

Asset Purchase Agreement made in duplicate as of the ____ day of _____, 2007, between:

[insert name and incorporation number of company], a company incorporated under the laws of the Province of British Columbia, having an address for delivery at [address] Victoria, British Columbia [postal code]

AND:

SEVILLE PROPERTIES LTD. (Inc. No. BC0487372), a company incorporated under the laws of the Province of British Columbia, having an address for delivery at 1629 West Shawnigan Lake Road, Shawnigan Lake, British Columbia V0R 2W0

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WHEREAS:

- A. The Vendor owns or holds under lease (as set out herein) the assets used in connection with the Business;
- B. The Vendor wishes to sell, and the Purchaser wishes to purchase, the Assets, as defined in subsection 1.1(e), on the terms and conditions set forth in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the covenants, agreements, representations and warranties set out below, the parties covenant and agree as follows:

1. Interpretation

1.1 Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith or unless otherwise specifically provided:

“Accountants” means [name of accounting firm];

“Accounts Receivable” means all accounts receivable, trade accounts, notes receivable and other debts owing to the Vendor in connection with or arising out of the Business, and the full benefit of all security for such accounts, notes and debts;

“Adjustment Date” means [month, day, year], or such other date as may be agreed upon in writing by the Vendor and the Purchaser or by their respective solicitors;

“Affiliate” with respect to a corporation means another corporation which is affiliated with the first mentioned corporation within the meaning thereof in the *Business Corporations Act* of British Columbia;

“Agreement” means this Agreement, including its recitals and schedules, as amended and supplemented;

“Assets” means all properties and assets of the Vendor of every kind and description (whether real, personal, mixed, tangible or intangible) relating to the Business wherever located (but not including the Excluded Assets) stipulated in Schedules B through G inclusive and Schedule I, J, and N through R inclusive, including, without limitation:

- (a) the Lands;
- (b) the Buildings;
- (c) subject to the terms of the Leases, the Vendor’s interest in the Leasehold Improvements and the Leased Premises;
- (d) the Vendor’s right, title and interest in the Contracts;

- (e) the Inventory;
- (f) the Prepaid Expenses;
- (g) the Computer Hardware;
- (h) the Computer Software;
- (i) the Office Equipment;
- (j) the Vehicles;
- (k) the Construction Tools and Equipment;
- (l) the Personal Property;
- (m) the Intellectual Property;
- (n) the Vendor's interest in the Permits; and
- (o) the Books and Records;

"Assumed Obligations" means the obligations to be assumed by the Purchaser as referred to in section 10.1 and any other obligations agreed to be assumed by the Purchaser as provided in this Agreement;

"Books and Records" means all files, ledgers and correspondence, all price and supplier lists, all manuals, reports, texts, notes, engineering, environmental and feasibility studies, data, specifications, memoranda, invoices, receipts, accounts, accounting records and books, financial statements and financial working papers and all other records and documents of any nature or kind whatsoever, including, without limitation, those recorded, stored, maintained, operated, held or otherwise wholly or partly dependent on discs, tapes and other means of storage, including, without limitation, any electronic, magnetic, mechanical, photographic or optical process, whether computerized or not, and all software, passwords and other information and means of or for access thereto, belonging to the Vendor and relating to any of the Assets;

"Buildings" means all buildings, structures, fixtures and other improvements located on or otherwise affixed or appurtenant to the Lands;

"Business Day" means any day other than a Saturday, Sunday or any statutory holiday in the province of British Columbia;

"Charter Documents" means articles, articles of incorporation, notice of articles, memorandum, bylaws and any other constating document of a corporate entity;

"Claim" means any claim by the Purchaser against the Vendor for any breach of a representation, warranty, covenant or other obligation of the Vendor in or under this Agreement or in or under any agreement, instrument or other document delivered pursuant to this Agreement;

"Completion" means the completion of the sale and purchase of the Assets in accordance with Article 7;

"Completion Date" means [month, day, year], or such other date as may be agreed upon in writing by the Vendor and the Purchaser or by their respective solicitors;

"Computer Hardware" means all the computer hardware used by the Vendor in the Business, including, without limitation, the hardware listed in Schedule N;

"Computer Software" means all the computer software, including, without limitation, application software, object codes and source codes, used by the Vendor in the Business, including, without limitation, the software and codes described in Schedule Y, and, with respect to any of the same

not owned by the Vendor, includes all rights of the Vendor under licence agreements and other agreements or instruments relating thereto, including, without limitation, those licence agreements, other agreements and instruments described in Schedule O;

“Construction Tools and Equipment” means all machinery, plant, equipment, parts, tools and accessories of the Vendor pertaining to the Business and used in the manufacture and packaging of goods for sale by the Vendor in the Business, including, without limitation, those items listed in Schedule P;

“Contracts” means all contracts, agreements, instruments, leases, indentures and commitments, whether written or oral, relating to any of the Assets to which the Vendor is a party and includes, without limitation, [describe any material included contracts if felt necessary], but excludes [describe excluded contracts];

“Current Liabilities” means all liabilities of the Vendor, without limitation except as may be specifically stipulated to be Excluded Liabilities;

“Employees” means employees of the Vendor;

“Encumbrance” means, whether or not registered or registerable or recorded or recordable, and regardless of how created or arising:

(a) a mortgage, assignment of rent, lien, encumbrance, adverse claim, charge, execution, title defect, security interest, hypothec or pledge, whether fixed or floating, against assets or property (whether real, personal, mixed, tangible or intangible), hire-purchase agreement, conditional sales contract, title retention agreement, equipment trust or financing lease, and a subordination to any right or claim of others in respect thereof;

(b) a claim, interest or estate against or in assets or property (whether real, personal, mixed, tangible or intangible), including, without limitation, an easement, right-of-way, servitude or other similar right in property granted to or reserved or taken by any Person;

(c) an option or other right to acquire, or to acquire any interest in, any assets or property (whether real, personal, mixed, tangible or intangible);

(d) any other encumbrance of whatsoever nature and kind against assets or property (whether real, personal, mixed, tangible or intangible); and

(e) any agreement to create, or right capable of becoming, any of the foregoing;

“Environment” means the air immediately around, and the water in, under and adjacent to, any of the Lands and any lands on which the Leased Premises are situate;

“Environmental Protection Laws” means all statutes, orders, bylaws, standards, permits, laws, regulations, treaties, conventions, ordinances, codes, policies, guidelines, directives, decisions, licences, consents, authorizations, certificates and lawful requirements (including, without limitation, of any Governmental Authority) relating to protection of the Environment, health and safety of the workplace, health, or transportation of dangerous goods, including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act, 1992* (Canada), the *Fisheries Act* (Canada), the *Workers Compensation Act* (British Columbia) and the *Waste Management Act* (British Columbia), and all amendments thereto and all rules, regulations, decrees, policies and criteria promulgated thereunder from time to time, including, without limitation, the Contaminated Sites Regulation (British Columbia), and also including principles of common law and equity;

“Hazardous Materials” means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, microwaves, waste, urea formaldehyde, asbestos materials, hydrocarbon contaminants, noxious substances, compounds known as chlorobiphenyls, deleterious substances, special wastes, dangerous goods or substances and any other substances or materials that are identified or described in or defined by any Environmental Protection Law as being substances or materials the storage, manufacture, disposal, treatment, generation, use, transportation or remediation of which, or release of which into or concentration of which in the Environment, is prohibited, controlled, regulated or licensed by any Governmental Authority or under any Environmental Protection Law;

“Excluded Assets” means the assets listed in Schedule A;

“Governmental Authority” means any federal, provincial, state, municipal, county or regional government or governmental or regulatory authority, domestic or foreign, and includes any department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing;

“Holdback” has the meaning ascribed thereto in subsection 2.5(c).

“Intellectual Property” means all rights, title, interest and benefit of the Vendor in and to intellectual property of every nature, whether registered or unregistered, including, without limitation, all instruction manuals, unpatented blue prints, drawings and designs, formulae, calculations, processes, prototypes and technology, together with all rights under licence agreements, sublicense agreements, strategic alliances, development agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing, that are owned by the Vendor or used in connection with the Assets, including, without limitation, that property described in Schedule B;

“Inventory” means the goods and inventories of construction materials and work in progress upon or pertaining to the Assets;

“Lands” means the lands and premises and appurtenant easements, rights of way and other interests in real property described in Schedule C;

“Leased Premises” means the premises which are leased by the Vendor as lessee, as more particularly set out in Schedule D;

“Leasehold Improvements” means all the leasehold improvements of the Vendor in the Leased Premises;

“Leases” means the leases described in Schedule D;

“Material Contracts” means agreements, contracts, leases, indentures, commitments and instruments described in Schedules F;

“Office Equipment” means all office equipment and furniture used by the Vendor in connection with the Business including, without limitation, the equipment described in Schedule G;

“Permits” means all permits, licences, registrations and other rights of the kinds described in subsection 3.3(a) entered into or obtained by the Vendor with respect to the Business or any of the Assets, including, without limitation, the permits, licences, registrations and other rights described in Schedule E;

“Permitted Encumbrances” means:

- (a) all exceptions, limitations, provisos and reservations contained in the original grants of the Lands or the lands on which the Leased Premises are situate from the Crown;
- (b) easements, servitudes, rights-of-way and similar rights in lands granted to or reserved by other persons which in the aggregate do not [*materially*] impair the usefulness of the Lands, the Buildings or the Leased Premises subject to such easements, servitudes, rights-of-way or similar rights;
- (c) liens for taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity of which is being contested at the time by the Vendor in good faith;
- (d) liens for any judgments rendered or claims filed against any of the Assets which the Vendor is contesting in good faith;
- (e) undetermined or inchoate liens and charges incidental to current construction or repairs or current operations which have not at such time been filed pursuant to law against any of the Assets or which relate to obligations not due or delinquent;
- (f) the right reserved to or vested in any Governmental Authority by the terms of any Lease, any of the Permits, or any consent, franchise or grant acquired by the Vendor or any statutory provision, to terminate any such Lease, Permit, consent, franchise or grant or to require annual or other periodic payments as a condition of the continuance thereof;
- (g) any Encumbrance resulting from the deposit of cash or obligations as security when the Vendor is required to make such deposit by a Governmental Authority or in the usual and ordinary course of the Business in connection with any of the Permits or the Material Contracts, any tenders or other similar matters in the usual and ordinary course of the Business and for the purpose of carrying on the same or to secure Workers’ Compensation, surety or appeal bonds or to secure the costs of litigation when required by law;
- (h) public and statutory obligations which are not due or delinquent, and security given to a utility or a Governmental Authority when required by such utility or Governmental Authority in connection with any of the Assets;
- (i) restrictive covenants and covenants under s. 219 of the *Land Title Act* (British Columbia) which do not adversely affect or impair the use of any of the Lands, the Buildings or the Leased Premises for the purposes for which they are proposed to be used by the Vendor, provided that all the foregoing are being complied with in all material respects;

which the Purchaser expressly agrees to assume pursuant to this Agreement, all of which are more particularly described in Schedule H.

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization or Governmental Authority;

“Personal Property” means, to the extent not forming part of the Lands, Buildings, Leasehold Improvements, Construction Tools and Equipment, Vehicles, Office Equipment and Computer Hardware, all equipment, furniture, furnishings, accessories, motors, tools, utensils, stores, supplies and parts of every nature and kind and other tangible personal property owned by the Vendor and used in the Business, including, without limitation, the items of personal property described in Schedule I, but excluding any Excluded Assets, any personal property which is the subject of a lease agreement and [any other personal property not to be included in Assets being sold];

“Possession Date” means [month, day, year], or such other date as may be agreed upon in writing by the Vendor and the Purchaser or by their respective solicitors;

“Prepaid Expenses” means all prepaid expenses of the Vendor attributable to the Business or the Assets including, without limitation, amounts paid for insurance, licensing fees, property taxes, telephone rentals, utilities and rentals which have a continuing benefit to the Purchaser after the Closing;

“Prime Rate” means the floating annual rate of interest established and recorded as such from time to time by [name of bank] as a reference rate then in effect for determining the interest rate it shall charge on Canadian dollar commercial loans in Canada;

“Purchase Price” means the purchase price for the Assets, as set out in section 2.2;

“Purchaser” means Seville Properties Ltd. (Inc. No. BC0487372) or its permitted assignee;

“Vendor” means [name of Vendor];

“Vehicles” means all automobiles, trucks, trailers, tractors and other vehicles owned by the Vendor and used in the Business, including, without limitation, those described in Schedule Q.

1.2 Gender, Number and Other Terms

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, “or” is not exclusive, and “including” is not limiting, whether or not non-limiting language (such as “without limitation”) is used with reference thereto.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement.

1.4 Statutes

Unless otherwise stated, any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments thereto and in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute or such regulations.

1.5 No Contra Proferentum

The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Agreement.

1.6 Currency

Except where otherwise expressly provided, all monetary amounts in this Agreement are stated and shall be paid in Canadian currency.

1.7 Governing Law and Attornment

This Agreement shall be governed by and construed in accordance with the law of British Columbia and the law of Canada applicable therein and all disputes and claims, whether for damages, specific performance, injunction, declaration or otherwise, both at law and equity, arising out of, or in any way connected with, this Agreement shall be referred to the courts of British Columbia and each of the parties hereby attorns to the exclusive jurisdiction of the courts of British Columbia.

1.8 Schedules

The following are the Schedules which are attached to and form part of this Agreement:

- Schedule A—Excluded Assets
- Schedule B—Intellectual Property
- Schedule C—Lands
- Schedule D—Leased Premises and Leases
- Schedule E—Permits
- Schedule F—Material Contracts
- Schedule G—Office Equipment
- Schedule H—Permitted Encumbrances
- Schedule I—Personal Property
- Schedule J—Insurance Coverage
- Schedule K—Litigation
- Schedule L—Required Notices, Consents and Approvals
- Schedule M—Opinions
- Schedule N—Computer Hardware
- Schedule O—Computer Software
- Schedule P—Construction Tools and Equipment
- Schedule Q—Vehicles
- Schedule R—Warranties

1.9 Cross-References

Unless otherwise stated, a reference in this Agreement to a designated article, section, subsection, paragraph or other subdivision or to a schedule is to the designated article, section, subsection, paragraph or other subdivision of, or schedule to, this Agreement.

1.10 References to Whole Agreement

Unless otherwise stated, the words “herein”, “hereof”, “hereby” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, paragraph or other subdivision or schedule.

2. Purchase of Assets

2.1 Purchase and Sale

Based on the representations and warranties contained in this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, on the Completion Date, the Assets, effective as of and from the Completion Date, free and clear of all Encumbrances other than Permitted Encumbrances, for the price and in accordance with and subject to the terms and conditions set forth in this Agreement.

2.2 Purchase Price

Subject to the adjustments provided for in section 2.5, the Purchase Price for the Assets is \$ [amount], which sum shall include all tax that may be payable pursuant to the provisions of the *Excise Tax Act* of Canada, provided that it shall be the sole responsibility of the Purchaser to pay all tax that may be due in respect of the transactions contemplated by this Agreement pursuant to the provisions of the *Property Transfer Tax Act* and the *Social Services Tax Act* of British Columbia.

It is further provided that, at the Completion Date the Vendor and the purchaser shall be registrants under the provisions of the *Excise tax Act* of Canada.

2.3 Allocation of Purchase Price

The Purchase Price shall be allocated as follows:

- (a) Lands, \$ [amount];
- (b) Buildings, \$ [amount];
- (c) Leasehold Improvements and Leases, \$ [amount];
- (d) Contracts (other than Contracts included in any of the other paragraphs of this subsection 2.4(a)), \$ [amount];
- (e) Computer Hardware, \$ [amount];
- (f) Computer Software, \$ [amount];
- (g) Construction Tools and Equipment, \$ [amount];
- (h) Vehicles, \$ [amount];
- (i) Office Equipment, \$ [amount];
- (j) Personal Property, \$ [amount];
- (k) Intellectual Property, \$ [amount];

- (l) Permits, \$ [amount];
- (m) all other Assets not included in the foregoing paragraphs of this subsection 2.4(a), \$ [amount];

The Vendor and Purchaser shall use the above allocations in their respective tax returns.

2.4 Payment of Purchase Price

The Purchase Price for Assets shall be paid by the Purchaser as follows:

- (a) On execution of this Agreement, the Purchaser shall pay a deposit of \$ [amount] (the "Deposit"), to the solicitors for the Vendor, [name of solicitors], in trust, which will form part of the Purchase Price of the Property, will be paid upon the following terms:
 - (i) within *(*) hours of acceptance of this Contract by the Vendor, communicated by delivery of an originally executed copy of this Agreement to the Purchaser;
 - (ii) the Deposit shall be delivered, in trust, to *, who shall be a lawyer or notary public and who shall hold the deposit in trust, without interest, as stakeholder, pursuant to the provisions of the *Real Estate Act* of British Columbia pending completion of this transaction of purchase and sale and not on behalf of the Vendor or the Purchaser;
 - (iii) Deposit cannot be released until it has cleared banks and the provisions of the *Real Estate Act* have been complied with. Only deposits over \$5,000.00 and held in trust for more than 60 days shall be deposited in an interest bearing account with interest accruing to the Purchaser;
 - (iv) if the Purchaser fails to pay the Deposit as required by this Agreement the Vendor may, at the Vendors option, terminate this Contract;
 - (v) if this transaction of purchase and sale does not complete pursuant to the terms of this Agreement, as may be amended, the Deposit shall be:
 - A) held in trust, without interest, and returned to such person as the Vendor and the Purchaser may, in writing, direct; or
 - B) paid into Court;
 - (vi) No deposit paid by cheque shall be required to be disbursed by the stakeholder until such cheque has cleared all banks.
- (b) Tender or payment of monies by the Purchaser to the Vendor of the balance of the Purchase Price shall be made to the solicitors for the Vendor, [name of solicitors], in trust, on the Completion Date and shall be by certified cheque, bank draft, cash or Lawyer's/Notary's trust cheque.

If the Purchaser is relying upon a new mortgage to finance the Purchase Price, the Purchaser, while still required to pay the Purchase Price on completion date, may wait to pay the Purchase Price to the Vendor until after the transfer and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Purchaser has (i) made available for tender to the Vendor that portion of the Purchase Price not secured by the new mortgage, and (ii) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration, and (iii) made available to the Vendor, a lawyer's or notary's undertaking to pay the Purchase Price upon

the lodging of the transfer and new mortgage documents and the advance by the mortgagee of the mortgage proceeds pursuant to the Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings.

2.5 Adjustments

The Buyer will assume and pay all municipal taxes, rates, local improvement assessments, fuel, utilities and other charges respecting the Land comprising the Assets subject of this Agreement, from and including the Adjustment Date. In addition to the foregoing, the Vendor and the Purchaser shall adjust, as at the Adjustment Date for:

- (a) licence and lease fees and payments paid or payable, rentals and other licence fees relating to any of the Assets and vehicle licence fees in respect of which the Purchaser shall receive benefit on or after the Completion Date;
- (b) prepaid expenses relating to any of the Assets other than relating to insurance policies not assigned to the Purchaser less the amount of the Holdback referred to in subsection 2.5(c);

and all other matters customarily the subject of adjustment.

- (c) the Holdback amount of \$ [amount], less retentions pursuant to section 2.6, plus interest as provided below, shall be paid by the Purchaser to the Vendor on [month, day, year]. Interest at the Prime Rate shall accrue on the amount of the Holdback less retentions pursuant to section 2.6.

2.6 Deductions from Holdback

If the Purchaser has a Claim or in good faith believes that it may have a Claim and on or before [month, day, year] gives notice in writing to the Vendor to that effect, specifying the general nature of the Claim and, in the case of a possible Claim, stating the basis for its belief that it may have a Claim, the Purchaser will be entitled to retain such amount from the Holdback as the Purchaser reasonably considers to be necessary to satisfy the amount of the Claim or possible Claim. The Purchaser will be entitled to retain such amount together with interest thereon at the Prime Rate until the validity and amount of the Claim is determined by agreement between the parties or by a court and upon such determination, the amount payable by the Purchaser to the Vendor shall be adjusted accordingly.

2.7 Risk of Loss and Damage Prior to Closing

Risk of loss of the Assets shall pass to the Purchaser at the Closing, and the Vendor shall bear all risk of loss or damage to, or destruction of, the Assets until the Completion Date and the Purchaser shall bear all such risk of loss, damage and destruction after the Closing. If, prior to the Closing, any Assets are lost, damaged or destroyed and such loss, damage or destruction has not been completely replaced, repaired or otherwise rectified by the Closing and if the Completion Date takes place, the Purchase Price will be reduced by an amount equal to the aggregate of:

- (a) the insurance proceeds paid on or before the Completion Date to the Vendor or its nominee in respect of such loss, damage or destruction; and

- (b) the aggregate of all deductible amounts under the insurance policies against which a payment has been made under subsection (a) above in respect of such loss, damage or destruction;

less:

- (c) the amount actually expended by or on behalf of the Vendor or its nominee in the repair, replacement or other rectification thereof.

The Vendor shall consult with the Purchaser prior to making a claim against any applicable insurance policy and shall act reasonably and bona fide in respect thereof and in a manner consistent with the Purchaser's interest in the Business and the Assets. The Vendor shall at the Completion Date make, or cause to be made, the necessary claims under all applicable insurance policies and shall assign to the Purchaser all remaining insurance proceeds which are or may become receivable by the Vendor or its nominee in respect of any such loss, damage or destruction. The Vendor shall indemnify and save harmless the Purchaser from and against the amount of any denied insurance claim in respect of such loss, damage or destruction where the denial is due to the negligence or wilful misconduct of the Vendor.

3. Representations and Warranties of the Vendor

The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying on the following representations and warranties in connection with the purchase of the Assets:

3.1 Corporate Status and Authority

- (a) Status: The Vendor is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia) in good standing with respect to the filing of annual reports in the office of the British Columbia Registrar of Companies, has never been struck from the register maintained by the Registrar or dissolved or liquidated and has full power and capacity to own the Assets and to carry on the Business as now conducted and to enter into, carry out the transactions contemplated by, and duly observe and perform all its obligations contained in, this Agreement.
- (b) Due Authorization: The execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Vendor pursuant to this Agreement, and the completion and performance of the transactions and obligations contemplated by, or contained in, this Agreement, have been duly authorized by all necessary corporate action on the part of the Vendor, and this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding obligation of the Vendor enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court.

3.2 Assets

- (a) **Ownership:** Except for the Leased Premises, the Vendor is the beneficial owner of and has good and marketable title to, all of the Assets free and clear of all Encumbrances except Permitted Encumbrances.
- (b) **Leases and Leased Premises:** The Leased Premises are held by the Vendor under the Leases, each of which is valid and subsisting, is described in Schedule D, and is in full force and effect and without amendment thereto, except as described in Schedule D, and the Leased Premises are free and clear of all Encumbrances except Permitted Encumbrances. The particulars of the Leases set out in Schedule D are complete and accurate in all material respects and there are no other leases, agreements to lease or tenancy arrangements relating to real property to which the Vendor is a party and which relate to the Assets. The Vendor has not previously assigned any of the Leases nor sublet its interest in any of the Leased Premises under any of the Leases except as described in Schedule D. The Vendor has not released any of the other parties to any of the Leases from the performance of any of their obligations thereunder. The Vendor is not in breach of any of the terms of any of the Leases and the Vendor is not aware of any of the other parties to any of Leases being in breach of any of the terms thereof, and no event or condition has occurred which, either immediately or after notice or lapse of time or both, could give rise to the cancellation or termination of any of the Leases.

Correct and complete copies of the Leases are set out in Schedule D.

All of the Leases comply with s. 73 of the *Land Title Act* (British Columbia).

- (c) **Zoning:** The Lands and the Leased Premises included in the Assets are zoned to permit [insert zoning particulars].
- (d) **Taxes:** All property, municipal, school, general and special taxes, rates, assessments, local improvements charges, frontage taxes, business taxes, development cost charges, other subdivision charges and costs and other levies which are chargeable against the Lands, the Buildings and the Leased Premises have been paid in full unless the same are not due and payable.
- (e) **Lands and Buildings:** The lists of lands and premises set out in Schedules C and D accurately describe all interests of the Vendor (owned, leased, licensed or other) in real property included in the Assets. Neither asbestos nor urea formaldehyde foam is now contained in any of the Buildings or Leased Premises.
- (f) **Encroachments:** All buildings, fixtures, leasehold improvements and facilities owned or leased by the Vendor are wholly within the boundaries of the Lands or the lands on which the Leased Premises are situate, as the case may be, and do not infringe upon or contravene the provisions of any easement, right of way, restrictive covenant or encumbrance registered against or otherwise affecting any of the Lands or the lands on which the Leased Premises are situate, as the case may be. There are no buildings, fixtures, improvements or facilities on any adjoining lands, whether public or private, that encroach on any of the Lands or the lands on which the Leased Premises are situate.

- (g) State of Tangible Personal Property: All tangible personal property included in the Assets has been properly maintained, is in good working order (where applicable) and repair, contains no defects known to the Vendor which could adversely affect the operation of the Business to any material degree and is in the possession of the Vendor.
- (h) Tangible Personal Property: The list of personal property set out in Schedule I accurately details all the tangible personal property included in the Assets.
- (i) Intellectual Property: With respect to the Intellectual Property included in the Assets:
 - (i) Schedule B contains a complete list of all patents, pending patent applications, trade-marks, trade-mark applications and copyright registrations in each jurisdiction in which application or registration has been made by or on behalf of the Vendor, together with all licences and agreements relating to the Intellectual Property;
 - (ii) the Vendor has the right to use, sell, license, sub-license and prepare derivative works for, and to dispose of, and to bring actions for the infringement or misappropriation of, the Intellectual Property and the Vendor has not conveyed, assigned or, save for Permitted Encumbrances, encumbered any of the Intellectual Property rights;
 - (iii) all registrations and filings necessary to preserve the rights of the Vendor to the Intellectual Property have been made and are in good standing;
 - (iv) the execution and delivery of this Agreement and the completion and performance of the transactions and obligations contemplated by or contained in this Agreement will not breach, violate or conflict with any instrument or agreement governing any Intellectual Property right, and will not cause the forfeiture or termination of any Intellectual Property right or in any way exclude the right of the Vendor to use, sell, license or dispose of or to bring any action for the infringement of any Intellectual Property right or any portion thereof;
 - (v) the use of the Assets by the Vendor does not, to the knowledge of the Vendor, infringe upon any intellectual property right, domestic or foreign, of any Person;
 - (vi) there are no pending or, to the knowledge of the Vendor, threatened, claims, actions, demands, lawsuits or other proceedings contesting the validity, ownership or right to use, sell, license or dispose of any of the Intellectual Property, nor to the knowledge of the Vendor is there any basis for such claim, nor has the Vendor received any notice asserting that any Intellectual Property right of the Vendor or the proposed use, sale, license or disposition thereof by the Vendor conflicts or will conflict with the rights of any party, nor is there any basis for any such assertion;
 - (vii) to the knowledge of the Vendor, no employee of the Vendor is in violation of any term of any non-disclosure, proprietary rights or similar agreement between the employee and any former employer;
 - (viii) the Vendor has used its best efforts to ensure that all technical information, other than technical information for which the Vendor considers patent protection and

defensive publication to be suitable, developed by and belonging to the Vendor with respect to the Assets, for which a copyright has not been registered nor patent protection sought, has been kept confidential;

- (ix) There are no royalties, honoraria, fees or other payments payable by the Vendor to any Person by reason of the ownership, use, license, sale or disposition of any of the Intellectual Property;
 - (x) all Persons having access to or knowledge of the Intellectual Property that is of a confidential nature and that is included in the Assets have entered into appropriate non-disclosure agreements with the Vendor; and
 - (xi) the Vendor has disclosed in writing to the Purchaser all opinions and communications of patent agents or attorneys or solicitors under its past or present direction that could be relevant to the valuation of the Intellectual Property or could be relevant to the representations or warranties contained in this subsection 3.2(i).
- (j) **No Rights to Assets:** There is no agreement, contract, option, commitment or other right in favour of, or held by, any Person other than the Purchaser to purchase, lease, licence or otherwise acquire any of the Assets or to occupy any part of the Lands, the Buildings or the Leased Premises.
- (k) **All Assets Used in Business:** Except for the Excluded Assets, the Assets include all rights, assets and properties the use and exercise of which are necessary for the performance of any Contract and any Permit to be assumed by the Purchaser pursuant to this Agreement.
- (l) **Inventory:** None of the Inventory is obsolete or un-usable in the ordinary course of residential or commercial building construction and all the Inventory is new, unused and in good condition.
- (m) **Contracts Assignable:** Subject only to obtaining the consents set out in Schedule L, all of the Material Contracts stipulated in Schedule F are freely assignable to the Purchaser.
- (n) **Rights to Assets:** The Vendor has the exclusive right to possess, use, occupy and dispose of the Assets, subject only to the rights of the other parties to the Contracts and the rights of the issuers of the Permits.
- (o) **Rights to Assets:** No present or former director, officer or shareholder of the Vendor or of any Affiliate of the Vendor owns, directly or indirectly, or has any agreement, option or commitment to acquire or lease, any property, asset, right or license included in the Assets.
- (p) **Leases Where Vendor is Lessor:** Without limiting the generality of subsection 3.2(b), there are no prepaid rents, security deposits, rent abatements, rent-free periods or outstanding lessor's contributions or obligations for lessee improvements, allowances or incentives under any of the Leases under which the Vendor is the lessor and the Vendor has no knowledge of any thing or matter which does or shall give any of the

lessees under any of such Leases any right of abatement, set-off or deduction in respect of the rent payable by such lessees.

3.3 Business Operations

- (a) Permits: The Vendor holds all permits, licences, registrations, consents, authorizations, approvals, privileges, waivers, exemptions, orders, certificates, rulings, agreements and other concessions from, of or with Governmental Authorities required to hold, operate and use the Assets as now being held, operated and used, by the Vendor, and all of the foregoing are validly issued, are in full force and effect, are in good standing, are being complied with in all respects and are listed in Schedule E; and no notice of breach or default or defect in respect of any of their terms has been received by the Vendor and there are no proceedings in progress, pending or threatened which could result in the cancellation, revocation, suspension or adverse alteration of any of them; and the Vendor is not aware of any matters or state of facts which could give rise to any such notice or proceeding; and, save as specifically set out in Schedule K, subject to obtaining the required consents as set out in Schedule L, they all are freely assignable to the Purchaser.
- (b) Compliance with Laws: Except as expressly disclosed in this Agreement, the Vendor is operating and using the Assets in compliance with all applicable laws, statutes, bylaws, decrees, rulings, orders, judgments and regulations of each jurisdiction in which the Assets are located and of all Governmental Authorities of each such jurisdiction, including, without limitation, any land use or zoning bylaw or regulation, development restriction or plan, building restriction or code.
- (c) Jurisdictions in which Assets are located: None of the Assets are situated, in any jurisdiction other than British Columbia and those Assets do not require Vendor registration, qualification or licensing.

3.4 Financial

- (a) No Material Change: Since [date]:
 - (i) there has been no material damage, destruction, loss or other event, from any cause whatsoever, whether or not covered by insurance, of, to or affecting any of the Assets or any material adverse change in the condition of any of the Assets, including, without limitation, changes arising as a result of any legislative or regulatory change, or revocation of any of the Permits;
 - (ii) there has been no event, condition or development, or threatened or probable event, condition or development of which the Vendor is aware, which has materially and adversely affected, or will materially and adversely affect, the Assets;
 - (iii) the Vendor has not, in connection with the Assets, directly or indirectly:
 - A. had any of the Assets become subject to an Encumbrance, other than a Permitted Encumbrance, whether or not created or permitted by the Vendor;
 - B. sold, transferred, assigned, leased or otherwise disposed of any of the Assets;

- C. directly or indirectly, engaged in or entered into any transaction or made any disbursement or assumed or incurred any liability or obligation or made any commitment to make any expenditure which might adversely affect any of the Assets; or
 - D. agreed to do any of the foregoing.
- (d) Books and Records: The Books and Records fairly and correctly set out and disclose in all material respects all material financial transactions of the Vendor relating to any of the Assets and have been accurately recorded in the Books and Records, all of which are under the exclusive ownership and direct control of the Vendor (including all means of access thereto and there from) and the Vendor has original or true copies of all such Books and Records in its possession.
 - (e) Liabilities: The Vendor has no debts or liabilities (whether accrued, contingent, absolute or otherwise and whether or not determined or determinable) that charge or may be capable of charging the Assets including, without limitation, liabilities relating to income and other taxes, except liabilities disclosed in this Agreement.
 - (f) No Liabilities Resulting in Encumbrances: There is no indebtedness or liability to any Person which might, by operation of law or otherwise, now or hereafter constitute or be capable of resulting in or forming an Encumbrance, except a Permitted Encumbrance, upon any of the Assets or in respect of which the Purchaser may become liable on or after the Completion date.

3.5 Insurance

- (a) List of Policies: Schedule J contains a complete and accurate listing of all insurance policies of the Vendor relating to the Assets including, without limitation, all property damage, general liability, motor vehicle policies.
- (b) Good Standing: With respect to the insurance policies listed in Schedule J, each is in good standing, all premiums required to be paid by the Vendor have been properly paid, there have been no misrepresentations or failures to disclose material facts, and there has been no refusal to renew any of the policies and the Vendor has no knowledge of any facts which might render any of the policies invalid or unenforceable.
- (c) Outstanding Claims: Except as set out in Schedule K, no threatened or actual claims against any of the policies described in Schedule K have been made in the last five years. The Vendor has given notice of or has otherwise presented in a timely fashion every claim under each such insurance policy.

3.6 Tax Matters

- (a) Filings: The Vendor has duly filed all returns, elections and designations required to be filed by it with all taxation authorities on a timely basis or if not filed on a timely basis, all fees, penalties, interest and other amounts payable as a result thereof have been paid. No such returns, elections or designations contain any misstatement or omit any statements that should have been included and each return, election and designation, including accompanying schedules and statements, is true, correct and complete.

- (b) Payment: The Vendor has paid in full all amounts (including, without limitation, excise, sales, use and consumption taxes and taxes measured on income and all instalments of taxes) owing to all federal, provincial, territorial and municipal taxation authorities due and payable by it.
- (c) Other Jurisdictions: The Vendor has not been, nor is it currently, required to file any returns or elections with any taxation authority located in any jurisdiction other than British Columbia or Canada.
- (d) Residency: The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (e) GST: The Vendor is a registrant for purposes of Part IX of the *Excise Tax Act* (Canada), and the Vendor's registration number is [number], and for the purposes of the *Excise Tax Act* (Canada) the Assets constitute and represent all or substantially all of the property of the Vendor.

3.7 Litigation and Claims

- (a) Adverse Proceedings: Schedule K contains a complete and accurate listing and description of all current, pending and, to the knowledge of the Vendor, threatened, actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions and investigations, and other proceedings, of, by, against, or relating to any of the Assets. The Vendor is not aware of any basis for any other action, claim, demand, lawsuit, prosecution, assessment, arbitration, investigation or other proceeding which, if pursued, would have a significant likelihood of having a material adverse effect on any of the Assets.
- (b) Compliance Directives: There is no outstanding compliance directive or work order relating to any of the Assets from any police or fire department, sanitation or health authority, environmental agency or any other Governmental Authority, nor does the Vendor have notice that there is any matter under formal consideration by any such authority relating to any of the Assets.
- (c) No Seizure: There is no appropriation, expropriation or seizure of any of the Assets that is pending or, to the knowledge of the Vendor, that has been threatened.

3.8 Contracts and Commitments

- (a) Material Contracts: Schedule F contains a complete and accurate list and description of, and specifically identify, all contracts, agreements, leases, commitments, indentures and instruments which are material to the Vendor and to which the Vendor is a party, by which the Vendor is bound or under which the Vendor is entitled to any benefits, including without limitation any contract, agreement, lease, commitment, indenture or instrument which, or under which:
 - (i) performance of any right or obligation by any party to it may occur over a period of time greater than one year;

- (ii) relates to or affects any interest in real property (whether freehold, leasehold or otherwise).

Correct and complete copies of the Material Contracts have been made available to the Purchaser.

- (b) Good Standing: The Vendor is not in breach or default of any of the terms of any of the Contracts or Material Contracts and the Vendor is not aware of any breach or default of any term of any of the Contracts or Material Contracts by any other party thereto. To the knowledge of the Vendor, each of the Contracts and Material Contracts is in good standing and in full force and effect and none, except as specifically set out in the applicable schedule, has been amended. No state of facts exists, which, after notice or lapse of time or both, would constitute a default or breach by the Vendor under any of the Contracts or Material Contracts. The Vendor has not received any notice of any default, breach or termination of any of the Contracts or Material Contracts or of any fact or circumstance which will, or is likely to, result in such a default, breach or termination.
- (c) Forward Commitments: All outstanding forward commitments by or on behalf of the Vendor for the purchase or sale of inventory have been made in accordance with the established price lists of the Vendor or its suppliers or, if otherwise, in accordance with the Vendor's normal business custom in varying therefrom.

3.9 Effect of Transaction

- (a) No Adverse Implications: Neither the execution and delivery of this Agreement nor the completion and performance of the transactions and obligations contemplated by or contained in this Agreement will:
 - (i) give any Person the right to terminate or cancel any contractual or other right of the Vendor or to remove any of the Assets;
 - (ii) result in the creation of any Encumbrance (other than Permitted Encumbrances) on any of the Assets or in a breach of or a default under any agreement giving a third party security against any of the Assets or in the crystallization of any floating charge on any of the Assets;
 - (iii) result in a breach or contravention of or default under any provision of any Permit, contract, agreement, instrument, lease, indenture, authority, certificate, consent, statute, regulation, bylaw, order, ruling, decision, arbitration award, judgment, decree or law to which the Vendor is a party or by or to which the Vendor, or any of the Assets are bound or are subject, which could have an adverse effect on the Assets or which could impair the legality or enforceability of this Agreement or the transactions contemplated by this Agreement, or require the consent of any Person; provided however that certain of the Contracts and Permits, as set out in Schedule L (and no others) require the consent of the other party thereto or of another Person (as set out in Schedule L) prior to any assignment thereof;
 - (iv) be contrary to any of the provisions of the Charter Documents of the Vendor; or

- (v) result in any fees, duties, taxes, assessments or other amounts relating to any of the Assets becoming due or payable, other than British Columbia Social Service Tax, Property Transfer Tax and tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada) payable by the Purchaser in connection with the transactions contemplated by this Agreement.
- (b) Government Approvals: Save as set out in Schedule L, there is no authorization, licence, approval, consent, order or any other action of, or any registration, declaration, filing or notice with or to any Governmental Authority, court, board, administrative tribunal or arbitrator that is required for the execution or delivery by the Vendor of this Agreement, or the completion or performance by the Vendor of any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement against the Vendor.

3.10 Environmental

- (a) Hazardous Material: No Hazardous Materials or other material used in or generated by the Business or any of the Assets have been or are currently placed, used, stored, treated, manufactured, disposed of, released, discharged, spilled or emitted in violation of any Environmental Protection Laws. All Hazardous Materials disposed of, removed, emitted, released, discharged or spilled from or treated on the Lands and any lands on which the Leased Premises are situate were and are documented, handled, transported and disposed of in compliance with all Environmental Protection Laws.
- (b) Waste Disposal: All of the facilities on the Lands and on any lands on which the Leased Premises are situate that were or are used for the disposal of Hazardous Materials or other material used in or generated by the Business or in or on any of the Lands, the Buildings or the Leased Premises have been and are properly permitted and operated in compliance with all Environmental Protection Laws and have not produced and do not produce any Hazardous Materials.
- (c) Environmental Agreements: There is no agreement or consent order to which the Vendor is a party relating to any environmental matter, and no such agreement or order is necessary for the continued compliance of any of the Assets or their respective uses or the Business with Hazardous Materials.
- (d) Investigations: There have been no orders issued or threatened and no investigations conducted, taken or threatened under or pursuant to any Environmental Protection Laws with respect to the Assets or any other businesses conducted on or from the Lands or any lands on which the Leased Premises are situate of which the Vendor is aware other than routine inspections. The Vendor is not aware of any circumstances or events that have any reasonable prospect of resulting in any claim, action or other proceeding with respect to Hazardous Materials or in an order or investigation under or pursuant to any Environmental Protection Laws.
- (e) Permits: All permits, licences, approvals, authorizations, consents, registrations, privileges, waivers, exemptions, orders, certificates, rulings, agreements or other concessions required under Environmental Protection Laws to own or possess the Assets have been obtained and all terms and conditions attached thereto have been duly complied with and all such permits, licences, approvals, authorizations, consents,

privileges, waivers, exemptions, orders, certificates, rulings, agreements and registrations are in full force and effect and in good standing where a failure to be in compliance, in full force and effect or in good standing would have an adverse effect on the Assets.

- (f) Adverse Proceedings: There have been no actions, claims or other proceedings commenced or threatened with respect to any of the Assets or the Business of or any other business conducted on the Lands or any lands on which the Leased Premises are situate pursuant to Environmental Protection Laws or with respect to Hazardous Materials.
- (g) Nuisance: The use of, and operations relating to, any of the Assets or any other business conducted on or from the Lands or any lands on which the Leased Premises are situate do not constitute a nuisance of any nature, nor has any claim for nuisance been made in respect of such use and operations by any Person.
- (h) Storage Tanks: There are no underground storage tanks on or under the Lands or any lands on which the Leased Premises are situate.
- (i) Limitation for Environmental Claims: The Purchaser will only be entitled to make a claim against the Vendor in respect of the breach of any warranty, representation, covenant or agreement of the Vendor under this Agreement or under any documents, instruments and agreements delivered pursuant to this Agreement relating to environmental matters if:
 - (a) the Purchaser has received a notice from a Governmental Authority or any Person which is based upon Environmental Protection Laws and which requires any action enforceable by law; or
 - (b) written claim or demand is made or an action or proceeding is commenced against the Purchaser in respect of the subject matter of such claim.

If the losses suffered by the Purchaser are a result of any remediation, the Vendor will not be liable for any losses suffered by the Purchaser to the extent that such losses relate to remediation to a standard greater than the remediation standard required by Environmental Protection Laws then in effect for the Lands, the Buildings and the Leased Premises as they were used as of the Completion Date.

The Vendor will not be liable for any losses suffered by the Purchaser to the extent that such losses arise in connection with the change of use of the Lands, the Buildings or the Leased Premises by the Purchaser from their use as of the Completion Date.

- (j) Environmental Report: The Vendor shall cause to be performed an environmental site assessment and shall obtain a report thereof addressed to the Vendor and the Purchaser (the "Environmental Report") with a scope satisfactory to the Vendor and the Purchaser and performed by an entity whose principal business is the conduct of such evaluations, of the soils, ground water and surface water located within the Lands and the lands on which the Leased Premises are situate. Such Environmental Report shall be commissioned within ten days after the execution of this Agreement and shall be

obtained not less than ten days prior to the Completion Date. The cost of the Environmental Report shall be borne by the Vendor. The Vendor shall freely cooperate with the Person preparing the Environmental Report in providing information regarding the lands and the lands on which the Leased Premise are situate, the current and former operations and activities of the Vendor and the Vendor's predecessors in title of the Lands and any prior lessees or occupants of the Leased Premises, to the extent known to the Vendor.

3.11 General

- (a) **No Adverse Knowledge:** Except as disclosed in this Agreement, the Vendor has no information or knowledge of any fact relating to any of the Assets or any of the transactions contemplated by this Agreement which might reasonably be expected to affect, materially and adversely, any of the Assets.
- (b) **Accuracy of Representations:** No certificate furnished by or on behalf of the Vendor to the Purchaser at the Completion Date in respect of the representations, warranties, covenants or agreements of the Vendor contained in this Agreement will contain any untrue statement of a fact or omit to state a fact reasonably necessary to make the statements contained therein not misleading.
- (c) **Facts:** This Agreement does not contain any untrue statement by the Vendor of a fact nor has the Vendor omitted to state in this Agreement a fact reasonably necessary in order to make the statements contained in this Agreement not misleading.
- (d) **Accuracy of Schedules:** All information set out in the Schedules to this Agreement is correct in every respect.
- (e) **Full Disclosure:** The Vendor has disclosed to the Purchaser all facts relating to the Assets which could reasonably be expected to be material to a Person intending to purchase the Assets.
- (f) **Copies of Documents:** Complete and correct copies of documents referred to in any Schedule to this Agreement have been delivered to the Purchaser.

4. Representations and Warranties of the Purchaser

4.1 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying upon the following representations and warranties in connection with the sale of the Assets:

- (a) **Status:** The Purchaser is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia) in good standing with respect to the filing of annual reports in the office of the British Columbia Registrar of Companies, has never been struck from the register maintained by the Registrar or dissolved or liquidated, and has full power and capacity to enter into, carry out the transactions contemplated by, and duly observe and perform all its obligations contained in this Agreement.

- (b) Due Authorization: The execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Purchaser pursuant to this Agreement, and the completion and performance of the transactions and obligations contemplated by or contained in this Agreement, have been duly authorized by all necessary corporate action on the part of the Purchaser, and this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court.
- (c) Non-contravention: Neither the execution and delivery of this Agreement nor the completion and performance of the transactions and obligations contemplated by or contained in this Agreement will result in a breach of or default under, or be contrary to, any of the provisions of the Charter Documents of the Purchaser or any Encumbrance, indenture, contract, agreement or instrument to which the Purchaser is a party or by which the Purchaser is bound.
- (d) Investment Canada: The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada).
- (e) GST Registration: The Purchaser is a registrant for purposes of Part IX of the *Excise Tax Act* (Canada), and the Purchaser's registration number is [number].

5. Pre-Completion Date Matters

5.1 Operations until Closing

Except as otherwise provided in this Agreement or unless otherwise agreed or consented to in writing by the Purchaser, the Vendor shall from the date of this Agreement up to the Closing:

- (a) Conduct of Business: Carry on and conduct its business in the ordinary course consistent with past practice and in particular:
 - (i) use all reasonable efforts to preserve the Assets intact and maintain the Assets in accordance with standard industry practice;
 - (ii) not allow any of the Assets to become subject to any Encumbrance except Permitted Encumbrances;
 - (iii) not sell, lease, license, transfer or otherwise dispose of, or agree to sell, lease, license, transfer or otherwise dispose of, any of the Assets except in the ordinary course of its business, consistent with past practice;
 - (iv) use all reasonable efforts to keep available the services of the present Employees for the Purchaser and to maintain relations and goodwill with suppliers, customers and others having business relations with the Vendor in respect of its business;

- (v) take good care of all the Assets and do all necessary repairs and maintenance to such of the Assets as are used by the Vendor in the ordinary course of its business, and take reasonable care to protect and safeguard the Assets;
 - (vi) make all necessary tax, governmental and other filings in a timely fashion; and
 - (vii) pay to all its Employees all wages (including overtime claims), salaries, bonuses and commissions, and all earned but unpaid vacation pay and sick leave pay and other entitlements under Benefit Plans up to *[and including]* the Completion Date;
- (b) Agreements: Not, amend, vary, cancel or terminate any of the Contracts, Material Contracts or Permits, or enter into any contract, agreement, instrument, commitment, lease, or indenture or obtain any additional permit, licence, registration or other right of the kind described in subsection 3.3(a) in connection with its business, except and after notifying the Purchaser in writing:
- (i) renewals or replacements of any of the Leases or Permits on substantially the same terms and conditions; and
 - (ii) any additional permits, licences, registrations or other rights in the ordinary course of its business, consistent with past practice, or as required by law;
- (d) Access: Provide to the Purchaser, its employees, representatives and agents, full access during normal business hours to the Vendor's personnel and its facilities and properties and to the Books and Records and to all, or true copies of all, title documents, indentures, contracts, agreements, Encumbrances, instruments, leases and other documents relating to the Assets and furnish them with all such information relating to the Assets as the Purchaser from time to time reasonably requests; it being acknowledged and agreed by the Vendor that no investigation made by the Purchaser or any of its employees, representatives or agents shall have the effect of waiving or diminishing the scope of, or otherwise affect the Purchaser's right to rely on, any representation or warranty made by the Vendor in this Agreement or in any document, instrument or agreement delivered pursuant to this Agreement; and
- (e) Ensure Representations and Warranties Correct: Use all reasonable efforts to ensure that the representations and warranties of the Vendor in this Agreement are true and correct at the Completion Date and that the conditions of the Purchaser in section 6.1 and the mutual conditions in section 6.3 are fulfilled at the Completion Date, and will inform the Purchaser promptly of any state of facts which will result in any representation or warranty of the Vendor being untrue or incorrect or in any condition of the Purchaser in section 6.1 or mutual condition in section 6.3 being unfulfilled at the Completion Date.

5.2 Confidentiality

The Purchaser acknowledges that any information, materials and documentation received or observed by it pursuant to or as contemplated by subsection 5.1(d), either before or after execution of this Agreement, is confidential. The Purchaser shall take, and shall cause its employees, representatives and agents to take, all reasonable steps and precautions to protect and maintain the confidentiality of such information, materials and documentation; provided that the foregoing will not prevent the Purchaser from disclosing or making available to its accountants,

professional advisors and bankers and other lenders, whether current or prospective, any such information, materials and documentation on a confidential basis for the purpose of carrying out the transactions contemplated by this Agreement.

5.3 Return of Information

If the purchase of the Assets pursuant to this Agreement is not completed, the Purchaser shall return to the Vendor all materials, documentation, data, records, drawings and other papers and copies thereof (whether on paper or in electronic, magnetic, photographic, mechanical or optical storage) relating to the Assets which is confidential and which is in the possession of the Purchaser and maintain the confidentiality of all information or knowledge obtained from the Vendor, and not use any such information or knowledge for any purpose whatsoever.

5.4 Remedies

The Purchaser acknowledges and agrees that if any of the provisions contained in sections 5.2 and 5.3 are not performed in accordance with the terms set out therein, the Vendor will be entitled to an injunction to prevent any breach of such provisions and may specifically enforce such provisions in any action instituted in any court having jurisdiction. These specific remedies are in addition to any other remedy to which the Vendor may be entitled at law or in equity.

5.5 Consents and Re-issues

The Vendor shall use all reasonable efforts to obtain, prior to the Completion Date:

- (a) all consents and approvals, in form and substance satisfactory to the Purchaser, acting reasonably, necessary for the assignment of the Vendor's interests in the Material Contracts and the Permits, and of any other of the Assets, to the Purchaser; and
- (b) if applicable, the re-issue of any of the Material Contracts and the Permits in the name of the Purchaser, and the Vendor shall not, except as presently contemplated by the terms thereof, or except with the prior written consent of the Purchaser, agree to any amendment or variation to the terms of any of the Material Contracts or the Permits in connection with, or as a condition of, such assignment or re-issue.

The Purchaser shall give to the Vendor such information and copies of such documents relating to the Purchaser which the Vendor may reasonably request in order to obtain any consent or approval, or re-issue referred to above.

5.6 Consent Not Received by Closing

If a consent or approval of a third party required to permit the transfer or assignment to the Purchaser of the Vendor's interest in any of the Material Contracts or the Permits, or of any other of the Assets, is not received on or before the Completion Date, and if, notwithstanding such non-receipt, the Vendor and the Purchaser proceed to complete the sale and the purchase of the Assets contemplated by this Agreement, the transfer or assignment of those Material Contracts and Permits, and other Assets, in respect of which the required consent has not been received on or

before the Completion Date will not be effective in each case until the applicable consent or approval has been received, and such Material Contracts or Permit, or other Asset, will be held by the Vendor following the Completion Date in trust for the benefit and exclusive use of the Purchaser. The Vendor shall continue to use all reasonable efforts to obtain the required consents and approvals, and shall only make use of such Material Contracts and Permits in accordance with the directions of the Purchaser that do not conflict with the terms of such Material Contracts or Permits.

5.7 Non-assignable Contracts and Permits

Notwithstanding any other provision of this Agreement, it is acknowledged and agreed by the Purchaser that certain of the Material Contracts are not by their terms, and certain of the Permits are not, assignable to the Purchaser, namely, those specifically referred to in sSchedule L as not being freely assignable to the Purchaser. The parties agree that the Material Contracts and Permits which are not assignable are not included in the Assets being sold and transferred to the Purchaser and are not included in the Material Contracts and Permits being assumed by the Purchaser pursuant to the terms of this Agreement.

5.8 Purchaser's Covenant

The Purchaser shall, prior to the Completion Date, execute and deliver such assumption agreements and applications for consents in such forms and content, all as may be reasonably required by the Vendor to obtain the consents and approvals, and the re-issues, referred to in section 6.5.

6. Conditions of Closing

6.1 Conditions of the Purchaser

The obligation of the Purchaser to complete the purchase of the Assets contemplated by this Agreement is subject to the fulfillment of the following conditions:

- (a) **Representations and Warranties:** The representations and warranties of the Vendor contained in this Agreement being true and correct on and as of the Completion Date with the same effect as though such representations and warranties had been made as of the Completion Date unless otherwise agreed or consented to in writing by the Purchaser;
- (b) **Covenants:** All of the covenants and obligations of the Vendor to be performed or observed on or before the Completion Date pursuant to this Agreement having been duly performed or observed unless otherwise agreed or consented to in writing by the Purchaser;
- (c) **Certificate of Vendor:** There having been delivered to the Purchaser a certificate of the Vendor dated at the Completion Date, executed by an authorized officer or director of the Vendor, certifying that the representations and warranties made by the Vendor in this Agreement are true and correct as at the Completion Date and that the covenants and obligations to be observed or performed by the Vendor on or before the Completion Date pursuant to the terms of this Agreement have been duly observed and performed unless otherwise agreed or consented to in writing by the Purchaser;

- (d) Releases: There having been delivered to the Purchaser duly executed releases in registerable form where applicable, of or evidence to the satisfaction of the Purchaser as to the discharge of, all Encumbrances against the Assets except Permitted Encumbrances; and
- (e) Satisfactory Due Diligence: The Purchaser being satisfied with the results of its due diligence investigations with respect to the Assets.
- (f) Financing: Financing commitments satisfactory to the Purchaser having been obtained by [month, day, year];
- (g) Board Approval: The board of directors of the Purchaser having approved this Agreement and the transactions contemplated by this Agreement;
- (h) Estoppel and Non-disturbance Agreements: The Vendor having delivered to the Purchaser estoppel and non-disturbance agreements in form and content satisfactory to the Purchaser, acting reasonably, from the holders of mortgages on the lands on which the Leased Premises are situate.

In the event that any of the foregoing conditions are not performed or fulfilled at or before the Completion Date, the Purchaser may, subject to section 12.11, terminate this Agreement, in which event, subject to section 12.11, the Purchaser will be released from all obligations under this Agreement, and the Vendor will also be so released unless the Vendor was reasonably capable of causing such condition or conditions to be fulfilled or unless the Vendor has breached any of its covenants or obligations in or under this Agreement. The foregoing conditions are for the benefit of the Purchaser only and accordingly the Purchaser will be entitled to waive compliance with any such conditions if it sees fit to do so, without prejudice to its rights and remedies at law and in equity and also without prejudice to any of its rights of termination in the event of non-performance of any other conditions in whole or in part.

6.2 Conditions of the Vendor

The obligation of the Vendor to complete the sale of the Business and the Assets contemplated by this Agreement is subject to the fulfillment of each of the following conditions:

- (a) Representations and Warranties: The representations and warranties of the Purchaser contained in this Agreement being true and correct on and as of the Completion Date with the same effect as though such representations and warranties had been made as of the Closing;
- (b) Covenants: All of the covenants and obligations of the Purchaser to be performed or observed on or before the Completion Date pursuant to this Agreement having been duly performed or observed; and
- (c) Certificate of Purchaser: There having been delivered to the Vendor a certificate of the Purchaser dated the Completion Date, executed by an authorized officer or director of the Purchaser, certifying that the representations and warranties made by the Purchaser in this Agreement are true and correct as at the Completion Date and that the covenants

and obligations to be observed or performed by the Purchaser on or before the Completion Date pursuant to the terms of this Agreement have been duly observed and performed.

In the event that any of the foregoing conditions are not performed or fulfilled at or before the Closing, the Vendor may, subject to section 12.11, terminate this Agreement, in which event, subject to section 12.11, the Vendor and the Parent Company will be released from all obligations under this Agreement, and the Purchaser will also be so released unless the Purchaser was reasonably capable of causing such condition or conditions to be fulfilled or unless the Purchaser has breached any of its covenants or obligations in or under this Agreement. The foregoing conditions are for the benefit of the Vendor only and accordingly the Vendor will be entitled to waive compliance with any such conditions if it sees fit to do so, without prejudice to its rights and remedies at law and in equity and also without prejudice to any of its rights of termination in the event of non-performance of any other conditions in whole or in part.

6.3 Mutual Conditions

The obligations of the Vendor to complete the sale of the Business and Assets contemplated by this Agreement and of the Purchaser to complete the purchase of the Business and Assets as contemplated by this Agreement are subject to fulfillment of the following conditions:

- (a) No Orders or Proceedings: No injunction or restraining order or other decision, ruling or order of a court, board, Governmental Authority or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the transactions contemplated by this Agreement and no action or proceeding having been instituted or remaining pending or having been threatened before any such court, board, Governmental Authority or administrative tribunal to restrain, prohibit, limit or impose conditions on the transactions contemplated by this Agreement; and
- (b) Obtain Consents: The Vendor having obtained all consents and approvals and reissues referred to in section 5.5 (subject to section 5.7) in each case in form and substance satisfactory to the Purchaser, acting reasonably, and the same having been delivered to the Purchaser.
- (c) In the event of any loss, damage or destruction of the Assets in whole or in part after the date of this Agreement and up to the Closing, the Vendor and the Purchaser shall negotiate in good faith to agree upon the application of any proceeds of insurance to rebuilding, repairing or replacement of the lost, damaged or destroyed Assets. If the Purchaser and the Vendor are unable to agree upon the application of such proceeds, the proceeds shall be applied to rebuild, repair or replace the lost, damaged or destroyed Assets as nearly as possible with assets or facilities of the same nature, kind and quality as those lost, damaged or destroyed.
- (d) If, prior to the Completion Date, there has been any loss, damage or destruction to any of the Assets, the Vendor shall forthwith thereafter deliver to the Purchaser a detailed list showing the insurance coverage with respect thereto, particulars of any claims made by the Vendor under the insurance coverage and the standing of such claims and if, notwithstanding such loss, damage or destruction, the Purchaser elects to complete

the transactions contemplated by this Agreement, the sale and purchase of the Assets shall be completed and the Vendor shall at the Closing:

- (i) pay to the Purchaser all monies received by Vendor before the Completion Date as proceeds of insurance with respect thereto; and
 - (ii) deliver to the Purchaser a duly executed assignment, in form and substance satisfactory to the Purchaser, of all the Vendor's interest in and to any proceeds of insurance with respect to any such loss or damage and the Vendor's written undertaking to co-operate with the Purchaser in the satisfactory settlement of all claims.
- (e) The Vendor shall from the date of this Agreement up to and including the Completion Date maintain in full force and effect the insurance coverage described in Schedule J and cause the Purchaser to be named as an additional insured party under that insurance coverage in respect of the Assets and a certificate of insurance to be issued in respect of the Purchaser; and the Vendor shall pay all premiums in connection with that insurance coverage and shall not act or fail to act so as to invalidate that insurance coverage.

Up to the Closing, the Assets will be and remain at the risk of the Vendor.

The proceeds of any insurance referred to above (other than business interruption insurance proceeds payable in respect of periods prior to the Closing) which become payable as a result of any physical loss or damage to any of the Assets after the date of this Agreement until the Completion Date shall, to the extent not applied to the repair or replacement of such Assets prior to the Completion Date, be deemed to be included as part of the Assets and any such insurance proceeds and all rights in respect of such insurance proceeds shall from the date of this Agreement be held in trust for the Purchaser by the Vendor and shall be assigned by the Vendor to the Purchaser in respect of and in replacement for any of the Assets lost, destroyed or damaged by any of the causes in respect of which the policies of insurance are maintained.

The Vendor shall take all necessary steps to the satisfaction of the Purchaser, acting reasonably, to ensure that any assignments of the benefits of insurance in respect of any of the Assets in favour of any party other than the Purchaser by either of them are subject to and subordinate to the interest and entitlement of the Purchaser to proceeds of such insurance as provided in this Agreement.

In the event that any of the foregoing conditions is not performed or fulfilled at or before the Closing, either the Purchaser or the Vendor may, subject to section 12.11, terminate this Agreement, in which event, subject to section 12.11, the party so terminating this Agreement will be released from all obligations under this Agreement, and the Vendor, if the Purchaser is the party terminating this Agreement, and the Purchaser, if the Vendor is the party terminating this Agreement, will also be so released unless the Vendor or the Purchaser, as the case may be, was reasonably capable of causing such condition or conditions to be fulfilled or has breached any of its covenants or obligations in or under this Agreement.

6.4 Other

The Purchaser and the Vendor acknowledge and agree that, although their obligations to complete the sale and purchase contemplated by this Agreement are subject to the fulfillment or waiver of their respective conditions and the mutual conditions set out in Article 6:

(a) the said conditions are not true conditions precedent or otherwise conditions to there being a binding agreement of purchase and sale between the parties respecting the Assets and the Business;

(b) this Agreement is not void, voidable, revocable or otherwise capable of being terminated by any of the parties except as set out in Article 6;

(c) the Vendor acknowledges that the Purchaser has paid the sum of \$10.00 as good consideration for the granting by the Vendor to the Purchaser of the rights to confirm the conditions set forth in sections 6.1 and 6.3 at the Closing.

7. Completion Date Transactions

7.1 Time and Place

The Completion Date shall take place in the offices of Kinar Curry Lawyers at 2:00 o'clock p.m. Victoria time on the Completion Date; or at such other time and date, or both, as the Vendor and the Purchaser or their respective solicitors may agree upon.

7.2 Vendor's Completion Documents

At the Completion Date, the Vendor shall deliver the following to the Purchaser:

- (a) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents which are necessary to assign, sell and transfer the Assets to the Purchaser as contemplated by this Agreement in such form and content as the Purchaser may require, acting reasonably;
- (b) certified copies of a resolution of the directors and of a special resolution (of the shareholders) of the Vendor approving the completion of the transactions contemplated by this Agreement including, without limitation, the sale of the Assets, and the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Vendor pursuant to this Agreement in such form and content as the Purchaser may require, acting reasonably;
- (c) an opinion of the Vendor's and Parent Company's solicitors substantially in the form in Schedule M;
- (d) if required by the Purchaser, the Vendor shall deliver to the Purchaser, at the Closing, a certificate issued pursuant to s. 116(4) of the *Income Tax Act* (Canada) or a certificate issued pursuant to s. 116(2) of the *Income Tax Act* (Canada) in respect of the purchase and sale of the Assets and the Business fixing a certificate limit which is not less than the Purchase Price, or failing delivery of either certificate, the Vendor shall permit the Purchaser to withhold such amount as the Purchaser would be liable to pay on behalf of the Vendor pursuant to s. 116(5) of the *Income Tax Act* (Canada);

- (e) possession of the Assets; and
- (f) if not previously delivered to the Purchaser, the original Material Contracts and Permits to the extent in the possession of the Vendor.

7.3 Purchaser's Completion Documents

At the Completion Date the Purchaser shall deliver the following to the Vendor:

- (a) a solicitor's trust cheque, certified cheque or bank draft drawn on a Canadian chartered bank or by wire transfer to an account designated by the Vendor payable to the Vendor or as the Vendor may direct, in an amount equal to the amount set out in subsection 2.4(b), adjusted as provided for in Section 2.5; provided that if, pursuant to this Agreement, or any document, instrument or agreement delivered pursuant to this Agreement, the Vendor becomes obligated to pay any sum of money to the Purchaser, then such sum may, at the election of the Purchaser, and without limiting or waiving any right or remedy of the Purchaser under this Agreement or any document, instrument or agreement delivered pursuant to this Agreement, be set off against and applied to any sum of money owed by the Purchaser to the Vendor (and security there for) until such amount has been completely set off.
- (b) certified copies of resolutions of the directors of the Purchaser approving the transactions contemplated by this Agreement, including, without limitation, the purchase of the Assets, and the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Purchaser pursuant to this Agreement in such form and content as the Vendor may require, acting reasonably.

7.4 Concurrent Delivery

It shall be a condition of the Completion that all matters of payment and the execution and delivery of documents by any party to the others pursuant to the terms of this Agreement shall be concurrent requirements and that nothing will be complete at the Completion Date until everything required as a condition precedent to the Completion has been paid, executed and delivered, as the case may be.

7.5 Transfer of Assets and Business

Subject to compliance with the terms and conditions of this Agreement, the transfer of the Assets to the Purchaser shall be deemed to take effect as at the Completion Date.

8. Responsibility for Obligations and Liabilities

8.1 Assumption by Purchaser

On the Closing, the Purchaser shall assume and be responsible for the observance, performance and payment of all obligations and liabilities which are to be observed, performed or paid from and after the Closing, under:

- (a) the Material Contracts, with the exception of Encumbrances (other than Permitted Encumbrances), insurance policies and [describe other exceptions], but subject to any required adjustments as of the Completion Date;
- (b) the Permits; and
- (c) any other contract, agreement or obligation specifically agreed to be assumed by the Purchaser in this Agreement;

and the Purchaser shall indemnify and save the Vendor harmless from and against any claims, demands, actions, suits, causes of action, losses, damages, costs and expenses whatsoever, including without limitation legal fees, suffered or incurred by the Vendor by reason of the failure of the Purchaser to perform or pay any of the obligations and liabilities referred to in this section 8.1.

8.2 Vendor's Obligations and Liabilities

The Vendor shall be responsible for the observance and performance of all obligations and payment of all expenses, costs and liabilities relating to the Assets other than those to be observed, performed or paid by the Purchaser as set out in this Agreement and the Vendor shall indemnify and save the Purchaser harmless from and against any claims, demands, actions, suits, causes of action, losses, damages, costs and expenses whatsoever, including without limitation legal fees, suffered or incurred by the Purchaser by reason of any failure of the Vendor to perform or satisfy any of the obligations and liabilities for which the Vendor is responsible.

8.3 Payment of Taxes on Sale and Transfer

The Purchaser shall be responsible for and shall pay when due any land transfer taxes, sales taxes, excise taxes (goods and services taxes) and similar taxes (but not income taxes of the Vendor) and any registration fees payable in respect of the sale and transfer of the Assets to the Purchaser. Without limiting the generality of the foregoing, at the Completion Date, the Purchaser and the Vendor shall table all completed returns required pursuant to the *Social Service Tax Act* (British Columbia) with respect to the sale of the Assets and the Purchaser shall table a cheque payable to the Minister of Finance (British Columbia) in the amount of the tax required to be paid pursuant to that statute. Immediately following the Completion Date, such returns and such cheque shall be forwarded by the Purchaser to the appropriate taxation authority.

91. Post-Completion Matters

9.1 ETA Election

The Purchaser and the Vendor shall elect jointly under s. 167(1) of the *Excise Tax Act* (Canada), in the form prescribed for the purpose of that subsection, in respect of the sale and transfer of the Assets hereunder, and the Purchaser shall file such election not later than the deadline for filing its GST return for its reporting period that includes the Completion Date.

9.2 Social Service Tax Certificate

The Vendor shall obtain, as soon as it is available from the Commissioner of Social Service Tax, a certificate in duplicate pursuant to s. 99 of the *Social Service Tax Act* (British Columbia) confirming that all social service taxes required to be paid or remitted up to but not including the Completion Date by the Vendor in connection with the Business have been paid and shall deliver a duplicate copy thereof to the Purchaser immediately upon receipt thereof.

10. Survival of Representations and Recourse

10.1 Survival

The Vendor acknowledge and agrees that the Purchaser is relying on the representations and warranties and other terms and conditions of this Agreement, notwithstanding any independent searches or investigations that may be undertaken by or on behalf of the Purchaser, and that no information which is now known or should be known or which may hereafter become known to the Purchaser, its employees, representatives or agents, will limit or extinguish the rights of the Purchaser with respect to any misrepresentation or breach of any warranty, covenant or obligation by the Vendor.

The representations, warranties, covenants and obligations of the Vendor in or under this Agreement and in or under any documents, instruments and agreements delivered pursuant to this Agreement shall survive the completion of the transactions contemplated hereby regardless of any investigations that the Purchaser may make or cause to be made, or knowledge it may have, prior to the Completion Date and shall continue in full force and effect for a period of three years from the Completion Date, as set out in section 10.2.

10.2 Limitation

- (a) The Purchaser will be entitled to make a claim against the Vendor in respect of the breach of any warranty, representation, covenant or obligation of the Vendor in or under this Agreement or in or under any document, instrument or agreement delivered pursuant to this Agreement only if written notice of any such claim is given by or on behalf of the Purchaser to the Vendor or the Parent Company, as the case may be, within three years from the Completion Date.

10.3 Defence of Third Party Claims

In the event of a claim (an "Indemnity Claim") being made by a third party against a party to this Agreement (the "Indemnified Party") in respect of which, subject to section 10.2, another party to this Agreement (the "Indemnifier") is or may be obligated under or arising out of this Agreement to indemnify, pay damages to or otherwise compensate the Indemnified Party, the following provisions shall apply.

The Indemnified Party shall promptly give written notice to the Indemnifier of any Indemnity Claim in respect of which the Indemnified Party intends to claim for indemnification against the Indemnifier. Such notice shall specify with reasonable particularity (to the extent that the information is available) the nature of the Indemnity Claim. The Indemnifier shall, at its own expense, assume control of the negotiation, settlement and defence of such Indemnity Claim. The Indemnified Party shall co-operate with the Indemnifier in respect of such Indemnity Claim and

the Indemnifier shall reimburse the Indemnified Party for all the Indemnified Party's reasonable expenses as a result of the Indemnifier's assumption of such Indemnity Claim and arising from the Indemnified Party's co-operation.

The Indemnified Party will have the right to participate in the negotiation, settlement and defence of such Indemnity Claim at its own expense and will have the right to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifier and the Indemnified Party shall be retained by the Indemnifier. If the Indemnifier fails to defend any Indemnity Claim within a reasonable time, the Indemnified Party will be entitled to assume control of the Indemnity Claim at the expense of the Indemnifier and the Indemnifier will be bound by the results obtained by the Indemnified Party with respect to such Indemnity Claim.

The following provisions shall also apply with respect to Indemnity Claims:

- (a) In the event that any Indemnity Claim is of a nature such that the Indemnified Party is legally bound or required by applicable law to make a payment to any person (a "Third Party") with respect to such Indemnity Claim before the completion of settlement negotiations or related legal proceedings, including, without limitation, the posting of any security to stay any process of execution or judgment, the Indemnifier shall be obligated to make such payment or post security therefor on behalf of the Indemnified Party. If the Indemnifier fails to do so, the Indemnified Party may make such payment or post security therefor and the Indemnifier shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for any such payment or cause the security to be replaced and released. If the amount of any liability of the Indemnified Party under the Indemnity Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifier to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifier.
- (b) Except in the circumstance contemplated by subsection 10.3(a) above, and unless the Indemnifier fails to assume control of the negotiation, settlement and defence of any Indemnity Claim, the Indemnified Party shall not negotiate, settle, compromise or pay any Indemnity Claim except with the prior written consent of the Indemnifier (which consent shall not be unreasonably withheld).
- (c) The Indemnified Party shall not permit any right of appeal in respect of any Indemnity Claim to terminate without giving the Indemnifier notice thereof and an opportunity to contest such Indemnity Claim.
- (d) The Indemnified Party and the Indemnifier shall co-operate fully with each other with respect to Indemnity Claims, shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available) and shall each designate a [*senior officer*] who will keep himself or herself informed about and be prepared to discuss the Indemnity Claim with his or her counterpart and with counsel at all reasonable times.
- (e) Notwithstanding the above provisions of this section 10.3, the Indemnifier shall not settle any Indemnity Claim or conduct any related legal or administrative proceeding in

a manner which would, in the opinion of the Indemnified Party, acting reasonably, have a material adverse impact on the Indemnified Party.

- (f) The provisions of this section 10.3 are intended to set out the procedures to be followed with respect to an Indemnity Claim and, provided the Indemnified Party follows such procedures in all material respects, nothing contained in this section 10.3 will derogate from the Indemnifier's obligations to indemnify the Indemnified Party.

11. Miscellaneous

11.1 Legal and Other Fees and Expenses

Unless otherwise specifically provided herein, the parties will pay their respective legal, accounting and other professional fees and expenses incurred by each of them in connection with the negotiation and settlement of this Agreement, the completion of the transactions contemplated by this Agreement and other matters pertaining hereto.

11.2 Notices

Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be in writing and delivered by hand, facsimile transmission or prepaid registered mail (return receipt requested) to the party to which it is to be given as follows:

To the Vendor:

[address]
Attention:

Facsimile No.: [fax number]
E-mail: [e-mail address]

To the Purchaser:

1629 West Shawnigan Lake Road, Shawnigan Lake, British Columbia V0R 2W0
Attention: Mr. Harvey Simons

Facsimile No.: [fax number]
E-mail: [e-mail address]

or to such other address or fax number or e-mail address as a party may specify by notice given in accordance with this section. Any such notice, request, demand or other communication given as aforesaid will be deemed to have been given, in the case of delivery by hand, when delivered, in the case of delivery by facsimile transmission, when a legible facsimile is received by the recipient if received before 5:00 p.m. on a Business Day, or on the next Business Day if such facsimile is received on a day which is not a Business Day or after 5:00 p.m. on a Business Day, and in the case of delivery by prepaid registered mail, as aforesaid, on the date received. In the event of discontinuance of postal service due to strike, lockout, labour disturbance or otherwise, notices, demands, requests and other communications shall be delivered by hand or by facsimile transmission.

11.3 Further Assurances

Each of the parties shall execute and deliver such further documents, instruments and agreements and do such further acts and things as may be reasonably required from time to time, either before, on or after the Completion Date, to carry out the full intent and meaning of this Agreement, give effect to the transactions contemplated by this Agreement and assure to the Purchaser good and valid title to the Assets, free and clear of all Encumbrances except Permitted Encumbrances.

11.4 Time of the Essence

Time shall be of the essence of this Agreement.

11.5 Brokers' Fees

Each of the parties acknowledges and agrees that it is not aware of any current or possible future claim for brokerage, agency, finder's fee or commission in connection with the transactions contemplated by this Agreement and that if any such claim should arise through, or under, or by virtue of any action taken by, any party, such party shall indemnify and hold harmless the others in respect thereof.

11.6 Entire Agreement

This Agreement constitutes the entire agreement between the Vendor and the Purchaser pertaining to the transactions contemplated by this Agreement and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser, and there are no warranties, representations, covenants, obligations or agreements between the Vendor and the Purchaser, or any Affiliate thereof, except as set forth in this Agreement.

11.7 Announcements

Except as required by law or regulatory authority and as may be required in order to obtain the consents contemplated by this Agreement, no announcements or disclosures concerning the transactions contemplated by this Agreement may be made by any party, its employees, agents or representatives to the public or to suppliers, customers or employees of the Vendor unless previously approved by the Vendor and the Purchaser. The parties shall consult with each other regarding any disclosure required by law or any Governmental Authority.

11.8 Assignment

Except with the written consent of the other party (which may be arbitrarily withheld), none of the parties may assign any of their respective benefits, obligations or liabilities under or in respect of this Agreement; provided however that, at any time prior to the Completion Date, the Purchaser may, without any such consent, assign all of its rights and benefits under this Agreement to any Affiliate of the Purchaser which delivers to the Vendor an instrument in writing executed by the Affiliate confirming that it is bound by and shall perform all of the covenants and obligations of the Purchaser under this Agreement as if it were an original signatory thereto, jointly and severally bound thereby with the Purchaser, and such instrument in writing shall contain an acknowledgement of the Purchaser that it continues to be bound by this

Agreement. Unless otherwise agreed in writing by the Vendor, no such assignment will relieve the Purchaser of its obligations and liabilities under this Agreement. In the event of an assignment contemplated above, any reference in this Agreement to "Purchaser" will be deemed to include the aforesaid assignee.

11.9 Invalidity

Each of the provisions contained in this Agreement is distinct and severable and a determination of illegality, invalidity or unenforceability of any such provision or part hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof, unless as a result of such determination this Agreement would fail in its essential purposes.

11.10 Waiver and Amendment

Except as expressly provided in this Agreement, no amendment or waiver of it will be binding unless made in writing by the party to be bound by such amendment or waiver. No waiver of any provision, or any portion of any provision, of this Agreement will constitute a waiver of any other part of the provision or any other provision of this Agreement nor a continuing waiver unless otherwise expressly provided.

11.11 Surviving Provisions on Termination

Notwithstanding any other provisions of this Agreement, if this Agreement is terminated, the provisions of subsections 5.2, 5.3, 5.4, 10.1, 10.2, 10.3, 11.1, 11.5, 11.7 and [subsection number for any other provisions which should survive] shall survive such termination and remain in full force and effect.

11.12 Counterparts

This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

11.13 Enurement

This Agreement will enure to the benefit of and will be binding upon the parties and their respective successors and any Affiliate of the Purchaser which is an assignee of the Purchaser,

and any other assignee consented to, as contemplated in section 11.8.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

[insert name and incorporation number of Company] by its authorized signatories:	[insert name and incorporation number of Company] by its authorized signatories:
_____ Pres.	_____ Pres.

Sec.	Sec.
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Asset Purchase Agreement made in duplicate as of the ____ day of _____, 2007, between:

[insert name and incorporation number of company], a company incorporated under the laws of the Province of British Columbia, having an address for delivery at [address] Victoria, British Columbia [postal code]

AND:

SEVILLE PROPERTIES LTD. (Inc. No. BC0487372), a company incorporated under the laws of the Province of British Columbia, having an address for delivery at 1629 West Shawnigan Lake Road, Shawnigan Lake, British Columbia V0R 2W0

Kinar Curry Lawyers
16A Nootka Court
633 Courtney Street
Victoria, British Columbia
V8W 1B9
Telephone: (250) 383-8685
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File: 73-019/GWK
