

NEW AND OLD ISSUES: TRANSFERRING MULTI-RES PROPERTIES -- WATCH OUT!

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NEW AND OLD ISSUES: TRANSFERRING MULTI-RES PROPERTIES -- WATCH OUT!

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1. *EMPLOYMENT STANDARDS ACT* ISSUES – DEALING WITH ON-SITE EMPLOYEES WHEN SELLING/PURCHASING AN APARTMENT BUILDING

Buying and selling residential apartment buildings can trigger obligations for vendors and purchasers under the *Employment Standards Act*¹ (the “ESA”). On-site superintendents, maintenance staff, parking/valet staff and cleaning staff may be employees of the building owner and will have accrued rights under the ESA that must be taken into account by the purchaser and vendor in the context of a transfer of the property.

Section 9 of the ESA deals with the sale of businesses and sets out the obligations owed by seller and buyer to the vendor’s site employees. The sale of a residential building with employees is a sale of business under the ESA. When a building is purchased, absent anything to the contrary, the employment of an employee shall be deemed not to have been terminated or severed. The employment with the vendor is deemed to be employment with the purchaser. The employee’s length of employment is deemed to have begun when the employee started working for the vendor, (or a previous vendor), not when the purchaser takes over. Absent any special provisions to address employment issues prior to closing, there is the equivalent of a statutory assignment of the employment relationship and all accrued incidents of same from vendor to purchaser on closing.

Employees that are retained after a building is sold must be receive the same salary, benefits, working conditions and other features of employment as they enjoyed before the sale. A prospective purchaser should therefore investigate the employment status of all employees before any purchase to determine if keeping employees is feasible. A purchaser should ascertain the salaries and benefits of all employees and investigate terms of employment that may impose extraordinary obligations on the purchaser after

¹ *Employment Standards Act, 2000*, S.O. 2000, c. 41, [ESA].

the sale.² If the purchaser is satisfied with all of the existing employment conditions, then the sale may proceed with a “seamless” transfer of employment obligations. If the purchaser intends to maintain the employees, then a statement of accounts should be rendered by the vendor to reflect any outstanding or accrued payments owed to the employees as at the date of closing. The purchaser should ensure that the vendor has taken care of all of their obligations to employees up to the date of sale. Contingent liabilities (ie: outstanding employee claims) may be addressed through post-closing agreements and security arrangements.

If the purchaser is mostly satisfied with the terms of employment, but has some concerns, then it may be possible to modify some pre-existing employment terms by agreement with the employee. The employee would have to agree to sign a new employment contract before any conditions could be changed. Modifying employment contracts can be tricky and it would be best to seek the advice of an employment lawyer before proceeding.

There is an exception to the “deeming” rule in section 9 of the ESA. The employment relationship need not stay the same as before the purchase if there is more than a 13 week break between the employee’s last day of work with the vendor and the first day of work with the purchaser.³ To get around the rule in section 9 a purchaser may wait 13 weeks before the employment begins. The exception to the rule in section 9 is not practical in the context of a sale of residential apartment buildings. The *Residential Tenancies Act, 2006*⁴ (RTA) imposes liability for rent abatements and rent reductions where building services are withdrawn, even on a temporary basis.⁵ Building owners who wait 13 weeks before employing superintendents, maintenance staff or valet/security personnel will trigger hostility from tenants and costly proceedings at the Landlord and Tenant Board (LTB) if they attempt to use this option to avoid ESA obligations.

² For example, outstanding legal proceedings: Human Rights Tribunal; WSIB Claims; Accommodation issues; LTD issues

³ ESA S. 9(2).

⁴ S.O. 2006, c. 17

⁵ RTA ss. 20, 30, 130

If a purchaser is not content with the existing terms of employment, then a common approach is to have the vendor terminate the employees prior to the sale. This can be arranged through conditions in the purchase agreement and a requisition. The purchaser can request that the vendor terminate the employees and meet ESA requirements and any other legal requirements for termination, including the provision of severance pay, at or before closing. The vendor would be responsible for termination pay and notice requirements, as well as delivery of vacant possession of superintendents' premises if applicable.⁶ The purchaser should request proof from the vendor that all legal requirements are fulfilled, including obtaining releases from the employees confirming termination. If the vendor has satisfied all of the requirements for termination, it is open to the purchaser to hire the terminated employees under a new employment agreement.

One thing to watch out for is whether the building is a collective bargaining unit within the meaning of the *Labour Relations Act*. There are a number of residential apartment buildings in Toronto that were unionized many years ago and the provisions of collective agreements continue to apply to staff. In such cases the collective agreement and all bargaining rights are subject to the provisions of the *Labour Relations Act* and termination of employment may be complex, especially where the purchaser seeks to extinguish the bargaining unit. It is recommended that a lawyer with expertise in *Labour Relations Act* matters be consulted in considering the implications of the presence of a collective bargaining unit at the building. The procedure and costs of termination of a bargaining unit employee and extinguishing collective bargaining rights can be substantial and would be a significant factor in adjustments to the final purchase price of the building.

A sample of additional wording to consider as a condition to your client's agreement of purchase and sale to address employee and employment issues is appended to this paper as Appendix "A".

⁶ Getting possession of superintendent's suites can also be tricky: See *Rondinelli v. Cain*, (1989) 67 O.R. (2d) 382 (Ont. Dist. Ct.).

2. RTA CHANGES: ELECTRICITY SUB-METERING – AVOIDING AN “ELECTRIFYING” EXPERIENCE

Effective January 1, 2011 all rental units that are “suite metered” for electricity consumption are now subject to special regulation under s. 137 of the *Residential Tenancies Act* (RTA). If the tenancy agreement will require a prospective tenant to pay en-suite electricity consumption, then the RTA imposes disclosure obligations to prospective tenants prior to entering into the tenancy agreement. As a solicitor acting on a transfer of such property, you should ensure that the responsibility for compliance with disclosure obligations has been clearly identified in writing (preferably with the purchaser’s staff as part of the due diligence process⁷) and that information needed to undertake due diligence is the subject of the requisitions.

Owners of suite metered rental units are required to give notice to prospective tenants, in the “prescribed form”⁸, of “the most recent information available to the landlord” concerning electricity consumption in the rental unit for the 12 month period prior to commencement of the new tenancy.⁹ If the landlord provides a refrigerator then the prospective tenant must be given “the best information that is available to the landlord” about the date of manufacture of the refrigerator and about the energy efficiency of the refrigerator.¹⁰

The policy rationale is that the consumption information will have meaning for the recipient so an informed decision can be made about the merits of offering to rent. The reality is that consumption information is of little use to the landlord or the prospective tenant in the rental process because both parties are far more interested in what the estimated cost of electricity will be. The future cost of electricity is difficult to predict based on past consumption costs as family size; meal preparation habits; age; and nature of occupancy all contribute to a wide spectrum of electricity use within a suite.

⁷ See retainer clause: Appendix “E”

⁸ See form attached as Appendix “B”

⁹ RTA, s. 137 (7) and s. 8 (2), O. Reg. 394/10

¹⁰ S. 8 (3), O. Reg. 394/10

Regardless of how useful the consumption information may be, its disclosure is mandatory and a failure to disclose gives rise to proceedings under s. 137 (12) of the RTA. A tenant may apply to the LTB for a finding that the landlord failed to disclose the required information and may ask the Board to order an abatement of rent; order “replacements” (ie: of inefficient refrigerators); or order a rent reduction.¹¹ Orders for rent abatements or rent reductions are likely where tenants demonstrate that the landlord failed to disclose the prescribed information in the prescribed form at the prescribed time and satisfies the LTB that the tenant’s expectations about electricity consumption and costs were not met. Orders for refrigerator replacement may be made if the LTB deems it appropriate.¹²

Where a vendor of a residential complex has failed to serve the required disclosures in a suite metered building, a contingent liability arises that may affect income stream. For this reason, the lawyer for a purchaser needs to ensure that as part of the due diligence process, the purchaser has made arrangements for a thorough review of the vendor’s management practices including compliance with RTA obligations and rent controls. The lawyer’s role is to require production by the vendor of the information for implementation of due diligence. In written retainer arrangements with the client, the responsibility for due diligence review, including RTA compliance, should be assigned to the purchaser and some back up protection provided through representations and warranties from the Vendor. Absent a proper retainer agreement to assign responsibility for regulatory compliance, the transacting lawyer for the purchaser will likely be found contractually and civilly liable for damages flowing from a later loss of income stream due to a failure to catch regulatory deficiencies in the vendor’s management practices.¹³

¹¹ S. 137 (12)

¹² Under s. 137 (9) the RTA imposes mandatory electricity conservation measures but only where a landlord and tenant agree that a sitting tenant will assume responsibility for payment of en-suite electricity. Those measures include a requirement that if the landlord has provided the refrigerator, it must be manufactured on or after January 1, 1994 and if it is replaced, it must be manufactured on or after January 1, 2002. For “prospective” tenants who are not given disclosure, the LTB may use 137 (9) as the appropriate yardstick for requiring replacement of a refrigerator.

¹³ 669283 *Ontario Ltd. v. Reilly*, 1996 CarswellOnt 293 (Ont. Gen. Div.).

3. DEVELOPMENTS AFFECTING OWNERS OF LAND LEASE RECREATIONAL PROPERTY – A WINDFALL FOR “CAMPERS” AND LIABILITY FOR LAND OWNERS

The Ontario Court of Appeal recently declared that campers who own permanent structures situate on leased land are subject to the provisions of the RTA.¹⁴ The RTA applies regardless of a mutual intention by the parties that the premises are to be used exclusively for recreational purposes and regardless of the zoning of the lands.¹⁵ For owners of recreational campgrounds and recreational land lease properties the ruling creates unexpected and costly liabilities because the RTA imposes onerous statutory obligations on landlords which cannot be contracted out of. For example, when the RTA applies the landlord is obliged to maintain roadways, trees, provide garbage removal, snow removal, and to ensure compliance with all housing standards required by municipalities or other provincial legislation.¹⁶ The landlord is also required to comply with rigorous security of tenure provisions and rent control provisions of the RTA.¹⁷ The net effect is to convert the property from a recreational use to a residential use regardless of applicable zoning and infrastructure. For the owners of land lease homes, the ruling is a windfall as for them it means an effective transfer of the entire land value plus extra's free of charge and all at the expense of the land owner.

When acting for owners of recreational land lease properties, the lawyer should make clear to the purchaser the risks associated with the transaction. Specifically, if the physical camp structures owned by tenants/campers are permanently affixed to leased land and are not “mobile homes”, then there is a risk of the RTA applying to the legal relationship between the owner and occupants. The risk may be removed if the operations on the land fall within an exemption provided in section 5 of the RTA¹⁸ which exempts “living accommodation...occupied for a seasonal...period in a....campground, trailer park...or vacation home” from the RTA; however, if the structure is “permanent”,

¹⁴ *Mathews v. Algoma Timberlakes Corp.* (2010), 102 O.R. (3d) 590 (Ont. C.A.), leave to appeal refused, *Mathews v. Algoma Timberlakes Corp.*, 2011 CarswellOnt 305, [Algoma].

¹⁵ RTA, s. 3 (1) prohibits “contracting out” of the RTA and applies “despite any other Act”, including the *Planning Act*.

¹⁶ RTA, ss. 20, 161

¹⁷ RTA, ss. 37, 110

¹⁸ RTA, s. 5 (a)

thereby making the structure a “land lease home”, it has been held that the exemption cannot apply.¹⁹

There are numerous instances of owners of trailers, mobile homes and cottages all seeking refuge under the RTA to both restrict rent increases and obtain mandatory residential amenities. For a new purchaser, an initial business plan strategy will often include implementation of a “fair” rent increase in an amount which is likely to exceed the guideline amount set by the Province (0.7% for 2011) thus triggering the owners of those structures to seek an inexpensive declaration at the LTB. If you are the lawyer who has failed to caution your client of this liability at the time of purchase, you can rest assured that your bewildered and frustrated client will first look to you for an explanation (and compensation) if a declaration is made that the RTA applies.

4. MUNICIPAL LANDLORD LICENSING BY-LAWS – IS YOUR CLIENT’S DEAL TOO GOOD TO BE TRUE?

Regulations to the *Municipal Act, 2001*²⁰ were amended in January, 2007 to remove a former statutory prohibition on the licensing of residential rental units.²¹ Since that time, some municipalities, particularly those with a substantial post-secondary student presence, have initiated a licensing process in an effort to discourage student rentals in converted dwellings²² and otherwise restrict the presence of students in residential neighborhoods in the vicinity of such institutions.²³

The typical strategy in municipal licensing of residential rental properties has been the enactment of new zoning restrictions, followed later by a requirement for mandatory licensing with a prohibition of continuing rental operations if a license is not obtained. A key component of the licensing process is a review of zoning compliance and a refusal to

¹⁹ *Algoma*, *supra* note 13 at para. 35.

²⁰ *Municipal Act, 2001*, S.O. 2001 c. 25.

²¹ O. Reg. 583/07 enacted January 1, 2007 repealed O. Reg. 243/02 which previously prohibited licensing.

²² Other tactics besides Licensing By-laws include using Building Code provisions in an effort to prevent “unrelated” persons from sharing a rental unit: see *2161907 Ontario Inc. v. City of St. Catharines et al*, 2010 ONSC 4548 (Ont. S.C.J.).

²³ Oshawa, London, Guelph, Waterloo, Hamilton. Toronto, Ottawa and Windsor have rejected the licensing option.

issue a license unless the applicant demonstrates same. By identifying potential infractions and shifting the onus of proof to property owners to demonstrate that their zoning and uses are “grandfathered” or otherwise legal, the municipalities create substantial liability to the property owners. In London Ontario, property owners have been required to prove conformity by demonstrating continuous use of multiple rental suites over a period of decades.²⁴ In one case in particular, the owner of the property was only able to exonerate himself and obtain a license after he obtained copies of an Official Plan and zoning by-law amendment obtained from the municipality decades ago approving creation of the rental units. The documents were procured through a Freedom of Information request to the same municipality that claimed the use was illegal, thus placing the onus (and expense) on the landlord to search the city’s file and exonerate himself from a false and potentially costly allegation.²⁵

In cases where rental properties have changed hands multiple times and where lawfulness of use has never been questioned, the requirement to demonstrate zoning compliance as part of the licensing process has meant some owners are looking to pass the problem on to the next person in the chain of title. It is common in communities with landlord licensing by-laws to see small rental properties for sale at very good prices with no mention of the licensing status of the property. If the deal closes without regard to municipal licensing status, it is the purchaser who will look to the lawyer for liability and compensation for damages arising as a consequence of the “defect in title” and the failure to identify and address licensing compliance. In municipalities like Waterloo and Guelph, very restrictive licensing by-laws have not yet been enacted but are high on the municipal legislative agenda; consequently, there is a good chance that some real estate bargains will enter the marketplace as passage of such by-laws becomes imminent. *Caveat Emptor* should be the motto of any flags you may raise when your client comes to you to review an offer for the purchase of student rental properties and converted dwellings intended to be operated as rentals.

²⁴ By-law CP-19; 1973 and 1993 are key “grandfathering” dates under London’s zoning by-laws depending on the zone

²⁵ City of London; License application file number 10-018293

If you are acting for the purchaser of a small rental property in a municipality with post-secondary educational facilities, ensure you have made written arrangements with your client to address residential licensing issues or that you have made appropriate requisitions and municipal inquiries to satisfy requirements under the licensing by-laws. Licenses are not always transferrable²⁶ and the right of your purchaser/client to obtain a license may be qualified by conditions in the licensing by-law; furthermore, there may be a positive obligation to notify the municipality of a change in ownership in order to trigger a fresh licensing process to obtain a license.²⁷ All of these are issues that will affect the post-closing operation of the property and a good lawyer will ensure that the issues are identified and addressed, both in the retainer agreement and in the Agreement of Purchase and Sale. The London Residential Rental Units Licensing By-law is appended for your reference as Appendix “C”.²⁸

5. REQUESTING RENT REDUCTIONS FLOWING FROM PROPERTY TAX REDUCTIONS – IMPLICATIONS FOR NET OPERATING INCOME WHEN ACTING ON SALES, ACQUISITIONS AND FINANCING OF MULTI-RES PROPERTIES IN GTA

The RTA has mandatory provisions and processes for the imposition of rent reductions in circumstances where property taxes at a multi-residential complex decrease by a “prescribed” amount.²⁹ In the GTA, in particular, there have been significant reductions in property taxes payable on property tax bills issued by the city because of reductions in values as determined by MPAC and because of a transfer of Solid Waste Management (SWM) charges from the tax bill to utility bills. The RTA requires that where there is a reduction in the property taxes on the tax bill, the municipality must issue certain notices, first to the landlord and then later to the tenants, informing them of the municipality’s calculations and giving notice of the pending rent decrease that will be given to all sitting tenants as of December 31 of the year in which the property tax decrease has occurred.³⁰

²⁶ Supra note 23 CP-19, s. 6.6.

²⁷ Ibid. s. 6.7.

²⁸ Note: CP-19 is currently the subject of a Superior Court application to quash; Court file # 2263/2010

²⁹ RTA, s. 131 and s. 41 O. Reg. 516/06

³⁰ S. 41 (3), (4), (6) O. Reg. 516/06

In 2010 the tenants of over 4,500 multi-res buildings in the GTA alone received Notices of Rent Reduction (NORRs) reducing their monthly rent.³¹ In many cases the rent reductions were imposed even though the owners' actual "municipal taxes and charges" increased; consequently, the net operating income for the property was impaired, coupled with an administrative nightmare for owners trying to remedy the problem through LTB proceedings.³² The intent of the RTA provisions is to pass property tax savings directly on to tenants but the process is based on a "default" formula which means that there are times when the property tax savings are less than what is passed through to tenants. In the case of the SWM charges, there were often no savings to the landlord because of the transfer of the charge from the tax bill to the utility bill. Such issues can be remedied by the LTB through a "variation" application; however, there are strict timelines and procedural requirements to such applications.³³ On the one hand, learning of an imminent rent reduction due to a reduction in property taxes may give a purchaser leverage to insist on a reduction in the purchase price; however, a knowledgeable vendor may counter with knowledge of the curative provisions available through the LTB.

Obviously, for acquisitions of multi-res properties, particularly in the GTA, the potential for NORR's has been high and the purchase price of such buildings is generally predicated on a cap rate applied to net operating income. While a general disclaimer of responsibility for due diligence and RTA compliance may help a lawyer avoid post-closing legal liability, if you are the legal counsel who flags the issue for your purchaser client, there is a good chance you will be doing that client's legal work for years to come.

Note that the "automatic" rent reductions do not apply to social/municipal housing complexes or to rental properties that are otherwise exempt from the rent control provisions of the RTA (ie: the "Post November 1, 1991 buildings").³⁴

³¹ Greater Toronto Apartment Association, *Building Blocks* Vol. 9 No. 2 October 2010.

³² S. 132 RTA and s. 42 O. Reg 516/06 permit applications to "vary" the amount of rent reduction

³³ Ss. 42 – 45 O. Reg. 516/06

³⁴ Section 6 RTA; s. 6 (2) (c) is the post Nov. 1, 1991 exemption.

6. HOW THESE ISSUES FACTOR INTO COMPLETING DEALS, STATEMENTS OF ADJUSTMENTS, AND POST-CLOSING RE-ADJUSTMENTS

The issues identified above can affect lawyer liability in contract and tort; worse, they can adversely affect your client's assessment of your good lawyerly judgment and competence. Once identified in the context of a specific transaction, the impact of the issue may result in termination of an agreement; changes in purchase price; or changes to the terms of the agreement to address the issues through post-closing obligations and security.

In the case of a sale of a building with a number of on-site employees, the cost of retaining or terminating the employees may create adjustments to the purchase price and the scope of documents to be delivered to the purchaser on closing. In cases where a building is suite metered and tenants pay for en-suite electricity consumption, the assignment of responsibility for due diligence is required to ensure compliance with notice requirements of the RTA and to avoid disruptions to income stream for the purchaser, and by extension, liability to the lawyer who acted on the purchase of the property.

When acting for a purchaser of recreational land lease property the physical nature of structures owned by licensees or tenants of leased land can greatly affect the rights and obligations of owners. A good understanding of the applicability of the RTA to the occupancies on such land is required by the purchaser as, depending on the pre-closing audit of the property, substantial contingencies may have to be accounted for in the purchase price or in post closing security. In our view, a thorough audit by a qualified Engineer of the state of "permanence" of all structures located on leased land, together with appropriate acknowledgements by owners of the structures, may protect both the vendor and purchaser's financial and legal interests as part of the closing obligations.

Lawyers also need to be wary when dealing with transactions involving rental properties which are converted dwellings or small residential complexes with multiple units. Proof

of zoning compliance should always be required or a clear waiver of same given by the purchaser who decides to take the risk where compliance cannot be satisfactorily proven. If a municipal landlord licensing by-law is in effect (or may soon be), then there is a better than average chance that the use of the property may be adversely affected after closing by the licensing process. A standard requisition may help address issues related to properties which are subject to a licensing regime but only “buyer beware” will protect a purchaser from the impact of by-laws currently on the municipal legislative “radar screen”.

Issues relative to rent reductions triggered by NORR’s are easily addressed by ensuring that property tax assessments and bills are available for review as part of the due diligence process. Any reduction in the annual charges or the presence of a pending property tax appeal by the vendor should trigger further investigation and analysis. The bottom line is that if the property tax goes down the rent is most likely to go down and that, in turn may affect what an owner is prepared to pay for a property, particularly if net operating income is substantially reduced.

End Note: I wish to express my appreciation to Michael Brightling, a “Solicitor” with our firm, for his assistance in preparing the sample language for documents as appended to Appendices A, D and E to this paper. I also wish to acknowledge the work of Erin O’Leary, Student-at-Law, for her assistance in the preparation of this paper.

APPENDIX A

Sample Wording for Dealing with non union employee issues in the Agreement

If the Vendor has employees working at the building, the Purchaser may need some time to decide whether or not the Purchaser will want to continue to employ some or all of those employees. You could add specific wording to the purchase agreement's general due diligence clause requiring specific disclosure of employee related information in addition to the usual disclosures and deliveries (e.g. leases, rent rolls, expense information and so forth). However it might be just as easy to add a specific condition to the agreement to deal with this issue and it may be less likely that the matter will be overlooked when the deal is proceeding to close. A condition along the following line might work for your purchaser.

“In addition to any other disclosures and deliveries provided for in this agreement, the Vendor shall also provide to the Purchaser within five (5) days of acceptance of this offer the following:

Complete employment details of all of the Vendor's employees working at the Property, including but not limited to each employee's name, address, salary, benefit details, job description, unpaid vacation pay and payroll deduction information as well as the date of commencement of their employment with the Vendor and details of any periods of interruption in that employment.

Upon receipt of this information the Purchaser shall be given ten (10) days to provide the Vendor with written instruction as to which of the Vendor's employees the Purchaser is willing to employ after closing and which employees the Purchaser is not willing to employ after closing. In the event that the Vendor is not willing to terminate the employees which the Purchaser is not willing to hire after closing, the Vendor shall so notify the Purchaser and if the Purchaser is still not willing to employ such employees, this agreement shall be null and void and the Purchaser shall be entitled to a return of the Purchaser's deposit without deduction.”

Remind your clients that whether the Purchaser hires any one or more of the Vendor's employees or not, in the case of an asset purchase (as opposed to the Purchaser buying the Vendor's shares of a corporation which owns the apartment building), the Vendor will still be obliged to prepare a record of employment for each employee, officially terminating the employees at the date of closing. The Purchaser, to the extent that any of the Vendor's employees are hired on, will set up a new employment accounts for each such employee but their terms of employment will, unless otherwise negotiated, continue on as before and the Purchaser's "new" employee will be treated as having been an employee of the Purchaser since he was first hired at the building by the Vendor or a prior owner of the building.

Note that if there are a sufficient number of employees involved in the building or complex, this area of the agreement will likely be renegotiated as the Vendor and Purchaser begin to consider and disclose to each other their relative positions.

Information to Prospective Tenant About Suite Meters or Meters

To: (Prospective Tenant's Name)	From: (Landlord's Name)
Address of Rental Unit:	

The following information must be given to the prospective tenant if the landlord has installed a meter or suite meter in the rental unit and the landlord wants the prospective tenant to pay for their own electricity costs.

Amount of Electricity Used in the Rental Unit:

The landlord must provide the information below to let the prospective tenant know about the electricity used in the rental unit over the last 12 months. If the meter or suite meter was installed less than 12 months ago, then the landlord must provide information about the electricity usage from the date it was installed up to the date the tenancy is entered into.

Period: From _____ to _____
(day / month / year) (day / month / year)

Kilowatt hours of electricity used: _____ (kWh)

Was the rental unit vacant during this period?

- ☐ The rental unit was not vacant during the period shown above.
or
- ☐ The rental unit was vacant during part of the period shown above. It was vacant from _____ to _____.
(day / month / year) (day / month / year)

Refrigerator in the Rental Unit:

The landlord must provide the best information available to them about the refrigerator in the rental unit.

- ☐ The landlord does not provide a refrigerator for the rental unit.
or
☐ The landlord provides a refrigerator for the rental unit.

The date the refrigerator was manufactured is _____.

Other available information about the energy efficiency of the refrigerator:

Important Information:

1. This information must be provided to the prospective tenant before the landlord enters into a tenancy agreement with the prospective tenant.
2. For more information about this notice or about your rights, you can contact the Landlord and Tenant Board. You can reach the Board by phone at 416-645-8080 or toll-free at 1-888-332-3234. You can also visit the Board's website at www.LTB.gov.on.ca.

Signature ☐ Landlord ☐ Agent

Name of Person Signing	Phone Number
Signature	Date

Agent Information (if applicable)

Name		Company Name (if applicable)	
Mailing Address			Phone Number
Municipality (city, town, etc.)	Province	Postal Code	Fax Number

APPENDIX C
London Residential Rental Units Licensing By-law and Regulations

Residential Rental Units Licensing By-law

CP-19 - Enacted – September 21, 2009

In Force – March 1, 2010

**This by-law is printed under and by authority
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A By-law to provide for the licensing and regulation of Residential Rental Units in the City of London.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25 provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 11 Business Licensing;

AND WHEREAS subsection 151(1) of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10 of the Act, a municipality may: provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and,
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality;

AND WHEREAS subsection 151(5) of the *Municipal Act, 2001* provides that subsection 151(1) applies necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9, 10 and 11 as if it were a system of licences with respect to a business;

AND WHEREAS the Council for the City of London considers it necessary and desirable for the public to regulate the renting of residential premises for the purpose of protecting the health and safety of the persons residing in residential rental premises by ensuring that the certain regulations are met, that the required essentials such as plumbing, heating and water are provided, for ensuring that the residential rental premises do not create a nuisance to the surrounding properties and neighbourhood and to protect the residential amenity, character and stability of residential areas;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and,
- (c) for the use of its property including property under its control;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity, and any person who contravenes such an order is guilty of an offence;

AND WHEREAS it is deemed expedient to pass this by-law;

NOW THEREFORE The Council of The Corporation of the City of London hereby enacts as follows:

1.0 DEFINITIONS

1.1 For the purpose of this By-law:

“Apartment Building” means a building or existing non-residential building that is divided horizontally and/or vertically into five or more separate Dwelling Units but does not include a Converted Dwelling.

“Applicant” means a person applying for a licence under this By-law;

“Building” means any structure consisting of a roof supported by walls or columns which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment and includes a carport;

“City” means The Corporation of the City of London;

“City Treasurer” means the Treasurer of The Corporation of the City of London or a person delegated by him or her for the purposes of this By-law.

“Converted Dwelling” means an existing dwelling constructed as a single, semi-detached, duplex or triplex dwelling on an existing lot prior to July 1, 1993 in which the number of Dwelling Units has been increased without significant alteration to the exterior of the building except for non-leasable floor such as fire escapes, stairwells and entrances to a maximum of 10 percent (10%) of the dwelling or 30.0 square metres, whichever is the lesser.

“Council” means the Municipal Council of The Corporation of the City of London;

“Director of Building Controls” means the Chief Building Official as appointed by Council pursuant to the *Building Code Act*;

“Dwelling Unit” means a single room or a series of rooms of complementary use which is located in a building, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupants thereof, which has a private entrance directly from outside the building or from a common hallway inside the building, in which all occupants have access to all of the habitable areas and facilities of the unit, and which is occupied and used or capable of being occupied and used as a single and independent housekeeping establishment.

“Fire Chief” means the Chief of London Fire Services of the City or a person delegated by him or her for the purposes of this By-law;

“Hearings Committee” means a person or body that has been delegated the power or duty to hold a hearing or provide an opportunity to be heard for the purpose of this Bylaw;

“Licensee” means any person licensed under this By-law;

“Licence Manager” means the Director of Building Controls;

“Lot” means a parcel of land which is;

- (i) shown on a registered plan of subdivision; or
- (ii) described in a single Transfer/Deed of Land of legal effect registered in the Land Registry Office or the Land Titles Office for the Land Registry Division of Middlesex.

“Manager of By-law Enforcement” means the Manager of By-law Enforcement of the City or a person delegated by him for the purposes of this By-law;

“Medical Officer of Health” means the Medical Officer of Health for the Middlesex-London District Health Unit or a person delegated by him for the purposes of this By-law;

“Municipality” means the land within the geographic limit of the City of London;

“Owner” includes:

- (i) each owner of a Rental Unit;
- (ii) each person who permits occupancy of a Rental Unit; and,
- (iii) the heirs, assigns, personal representatives and successors in title of a person referred to in clauses (i) and (ii).

“Rental Property” includes each Building containing a Rental Unit and the Lot on which the Rental Unit is situate.

“Rental Unit” means a Building or part of a Building:

- (i) consisting of one or more rooms;
- (ii) containing toilet and cooking facilities;
- (iii) designed for use as a single housekeeping establishment; and
- (iv) used or intended for use as a rented residential premises.

“Stacked Townhouse” means a building designed to contain three or more Dwelling Units attached side by side, two units high, with each Dwelling Unit having a private entrance to grade level and a private open space area of any upper unit may utilize a portion of the roof of any lower unit.

“Townhouse” means a building divided vertically into three or more attached Dwelling Units by common walls extending from the base of the foundation to the roof line, each Dwelling Unit having a separate entrance at grade, and so located on a lot that individual units may not have legal frontage on a public street.

“Tenant” includes a person who pays rent in return for the right to occupy a Rental Unit and includes the person’s heirs, assigns (including subtenants) and personal representatives.

2.0 PROHIBITIONS

2.1 No person shall operate a Rental Unit without holding a current valid licence issued under the provisions of this By-law.

2.2 No person shall hold himself, herself or itself out to be licensed under this By-law if they are not.

2.3 No person shall contravene or fail to comply with a term or condition of his, her or its licence imposed under this By-law.

2.4 No person shall operate a Rental Unit while their licence issued under this By-law is under suspension.

3.0 APPLICATION OF BY-LAW

3.1 This By-law shall not apply to:

- (a) a Rental Unit in an Apartment Building, a Stacked Townhouse or a Townhouse;
- (b) a Rental Unit that meets all of the following conditions:
 - (i) the Rental Unit constitutes the principle residence of the registered owner;
 - (ii) the Rental Unit is temporarily rented by the registered owner for a period of time no greater than 12 consecutive months in any 24 month period;
 - (iii) the Rental Unit was occupied by the registered owner immediately prior to its rental;
 - (iv) the registered owner of the Rental Unit is temporarily living outside of the Municipality; and,
 - (v) the registered owner intends to reoccupy the Rental Unit upon termination of the temporary rental.

4.0 ADMINISTRATION

4.1 The administration of this By-law is assigned to the Licence Manager who shall generally perform all of the administrative functions conferred upon him or her by this By-law and without limitation may:

- (a) receive and process all applications for all licenses and renewals of licences under this By-law;
- (b) issue licenses in accordance with the provisions of this By-law;
- (c) impose terms and conditions on licences in accordance with this By-law; and,
- (d) refuse to issue or renew a licence or revoke or suspend a licence in accordance with this By-law.

5.0 APPLICATIONS FOR A LICENCE AND RENEWAL OF LICENCE

5.1 Every application for a licence and renewal licence shall be made to the Licence Manager on the forms provided by the Licence Manager. Without limitation, every application for a licence or a renewal shall include the following information:

- (a) the name, municipal address and telephone number of each Owner;
- (b) if the Owner is a partnership, the name, address and telephone number of each partner;
- (c) if the Owner is a corporation, the address of its head office, the name, address and telephone number of each director and officer;
- (d) the municipal address and legal description of the Rental Unit;
- (e) a sworn statement by the Owner certifying the accuracy, truthfulness and completeness of the application;
- (f) if the Owner is a partnership, a sworn statement by each partner certifying the accuracy, truthfulness and completeness of the application; and,
- (g) if the Owner is a corporation, a sworn statement by an officer of the corporation duly authorized for that purpose certifying the accuracy, truthfulness and completeness of the application.

5.2 Every person applying for a licence or a renewal of a licence shall provide in full at the time the application is submitted all of the information requested on the application form as well as:

- (a) payment of the prescribed fee as set out in Schedule "A" of this By-law;
- (b) a copy of the Transfer/Deed and parcel abstract dated no later than fifteen (15) days prior to the date of the application evidencing the Owner's ownership of the Rental Unit;
- (c) if the Applicant or Licensee is a corporation, a copy of the incorporating documentation, a copy of the last initial notice or notice of change which has been filed with the provincial or federal government and a Certificate of Status issued by the Ministry of Government and Consumer Services dated no later than fifteen (15) days prior to the date of the application;
- (d) if the Applicant or Licensee is a partnership, details of each partner's interest in the partnership; and,
- (e) any other documentation or information as may be required in any other Part of this By-law and by the Licence Manager.

5.3 The Licence Manager may require affidavits in support of an application for or a renewal of a licence.

5.4 Every application may be subject to investigations by and comments or recommendations from the municipal or provincial department or agencies as the Licence Manager deems necessary including but not limited to:

- (a) the Director of Building Controls;
- (b) the Manager of By-law Enforcement;
- (c) the Fire Chief; and,
- (d) the Medical Officer of Health.

6.0 ISSUANCE OF LICENCES

6.1 Every licence issued under this By-law shall be in the form and manner as provided by the Licence Manager and without limitation shall include on its face the following information;

- (a) the licence number;
- (b) the name, address and telephone number of each Licensee;
- (c) the date the licence was issued and the date it expires; and,
- (d) the municipal address of the Rental Unit.

6.2 Every licence that is issued for the first time, and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold and renewing a licence all of which shall be performed and observed by the Applicant or the Licensee:

- (a) the Applicant or Licensee shall pay the prescribed licence fee as set out in Schedule "A" to this By-law;
- (b) the Applicant or Licensee shall pay all fees and fines owed by the Applicant or Licensee to the City;
- (c) the Applicant or Licensee shall allow, at any reasonable time and when permitted by law, the City to inspect the Rental Unit and the Rental Property;
- (d) the Applicant or Licensee shall ensure that the Rental Unit and the Rental Property are not constructed or equipped so as to hinder the enforcement of this By-law;
- (e) the conduct of the Applicant or Licensee, or any partner, officer, director, employee or agent of the Applicant or Licensee, shall not afford reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the operation of the Rental Unit in accordance with the law or with honesty or integrity;
- (f) the Rental Unit and Rental Property shall be in accordance with the requirements of the *Building Code Act* and the Regulations thereunder, the *Fire Protection and Prevention Act, 1997* and the Regulations thereunder, and the City's Property Standards By-law CP-16;
- (g) where the Rental Unit or Rental Property is altered and a building permit is required to carry out the alterations, the Rental Unit and Rental Property, as altered, shall be in accordance with the *Building Code Act* and the Regulations thereunder, the *Fire Protection and Prevention Act, 1997* and the Regulations thereunder, and the City's Property Standards By-law CP-16;
- (h) the use of the Rental Unit and Rental Property is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
- (i) the Applicant or Licensee shall not directly or indirectly require or cause a Tenant to refuse to consent to lawful entry and inspection of a Rental Unit or Rental Property for the purpose of determining compliance with this By-law;
- (j) if the Applicant or Licensee is a partnership or a corporation, any change in the composition of the partnership or of the officers and/or directors of the corporation shall be reported to the Licence Manager within ten (10) days;
- (k) the Licensee shall ensure that a legible copy of the license issued under this By-law is posted and maintained in a prominent and visible position inside the Rental Unit near the front entrance.

6.3 A licence issued under this By-law shall be valid only for the period of time for which it was issued.

6.4 The issuance of a licence or renewal thereof under this By-law is not intended and shall not be construed as permission or consent by the City for the Licensee to contravene or fail to observe or comply with any law of Canada, Ontario or any by-law of the City.

6.5 Every licence, at all times, is owned by and is the property of the City and is valid only in respect of the person and for the Rental Unit on the Rental Property named therein. A separate licence shall be required for each Rental Property.

6.6 No licence issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

6.7 The Licensee shall notify the Licence Manager of any change in ownership of the Rental Unit or Rental Property and shall surrender his, her or its licence to the Licence Manager within seventy-two (72) hours of the completion of such change.

6.8 All licence fees and inspection fees paid under this By-law are non-refundable.

7.0 POWERS OF THE LICENCE MANAGER

7.1 The power and authority to issue or renew a licence, refuse to issue or refuse to renew a licence, to cancel, revoke or suspend a licence, to impose terms and conditions, including special conditions, on a licence, are delegated to the Licence Manager.

7.2 (a) The Licence Manager shall issue a licence or renew a licence where the requirements or conditions of this By-law have been met.

(b) The Licence Manager may refuse to issue, refuse to renew or revoke or suspend a licence or impose a term or condition on a licence on the following grounds:

- (i) the conduct of the Applicant or Licensee, or any partner, officer, director, employee or agent of the Applicant or Licensee, affords reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the operation of the Rental Unit in accordance with the law or with honesty or integrity;
- (ii) there are reasonable grounds to believe that an application or other documents provided to the Licence Manager by or on behalf of the Applicant or a Licensee contains a false statement;
- (iii) an Applicant or Licensee is carrying on activities that are in contravention of this By-law; or,
- (iv) an Applicant or Licensee does not meet all of the requirements of this By-law or that the Rental Unit or Rental Property does not comply with the provisions of this By-law.

7.3 Notwithstanding any other provision of this By-law, the Licence Manager may impose terms and conditions on any licence at issuance, renewal or any time during the term of the licence, including special conditions, as are necessary in the opinion of the Licence Manager to give effect to this By-law.

7.4 Where the Licence Manager is of the opinion that:

- (a) an application for a licence or renewal of a licence should be refused;
- (b) a reinstatement should not be made;
- (c) a licence should be revoked;
- (d) a licence should be suspended, or,
- (e) a term or condition of a licence should be imposed;

the Licence Manager shall make that decision.

7.5 Where the Licence Manager has made a decision under subsection 7.4 the Licence Manager's written notice of that decision shall be given to the Applicant or the Licensee by regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the address of the corporation's registered head office.

7.6 The written notice to be given under subsection 7.5 shall:

- (a) set out the grounds for the decision;
- (b) give reasonable particulars of the grounds;
- (c) be signed by the Licence Manager; and,
- (d) state that the Applicant or Licensee is entitled to a hearing by the Hearings Committee if the Applicant or Licensee delivers to the City Clerk, within ten (10) days after the notice in subsection 7.5 is served, and the appeal fee as set out in Schedule "A" of this By-law.

7.7 Where no appeal is registered within the required time period, the decision of the Licence Manager shall be final.

7.8 Despite subsection 7.6 where a licence is voluntarily surrendered by the Licensee for revocation, the Licence Manager may revoke the licence without notice to the Licensee.

8.0 HEARINGS BEFORE THE HEARINGS COMMITTEE

8.1 The power and authority to conduct hearings of appeals under this By-law are hereby delegated to the Hearings Committee.

8.2 The provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, except sections 17, 17.1 and 19, applies to all hearings conducted by the Hearings Committee under this By-law.

8.3 When the Applicant or Licensee, who has been given written notice of the hearing, does not attend at the appointed time and place, the Hearings Committee may proceed with the hearing in his or her absence and the Applicant or Licensee shall not be entitled to any further notice of the proceeding.

8.4 At the conclusion of the hearing, the Hearings Committee may give its decision orally or in writing but in each case it shall provide its decision in writing, with reasons, within thirty (30) days of the hearing to the Applicant or Licensee and the Licence Manager.

8.5 The Hearings Committee may uphold or vary the decision of the Licence Manager or make any decision that the Licence Manager was entitled to make in the first instance.

8.6 The decision of the Hearings Committee is final.

9.0 ENFORCEMENT

9.1 This By-law may be enforced by a City municipal law enforcement officer or a London Police Service police officer.

9.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law, including carrying out an inspection.

10.0 PENALTY

10.1 Any person who contravenes any provision of this By-law is guilty of an offence.

10.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

10.3 A person convicted under this By-law is liable to a maximum fine of \$25,000.00 upon a first conviction and a maximum fine of \$50,000.00 for any subsequent conviction.

10.4 Despite section 10.3 where the person convicted is a corporation, the corporation is liable to a maximum fine of \$50,000.00 upon a first conviction and a maximum fine of \$100,000.00 for any subsequent conviction.

10.5 If this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

11.0 GENERAL

11.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

11.2 If there is a conflict between a provision of this By-law and a provision of any other City by-law, then the more restrictive provision shall apply.

12.0 MISCELLANEOUS

12.1 This by-law may be referred to as the “Residential Rental Units Licensing By-law”.

12.2 This by-law shall come into force and effect on March 1, 2010.

PASSED in Open Council on September 21, 2009.

Anne Marie DeCicco-Best
Mayor

Linda Rowe
Acting City Clerk

First Reading - September 21, 2009
Second Reading - September 21, 2009
Third Reading – September 21, 2009

**SCHEDULE “A”
FEES**

Licence Fee for a licence for each Rental Property	\$ 25.00
Licence Renewal Fee for each licence renewed under this By-law	\$ 25.00
Appeal Fee	\$0.00

APPENDIX “D”
**Additional Agreement of Purchase and Sale Clauses for the Purchase of an
Apartment Building**

1. The Vendor covenants, represents and warrants that:
 - a) It is not in default under or in respect of any of the tenancy agreements in any material respects.
 - b) It is not in contravention of the *Residential Tenancies Act* or any other present or prior legislation which affects rents which can be charged in the complex.
 - c) The Vendor has not received any notification from any municipal, provincial, federal or other statutory authority advising of any defects or work orders, expropriations, or any non-compliance with any building restrictions, by-law, regulation, ordinance or repair/modification request of any regulatory body including but not limited to the fire prevention/protection authorities or the building inspection authorities.
 - d) That the construction of the Property and the present use thereof are not in contravention of any applicable zoning restrictions, municipal by-laws or federal or provincial laws relating to the construction or development of the Property.
 - e) To the best of the Vendor’s knowledge the building located on the Property, its roof and all mechanical electrical and plumbing systems, together with all equipment are today and at Closing will be in good working order and repair. The Vendor confirms that to the best of its knowledge the Property does not contain any asbestos or other banned materials stored or installed on the Property.
 - f) The Vendor has not received any notice of complaint or violation of laws applicable to employees and has caused to be paid all amounts arising from Worker’s Compensation.
 - g) The Vendor shall continue to operate the building until the Closing Date in an efficient and businesslike manner and will not decrease rent, terminate any leases, accept any surrenders of leases (except in the ordinary course of business), or enter into any new service agreements in respect of the buildings without the prior written consent of the Purchaser, which shall not be unreasonably withheld.
 - h) The Vendor is not aware of any defects in the buildings located on the Property, either apparent or latent which have not been disclosed to the Purchaser.
 - i) The Vendor has obtained all Licenses required by the Municipality to operate the Property as a residential rental property and that all such licenses are in good standing;

- j) All utility meters servicing individual rental units were installed by and are serviced and billed through a duly licensed provider.
- k) The Property is not subject to the Resident Tenancies Act and the Vendor consents to the Purchaser or its agents making application to the Landlord and Tenant Board, at the Purchaser's sole expense, for a declaration confirming same and the Vendor will provide, on demand, such written authorizations as are required by the Purchaser to obtain such a declaration.

The representations, covenants and warranties shall survive for a period of one year from the date of the Closing Date and not merge on the completion of this transaction.

2. The Vendor shall make available to the Purchaser on or before the 5th day after acceptance of this Agreement the following, all of which shall be used by the Purchaser and its advisors for the purpose of evaluating the Property and all copies of which shall be returned to the Vendor if the Vendor's conditions set out below are not satisfied in writing or the transaction is not completed or terminated by the Purchaser for any reason:

- a) A schedule of all leases and/or tenancy agreements as at the date of execution of this Agreement containing the address, name of tenant, rental amount, term and other special conditions of occupancy, if any, the amount of any deposits, the date of the most recent interest payment and the amount of interest accrued but unpaid. Photocopies of all agreements or contracts (other than leases) relating to or affecting the Property and warranties. The Vendor shall certify that such schedule is true and correct.
- b) Photocopies of any current written lease agreements and any amendments thereto each one.
- c) Any Residential Rental License required by the Municipality.
- d) A list of current employees of the Vendor detailing each employee's name, date of first hiring, details of any interruption to the employment period, salary or wage, job description, unpaid vacation pay along with premiums paid for employment insurance, health insurance and Canada Pension Plan and any other information reasonably required by the Purchaser to assess the obligations associated with continuing each employee's employment following closing.
- e) Any plans and specifications of the buildings forming part of the Property covered by this Agreement, including any plans for future expansion or alteration of the buildings that are in the possession of the Vendor.
- f) Any survey of the Property in the possession of the Vendor showing the location of the buildings and all easements, rights-of-way and fences thereon.

- g) Operating records for the Property including, but not limited to, utility bills, municipal tax information including any pending municipal tax appeals, municipal notices pertaining to rent reductions and insurance information for 2009, 2010 and the current year up to the date of this Agreement.
 - h) Photocopies of all metering agreements entered into between the Vendor and the meter provider and a list of all rental units where tenants pay for individually metered utilities.
 - i) Deliver to the Purchaser, all studies, reports and /or recommendations relating to the physical buildings, fire compliance, equipment, soil reports, or services in the possession of the Vendor.
 - j) The most recent Phase 1 Environmental Site Assessment Report along with any other Environmental Assessment Reports of which the Vendor is aware.
3. This Agreement is conditional until 6:00pm on the 40th day after acceptance (the “due diligence period”) upon the following conditions. In the event that any of the conditions are not satisfied or waived within the due diligence period then this agreement shall be null and void and the Purchaser’s deposit returned in full without deduction. These conditions are included for the benefit of the Purchaser and may be waived at its option:
- a) Upon the inspection of the Property by such inspectors as the Purchaser may require and the obtaining of a report satisfactory to the Purchaser at its own expense. The Vendor agrees to cooperate in providing access to the building for the purpose of this inspection;
 - b) Review, at the Purchaser’s sole expense, of the documents and information referred to in section 2 above.

APPENDIX E

Sample Retainer Letter Clause: Ontario Multi-res Transfers

“We wish to confirm that the scope of our retainer does not include review, analysis or opinion on the Vendor’s past and current practices in managing the property, including whether the Vendor has complied with regulatory requirements such as those in the *Residential Tenancies Act*. These issues and the review of materials provided to you by the Vendor during the ‘due diligence period’ remains your responsibility, however we strongly recommend that you engage the appropriate professionals competent to audit the Vendor’s compliance with professional and regulatory operational standards for the management of multi-residential rental property in Ontario.”