

# AGREEMENT OF PURCHASE AND SALE

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TO: Paddon + Yorke Inc. as Court Appointed Receiver of the real property owned by Black Loon Millworks International Inc. ("Paddon")

FROM: \_\_\_\_\_ (the "Purchaser")

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offers to purchase:

- A. Lands and premises bearing the municipal address of 59 Industrial Park Crescent, in the City of Sault Ste. Marie, Ontario, and being legally described as follows:

**PT LT 40, RCP H744, TARRENTORUS PT 3 1R 1954 & PT 3 1R 3205  
PIN #315610014**

(the "Land")

- B. The Land is referred to as "the Property". The purchase price of the Property sold under this Agreement shall be:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
payable as follows:

An initial deposit of **Ten Thousand Dollars (\$10,000.00)** is paid this date by certified cheque to TCL Asset Group Inc., agent for Paddon. Upon acceptance of this offer a further deposit in the amount of **Twenty Five Thousand Dollars (\$25,000.00)** is to be paid by certified cheque to TCL Asset Group Inc., within **three (3) business days** after acceptance of this offer. Said sums to be held in an interest bearing account pending the completion or other termination of this Agreement arising from the acceptance of this offer and upon completion of the Agreement to be credited to the purchase price with the balance of the purchase price to be paid by bank draft, bank wire transfer or certified cheque on the date of completion, subject to any adjustments calculated on the date of completion. Adjustment shall be made, as of 12:01 a.m. on the Date of Closing, for realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, utilities, fuel costs, and any other items which are usually adjusted in purchase transactions involving office/industrial/warehouse properties. The date of closing shall be for the account of the Purchaser, both as to income and expense.

1. The Purchaser acknowledges:

- a) that Paddon is selling the Property as court-appointed Receiver in exercise of powers contained in the Order of the Honourable Mr. Justice Newbould dated June 26, 2012; and
- b) that Paddon shall have the right, at its option, exercisable at any time, up to and including the date of completion, to terminate this Agreement by delivery of written notice to the Purchaser or its solicitor, if Paddon is unable to complete this Agreement as a result of any action taken by a prior encumbrancer, the present registered owner, or any other party in the exercise of any right which is not terminated upon acceptance of this Agreement, or an order of the court. In such event, this Agreement shall be terminated and the deposit, without interest or deduction, shall be returned to the Purchaser, provided that Paddon shall not be liable to the Purchaser for any losses, costs, expenses or damages incurred or suffered by the Purchaser as a result of termination of this Agreement.

2. The Purchaser agrees as follows:

- a) subject to section 3(b), to purchase all the Property under this Agreement as it exists on the date of completion of this Agreement;
- b) that Paddon makes no representations or warranties of any kind in respect to any defects to the Property, including inherent defects, defects in workmanship, material and any item of construction which has not been completed and Paddon shall have no responsibility to complete any unfinished work or to remedy any defect;
- c) that the Purchaser is entirely responsible for inspection of the Property and acknowledges that Paddon makes no representation or warranty as to the quality, quantity, fitness and title to the Property;
- d) to complete at its own expense within 10 days of the date of acceptance of this Agreement (the "Requisition Date") an examination of the title of the Land, and to make inquiries of the municipality, public utilities and any government authority as to whether the desired use of the Land may be lawful, and that there are no outstanding work orders or deficiency notices affecting the Land;
- e) if on or before the Requisition Date any valid written objection is delivered to Paddon as to the title or to any outstanding municipal work order or deficiency notice or to the fact that the Purchaser's desired use of the Land will not be lawful or that the Property may not be insured which Paddon is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in

respect to these objections, shall be terminated and the deposit together with interest, shall be repaid to the Purchaser without any deduction and neither Paddon nor the Purchaser shall be liable for any costs or damages or have any further liability hereunder. However, if the Purchaser makes no valid objections in writing by 5:00 p.m. on or before the Requisition Date, the Purchaser shall be deemed to have accepted Paddon's title to the Property, any municipal work orders and deficiency notices and the available use, except for any valid objections going to the root of title to the Land; and

- f) to accept the Property subject to all matters affecting the Property including, without limitation, all leases, encumbrances, easements, rights-of-way, rights of re-entry, agreements, by-laws, restrictive covenants and instruments.
- g) The Purchaser agrees to deliver on or before the closing date a written direction to the City of Sault Ste. Marie Tax Department to pay directly and exclusively to Paddon any applicable Property Tax Rebates for the period prior to the date of closing.

3. Paddon agrees:

- a) if required by the Purchaser, to authorize the municipality, public utilities and government authority to release all information in regard to the Land;
- b) until completion of this Agreement, all the Property shall remain at the risk of Paddon. In the event of damage to the Property, Paddon or the Purchaser may, at its option, terminate this Agreement and the deposit shall be repaid to the Purchaser with interest and without deduction;
- c) unless already made available to the Purchaser by Paddon prior to the execution of this Agreement, Paddon covenants to make available for inspection by the Purchaser, within five (5) Business Days of the date of execution of this Agreement, the following material if in Paddon's possession or control:
  - I. Authorizations for Information: authorizations to be prepared by the Purchaser and executed by Paddon and addressed to the appropriate municipal building department, zoning department and fire department and to all other Government Authorities, authorizing the release of any and all information on file in respect of the Property, but specifically prohibiting inspections by any such Government Authorities;
- d) to allow the Purchaser and the Purchaser's authorized representatives reasonable access to the Property during normal business hours from time to time, but no more than 3 occasions, during the Requisition Period and hereby authorizes the Purchaser to carry out, at its sole cost and expense, such reasonable tests and inspections thereof as the Purchaser or its authorized representatives may deem necessary, provided that such inspections shall not unduly interfere with the use, operation and enjoyment of the Property by Paddon or any occupants thereof. The said reasonable tests and inspections may include:
  - I. conducting soil, ground-water and environmental tests;
  - II. taking measurements;
  - III. conducting surveys;
  - IV. removing samples where reasonable to do so; and
  - V. examining the interior of walls where reasonable to do so.

All such inspections will be carried out on 48 hours notice in writing to Paddon and in the presence of a representative of Paddon (if Paddon so desires). All tests of building systems will be conducted during normal business hours, unless otherwise authorized by Paddon. The Purchaser covenants and agrees to repair or pay the cost of repair of any damage occasioned during and resulting from the inspection of the Property conducted by the Purchaser or its authorized representatives, as outlined above and to return the Property to the condition same was in prior to such inspections.

4. Paddon and the Purchaser agree:

- a) there is no representation, warranty, collateral agreement or condition affecting this agreement or the Property except as expressed in this Agreement;
- b) on closing, or as soon thereafter as reasonably possible, Paddon shall obtain a vesting order from the Ontario Superior Court of Justice ("Court") vesting the Property in the Purchaser clear of all encumbrances;
- c) this offer shall be irrevocable until 12 noon on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and if not accepted by that time, this offer shall be null and void;
- d) acceptance of this offer by Paddon is subject to Paddon being prevented from completing this Agreement by virtue of any action by the debtor, any third party or any order of any court of competent jurisdiction;
- e) all Land Transfer Taxes, Sales Taxes and Goods and Services Taxes, if payable, shall be paid by the Purchaser on the date set for completion of this Agreement;
- f) time shall be in all respects of the essence;
- g) this Agreement shall be completed no later than 4:30 p.m. thirty (30) after acceptance of the Agreement of Purchase and Sale by Paddon.
- h) completion of this agreement is subject to the approval of the Court, and absent same Paddon will not be obligated to complete it and no action will lie against Paddon; and

- i) in all respects the completion of this Agreement is subject to the Order of the Court approving the sale and vesting the assets in the Purchaser, failing which this Agreement and Paddon's obligations thereunder shall be of no force and effect.

5. Paddon's Closing Deliveries

Paddon covenants to execute, where applicable, and deliver the following to the Purchaser at closing or on such other date expressly provided herein:

- a) Vesting Order: An order of the Court vesting the Property in the Purchaser, in accordance with the provisions of this Agreement;
- b) Statement of Adjustments: a statement of adjustments to be delivered not less than five (5) Business Days prior to closing;
- c) Direction Regarding Funds: a direction from Paddon designating the party or parties to which the balance of the Purchase Price hereof shall be paid; in the event that Paddon designates more than one party then it shall also designate amounts payable to each of the parties;
- d) Undertaking to Re-Adjust: Paddon's undertaking to re-adjust any item on or omitted from the statement of adjustments;
- e) Non-Residence Certificate: Paddon's certificate setting out that it is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the Income Tax Act (Canada) and is not the agent nor trustee of a "non-resident";
- f) Keys, Security Cards and Combinations: relating to the Property in Paddon's possession;
- g) Vacant possession of the Property; and
- h) Such further documents as shall be reasonable required by the Purchaser in transaction of this sort from Receivers.

6. Purchaser's Closing Deliveries

The Purchaser covenants to execute, where applicable, and deliver the following to Paddon at or prior to Closing:

- a) Direction Regarding Title: a direction from the Purchaser designating the transferee(s) in the Vesting Order (required only in the event that the Vesting Order is to be inscribed in favour of a person/entity other than the Purchaser);
- b) Undertaking To Re-Adjust: the Purchaser's undertaking to re-adjust any item on or omitted from the statement of adjustments; and
- c) HST Indemnity: Undertaking to self assess and indemnify for HST.

7. Planning Act (Ontario)

This Agreement shall be effective to create an interest in the Property for the Purchaser only if Part VI of the Planning Act (Ontario) is complied with prior to Closing.

8. Harmonized Sales Tax (HST)

- a) Application of HST to this Agreement: If the transaction contemplated hereunder shall be subject to the Harmonized Sales Tax ("HST") levied pursuant to the Act, then HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the Act;
- b) Self-Assessment: If part or all of the said transaction is subject to HST and the Purchaser is a "prescribed recipient" under the Act and/or is registered under the Act then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the Act or, if no such form is prescribed, then in reasonable form, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. The Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to Paddon, at Closing, in addition to the balance due at closing an amount equal to the HST that Paddon shall be obligated to collect and remit in connection with the said transaction; and,
- c) HST Indemnity: The Purchaser shall indemnify and save harmless Paddon from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

9. Commission

Paddon shall be responsible for paying any commission or other remuneration payable to any agent retained by Paddon in connection with the sale of the Property and Paddon agrees to indemnify and save harmless the Purchaser from and against any claim for such commission or other remuneration.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Name of Purchaser

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Purchaser  
(I have the authority to bind the Corporation)

**Paddon + Yorke Inc. accepts the above offer.**

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2014

**Paddon + Yorke Inc.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_