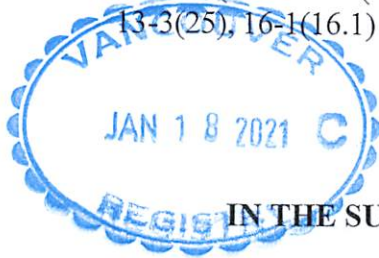


FORM 17 (RULES 4-6(1), 5-1(4), 5-2(4), 5-4(1), 8-1(21.1) and (22), 9-4(1), 12-2(6),  
13-3(25), 16-1(16.1) and (17), 20-5(3), 21-5(4), 23-1(9), 23-3(10) and 23-5(5))



No. H 200252  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

371392 B.C. LTD.  
371392 B.C. LTD. doing business as DIAMOND HEAD MOTOR  
INN and DIAMOND HEAD MOTEL  
1134365 B.C. LTD.  
H.D.P. HOLDINGS INC.  
FARHEEN RAWJI  
DIPTI PANCHAL  
HITESH PANCHAL  
ALL TENANTS AND OCCUPIERS OF THE SUBJECT  
LANDS

Respondents


**REQUISITION - GENERAL**

**Filed by: D. MANNING & ASSOCIATES INC.**

**Required:**

In accordance with COVID-19 Notice No. 31, enclosed for filing is the offer of Redekop Ferrario Properties Ltd. dated January 13, 2021 approved by Master Vos by order pronounced January 15, 2021.

Date: January 18, 2021

  
\_\_\_\_\_  
Signature of lawyer for filing party  
Heather A. Frydenlund

## AGREEMENT OF PURCHASE AND SALE

Dated the 13<sup>th</sup> day of January, 2020 *J MR.*

BETWEEN:

Redekop Ferrario Properties Ltd. a corporation having an office in the City of Abbotsford, in the Province of British Columbia (hereinafter referred to as the "Purchaser"),

OF THE FIRST PART

AND:

**D. MANNING & ASSOCIATES INC.**, in its capacity as Court Appointed Receiver and Manager of the Assets, Undertakings and Properties of 371392 B.C. Ltd. dba Diamond Head Motor Inn, and not in its personal capacity (hereinafter referred to as the "Vendor"),

OF THE SECOND PART

**WHEREAS** the Vendor is the Receiver and Manager of the Motel Property; and

**AND WHEREAS** the Vendor is entitled to sell the Motel Property subject to the granting of an Order of the Supreme Court of British Columbia and the Purchaser desires to purchase the Motel Property upon and subject to the terms and conditions hereinafter set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the covenants and agreements herein contained the parties hereto agree as follows:

### ARTICLE 1 - INTERPRETATION

#### 1.1 Definitions

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

- (a) "371392" means 371392 B.C. Ltd. dba Diamond Head Motor Inn;
- (b) "Agreement" means this Agreement and all amendments made hereto by written agreement between the Vendor and the Purchaser and every properly executed instrument by which its terms amends, modifies or supplements such agreement;
- (c) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

- (d) "Closing Date" means within 15 days of approval of the sale of the Motel through a Vesting Order, or such other date as agreed to by the parties in writing;
- (e) "Court" means the Supreme Court of British Columbia;
- (f) "Deposit" has the meaning ascribed thereto in Section 2.3(a)(i);
- (g) "Excluded Assets" means:
- (i) all cash, bank balances, monies in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by or for the account of the Vendor as of the Closing Date;
  - (ii) all GST refunds or returns owned or held by or for the account of the Vendor as of the Closing Date;
  - (iii) the corporate, financial, taxation and other records (including minute books) of the Vendor or 371392 not pertaining primarily to the Motel Property;
  - (iv) all income taxes recoverable;
  - (v) all wage subsidy claims;
  - (vi) all insurance premium refunds or similar refunds;
  - (vii) all Receivables; and
  - (viii) Inventory.
- (h) "FF&E" means the machinery, tools, spare parts, supplies, accessories, furniture, fixtures and equipment owned by the Vendor, located on the Motel Lands and used in the operation of the Motel Property on the Closing Date;
- (i) "GST" means the Goods and Services Tax as more fully described in Part IX of the *Excise Tax Act* (Canada);
- (j) "Inventories" means all inventories of the Motel, including, without limitation, all linens, utensils; engineering, maintenance and housekeeping supplies, including soap, cleaning materials and matches; laundering and toilet supplies provided to guests as part of the Motel services; stationery and printing; and other supplies of all kinds for use in connection with the ownership, maintenance or operating of the Motel Property as of the Closing Date;
- (k) "Leases" means the leases described in Schedule "C" hereto;
- (l) "Licenses" means all licenses relating to the operation of the Motel, if any, to the extent such licenses are assignable;
- (m) "Motel" means the Diamond Head Motor Inn, being a 40 room motor inn or motel located on the Motel Lands;

- (n) "Motel Lands" means a freehold interest in the lands legally described in Schedule "A";
- (o) "Motel Property" means the assets and undertaking referred to or described in Section 2.1;
- (p) "Purchase Price" has the meaning set out in Section 2.2;
- (q) "Purchaser's Solicitors" means to follow
- (r) "Receivables" means all accounts receivable (other than guest ledger receivables described in Section 5.3), bills receivable, trade accounts, book debts, and other amounts due, owing or accruing due to the Vendor in connection with the Motel Property;
- (s) "Time of Closing" means 10:00 a.m. (Pacific time) on the Closing Date;
- (t) "Vesting Order" means an Order of the Supreme Court of British Columbia approving the sale of the Motel Property pursuant to this Agreement; and
- (u) "Vendor's Solicitors" means Owen Bird Law Corporation.

## 1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

## 1.3 Extended Meanings

In this Agreement words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

## 1.4 Accounting Principles

Wherever in this Agreement reference is made to a calculation to be made in accordance with generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles.

## 1.5 Currency

All references to currency herein are to lawful money of Canada.

## 1.6 Schedules

The following are the Schedules annexed hereto, incorporated in this Agreement by reference, and deemed to be part hereof:

Schedule A – Motel Lands (Legal Description)

Schedule B – Permitted Encumbrances

Schedule C – Leases

## **ARTICLE 2 – PURCHASE AND SALE**

### **2.1 Motel Property**

Upon and subject to the terms and conditions hereof, at the Time of Closing the Vendor shall sell to the Purchaser and the Purchaser shall purchase from the Vendor, free and clear of any and all liens, mortgages, charges, security interests, and encumbrances, but subject to the permitted encumbrances identified in Schedule B, all the right, title and interest of the Vendor in and to the property assets, rights and undertaking used by the Vendor in conducting the business of owning and operating the Motel other than the Excluded Assets (collectively, the "Motel Property") including without limitation the following:

- (a) the Motel Lands;
- (b) all plant, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Motel Lands;
- (c) all fixed machinery and fixed equipment situate on or forming part of the Motel Lands;
- (d) all FF & E;
- (e) the full benefit of all contracts to which the Vendor is entitled in connection with the Motel Property;
- (f) all Inventories;
- (g) all prepaid expenses and deposits paid by the Vendor relating to the leases, contracts, agreements and commitments related to the Motel which are assigned to and assumed by the Purchaser hereunder;
- (h) to the extent they are assignable, the full benefit of all licenses, registrations, permits, quotas, telephone numbers, fax numbers and e-mail addresses used in connection with the operation of the Motel in the usual and ordinary course;
- (i) all future room bookings and deposits for such bookings pertaining to the Motel;
- (j) all the right, title, benefit and interest of the Vendor in and to all computer software used in connection with the Motel;
- (k) the goodwill of the Motel including, without limiting the generality of the foregoing,

- (i) the exclusive right of the Purchaser to represent itself as operating the Motel in continuation of and in succession to the Vendor and the right to use any words indicating that the business in the Motel is so carried on including, without limiting the generality of the foregoing, the use of the trade name "Diamond Head Motor Inn; and
- (ii) all records of sales, customer lists and supplier lists of or used in connection with the Motel Property as are in the possession or under the control of the Vendor;
- (l) all Leases; and
- (m) all personnel records, books, maintenance manuals, documents and data bases relating to the Motel Property as are in the possession or under the control of the Vendor but not including original copies of the corporate, financial, taxation and other records (including minute books) of the Vendor.

## **2.2 Purchase and Sale and Purchase Price**

The Vendor shall sell the Motel Property to the Purchaser and the Purchaser shall purchase the Motel Property from the Vendor for a total purchase price of \$4,050,000 DOLLARS (plus any GST, Provincial Sales Tax, and Property Transfer Tax payable in respect of the transaction), subject to adjustment as provided herein (hereinafter referred to as the "Purchase Price"), upon and subject to the terms and conditions hereof.

## **2.3 Payment of Purchase Price**

- (a) The Purchase Price will be payable as follows:
  - (i) \$405,000 being <sup>10%</sup> ten percent (10%) of the Purchase Price (the "Deposit") within 10 Business Days of execution of this Agreement by certified cheque or bank draft payable to the Vendor's Solicitor (Owen Bird Law Corporation), in trust, as a deposit to be held in a non-interest bearing account and to be held pursuant to the terms and conditions of this Agreement;
  - (ii) the balance of Purchase Price, subject to the adjustments provided for herein, by way of wired transfer of funds payable to the Vendor's Solicitor, in Trust, or at the request of the Vendor by direct deposit to the account of the Vendor's Solicitor at the Time of Closing.
- (b) The Deposit shall be held in trust by the Vendor's Solicitor. If the Purchaser fails to comply with the terms of this Agreement due to no fault of the Vendor, the Deposit shall be forfeited to the Vendor, without prejudice to any other right or remedy of the Vendor and this Agreement shall thereafter be null and void and of no force or effect. If the Vendor fails to comply with the terms of this Agreement due to no fault of the Purchaser, then the Deposit shall be returned to the Purchaser without condition or reduction and in full and final settlement of any claims of the Purchaser hereunder.

#### **2.4 Allocation of Purchase Price**

The Purchase Price payable to the Vendor for the Motel Property shall be allocated by the Vendor as between the various classes of assets being purchased.

#### **2.5 Income Tax Filings**

The Vendor and the Purchaser, in filing their respective income tax returns, will use the allocation of the Purchase Price determined by the Vendor pursuant to Section 2.4.

#### **2.6 GST Election**

The Vendor and the Purchaser will on or before the Time of Closing, jointly execute an election, in prescribed form and containing the prescribed information to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply to the sale and purchase of the Motel Property hereunder so that no tax is payable in respect of such sale and purchase under Part IX of the *Excise Tax Act* (Canada). The Purchaser shall provide to the Vendor on or before the Time of Closing, evidence that the Purchaser is registered under Part IX of the *Excise Tax Act* (Canada), including its registration number, failing which the Purchaser shall pay GST to the Vendor on the full amount of the Purchase Price as and when required by the *Excise Tax Act* (Canada). The Purchaser will file such election with the Minister of National Revenue within the time prescribed by the *Excise Tax Act* (Canada).

#### **2.7 Assumption of Obligations and Liabilities**

The Purchaser will assume, fulfill and perform the obligations and liabilities of the Vendor accruing on and after the Closing Date under the Leases.

#### **2.8 Obligations and Liabilities Not Assumed**

Except as otherwise expressly provided in this Agreement, the Purchaser does not assume and will not be liable for any obligations, liabilities (whether accrued, actual, contingent or otherwise), expenses, costs, penalties, claims or demands of the Vendor whatsoever incurred or accruing in, or arising out of the Motel Property or the operation of the Motel prior to the Closing Date including, without limiting the generality of the foregoing, any taxes under the *Income Tax Act* (Canada) or any other taxes whatsoever that may be or become payable by the Vendor including any income or corporation taxes resulting from or arising as a consequence of the sale by the Vendor to the Purchaser of the Motel Property.

#### **2.9 Purchaser's Right to Inspect**

- (a) The Purchaser, at its sole cost and expense, may make reasonable inquiries (including requests for outstanding work orders) of any municipal, building department, zoning department, governmental and environmental authorities ("Authorities") in respect of the Motel Property as the Purchaser may consider advisable. The Vendor agrees to provide, within three (3) Business Days of execution and delivery of this Agreement, an authorization necessary to enable the Purchaser to carry out such investigations provided that the Purchaser is not authorized or permitted to request the Authorities to inspect the Motel Property. Notwithstanding the foregoing, the Vendor hereby authorizes the Purchaser and its agents to conduct all necessary physical inspections of the building systems

located on the Motel Property provided that in doing so, the Purchaser shall take all necessary steps to promptly repair, at its sole cost and expense, any damage caused by the Purchaser or its agents. The Purchaser shall further indemnify and save harmless the Vendor for any damages, claims or expenses arising from or in relation to any inquiries or inspections made in respect of the Motel Property by or on behalf of the Purchaser.

- (b) The Vendor agrees to provide the Purchaser and its agents with reasonable access to management of the Motel, which at the option of the Vendor shall be in the accompaniment of a representative of the Vendor.
- (c) The Purchaser shall keep confidential all documents and information obtained from the Vendor or from Authorities in connection with this transaction including, without limitation, all documents and information obtained prior to the execution of this Agreement, including, without limitation, the existence of this Agreement, or the price and terms of the sale contemplated hereby, or other property information delivered pursuant to this Agreement, provided however that the Purchaser shall be entitled to disclose all such documents and information to its legal, financial and other advisors and to prospective lenders as required in relation to the transaction set out herein. If this Agreement is terminated without completion of the transaction contemplated herein then, promptly after such termination or if the purchase and sale of the Property fails to complete for any reason whatsoever, all documents, working papers and other material obtained by the Purchaser in connection with this Agreement shall be returned to the Vendor and any copies and notes held by or on behalf of the Purchaser shall be destroyed.
- (d) For the purposes of this Section 2.9, any notice to the Vendor shall be given to D. Manning & Associates Inc. and the Vendor shall make all arrangements as required.

## **2.10 Closing**

- (a) The closing of the transaction contemplated in this Agreement shall take place remotely and simultaneously at the offices of the Vendor's Solicitor and the Purchaser's Solicitor at the Time of Closing on the Closing Date. Each party shall exchange, via courier or other personal delivery, original copies of all closing documents required to be delivered as original documents and delivery to the other party hereto on such dates as provided for in this Agreement.
- (b) If the Land Title and Survey Authority Office is not open on the date set for the Closing Date, the Closing Date shall be the first day thereafter that it is open for business.
- (c) It shall be the Purchaser's responsibility to prepare or cause to be prepared any documents necessary to complete the transaction (other than the Vesting Order) and to deliver such documents to the Vendor's Solicitor not less than five (5) Business Days prior to the Closing Date. The Purchaser shall bear all costs of preparation and registration of the closing documents. The Vendor shall bear its own costs for discharging the charges it is required to discharge. All documents required to transfer the Motel Lands to the Purchaser will be delivered, when required, in registerable form.



- (d) The Purchaser's Solicitor shall deliver the following to the Vendor's solicitor on or before five (5) Business Days prior to the Closing Date, in the form and content previously agreed on or otherwise acceptable to the Vendor's Solicitors, acting reasonably:
- (i) the Vendor's Statement of Adjustments;
  - (ii) Assignment of Leases;
  - (iii) Joint Election executed by the Vendor pursuant to Section 167 of the *Excise Tax Act* (Canada) in respect of the sale and purchase of the Motel Property;
  - (iv) a Bill of Sale to be executed by the Vendor in connection with all FF&E provided however that the Vendor shall not be required to identify any specific items by serial number;
  - (v) Assignment of all existing permits and licenses, if any which may be available to the Purchaser, subject to receiving consents from third parties for the assignment of any such permit or license, if required;
  - (vi) a Certificate of the Vendor that the Vendor is not a non-resident of Canada for the purpose of the *Income Tax Act*; and
  - (vii) all other documents expressly contemplated by this Agreement or reasonably required by the Purchaser's solicitor.
- (e) The Vendor will, subject to the Vendor's approval of such documents, cause the Vendor's Solicitors to deliver the items described in Section 2.10(d), duly executed by the Vendor and in registrable form wherever appropriate, together with the certified copy of the Vesting Order, to the Purchaser's Lawyers.
- (f) The Purchaser shall deliver the following to the Vendor's Solicitors on or before the Closing Date, in the form and content previously agreed on or otherwise acceptable to the Vendor's Solicitors, in trust, acting reasonably:
- (i) the Purchaser's Statement of Adjustments;
  - (ii) the balance of the Purchase Price by way of Purchaser's Solicitor trust cheque payable to the Vendor's Solicitors, or direct deposit to the account of the Vendor's Solicitor, in Trust, as adjusted in accordance with the terms of this Agreement;
  - (iii) Assignment of Leases;
  - (iv) Joint Election executed by the Purchaser pursuant to Section 167 of the *Excise Tax Act* (Canada) in respect of the sale and purchase of the Motel Property;
  - (v) GST Indemnity and Undertaking in respect of the matters more particularly set forth in section 2.6;

- (vi) a filed copy of a Certificate of No Appeal issued by the Court certifying no appeal has been filed in respect of the Vesting Order;
  - (vii) all documents contemplated by Section 2.10(b) which require execution by the Purchaser, duly executed by the Purchaser; and
  - (viii) all the documents, certificates, agreements or assurances expressly contemplated by this Agreement or reasonably required by the Vendor's Solicitor.
- (g) The closing deliveries of the Vendor shall be forwarded by the Vendor's Solicitor to the Purchaser's solicitor in trust on reasonable trust conditions.

## **2.11 Possession**

Subject to the terms of this Agreement being complied with and the balance of the Purchase Price, as adjusted, having been paid in accordance with the terms of this Agreement, the Vendor shall on the Closing Date deliver possession of the Motel Property to the Purchaser subject only to the tenants' rights pursuant to the Leases and the rights of guests and other users or occupants of the Motel on the Closing Date.

## **ARTICLE 3 – REPRESENTATIONS AND WARRANTIES**

### **3.1 Representations and Warranties of the Vendor**

The Vendor represents and warrants to the Purchaser as at the date of this Agreement and as at the Closing Date that:

- (a) the Vendor is not a non-resident person within the meaning of section 116 of the *Income Tax Act* (Canada); and
- (b) the Vendor is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 122473515 RT0006.

The Vendor makes no representations as to residency of the owner(s) of the Motel Property and will make no representations or declarations about that at closing. The Purchaser hereby warrants and represents to the Vendor that the Purchaser has made reasonable inquiry within the meaning of s.116 (5) (a) of the *Income Tax Act* and is satisfied that the registered or beneficial owner(s) of the Motel Property is, or if more than one are, Canadian residents. The Purchaser agrees that upon completion the Purchaser will pay to the Vendor, subject only to those adjustments to which the Vendor has agreed in writing, the full purchase price owing on the purchase under this Agreement without holdback under s.116 (5) of the *Income Tax Act* or related sections and, to the extent necessary, has incorporated any associated risk into the Purchase Price.

### **3.2 Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Vendor as at the date of this Agreement and as at the Closing Date that:

- (a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the Province of British Columbia;
- (b) the Purchaser has good and sufficient corporate power, authority and right to enter into and deliver this Agreement and to complete the transaction to be completed by the Purchaser contemplated hereby;
- (c) this Agreement constitutes a valid and legally binding obligation of the Purchaser; and
- (d) the Purchaser is or will be on Closing registered under Part IX of the *Excise Tax Act* (Canada) and that its GST registration number is 74147 6535 RT0001

The Purchaser acknowledges that the Vendor is relying upon such representations, warranties and/or covenants without which the Vendor would not have entered into this Agreement.

#### **ARTICLE 4 - COVENANTS**

##### **4.1 Covenants of the Vendor**

- (a) Within ten (10) Business Days of the date on which the last of the parties executes and delivers this Agreement, the Vendor will deliver to the Purchaser the following:
  - (i) copies of the site plans in the Vendor's possession or under its control;
  - (ii) copies of all inspection reports in the Vendor's possession or under its control;
  - (iii) copies of all Leases;
  - (iv) a list of all of the employees which, to the knowledge of the Vendor, are involved with the operation of the Motel, which list shall indicate whether such employees are part-time or full-time, on active duty or are on short-term or long-term disability or on maternity or paternity leave, the annual salary and other compensation, or the rate of pay if other than on an annual basis, and the length of employment of each employee. The Vendor shall also provide complete copies of all employment and consulting contracts in the Vendor's possession or under its control;
- (b) The Vendor sells the Motel's assets on an "as is, where is" basis and there is no warranty, express or implied, as to description, classification, quality, quantity, condition, title, merchantability, fitness for purpose, value and without limiting the foregoing, any and all statutory conditions and warranties are to be waived by the Purchaser.
- (c) Without limiting the generality of any other provision hereof, if the Vendor or any person on its behalf provides the Purchaser with any information (including, without limitation, due diligence materials in its or their possession or control) concerning the Motel Lands Property or the Motel Property, such as, without limitation, the items listed in section 4.1 (a) or any appraisals, engineering reports, environmental

studies, etcetera, such information (the "Information") is provided strictly on the understanding that neither the Vendor nor anyone on its behalf or for whom at law they may be liable, makes any representation, declarations or warranties, express or implicit, as to the accuracy or completeness of such Information. The Vendor expressly disclaims any and all liability for any errors or omissions related to or concerning such Information including its lack of completeness. Neither the Vendor nor anyone acting on its behalf or for whom at law it may be liable, shall be under any obligation to take any actions whatsoever to consider the contents of the Information, its accuracy, completeness or relevance, the Purchaser assuming all such responsibility. The Purchaser will not make or advance any claim against any third party with respect to such Information where such third party might, in relation thereto, have a right to third party or otherwise make a claim against the Vendor.

#### **4.2 Covenants of the Purchaser**

- (a) The Purchaser shall indemnify and save harmless the Vendor from and against any and all obligations, liabilities (whether accrued, actual, contingent or otherwise) expenses, costs, penalties, claims and demands whatsoever:
  - (i) Incurred directly or indirectly in connection with or arising out of any breach of any of its representations, warranties, covenants or agreements contained in this Agreement; or
  - (ii) arising out of, resulting from or relating to liabilities of the Vendor expressly assumed by the Purchaser hereunder.
- (b) The Purchaser shall be liable for and shall pay all land title registration fees in connection with the conveyance and transfer of the Motel Property by the Vendor to the Purchaser, and all fees relating to the assignment of or obtaining of, any permits, licenses or other consents or permissions required by the Purchaser to operate the Motel after the Closing Date.
- (c) The Purchaser shall preserve those of the documents, books and records which it acquires from the Vendor in respect of this transaction for a period of six (6) years from the Closing Date, or for such longer period as is required by law, and shall permit the Vendor and its authorized representatives reasonable access to those documents, books and records in connection with the affairs of the Vendor for such period. The Vendor agrees to pay to the Purchaser the Purchaser's reasonable costs incurred in connection with providing access to such documents, books and records.
- (d) The Purchaser shall be responsible for obtaining, and for any cost associated with, any consent or approval which may be required for the assignment of any franchise, license, permit, agreement, contract or commitment whatsoever forming part of the Motel Property.

#### **4.3 Employees**

- (a) As of and from the Time of Closing the Purchaser shall be responsible for all items in respect of Employees, including, without limiting the generality of the foregoing,

premiums for Employment Insurance, payroll tax and Canada Pension Plan, accrued vacation pay, wages, salaries and commissions, employee benefit plan payments, required notice of termination and severance for each of the Employees accruing up to and following the Time of Closing.

- (b) Prior to the Closing Date, the Vendor shall make all deductions required by law or by contract to be made from employee wages or salaries and will remit the amounts deducted and all related employer contributions required to the authorities or entities entitled to receive payment of such amounts.

## **ARTICLE 5 – CLOSING ARRANGEMENTS**

### **5.1 Examination of Records and Motel Property**

The Vendor shall permit the Purchaser, through its agents and representatives and upon reasonable notice, to continue to make such reasonable investigation prior to the Time of Closing of the Motel Property as the Purchaser considers necessary or advisable.

### **5.2 Risk of Loss**

- (a) Until the Time of Closing the Motel Property shall remain at the risk of the Vendor and the Vendor shall maintain the policies of insurance currently maintained by it in respect of loss or damage to or any other casualty in respect of the Motel Property.
- (b) In the event of any damage or destruction ("Damage") to the Motel Property occurring before the Time of Closing in respect of which the Vendor and the Purchaser, acting reasonably, estimate that the cost of repair would be \$500,000.00 or more, the Vendor shall forthwith give written notice to the Purchaser and the Purchaser shall have the option, exercisable by written notice delivered to the Vendor within five (5) Business Days of receipt of the Vendor's notice, of either terminating this Agreement or closing the transactions contemplated hereby in which latter event, the net proceeds of the insurance policies maintained by the Vendor shall at such time as they are paid to the Vendor, be paid to and become the property of the Purchaser.
- (c) In the event of any Damage to the Motel Property occurring before the Time of Closing in respect of which the Vendor and the Purchaser, acting reasonably, estimate that the cost of repair would be less than \$500,000.00 and which would not have a material adverse effect on the ability of the business of the Motel to be conducted in the ordinary course thereof following such damage, the Purchaser shall close the transaction contemplated hereby and the net proceeds of the insurance policies maintained by the Vendor shall, at such time as they are paid to the Vendor, be paid to and become the property of the Vendor.

### **5.3 Adjustments to Purchase Price**

- (a) The Purchase Price shall be adjusted to take account of real estate and property taxes, utilities, fuel, rent payments and receipts, prepaid rents, and advance deposits as of the Closing Date, with the Closing Date being for the account of the Purchaser. Room revenues for the night preceding closing shall be divided equally

between the Vendor and the Purchaser. The Vendor shall be entitled to all revenues from the Motel Property through and including the last full day prior to the Closing Date. Vendor shall receive the income and shall be charged for the expenses attributable to any restaurant or bar facility which remains open after 11:59 p.m. on the day preceding the Closing Date (the "Cut-Off Time") until such facilities are closed on the Closing Date. At Closing, there shall be included in the Motel Property and there shall be added to the Purchase Price:

- (i) at face value, the petty cash funds at the Motel Property as of the Cut-Off Time; and
  - (ii) at face value, the guest ledger receivables as of the Cut-Off Time for guests staying at the Motel Property on the Closing Date with the appropriate shared allocation for the Closing Date described above.
- (b) The additions to the Purchase Price consisting of the petty cash funds and guest ledger receivables as determined above shall be paid to the Vendor at closing by a credit to the Vendor in the computation of the adjustments on the Closing Date. Except for the petty cash funds and guest ledger receivables, all cash, cheques and other funds (whether in the form of notes or other security) located at the Motel Property or pertaining to the Motel Property as of the Cut-Off Time and balances on deposit to the credit of the Vendor with banking institutions shall, at the Time of Closing, be retained by the Vendor and are not included in this purchase and sale. No adjustment shall be made for any revenues, other than the guest ledger receivables described above, which remain uncollected as of the Cut-Off Time; provided, however, the Vendor shall be obligated to reimburse Purchaser for all guest ledger receivables purchased at face value by Purchaser at Closing but uncollected by the Vendor within ninety (90) days after the Closing Date so long as Purchaser has made a good faith effort to collect all amounts owing and unpaid under such guest ledger receivables. Purchaser shall, contemporaneously reassign to Vendor all guest ledger receivables for which Vendor reimburses the Purchaser according to the immediately preceding sentence. If either the Vendor or the Purchaser receives revenues from the Motel Property on or after the Closing Date and the other party is entitled to such revenues, the receiving party shall immediately remit said revenues to the other party. All sums received by the Vendor or the Purchaser after the Closing Date which are not designated by the remitting party to be credited against particular obligations shall be deemed applicable to the oldest obligations first.
- (c) Notwithstanding the terms hereof, the Vendor covenants that it will not commence a lawsuit or collection proceeding against any retail or office tenant of the Motel Property with respect to such sums without prior written consent of the Purchaser, which consent shall not be unreasonably withheld.

#### **5.4 Post-Closing Adjustments**

The Vendor and the Purchaser agree that, to the extent items are prorated or adjusted at Closing on the basis of estimates, or are not prorated or adjusted at Closing pending actual receipt of funds or compilation of information upon which such prorations or adjustments are to be based, each of them will, upon a proper accounting, pay to the other such amounts as may be necessary such that the Vendor will receive the benefit of all income and will pay all expenses of the Motel

Property through and including the last full day prior to the Closing Date and Purchaser will receive the benefit of all income and will pay all expenses of the Motel Property from and after the Closing Date. If the Purchaser receives any bill, or invoice that relates to periods prior to the Closing Date, the Purchaser will refer such bill or invoice to the Vendor and the Vendor agrees to pay such bill or invoice promptly upon receipt unless it is bona fide disputing same in which latter event it shall diligently prosecute such dispute. Any rental or other income including, but not limited to, percentage rentals, overage rentals, common area maintenance charges, tax reimbursements, utility charges, and other amounts payable to the owner of the Motel Property that are payable for the period prior to the Closing but, as of the Closing Date, have not been received by the Vendor, whether because such amounts are delinquent or because such amounts are not yet due, shall not be prorated at Closing, but shall be equitably adjusted after the Closing (but as of the Closing Date) when and if such amounts are received by the Purchaser. With respect to any Receivables due and owing as at the Closing Date, to the extent that they are not collected by the Purchaser within 90 days after the Closing Date and remitted to the Vendor to the extent the Vendor is entitled to the same, then the Vendor shall be entitled to pursue such Receivables to the full extent possible.

#### **5.5 Purchase from a Receiver and Manager and the Vesting Order**

Notwithstanding any term or condition to the contrary in this Agreement the parties hereto agree as follows:

- (a) The Vendor is the Court-Appointed Receiver and Manager without security of the Assets, Properties and Undertakings of 371392 B.C. Ltd. dba Diamond Head Motor Inn ("D. Manning & Associates Inc.") pursuant to a court order (the "Receivership Order") in Proceeding No. H-200252 (Vancouver Registry) (the "Proceeding") of the Court and not in its personal capacity, and the Vendor agrees to present this Agreement to the Court for approval and for the granting of the Vesting Order, and in so doing is not contractually or otherwise liable to any party in any way. Notwithstanding anything herein to the contrary, the Purchaser acknowledges that the Vendor is acting only in such representative capacity pursuant to the Receivership Order and that the Vendor shall have no liability whatsoever under, as a result of or in relation to the entering into or carrying out the transaction which is the subject matter of this Agreement.
- (b) The Vendor shall deliver title to the Motel Property free and clear of all encumbrances of the parties to the Proceeding in accordance with the terms of the Vesting Order except subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favor of utilities and public authorities, existing tenancies, if any, and except as otherwise set out herein.
- (c) If there are existing registered financial charges to be paid under the terms of the Vesting Order, the Vendor may wait to pay such existing financial charges until immediately after receipt of the Purchase Price but, in this event, the Vendor may pay the Purchase Price to the Vendor's Solicitors in trust, on undertakings to pay those financial charges in accordance with the Vesting Order.
- (d) 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 the Closing Date, may

wait to pay the Purchase Price to the Vendor until after the Vesting Order and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if before such lodging the Purchaser has (a) made available for tender to the Vendor that portion of the Purchase Price not secured by the new mortgage, and (b) fulfilled all of the new mortgagee's conditions for funding except lodging the mortgage for registration, and (c) 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.

- (e) The Purchaser accepts the Motel Property "as is, where is" as of the Closing Date and covenants and agrees to save the Vendor harmless from any and all claims resulting from or relating to the age, fitness, condition, zoning, lawful use, or circumstances and location of the Motel Property, and agrees to accept the Motel Property subject to any outstanding work orders or notices or infractions as of the date of closing and subject to the existing municipal or other governmental by-laws, restrictions or orders affecting its use, including subdivision agreements, covenants, caveats, rights of way and easements.
- (f) The Purchaser acknowledges that the Vendor is making no representations and/or warranties of any nature or kind whatsoever with respect to the Motel Property. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Motel Property and its suitability for any purpose, including occupancy, development, or derivation of value.
- (g) The Purchaser acknowledges and agrees that the Vendor makes no representations and/or warranties of any nature or kind whatsoever with respect to the title, fitness, condition (including environmental and economic condition), zoning or lawful use of the Motel Property and agrees to accept the Motel Property in a "as is, where is" condition and subject to any outstanding work orders or notices of infractions as of the date of closing and subject to the existing municipal or other governmental by-laws, restrictions or orders affecting its use, including sub-division agreements, covenants, caveats, rights of way and easements. Without limiting the generality of the foregoing or any other provision hereof, the Vendor acknowledges and agrees that there are no representations or warranties with respect to:
  - (i) the fitness, condition, zoning, licencing, or lawful use of the Motel Property, the Purchaser's intended uses or development or redevelopment thereof;
  - (ii) whether the Motel Lands comply with any existing land use or zoning by-laws or regulations or municipal development agreements or plans;
  - (iii) the location of any buildings and other improvements on the Motel Lands and whether such locations comply with any applicable municipal bylaws or regulations;
  - (iv) whether or not any buildings or improvement located on the Motel Lands encroach onto any neighbouring lands or any easements or rights of way;



- (v) whether or not any buildings or improvement located on any neighbouring lands encroach onto the Motel Lands;
  - (vi) the size and dimensions of the Motel Lands or any buildings or improvements located thereon;
  - (vii) whether or not the Motel Lands (including any buildings located thereon) are contaminated with any hazardous substance as so defined under the laws of the Province of British Columbia or insulated with urea formaldehyde insulation; or
  - (viii) income or expenses related to the Motel Property and/or any businesses conducted thereon.
- (h) The Purchaser acknowledges that the Vendor is making no representations and/or warranties of any nature or kind whatsoever with respect to the Motel Property. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Motel Property and its suitability for any purpose, including occupancy, development, or derivation of value.
- (i) The Purchaser acknowledges that the fixtures and chattels presently on the premises are to be taken by the Purchaser at the Purchaser's own risk completely, without representation or warranty of any kind from the Vendor as to the ownership or state of repair of any such fixtures and chattels. Without limitation, to the extent that the Vendor is unable to convey title to any chattels, separate arrangements will have to be made by the Purchaser with any owner of any chattels in order for the Purchaser to take title to any chattels.
- (j) The Purchaser acknowledges that any information supplied to the Purchaser by the Vendor or its agents or representatives is and was supplied without any representation or warranty, and that the responsibility for verification of any such information shall be wholly the responsibility of the Purchaser.
- (k) The Purchaser hereby waives any requirement for the Vendor to provide to the Purchaser a site profile for the Motel Lands under the Environmental Management Act of the Province of British Columbia and any regulations in respect thereto.
- (l) The Vendor shall provide the Purchaser with only those keys to the premises comprising the Motel Property that are in its possession.
- (m) This Agreement is subject to the Vendor obtaining the Vesting Order. This condition is for the sole benefit of the Vendor. If the Vendor is unable to obtain the Vesting Order, then the Deposit shall forthwith be returned to the Purchaser and, upon such payment, the Vendor and Purchaser shall also be released from all other obligations hereunder.
- (n) The Vendor intends to maximize the proceeds of sale within the Court approval process. This Agreement will become public information prior to the Court approval date, and the Purchaser acknowledges and agrees that other prospective purchasers may attend in Court in person or by agent at the hearing of the motion

for the granting of the Vesting Order and such prospective purchasers may make competing offers which may be approved by the Court. The Vendor may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Motel Property. The Vendor gives no undertaking to advocate the acceptance of this Agreement. To protect its interest in purchasing the Motel Property, the Purchaser acknowledges and agrees that a representative should attend at the Court hearing for the granting of the Vesting Order on behalf of the Purchaser and be prepared there to make such amended or increased offer to purchase the Motel Property as the Court may permit or direct, and it is recommended that the Purchaser seek independent legal advice to advance its own offer to the Court.

(o) Acceptance of this Agreement by the Vendor is pursuant to the Receivership Order and not as owner of the Motel Property and will become effective from the time the Vesting Order is granted. Until such time, the Vendor is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Motel Property. Given its position and relationship to other parties in the Proceeding and as an officer of the Court, the Vendor may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Motel Property. The Vendor gives no undertaking to advocate the acceptance of this Agreement. In that regard, the Purchaser must make its own arrangements to support this Agreement in Court. The Purchaser acknowledges that another party or parties may attend the Court on the date scheduled to hear the Vendor's application for the Vesting Order for the purpose of submitting an offer or offers to purchase the Motel Property. Notwithstanding the foregoing, the Agreement shall be deemed irrevocable by the Purchaser except as expressly otherwise stated in the Agreement.

(p) This Agreement may be terminated at the Vendor's sole option if:

- (i) at any time prior to the Vendor obtaining the Vesting Order, the Vendor determines it is inadvisable to present this Agreement to the Court;
- (ii) at any time prior to the Vendor obtaining the Vesting Order, the security which is the subject of the Proceeding is redeemed; or
- (iii) the Court makes an order cancelling or changing the Vendor's power of sale;

and in any such event the Vendor shall have no further obligations or liability to the Purchaser under this Agreement or otherwise. This condition is for the sole benefit of the Vendor.

(q) In the event that:

- (i) the mortgagor or any other person shall become entitled to redeem, assign or place the mortgage in good standing and does so prior to the completion of the sale; or
- (ii) the Vendor is unable to complete the sale pursuant to the Vesting Order;

then the Vendor shall have the right to terminate this Agreement and upon giving written notice to the Purchaser that it is so doing, this Agreement shall be cancelled, without interest or deduction. Written notice shall be deemed to be validly given if received by the agent or solicitor or notary for the Purchaser.

- (r) The Vendor shall not be required to furnish any title documents and shall only be required to provide such deeds, copies thereof, or evidence of title as are in its possession or control.
- (s) The Purchaser acknowledges and agrees that time will be of the essence hereof, and unless the balance of the cash payment is paid or such formal agreement to pay the balance as may be necessary is entered into on or before the Closing Date, the Vendor may at its option either terminate or reaffirm this Agreement, and in either event the amount paid by the Purchaser, including without limitation the Deposit will be absolutely forfeited to the Vendor on account of damages without prejudice to any of the Vendor's other remedies.
- (t) The Purchaser acknowledges and agrees to provide the net sale proceeds to Owen Bird Law Corporation, in Trust, by way of wired transfer of funds.
- (u) No property disclosure statement concerning the Motel Property forms part of this Agreement.
- (v) In the event of any conflict or inconsistency between the terms of this section 5.5 and any other term in this Agreement, the terms of this section 5.5 shall prevail.

## **ARTICLE 6 - GENERAL**

### **6.1 Further Assurances**

Each of the parties hereto shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other parties may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **6.2 Time of the Essence**

Time shall be of the essence of this Agreement.

### **6.3 Legal Fees**

Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

### **6.4 Public Announcements**

Except as required by applicable regulatory authorities, no public announcement or press release concerning the sale and purchase of the Motel Property shall be made by any of the parties hereto without the prior written consent and joint approval of all other parties hereto. Notwithstanding the

foregoing, the Vendor acknowledges that the Purchaser may disclose the fact of the sale and purchase for the purpose of the Purchaser's due diligence and financing and obtaining any necessary consents, licenses and approvals to the transaction.

#### **6.5 Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto.

#### **6.6 Entire Agreement**

This Agreement together with the Schedules attached hereto constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

#### **6.7 "As Is, Where Is"**

The Purchaser acknowledges and agrees that the Motel Property is being purchased on an "as is, where is" basis and that in completing the transaction contemplated in this Agreement, the Purchaser relies solely on its own investigation. Any reports provided to the Purchaser by the Vendor are not warranted to in any way by the Vendor and the Vendor has not obtained letters of transmittal respecting the same.

#### **6.8 Amendments and Waiver**

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

#### **6.9 Assignment**

Notwithstanding the foregoing, the Purchaser may on reasonable notice to the Vendor assign any of its rights or obligations under this Agreement to any direct or indirect subsidiary or affiliate of the Purchaser in its sole and absolute discretion and without the consent of the Vendor; provided however that notwithstanding any such assignment, the Purchaser shall remain liable to perform the Purchaser's obligations hereunder and such assignment shall in no way release the Purchaser from such obligations.

#### **6.10 Notices**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by fax addressed to the recipient as follows:

To the Vendor:

**D. Manning & Associates Inc.**

Court-Appointed Receiver and Manager of the Assets, Undertakings and Properties of  
371392 B.C. Ltd. dba Diamond Head Motor Inn  
Suite 520 - 625 Howe Street  
Vancouver, B.C. V6C 2T6

Attention: Mr. Alex E.H. Ng, LIT, CIRP  
Fax number: (604) 683-8327

To the Vendor's Solicitors:

**Owen Bird Law Corporation**  
Suite 2900, 595 Burrard Street  
P.O. Box 49130  
Vancouver, B.C. V7X 1J5  
Attention: Mr. Alan A. Frydenlund, QC

Fax number: (604) 683-0570

To the Purchaser:

♦ Redekop Ferrario Properties Ltd

Attention: ♦ James Redekop

Fax number: ♦

E-mail address: ♦ James@redekopdevelopment.com

To the Purchaser's Solicitors:

♦ Cowling WLG

Attention: ♦ Murray Braaten

Fax number: ♦

E-mail address: ♦ Murray.Braaten@gowlingwlg.com

or to such other address, individual or fax number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by fax, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by fax.

**6.11 Governing Law and Attornment**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

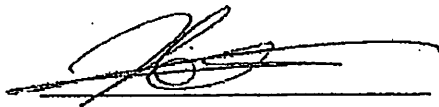
**6.12 Severability**

If any provision of this Agreement is found to be illegal or unenforceable, such provision shall be severed from this Agreement and such finding shall not affect the legality or enforceability of any other provision of this Agreement.

**6.13 Counterparts and Facsimile**


This Agreement may be executed in separate counterparts, each of which shall be an original hereof. Delivery of executed copies of this Agreement by facsimile transmission shall be as effective as if delivered personally.

IN WITNESS WHEREOF the parties have executed this Agreement.



Witness: Nelson Chan  
Print Name:

Purchaser's Signature,

  
James Redekop  
Print Name Redekop Ferrario Properties Ltd.  
Director  
Title:

I/We have authority to bind the corporation

**D. MANNING & ASSOCIATES INC.  
IN ITS CAPACITY AS RECEIVER AND  
MANAGER OF THE ASSETS, UNDERTAKINGS  
AND PROPERTIES OF 371392 B.C. LTD.  
dba DIAMOND HEAD MOTOR INN  
(not in its personal capacity)**

Per: William Chow

**SCHEDULE A**

**LEGAL DESCRIPTION**

**Legal Description:**

**PID: 003-439-411**

**Lot 114 Except: Part Road On Plan 87258  
District Lot 165 Group 3  
New Westminster District  
Plan 64278**

**Civic Address:**

**32550 Logan Ave, Mission, British Columbia, V2V 1C6**

## **SCHEDULE B**

### **PERMITTED ENCUMBRANCES**

All charges, liens and interests listed in the attached Title Search dated \_\_\_\_\_, (except for Mortgage CA7036289, Assignment of Rents CA7036290, and Certificate of Pending Litigation CA8261858) and all subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favor of utilities and public authorities, existing tenancies or sub-tenancies, if any.



**SCHEDULE C**

**LEASES**

**Short Term Lease Agreement with Provincial Rental Housing Corporation**