration be obtained from Sellers.]*

13. The Land is not the subject of any loan under The Homeowner's Tax and Insulation Assistance Act (Manitoba) or, if any such loan is outstanding, the same will be paid off from the sale proceeds.

14. This sale is a sale of a used residential property and is an exempt supply pursuant to the Goods and Services Tax ("GST") provisions under the Excise Tax Act (Canada), and no GST is payable by the buyer regarding this supply.

*15. I am not now and, as at the date of the completion of the sale of the Land, will not be a non-resident of Canada within the meaning of the Income Tax Act (Canada).

16. I have not received a notice of application, nor am I aware of any notice of application, with respect to the provisions of The Safer Communities and Neighbourhoods and Consequential Amendments Act for the subject property.

17. *[Insert any other representations made under the Agreement for Sale which are to survive the Closing.]*

AND I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Evidence Act (Canada).

(SEVERALLY) DECLARED before me at)

the _____ of _____ in the Province)

of Manitoba, this _____ day of)

_____, 20____.)

_____))

A Notary Public/Commissioner for Oaths

in and for the Province of Manitoba.

My Commission expires: *[Insert name, office and address of witness, as required by the LTO.]*

NOTE: See *The Real Property Act* [section 72.9](#). You must include the Affidavit of Subscribing Witness completed by the witness to the Declaration as to Possession – see sample Affidavit of Subscribing Witness below.

AFFIDAVIT OF SUBSCRIBING WITNESS

I, _____, of the _____ of _____, in Manitoba

make oath and say that:

1. I am a subscribing witness to the attached Declaration as to Possession and I was present and saw it executed at _____ by _____.

2. I verily believe that each person whose signature I witnessed is of the full age of majority and is the party of the same name referred to in the Declaration as to Possession.

SWORN/DECLARED before me at _____)

the _____ of _____ in the Province) _____

of Manitoba, this _____ day of _____)

_____, 20____.) _____

_____) _____

A Notary Public/Commissioner for Oaths
in and for the Province of Manitoba.

My Commission expires: *[Insert name, office and address of witness, as required by the LTO.]*

11. Sample Trust Conditions

a) To Solicitor Acting for Seller (Traditional Closing)

Black, Whyte & Company, LLP
110 Alberta Street
Winnipeg MB R3A 4J4
ATTENTION: Barry Whyte

RE: Jones Sale to Davis

Enclosed is our trust cheque in the amount of \$14,217.52 representing partial payment on account of the balance due under your statement of adjustments.

In accordance with the Offer to Purchase, your client has agreed to accept a delay in payment with respect to the funds to be paid from the proceeds of our clients' new mortgage. Our clients have agreed to pay interest on this delayed payment at the same rate as our clients' new mortgage from the date of possession until received by your office. We confirm we have collected interest from our clients for at least thirty days.

The enclosed funds are sent to you in trust and on the following conditions:

1. That our clients will be given vacant possession to the premises on or before the date of possession.
2. That on or before the date of possession you will provide our office with a Transfer of Land which will, when submitted for registration to the Winnipeg Land Titles Office, be sufficient to cause title to the property described in Certificate of Title No. 1 to issue to our clients, free and clear of all registered encumbrances except Mortgage No. 1285811 (to be discharged from the proceeds of sale) and any arising from, by, through or against our clients.
3. That on or before the date of possession you will provide our office with a Declaration as to Possession from your client in a form satisfactory to us which, among other things, will indicate that the list of chattels included in the offer to purchase agreement are being transferred to our clients free and clear of all encumbrances.
4. That you will instruct your client that those chattels set out in the Offer to Purchase are to remain on the premises.
5. That you will instruct your client that all accounts for utility services provided to the property to the date of possession are to be paid by your client.

6. That if we are able to provide you with evidence that there remains outstanding any real property taxes, water bills or any outstanding accounts under finance or rental programs related to fixtures or improvements on the property and capable of forming a charge against the property which are not our clients' responsibility, or not adjusted for on the Statement of Adjustments, at or prior to the time that we provide you with the remainder of the balance due on closing, you will attend to payment of such account and will provide us with confirmation of payment.

7. That upon your office receiving the full balance due to your client you will forthwith forward to the mortgagee of mortgage no. 1285811 all amounts owing under the mortgage and attend to the required payment in full of said mortgage and thereupon requisition a registrable discharge of same, and upon receipt, provide us with the registerable discharge and a trust cheque to cover the cost of the registration of the discharge. Our client will obtain the new Status of Title free of any additional charge with the successful registration of the discharge provided by you.

8. That you insert the following clause (or permit us to insert the following clause) in section 4 or 12 of the Transfer of Land:

"The implied covenants contained in Section 77 of The Real Property Act as they pertain to mortgage no. 1285811 are expressly negated by the Transferee."

In the event that you are unable or unwilling to comply with any or all of the above trust conditions we would ask that you immediately contact the writer in an effort to resolve matters. In the event that matters cannot be resolved between our offices the enclosed funds are to be returned to our offices immediately on demand.

We confirm that our clients have placed insurance coverage upon the premises effective the date of possession or earlier and in at least the amount required by the mortgagee of their new mortgage.

To the best of our knowledge all mortgage documents have been duly executed and we are in a position to meet the requirements of the mortgagee except for obtaining the duplicate registered mortgage.

Upon your acceptance of these trust conditions and our agreeing to the conditions to be imposed on our office we undertake to submit the Transfer of Land and our clients' new mortgage to the Winnipeg Land Titles Office for registration and upon completion of registration to report to our clients' mortgagee and requisition the mortgage proceeds and upon receipt to forward to you the unpaid balance due to your client together with such interest payable by our clients as we have on hand.

As indicated above we have collected interest for at least 30 days. We acknowledge our clients' obligation to pay further interest in compliance with the Offer to Purchase and in the event more interest than we have collected is required we will endeavour to obtain it from our clients and forward it to you.

Please let me know how our clients are to obtain the key.

Yours truly,

Brown, Brown and Gray

Per: Alice Toews

AT/ti

Enclosure

b) To Purchaser's Solicitor (Traditional Closing)

Brown, Brown & Gray
68 North Blvd.
Winnipeg MB R3X 0P0
ATTENTION: Alice Toews

RE: Jones Sale to Davis

We enclose the following:

1. Transfer of Land;
2. Unpaid Vendor's Caveat;
3. Declaration as to Possession;
4. Statement of Adjustments;
5. Key to the subject premises.

In accordance with the Offer to Purchase, our client has agreed to accept a delay in payment with respect to your clients' new mortgage. Interest is to be paid on this delayed payment at the same rate as your clients' mortgage from the date of possession until received by our office.

The above documents are forwarded in trust on the condition and your firm's undertaking that:

1. The above documents will not be used in any way:
 - (a) unless you confirm your clients have properly executed the mortgage and all other documents required by the mortgagee of the mortgage referred to in the agreement;
 - (b) unless you confirm that you have taken all reasonable steps to ensure all other requirements of the mortgagee with respect to the advance of mortgage funds will be satisfied upon the completion of registration;
 - (c) unless you confirm your clients have executed and given you an irrevocable order to pay the mortgage proceeds from your clients' new mortgage to your firm and that you have collected from you clients at least thirty days interest to permit your office to pay interest on the unpaid balance;
 - (d) unless you provide us with all amounts estimated to be due, including an amount estimated by you to be equal to the interest for the delayed payment referred to above, over and above the net mortgage proceeds expected from such mortgage (which net mortgage proceeds are not to be more than the amount referred to in the

Offer to Purchase) and which is to be paid to our office no later than the date of possession referred to in the enclosed Statement of Adjustments;

(e) unless you confirm that your clients have placed insurance coverage for fire and other hazards on the property effective as of the closing of this action in an amount sufficient to protect the balance due to our client as unpaid vendor.

2. Upon satisfaction of trust condition no. 1 above and our confirming your trust conditions imposed on our office are acceptable, you will complete sections 4, 9 and 13 of the enclosed Transfer of Land and you will forthwith, within two business days of the closing of this transaction, submit for registration in the Winnipeg Land Titles Office the enclosed Transfer of Land, the enclosed Unpaid Vendor's Caveat [*note that this is rarely used in practice but it is legally permitted*] and the mortgage your clients are placing on this property, in that order and in series.

Immediately upon completion of the registration, you will apply to the mortgagee of such funds and requisition the mortgage proceeds and upon receipt of such funds you will immediately forward to our office the amount then owing.

3. That you will notify us immediately in the event your clients' mortgagee refuses to advance the mortgage proceeds or if the documents are rejected for any reason by the Winnipeg Land Titles Office.

If you are unwilling or unable to comply with any or all of the above trust conditions, we ask that you immediately contact the writer in an effort to resolve matters. If our differences cannot be resolved, the enclosed documents and key are to be returned unused, upon demand.

Upon your compliance with trust condition no. 1, and our confirming your trust conditions to be imposed on our office are acceptable, the key can be released to your client, but not before the date of possession without our consent.

Upon our office receiving the full balance due to close together with the interest our clients are entitled to we will attend to the required payment in full of mortgage no. 1285811. Thereupon we will requisition a discharge of that mortgage.

Upon receipt of the discharge of the mortgage we will provide it to you with a discharge of our client's Unpaid Vendor's Caveat as well as the required filing fees including the filing fee for the registration of the Unpaid Vendor's Caveat.

Yours truly,

Black, Whyte & Company, LLP

Per: Barry Whyte

Enclosures (5)

12. Sample Orders to Pay

a) For a Sale Transaction

ORDER TO PAY

TO: Black, Whyte & Company, LLP

Re: Sale of 3 Smith Street (the "Property")

According to the Offer to Purchase Agreement dated **insert date* (the "Agreement")

You are authorized and directed to pay the following from the proceeds of the sale of the Property:

1. all outstanding real property taxes affecting the Property including penalties, if any;
2. discharge the following registered encumbrances and any other encumbrances that may be registered on the title to the Property or capable of forming a charge on the Property which are my responsibility to discharge pursuant to the Agreement:

Mortgage No.: 1285811

3. Ajax Realty, the balance of commission owing after crediting them with the deposit they are holding;
4. Black, Whyte & Company, LLP, legal fees and disbursements;
5. Other: _____

6. the balance to be paid to me, unless otherwise directed in writing;

when the sale proceeds can be released by you and this is your full and sufficient authority.

Dated at the City of Winnipeg, Manitoba, this * day of * 20*.

_____ (Seller name and signature)

b) For a Purchase Transaction

ORDER TO PAY

TO: Scotia Mortgage Corporation

AND TO: Brown, Brown and Gray

Re: Purchase of 3 Smith Street, Winnipeg (the "Property")

According to the Offer to Purchase Agreement dated **insert date* (the "Agreement")

You are authorized and directed to advance the mortgage proceeds and pay out the funds provided to you for the purchase and mortgage of the above noted Property as follows:

1. To Canada Mortgage and Housing Corporation, or its agent, the sum of \$2500.00 representing the mortgage insurance premium; and
2. The balance to Brown, Brown and Gray, Barristers and Solicitors to be disbursed as follows:
 - (a) to pay all outstanding real property taxes on the Property including penalties, if any, that are required to be paid;
 - (b) to pay outstanding encumbrances, if any affecting the Property that are required to be discharged;
 - (c) to pay Black, Whyte & Company, LLP, the solicitors for the Vendors, the amount required to complete the purchase of the Property;
 - (d) to pay Winnipeg Land Titles Office, for registration fees and related taxes and disbursement;
 - (e) to pay Brown, Brown and Gray, Barristers and Solicitors their legal fees and disbursements; and
 - (f) to pay the balance to the undersigned unless directed otherwise by the undersigned;

when the mortgage proceeds can be released by you and for doing so, this shall be your full and sufficient authority.

Dated at the City of Winnipeg, Manitoba, this * day of * 20*.

_____ (*Purchaser name and signature*)

13. Sample Reporting Letter to Purchaser Clients

[Note the client opted for title insurance instead of a new BLC and Zoning memorandum.]

[date]

Mr. Donald Davis and Ms. Dawn Davis
3 Smith Street
Winnipeg MB R3Z 0L0

Dear Mr. and Ms. Davis:

Re: Purchase and Mortgage of 3 Smith Street, Winnipeg (the “Property”) Davis from Jones (the “Vendor”) Possession Date: 1 April 2012

All matters are now complete in respect of the above transaction and accordingly this will serve as our report to you.

TITLE AND MORTGAGE PARTICULARS

Certificate of Title No.995043 to the property, which is legally described as:

LOT 7 BLOCK 12 PLAN 3

8371 WLTO IN RL 15 PARISH OF ST. JOSEPH

now stands in the names of Donald Dexter Davis and Dawn Della Davis, as joint tenants, and, in accordance with the enclosed copy of Certified Status of Title, as at *[date]*, is free and clear of all registered encumbrances, with the exception of the following:

1. Mortgage No.3161860 in the amount of \$137,500, in favor of Scotia Mortgage Corporation (the “Mortgage”). The Mortgage, as registered, bears interest at the rate of 7% per annum calculated semi-annually, not in advance. The Mortgage, as registered, is repayable by equal consecutive monthly instalments of \$963.08 (principal and interest) which payments commence on *[date]* and will continue up to and including *[date]*, at which time the entire balance owing becomes due unless renegotiated with Scotia Mortgage Corporation. The Mortgage contains various conditions and provisions and we would suggest that you read the enclosed Mortgage and Standard Charge Mortgage Terms carefully so as to re-acquaint yourselves with them;
2. Mortgage No.3161861 in the amount of \$20,000.00, in favour of the Vendor, John Samuel Jones (the “Mortgage”). The Mortgage, as registered, bears interest at the rate of 7% per annum calculated semi-annually, not in advance. The Mortgage, as registered, is repayable by equal consecutive monthly instalments of \$395 (principal and interest) which payments commence on *[date]* and will continue up to and including *[date]*, at which time the entire balance owing will be paid off and you can seek and register a discharge of that Mortgage from the Vendor.

ADJUSTMENT PARTICULARS

The purchase price of the Property, in accordance with the Offer to Purchase, was \$170,000.00 with adjustments and possession on [date].

On the Statement of Adjustments prepared by the Vendor's solicitor, you were credited with the deposit you paid of \$1000. You were credited with your share of the [year] taxes in the amount of \$638.48 and the Vendor was credited with the TIPPS account of \$856 that represents installments already paid before the date of possession by the Vendor for the months of * * * *. You agreed to assume responsibility for paying \$35,000 remaining on the Vendor's existing Mortgage and to give the Vendor a mortgage back in the amount of \$20,000. After the above adjustments, there remained a balance due to the Vendor and payable by you on closing of \$114,217.52.

On [date], we forwarded the sum of \$14,217.52 to the Vendor's solicitor and on receipt of the mortgage proceeds on [date], we forwarded the further sum of \$100,191.78, as the balance owing of \$100,000, plus interest at your mortgage rate of 7.00% that totalled \$191.78 for the 10 days between your possession of the property and our payout of the mortgage proceeds.

SURVEYOR'S BUILDING LOCATION CERTIFICATE & SKETCH ("BLC") AND ZONING MEMORANDUM

As you are aware, a current BLC and Zoning Memorandum were not available from the Vendor. We confirm our discussion regarding the benefits of ordering a new BLC and Zoning Memorandum before the date of possession. Notwithstanding our recommendations to you we confirm your advice to us that you had no grave concerns and your instructions were not to obtain the documents in question. As an alternative, you instructed us to obtain title insurance.

TITLE INSURANCE

As owners of the Property, you are insured by Stewart Title Guaranty Company in the amount of \$170,000 under Policy No. O-7763 988479. A copy of the policy from the insurer is enclosed.

The Mortgagee is insured by Stewart Title Guaranty Company in the amount of \$170,000 under Policy No. M-7764 980377. Because you obtained that title insurance, Scotia Mortgage Corporation waived their usual requirement for both a Surveyor's Building Location Certificate and Zoning Memorandum. If Scotia Mortgage Corporation should suffer a loss as a result of the residence not being located on the lands or in contravention of zoning, the insurer would pay Scotia Mortgage Corporation for that loss.

INSURANCE

We are advised that the dwelling on the Property is insured with Wawanesa Mutual in the amount of \$170,000 under Binder No. 2013, with loss payable firstly to Scotia Mortgage

Corporation, as mortgagee, and that the policy contains the Insurance Bureau of Canada Standard Mortgage Clause. We enclose a copy of that insurance binder for your records.

REAL PROPERTY TAXES

The real property taxes are paid in full to [date] as evidenced by the enclosed City of Winnipeg Tax Certificate issued [date]. The [year] real property taxes will be your responsibility when they become due on June 30, [year].

ENCLOSURES

We enclose the following:

1. Copy of Statement of Adjustments which shows how the purchase/sale price was calculated;
2. Scotia Mortgage Corporation Approval of Mortgage and Cost of Borrowing Disclosure Statement;
3. Acknowledgement (Standard Charge Terms);
4. Scotia Mortgage Corporation Standard Charge Terms No.7654321 Acknowledgment of receipt of Standard Charge Terms [a copy of which was also provided to you prior to signing];
5. A copy of the registered Mortgage with copy Certificate of Status attached;
6. A copy of Certified Status of Title No. 995043 dated [date];
7. The original Stewart Title Insurance – Owners Policy No. O-7763 988479 **[this is a valuable document and you should keep it in a place of safekeeping]**;
8. A copy of Stewart Title Insurance – Loan Policy No. M-7764 980377 [this is a valuable document and should be kept in a place of safekeeping – the original was sent to Scotia Mortgage Corporation with our final report to it];
9. Vendors' Declaration as to Possession declared [date];
10. Declaration as to Possession declared by you on [date];
11. Your Building Location Certificate Instructions signed by you on [date];
12. A copy of insurance binder;
13. City of Winnipeg Tax Certificate dated [date];
14. Copy of Right-of-Way No.1145672;
15. Order to Pay signed by you on [date];

16. A copy of "paid" Stewart Title Guaranty Company Invoice No.05-444790-05;
17. Statement of Monies Received and Disbursed which provides an accounting of trust funds dealt with us on your behalf;
18. Our receipted Statement of Account for fees, disbursements and taxes;
- [or]** Our partially receipted Statement of Account for fees, disbursements and taxes indicating a balance owing by you of [\$●] that we ask you to pay now;
19. *[if applicable]* Our trust cheque in the amount of [\$●] representing the balance of funds held to your credit in our trust account.

We trust you will find the above and enclosed to be in order, but if you should have any questions, please do not hesitate to contact us. In the meantime, we wish to thank you for allowing us this opportunity to be of service to you and we look forward to our continuing relationship.

Yours truly,

Brown, Brown and Gray

Per:

"signature"

ALICE TOEWS

AT/ac

Encls.

14. Solicitor's Report on Title

[Note that here the client obtained a new BLC and zoning memorandum but no title insurance.]

BROWN, BROWN and GRAY
Barristers & Solicitors
68 North Blvd.
WINNIPEG, Manitoba
R3X 0P0

SOLICITOR'S REPORT ON TITLE

REGISTERED OWNERS: ARTHUR PARK and JANE SMITH, both of 444 Main Street, Winnipeg, Manitoba, R3C 0X0, as joint tenants.

ADDRESS FOR SERVICE: 444 Main Street, Winnipeg, Manitoba, R3C 0X0

CIVIC ADDRESS: 444 Main Street, Winnipeg, Manitoba, R3C 0X0

CERTIFICATE OF TITLE NUMBER: 1133888

LEGAL DESCRIPTION: Lot 7, Block 88, Plan 99, WLTO, in RL 55, Parish of St. Boniface

DATE OF ADJUSTMENTS: *[date]*

DATE OF POSSESSION: *[date]*

PURCHASE PRICE: \$94,900

ENCUMBRANCES:

1. Caveat No. 199999, registered in the Winnipeg Land Titles Office on October 16, 1977 by R.E. Gunn. This caveat is a building restriction caveat and prohibits the building of more than one house on a lot and states that the house must be 20 feet back from the street line. We enclose a copy of the caveat for your records and information. Please note that this Caveat in no way adversely affects your interest in the property.
2. You have executed a Promissory Note in the sum of \$10,700 in favour of JOHN JONES, which is payable on demand, but bears no interest.

We report:

PROPERTY TAXES: The *[year]* real property taxes on this property are the sum of \$1,314. Your share of same amounted to the sum of \$555.45 as reflected in the statement of adjustments.

BUILDING LOCATION CERTIFICATE: SKETCHUM SURVEYS prepared the Building Location Certificate and sketch of the property, dated *[date]* and it confirms that there are no

encroachments onto adjoining properties or by adjacent buildings onto your property. The property has a frontage of 60.0 feet and a depth of 100.0 feet.

ZONING MEMORANDUM: City of Winnipeg, Zoning Memorandum No. 000896, dated [date], indicates that the property is zoned R- 1 and that it complies with all necessary by-laws and/or town planning schemes as to yards and alignments.

UTILITIES: We have received confirmation from the appropriate utility companies that there are no liens, equipment on rental, or monies owing in connection with this property.

ENCLOSURES:

1. Our Statement of Receipt and Disbursements of Trust Monies indicating a balance due yourselves of \$25.64 and our trust cheque in your favour in that amount.
2. Our Statement of Account for services rendered on your behalf and at your request.
3. Copy of Offer to Purchase.
4. Copy of Statement of Adjustments.
5. Copy of Certificate of Title No. 1133888.
6. Copy of utility letters.
7. Copy of Building Location Certificate and sketch.
8. Copy of City of Winnipeg Zoning Memorandum.
9. Copy of Caveat.
10. Copy of Promissory Note.

DATED at the City of Winnipeg, in Manitoba, on [date]

Yours truly,

BROWN, BROWN and GRAY

Per:

Alice Toews

AT/pja

Enc.

15. Statement of Receipt and Disbursement of Trust Monies

RECEIVED from you in accordance with Estimated Closing Costs			\$50,000.00
RECEIVED from BANK Bridge Financing			\$25,000.00
PAID to the Solicitors for Seller, the cash to mortgage	\$68,000.00		
PAID to Teranet Manitoba – registration of Transfer of Land and Mortgage (Land Transfer Tax)	\$1,720.00		
RECEIVED from BANK the net mortgage proceeds			\$125,000.00
PAID to the Home Title Company: Title Insurance	\$175.00		
PAID to the Solicitors for the Seller, the balance to complete the purchase	\$129,000.00		
PAID to Goodpeople Law Corporation, our Statement of Account for fees and disbursements	\$600.00		
TO your credit by enclosed trust cheque: Surplus of funds on hand	\$505.00		
	\$200,000.00		\$200,000.00

16. Statement of Receipt and Disbursement of Trust Monies for Restricted Trust Account and EFT Withdrawals

RECEIVED from Goodpeople Law Corporation, our pooled trust account cheque			\$1,864.00
PAID to Teranet Manitoba, Land Transfer Tax, EFT withdrawal from Restricted Trust Account	\$1,650.00		
PAID to Teranet Manitoba, Registration fees, EFT withdrawal from Restricted Trust Account	\$214.00		
	\$1,864.00		\$1,864.00

17. The New Closing Practice (NCP) Documents

Please note the following:

The NCP proposes the use of new “typical” trust conditions.

Jeff Shypit, the conveyancing lawyer who is spearheading the NCP, has provided the sample documents for closing on a “routine” sale and a “routine” purchase using the NCP.

- a) Buyer Trust Letter NCP
- b) Buyer Undertaking NCP
- c) Seller Trust Letter NCP
- d) Seller Undertaking NCP

He confirmed that the seller’s undertaking has been vetted and approved by Stewart Title Insurance and FCT Title insurance. He recommends that any lawyer who is using or relying on other title insurers should do their own due diligence to ensure that the coverages necessary are available (i.e. regarding gap and water) and what requirements those title insurance companies will have

This initiative is a private industry initiative and not a Law Society or Bar Association initiative.

a) Buyer Trust Letter NCP

Date

Delivered

<<Name and Address of Seller's Law Office>>

Attention: <<Name of Seller's lawyer>>

Dear <<Name of Seller's lawyer>>:

**Re: <<Buyer>> purchase from <<Seller>>
<<Property Address>>
Possession Date: <<Possession Date>>
Our File No.: <<File No.>>**

We enclose our trust cheque in the sum of \$_____ representing the balance due on closing and the buyer's undertaking to readjust.

We confirm that we have obtained title insurance with gap coverage, for both the buyer and the lender (if applicable).

We confirm that the following references shall have the following meanings:

- a) "Closing" means <<**Possession date and time**>>;
- b) "Non-Permitted Registrations" means:
 - i) <<**Non-permitted encumbrances**>>;
- c) "Permitted Registrations" means:
 - i) <<**Permitted encumbrances**>>
- d) "Outstanding Taxes and Penalties" means <<**Nil or outstanding tax amount**>>;
- e) "Agreement" means the offer to purchase or other agreement of the parties;
- f) "Keys" means any form of access device, including keys, keypad lock codes or security codes necessary to allow the buyer to enter the premises.

The enclosed funds are forwarded to you upon the following trust conditions:

Additional or amended trust conditions

The standard new conveyancing practice (NCP) trust conditions hereafter are subject to the following additions or amendments:

1. Old Style Closings:
 - a) You are not required to provide us with the seller's written undertaking as referred to in NCP trust condition 1 c) below.
 - b) In the event that you do not provide our firm with the seller's written undertaking (which would allow us to title insure the risk regarding water accounts) the following "old style" trust condition shall apply:

That, upon completion of registrations, you will ensure payment of the final water account (if same represents a lienable amount), such account being based on an actual water reading taken on or about the closing date.

Standard NCP trust conditions

1. Documents: On or before Closing, you will deliver to our office:
 - a) a transfer of land or, if using an eTransfer, your client's executed portion thereof, in registrable form, together with any additional documents required of your client by The Property Registry which, to the best of your knowledge, will be sufficient to cause The Property Registry to register a title in favour of our client, free and clear of registrations except for the Permitted Registrations, the Non-Permitted Registrations, and any registrations arising by, through or against our client;
 - b) a declaration as to possession executed by all registered owners, in standard form, containing, *inter alia*, a statement that each of the registered owners is not a non-residents of Canada within the meaning of the *Income Tax Act* as of Closing. In the event that you are unable to obtain such a statement of non-residency from each registered owner, then you will forthwith apply for, and in due course provide us with a copy of, a Certificate of Compliance under Section 116 of the *Income Tax Act*, bearing in mind that you may be required to remit to Canada Revenue Agency 25% of that owner's share of the gross sale proceeds to obtain such Certificate;
 - c) a written undertaking to readjust from your client in standard form;
 - d) a statement of adjustments, which accurately reflects the terms of the Agreement; errors and omissions excepted (E&OE), and;
 - e) keys.
2. Closing Instructions: You will instruct your client that:
 - a) possession is to be given to the buyer on Closing in accordance with the Agreement (vacant, if prescribed), and that Keys not otherwise delivered to the buyer are to be left on the premises;
 - b) all chattels and fixtures included in the Agreement are to remain on the premises, free and clear of encumbrances unless otherwise allowed in the Agreement.
 - c) the final **water accounts** for all services to the premises up to Closing are to be paid in full;
 - d) all accounts for utilities supplied to the premises up to Closing are to be paid in full; and
 - e) if a condominium, any condominium fees or charges up to Closing are to be paid in full.

3. Equity: Prior to Closing, you will have performed an equity calculation and will have taken all reasonable steps to ensure that, upon your receipt from us of all monies due to your client, you will have sufficient sale proceeds to pay out and discharge the Non-Permitted Registrations, the Outstanding Taxes and Penalties, and any other amounts required to be paid in order to comply with the trust conditions herein.
4. Private Encumbrances: Prior to Closing, you will have obtained a registrable discharge of any Non-Permitted Registration held by any party other than a government body or a lender that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.
5. Release of Funds: You may release funds only: (i) after Closing; and (ii) as long as we have not notified you that the buyer cannot receive possession as required under the Agreement because the property has been destroyed or so seriously damaged as to prevent possession, or because the property is not vacant (if so required by the Agreement); or because Keys have not been provided, and only upon either:
 - a) The Property Registry having registered title in favour of the buyer; or
 - b) our confirmation that we have placed title insurance with gap coverage, for both buyer and lender (if applicable), in which case the release of funds shall occur only after you have obtained and forwarded to us a title search, effective on or after Closing, confirming that title is subject to no registrations other than the Permitted Registrations, the Non-Permitted Registrations and any registrations by, through or against the buyer.
6. Document Defects: If advised that any corrections of your documents are required by The Property Registry, you will forthwith use your best efforts to correct the same by correction letter or otherwise or, if necessary, by obtaining and providing to us newly-executed documents together with any related rejection fee.
7. Discharges and Pay-outs: Subject to the provisions under *Release of Funds* above, upon your receipt of all monies due to your client, you will forthwith:
 - a) pay-out as necessary and ensure that all Non-Permitted Registrations are discharged and, within a reasonable time, forward to our office a new Status of Title evidencing the same; and
 - b) ensure that any Outstanding Taxes and Penalties, together with any further penalties, are paid.

If you are unable or unwilling to accept or to thereafter comply with any of the conditions herein, the enclosed funds are to be returned to our office upon our request.

Yours very truly,

<<Buyer's Law Firm>>

Per:

<<Name of Buyer's lawyer>>

Encl.

c) Seller Trust Letter NCP

Date

Delivered

<<Name and Address of Buyer's Law Office>>

Attention: <<Name of Buyer's lawyer>>

Dear <<Name of Buyer's lawyer>>:

Re: <<Seller>> sale to <<Buyer>>

<<Property Address>>

Possession Date: <<Possession Date>>

Our File No.: <<File No.>>

We enclose the following:

1. Transfer of Land, or the Seller's signed portion thereof;
2. Declaration as to Possession;
3. Statement of Adjustments;
4. Seller's Undertaking;
5. Keys.

We confirm that the following references shall have the following meanings:

- a) "Closing" means **<<Possession date and time>>**;
- b) "Non-Permitted Registrations" means:
 - i) **<<Non-permitted encumbrances>>**;
- c) "Permitted Registrations" means:
 - i) **<<Permitted encumbrances>>**;
- d) "Outstanding Taxes and Penalties" means **<<Nil or outstanding tax amount>>**;
- e) "Agreement" means the offer to purchase or other agreement of the parties;
- f) "Keys" means any form of access device, including keys, keypad lock codes or security codes necessary to allow the buyer to enter the premises.

The enclosed are forwarded to you upon the following trust conditions:

Additional or amended trust conditions

The standard new conveyancing practice (NCP) trust conditions hereafter are subject to the following additions or amendments:

1. Old Style Closings
 - a) You are not required to provide us with the buyer's written undertaking as referred to in NCP trust condition 2 below;
 - b) Any obligation of our firm to deal with water accounts shall be limited to a holdback of \$1,000.00 and payment of a final account to that amount. We enclose a written undertaking from the seller which allows you to title insure the risk on behalf of your client.

Standard NCP trust conditions

1. Funds: You will tender to our office, on or before Closing, the balance due on closing pursuant to our statement of adjustments.
2. Buyers' Undertaking to Readjust: You will forward to our office, on or before Closing, a written undertaking to readjust from your client in standard form.
3. Use of Keys: You will only release Keys to your client upon our express approval. Alternatively, you may release Keys without our express approval in which case: (a) you are then deemed to have accepted our trust conditions; and (b) you will have no option but to ensure that your trust conditions are acceptable to us. In either case, you will expressly advise your client that accessing the property prior to the date and time of Closing, without the seller's express consent, is prohibited and could have serious legal consequences and that same is not to be deemed to be the giving of possession.
4. Completion of Transfer of Land: Prior to registration, you will complete any of the transferee's portions of the transfer of land that have not yet been completed, and you will not insert the name of any transferee other than the buyer identified in the Agreement, or a family member of such person, without our prior consent.
5. Registrations: Forthwith on or after Closing and within the time limit required under any policy of gap title insurance that you have placed, you will register at The Property Registry the transfer of land together with any documents of the transferee required by The Property Registry.
6. Document Defects: If advised by The Property Registry or our office that any corrections of documents are necessary, you will forthwith use your best efforts to correct the same by correction letter or otherwise or, if necessary, by obtaining newly executed documents and re-registering same.
7. Issuance of Title: You will forthwith advise our office once title issues in favour of your client. You agree, however, that our office shall be free to release monies prior to the issuance of title if you have confirmed to us that you have obtained title insurance with gap coverage, for both the buyer and the lender (if applicable) and if our confirming title search on or after Closing indicates no registrations other than the Permitted Registrations, the Non-Permitted Registrations, and any registrations by, through or against the buyer.

If the Agreement allows for the tender of less than the full balance due on Closing and you are tendering less than the full balance, the following conditions shall apply in lieu of condition No. 1:

8. Cash to Mortgage: You will tender to our office, on or before Closing, an amount that is not less than the sum to be tendered on Closing as prescribed by the Agreement.
9. Calculations: You have calculated all monies required to close and are satisfied that the cash to mortgage so tendered, together with the monies to be advanced under any mortgage, shall be sufficient to pay the remaining balance due on closing, taking into account any deductions from the mortgage advance and any other amounts, including interest, that you will need to pay.
10. Mortgagee Requirements: You have obtained an irrevocable Order to Pay from the borrower to pay mortgage funds to your office and, to the best of your knowledge and upon review of the mortgage instructions and related documents, you are satisfied that all lender requirements for an advance of mortgage funds (except registration of documents) have been satisfied and there are no circumstances known to you that would cause the lender to refuse to advance funds.
11. Private Lender: Unless the lender is a government body or a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business, you will have obtained mortgage funds prior to Closing.
12. Requisition: Forthwith upon completion of registrations at The Property Registry or sooner, you will requisition all mortgage proceeds required to pay the remaining balance due on closing and will remit the same to our office, together with interest at the rate payable by the borrower under the mortgage (unless a higher rate is prescribed in the Agreement) calculated from the day after Closing until the date funds are paid to our office inclusive. Your obligation to pay interest will be limited to 30 days but, if a greater amount is required, you will use your reasonable efforts to collect same and pay same to our office forthwith.

If you are unable or unwilling to accept any of the conditions herein, the enclosed documents and Keys are to be returned to our office upon our request and you are not to register the transfer of land provided to your office.

Yours very truly,

<<Seller's Law Firm>>

Per:

<<Seller's lawyer>>

Encl.

d) Seller Undertaking NCP

SELLER'S UNDERTAKING

TO: <<Buyer>>

AND TO: <<Buyer's lawyer>>

RE: Sale of <<Property Address>>

IN CONSIDERATION of, and notwithstanding the closing of the above transaction, I hereby undertake as follows:

1. TO deliver up vacant possession (if so required by the agreement of sale) of the premises on closing;
2. TO pay all arrears of taxes to the extent that an allowance has not been granted to the purchaser on account thereof and to pay the 2019 taxes in accordance with the Statement of Adjustments;
3. TO pay all utilities accounts (inclusive of final readings), including water, hydro-electric and gas charges, to the date of closing, and if a condominium, all common element or other condominium charges up to the date of possession;
4. TO pay off and discharge any existing mortgages, registered lines of credit, liens, executions and other encumbrances affecting the subject property which are not being assumed by the buyer;
5. TO readjust, forthwith upon demand any item on the Statement of Adjustments, if necessary, or any item that should have been included in the Statement of Adjustments pursuant to the Sale Agreement; and
6. TO leave on the premises all chattels and fixtures specified in the Agreement of Purchase and Sale, free of encumbrances, liens and claims of any kind whatsoever.

I acknowledge that the within undertakings shall be relied upon by the buyer and any of the buyer's representatives and are intended to survive the closing of the transaction.

DATED at Winnipeg, Manitoba this _____ day of _____, <<year>>.

WITNESS: _____)

)

)

Name: (*print*)

Seller1

WITNESS: _____)

)

)

Name: (*print*)

Seller2