

THE CORPORATION OF THE CITY OF KENORA

BY-LAW NUMBER 173 - 2003

A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AMENDING AGREEMENT OF PURCHASE AND SALE BETWEEN THE CORPORATION OF THE CITY OF KENORA AND 1286730 ONTARIO LIMITED

WHEREAS the Corporation of the City of Kenora entered into a Purchase and Sale Agreement for the current Public Works Yard on February 13, 2003; and

WHEREAS the parties agree and wish to amend the provisions of that Agreement and find it necessary and expedient to execute an Amending Agreement for this purpose;

NOW THEREFORE the Council of the Corporation of the City of Kenora enacts as follows:

1. **THAT** the parties hereby enter into an Amending Agreement to extend the Condition Date and the Closing Date and to provide for certain other amendments as set out on the attached Agreement.
2. **THAT** the Mayor and Clerk of the Corporation of the City of Kenora are hereby authorized to execute the Amending Agreement between the Corporation of the City of Kenora and 1286730 Ontario Limited in accordance with the terms and conditions therein, and to affix the Seal of the Corporation thereto.
3. **THAT** this by-law shall come into force and be in effect from and after the final passing thereof.

BY-LAW read a FIRST & SECOND Time this 22 day of Dec., 2003.

BY-LAW read a THIRD & FINAL Time this 22 day of Dec., 2003.

THE CORPORATION OF THE CITY OF KENORA

.....**MAYOR**
David S. Canfield

.....**CITY CLERK**
Joanne L. McMillin

AMENDING AGREEMENT

Made This 18th Day of December, 2003.

BETWEEN:

The Corporation of the City of Kenora
(collectively the "Vendor")

OF THE FIRST PART

AND

1286730 Ontario Limited
(the "Purchaser")

OF THE SECOND PART

WHEREAS:

- (a) The Vendor and 1376273 Ontario Limited entered into an agreement of purchase and sale dated February 13, 2003 and accepted by the Vendor on February 18, 2003 (the "APS"), as amended and assigned to the Purchaser by an assignment and amending agreement dated June 4, 2003, as further amended by amending agreements dated August 25, 2003 and November 20, 2003 (the APS, as amended, hereafter referred to as the "Agreement") for the purchase of approximately 15.43 acres of land fronting on Highway 17 East, in the City of Kenora, Province of Ontario as more particularly described in the Agreement (the "Property");
- (b) The Purchaser and Vendor acknowledge that it is the intention of the Purchaser, following closing, to transfer a portion of the Property to Canadian Tire Real Estate Limited (the "CTC Lands") and to retain the remainder of the Property (the Retained Lands") and to provide for certain easements over the CTC Lands and the Retained Lands;
- (c) In order to facilitate the transfers and easements referred to in recital (b) above, the Vendor has agreed to transfer the CTC Lands and the Retained Lands on the Closing Date to two separate entities and to provide for such easements as the Purchaser may direct; and
- (d) The Purchaser wishes to waive certain of the Conditions in the Agreement and the parties wish to provide certain other amendments to the Agreement,

NOW THEREFORE, IN CONSIDERATION of the payment of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Vendor and the Purchaser agree as follows:

1. Prior to closing, the Purchaser shall prepare and have deposited in the Land Registry Office a reference plan (the "Reference Plan") on which the CTC Lands and the Retained Lands shall be shown as separate parts. The Reference Plan shall also indicate as separate parts any easements to be granted over the CTC Lands and the Retained Lands in favour of the Retained Lands or the CTC Lands, as applicable (the "Mutual Easements"), and any easements to be granted over the CTC Lands or the Retained Lands in favour of any adjoining lands or pursuant to any Development Agreement (as defined

in Section 6.2 of the Agreement) (collectively, "Third Party Easements"). The costs of preparing and depositing the Reference Plan shall be borne by the Purchaser.

2. The Purchaser shall, prior to closing, provide the Vendor with a copy of the Reference Plan along with the legal descriptions of the CTC Lands and the Retained Lands and of any Mutual Easements and Third Party Easements. The Purchaser shall be responsible for preparing the Transfers/Deeds of the CTC Lands and the Retained Lands (which Transfers/Deeds shall also contain any required Mutual Easements) and for preparing any Transfers/Deeds required to provide for Third Party Easements on closing. The Purchaser shall also provide a direction to the Vendor on closing as to the entities that shall take title to the CTC Lands and the Retained Lands on closing.
3. The Vendor agrees that it shall, on closing, transfer the CTC Lands and the Retained lands as two separate parcels in accordance with the direction of the Purchaser as provided in paragraph 3 hereof and shall, if required by the Purchaser, transfer any Third Party Easements as directed by the Purchaser and approved by the vendor, which Third Party Easements shall be registered immediately prior to the registration of the Transfers/Deeds of the CTC Lands and the Retained Lands.
4. The Purchaser hereby waives its Conditions set out in Subsections 6.2(a) and (c) of the APS.
5. The Condition Date in Section 6.2 of the APS is hereby extended to February 18, 2004 for the satisfaction or waiver of the Purchaser's Conditions set out in Subsection 6.2(b) of the APS.
6. Any terms which are not specifically defined herein shall have the same meaning as set out for such terms in the Agreement.
7. This Amending Agreement may be executed in any number of counterparts. A party may send a copy of its executed counterpart to the other party by facsimile transmission instead of delivering a signed copy original of that counterpart. Each executed counterpart (including each copy sent by facsimile transmission) shall be deemed to be an original and all executed counterparts taken together shall constitute one agreement.
8. Save and except as amended herein, the Agreement is unamended and in full force and effect.

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first written above.

The Corporation of the City of Kenora

Per: _____

Per: _____

I/we have authority to bind the Corporation

1286730 Ontario Limited

Per: _____

I have authority to bind the Corporation