

**LOT SALE AND PURCHASE AGREEMENT**

**1. Basic Features, Definitions and Schedules.**

1.1 The following are certain basic provisions and definitions which are part of and referred to in the subsequent provisions of this Agreement:

- a) Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- b) Purchasers GST No: \_\_\_\_\_
  
- c) Developer: Kling Holding Ltd.  
3918 St. Andrews Road, East St. Paul, Mb., R2E 1C8
  
- d) Lot Number: \_\_\_\_\_
  
- e) Civic Address: \_\_\_\_\_
  
- f) Purchase Price: \_\_\_\_\_
  
- g) Closing Date: The earlier of (i) \_\_\_\_\_ and (ii) the date 7 days after the date the Developer notifies the Purchaser that it has completed registration of the Plan of Subdivision. If the Plan of Subdivision is not registered by \_\_\_\_\_, the Developer and Purchaser may extend the Closing Date to such date as they may agree.
  
- h) Compliance Deposit: \$5,000.00
  
- i) Permitted Encumbrances: The conditions, reservations and exceptions contained in the original grant from the Crown; utility rights of way for utilities including gas, electric power, telephone, cablevision, sanitary sewers, development scheme caveats which may be registered by the Developer and servicing and/or development agreement caveats which may be registered by the Municipality.

1.2 The following schedules are attached and form part of this Agreement:

- Schedule A - Lot Grade Plans
- Schedule B - Architectural Guidelines

2. **Agreement of Purchase and Sale.** The Purchaser agrees to buy and the Developer agrees to sell the Lot subject only to Permitted Encumbrances for the Purchase Price on the terms and conditions of this Agreement.

3. **Payment of Purchase Price.** The Purchaser will pay the Purchase Price for the Lot as follows:

- a) A Deposit in the amount of \$10,000.00, now paid by the Purchaser to the Developer, the receipt of which the Developer acknowledges; and

- b) the balance of the Purchase Price, subject to adjustments, and the Compliance Deposit will be paid on or before the Closing Date.
4. **Deposit.** The Deposit will be applied by the Developer as follows:
- a) on the Closing Date the Deposit will be credited on account of the Purchase Price; or
  - b) if the Developer is not in default under this Agreement and the Purchaser fails to complete the purchase of the Lot in accordance with this Agreement or if the Purchaser repudiates this Agreement, then, at the Developer's option and on written notice to the Purchaser, the Deposit will be forfeited to the Developer as liquidated damages, in full and final satisfaction of any claims by the Developer against the Purchaser in connection with this Agreement; or
  - c) if the Purchaser is not in default under this Agreement and the Developer fails to complete the sale of the Lot in accordance with this Agreement or if the Developer repudiates this Agreement, then the Deposit will be refunded to the Purchaser upon demand, without prejudice to any other rights the Purchaser may have in respect of such failure or repudiation by the Developer.
5. **GST.** The Purchase Price does not include GST. If the Purchaser is not a registrant, GST will be an item of adjustment payable on Closing Date. If the Purchaser is a GST registrant, the Purchaser represents and warrants to the Developer that the Purchaser is registered under the Excise Tax Act and has been assigned the registration number indicated on the first page of this Agreement. The Purchaser agrees to assume the liability for the GST accruing in respect of this transaction and to indemnify and save harmless the Developer from and against any and all GST for which the Developer is required to pay relating to this Agreement.
6. **Adjustments.** All amounts payable in the nature of municipal property taxes and other charges normally the subject of adjustment relating to the Lot to be conveyed on a Closing Date shall be adjusted between the Purchaser and the Developer as at the Closing Date.
7. **Mortgages.** Notwithstanding and without limiting the Developer's obligation to deliver the Lot unencumbered, except for Permitted Encumbrances, the Developer shall have the right to discharge financing encumbrances charging title to the Lot from the sale of proceeds of the transaction. If the purchaser is obtaining a portion of the Purchase Price from the proceeds of a new mortgage, the Developer agrees to defer payment of that portion of the Purchase Price for the time required to register the transfer of land in series with that new mortgage, provided that the Purchaser pay interest on the portion of the Purchase Price remaining unpaid at the rate of 6% per annum and that the Purchaser's solicitor complies with reasonable trust conditions imposed by the Developer's solicitor until the Developer has been paid the total Purchase Price plus interest.
8. **Condition of Lot.** The Purchaser acknowledges and agrees that is purchasing the Lot on an "as is, where is" basis, based upon the results and evaluations by the Purchaser of the Purchaser's own due diligence searches, studies, examinations and inquiries and not upon any warranty or representation made by or on behalf of the Developer. The Purchaser agrees that the Developer shall have no responsibility or liability arising from flooding of the Lot, riverbank instability, soil conditions or any settlement or subsidence which may occur on the Lot. The Purchaser shall take all such flood protection and riverbank stability measures as it considers necessary. The Purchaser agrees to indemnify and save harmless the Developer from and against any and all liabilities, damages, losses, claims, awards, actions, proceedings, costs (including solicitor and client) and expenses brought against the Developer arising out of any environmental condition, riverbank or soils condition of the Lot or lands in the vicinity of the Lot, or as a result of the presence of hazardous substances in, on, over, under, adjacent to, or in the vicinity of the Lot. If the Lot will be located on the Red River (Lots 13-16), the Purchaser acknowledges being provided a copy of the Geotechnical Investigation and Slope Stability Review dated July 20, 2016 and acknowledges that this report has been provided for information purposes only without recourse to the Developer or Stantec Consulting Ltd.
9. **Developer's Services.** The Purchase Price shall include the installation by the Developer of all services as required by the Development Agreement (the "**Development Agreement**") between the Developer and the RM of West St. Paul (the "**Municipality**"). The Developer shall not be, or deemed to be, in default of this

Agreement if Developer is delayed or hindered in the installation of services as a result of any cause whatsoever beyond the control of the Developer. The Purchaser grants the Developer or its agents the right, with machinery and equipment, to enter upon the Lot to do such work as may be required in order that the Developer may carry out its obligations under the Development Agreement.

10. **Zoning and Building Restrictions.** The Purchaser acknowledges that the Development Agreement imposes several zoning and building restrictions and also several positive obligations which must be complied with by the Purchaser, including an obligation to complete construction of a dwelling within 3 years of the Closing Date. In accordance with the requirements of the Development Agreement, the Developer advises the Purchaser that:
  - a) The Purchaser will be required to pay a lot grade deposit at the time of placing their building permit deposit;
  - b) The Purchaser must have their plans approved by the Developer as set out below;
  - c) The Purchaser will be required to pay sewer charges to the Municipality as set out in the Development Agreement; and
  - d) The Purchaser is encouraged to use low flush and low water use appliances and comply with sewage disposal as set out in the Development Agreement.
  
11. **Compliance Deposit.** On or before the applicable Closing Date, the Purchaser shall pay to the Developer a \$5,000.00 Compliance Deposit in order to secure and guarantee the performance by the Purchaser of its covenants hereunder, including without restricting the generality of the foregoing:
  - a) compliance with all matters set out in this Agreement, including, without restricting the generality of the foregoing, architectural guidelines and proper disposal of excavated material; and
  - b) to be applied against any costs, expenses, and charges incurred by the Developer for which the Purchaser has an obligation to indemnify the Developer as set out in Section 12.
  
- 11.1 In the event that the Purchaser fails to carry out its covenants hereunder, the Developer, its agents or employees may (but shall not be obliged so to do) enter the Lot and do such things as are, in the Developer's opinion, necessary to remedy the Purchaser's default. At any time during which the Purchaser is in default of this Agreement, the Developer may apply and use the Compliance Deposit or any part thereof, to reimburse the Developer for monies expended by it to cause compliance with the terms hereof, or to do any work required of the Purchaser hereunder and done by the Developer on the Purchaser's behalf.
  
- 11.2 Following substantial completion of the residence on the Lot including final grading and landscaping of the Lot as required pursuant to this Agreement, the Developer shall, upon the request of the Purchaser, inspect the Lot as soon as reasonably possible, and if on such inspection and confirmation of satisfactory inspection all matters set out herein are fully complied with, release to the Purchaser the Compliance Deposit or part thereof remaining after use in accordance with subparagraph 11.1, without interest.
  
12. **Damages to Utilities and Services.** The Purchaser agrees to indemnify and save the Developer harmless from all costs, expenses, and charges related to:
  - a) the repair and replacement of damage to pavements, service connections, survey monuments, valves, manholes, catch basin covers, street signs, decorative fences, utilities and improvements on or abutting the Lot;
  - b) failure to dispose of construction litter or refuse in the manner required by the Development Agreement; and
  - c) the removal of earth, mud, clay or other similar substances which may be deposited on streets during the course of construction on the Lot.

The Purchaser covenants to pay all costs of repairs incurred by the Developer within 30 days of invoicing, failing which interest at 12% per annum shall accrue thereafter on the unpaid balance from the date of invoicing until paid.

13. **Lot Grading.** The Purchaser agrees to grade the Lot in a prudent manner in compliance the grade plan approved by the Municipality.
14. **Architectural Approval.** No construction is permitted on any Lot without the Developer's written approval in accordance with the "**Architectural Guidelines**" attached hereto as **Schedule "B"**. To obtain architectural approval, the Purchaser shall, prior to applying to the Municipality for a building permit, submit to the Developer, one set of drawings of the proposed dwelling showing:
  - a) Floor plans;
  - b) Elevations showing exterior material, finish and color;
  - c) Site plan showing location of dwelling, finish grade, walks, drives and fences proposed or existing; and
  - d) Additional information reasonably required by the Developer (collectively the '**Plans**').

The Developer, as the case may be, will grant or reject approval of such Plans or make recommendations for alteration of such Plans in a timely manner, and in doing so will not act arbitrarily. The Developer may at its sole and absolute discretion, waive in whole or in part any requirements respecting architectural guidelines respecting the Lot and in like manner shall be entitled to waive any and all similar provisions with respect to any other Lots in the subdivision.

The Developer shall not be responsible to the Purchaser for the manner in which it exercises its discretion in the application of these guidelines, including any perceived failure to enforce compliance with these provisions with respect to other Lots in the subdivision.

Construction of improvements on the Lot will not be commenced or carried out except in accordance with the Plans approved hereunder and in compliance with building permit(s) issued by the Municipality and all applicable laws, ordinances, rules, regulations or orders of the Municipality or other governmental authorities.

15. **Development Scheme.** The Lot will be subject to a caveat respecting the architectural guidelines.
16. **Representations and Warranties of Developer.** The Developer represents and warrants to the Purchaser and acknowledges that the Purchaser has relied thereon in entering into this Agreement and in concluding the purchase and sale of the Lot, that:
  - a) the Developer has full and sufficient authority to cause the registered owners of the Lot to convey legal and beneficial title for the Lot to the Purchaser; and
  - b) the Developer and the registered owners are not non-residents of Canada within the meaning of the Income Tax Act (Canada).
17. **Purchaser's Covenants.** The Purchaser covenants and agrees with the Developer:
  - a) to comply with all the by-laws, restrictions and requirements of the Municipality in respect of the Purchaser's construction and other activities on the Lot, including those set forth in the Development Agreement;
  - b) that the Developer shall be at any time entitled to enter upon the Lot to perform any work required by the Municipality;
  - c) that the Developer will plug the sewer service when the lot line services are installed. The Purchaser agrees that the plug shall not be removed to connect the dwelling, until the foundation excavation has been backfilled and the roof of the dwelling has been sheathed and shall indemnify the Developer and

the Municipality against all actions, claims, demands, damages, loss and costs, including legal and court costs suffered or incurred by the Developer or the Municipality arising out of any failure by Purchaser to do so;

- d) that the Purchaser shall install at its own expense all sewer connections to the dwelling to be erected on the said Lot, all in accordance with the requirements of the Municipality and subject to any warranties imposed under a Development Agreement relating to the Lot, and to secure from the Municipality all necessary permits in connection therewith;
  - e) to trench and backfill from the property line of the Lot to service connections to the dwelling for utilities at the Purchaser's expense and to pay all charges with respect to the above services and equipment;
  - f) to grade and sod all adjacent front and side boulevard areas abutting the Lot, together with any drainage or swale easements located on the Lot, all within two years following issuance of a building permit for the Lot;
  - g) to install driveway and driveway approach in either concrete or paving stone, or paved alternate approved by the Municipality, from the Road to the dwelling in accordance with applicable standards required by the Municipality including making any required adjustments to the manholes and or curbs, within 18 months following issuance of a building permit for the Lot;
  - h) to keep any road allowance, utility easement or other nearby public and private lands clear of all excess fill, aggregates or topsoil or any other construction debris;
  - i) to ensure that excavation will not occur, nor will excavation dirt be stored within two (2) metres in perpendicular width of any area of Lots subject to electrical, gas or telephone utility easements, or any property line where a fence is or will be constructed. Excavation dirt may not be stored between the excavation and the riverbank. Excavation shall only be stored within lot lines;
  - j) to be responsible for the disposal of excess excavation material promptly from the Lot and the cleanup of spillage of earth or any other foreign material on any road allowance or areas adjacent to the Lot and repair of damage to the roadway improvements as may be caused by or related to the Purchaser's activity on the Lot;
  - k) that all excess concrete will be taken off site and will not be disposed of within the subdivision;
  - l) to cut weeds on the Lot and adjacent boulevards and to keep the Lot free from construction debris, waste materials and the like and to keep the Lot in a neat and tidy condition and not to place or dump any article or thing within the subdivision, all in accordance with any and all by-laws, and/or specifications of the Municipality or the Developer;
  - m) to maintain any fences erected by the Developer on or adjacent to the Lot as would a prudent owner and not to alter the same as to colour or otherwise;
  - n) to ensure compliance with any regulations by the Province of Manitoba or the Municipality regarding road restrictions within the community or surrounding rights-of-way, including weight restrictions and seasonal access; and
  - o) that notwithstanding anything to the contrary, the provisions of this paragraph 17 will survive until the 5th anniversary of the Closing Date.
18. **Unregistered Plan.** It is understood by the Purchaser that the Lot may not be as described on a plan of subdivision which is finally registered in the Winnipeg Land Titles Office and the Purchaser understands that in such instances it is expected that the plan of subdivision will be registered within a reasonable time after the date of this Agreement. In such instances, the plan will be noted "unregistered" on the first page of this Agreement and the Lot will be described through the use of a tentative plan of subdivision. The Purchaser releases the Developer of any liability with respect to this Agreement in the event that there are differences between the tentative plan of subdivision and the final subdivision plan which is registered.
19. **Limited Access.** Prior to the Closing Date, the Purchaser shall only be entitled to enter upon the Lot for the limited purpose of site survey and planning which are required to be done for the Purchaser's application for foundation and building permits.

20. **Signage.** The Purchaser acknowledges and agrees that no signs may be erected on the Lot without the express written consent of the Developer. The Purchaser grants the Developer the right to enter upon the Lot and any premises upon the Lot to remove any offending signage, without liability for damage to the sign, the Lot or the premises. Direction signs by the Purchaser or his agents are not permitted within the community or on roads leading to the community.
21. **Closing Procedure.** On or before each Closing Date, the Developer will deliver to the Purchaser's solicitors, properly executed and in registerable form where applicable, the following documents:
- a) freehold transfer transferring title to the Lot to the Purchaser, free and clear of all liens, charges, claims and encumbrances save and except Permitted Encumbrances and those financial charges, if any, to be discharged by the Developer's solicitors on closing as provided herein; and
  - b) statement of adjustments;

On or before the Closing Date, the Purchaser will deliver to the Developer or the Developer's solicitors, the following:

- a) either the applicable GST or if the Purchaser is a GST registrant, a certificate satisfactory to the Developer, acting reasonably, and sufficient to relieve the Developer from any obligation to collect and remit any GST with respect to the sale of the Lot, and an indemnity of the Developer in respect thereof; and
  - b) payment of the Compliance Deposit;
  - c) payment of the balance to close in an amount equal to the adjusted Purchase Price for the Lot less the amount if any, to be advanced to the Purchaser under any mortgage financing arranged by the Purchaser in respect of such Lots, along with the Purchaser's undertaking to pay the balance of the Purchase Price plus interest as provided in paragraph 6 hereof forthwith upon completion of registrations in the Winnipeg Land Titles Office.
22. **Complete Agreement.** The Purchaser acknowledges that there is no warranty, collateral agreement or condition affecting the Lot other than as is expressed herein in writing, and that the terms and conditions hereof are the full and complete terms of this Agreement.
23. **Costs of Enforcement.** All legal and administrative costs and expenses (including solicitor-client costs) incurred by the Developer in connection with any default of the Purchaser under this Agreement shall be deemed to be secured hereby and charged upon the Lot and shall on demand be payable forthwith by the Purchaser to the Developer with interest at the Interest Rate calculated in the manner hereinbefore provided.
24. **Invalidity of Provision.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
25. **Assignment.** No assignment of this Agreement or any interest herein, or sale or transfer of the Lot or any portion thereof by the Purchaser shall be valid unless such assignment or sale or transfer is for the entire interest and is approved in writing by the Developer, in the Developer's sole and unfettered discretion.

If the Purchaser makes any assignment or sale or transfer or purported assignment, sale or transfer as aforesaid, without the Developer's approval as provided, then, in addition to all other rights and remedies the Developer may have at law or in equity, the whole of the Purchase Price and all other monies owed to the Developer by the Purchaser hereunder at the Developer's option shall thereupon become due and payable to the Developer. No agreement or relationship between the Purchaser and any assignee or any other person acquiring title or interest from or through the Purchaser shall require the Developer to transfer and convey any interest in the Lot to anyone other than the Purchaser unless agreed to in writing by the Developer. This provision shall not in any way be affected or changed by reason of the Developer having received payment of any portion of the Purchase Price from any assignee or other person. No assignment of this Agreement nor any sale or transfer of any interest in the Lot, whether approved by the Developer or not, shall operate so as to release the Purchaser from any of the covenants, conditions and obligations herein contained, including without limitation, any payment of principal, interest or other indebtedness due

hereunder. Without limiting the covenants and obligations herein of the Purchaser, the Developer may impose as one of the conditions to granting its consent that the Purchaser cause its successor in title to undertake in favour of the Developer (in form and content acceptable to the Developer) to perform and observe those covenants of the Purchaser hereunder which are then unperformed or are continuing.

- 26. **Notice.** Any notice, request or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be given by personal delivery or written electronic communication which results in a written or printed Notice being given to the applicable address set forth below:
  - a) in the case of Developer, addressed to the Developer at the address above written,
  - b) in the case of Purchaser, addressed to the Purchaser at the address above written,

or at or to such other address or addresses as any party hereto may from time to time designate to the other party in such manner.

Any Notice, if delivered between the hours of 8:30 a.m. and 4:00 p.m. Winnipeg time, shall be deemed to have been validly and effectively given and received on the date of delivery. Any notice, if sent by electronic communication, shall be deemed to have been validly and effectively given and received on the date of transmission, if received on that party's computer machine at the specified mail address.

- 27. **Binding Effect.** This Agreement shall be binding on the parties, their successors and assigns.
- 28. **Timely and Proper Execution of Obligations.** When any action is called for by this Agreement, it should be carried out properly and promptly.
- 29. **Waiver.** Waiver by either party of any of its rights hereunder shall not be construed as constituting a precedent.
- 30. **Survival.** Except as expressly provided otherwise, all representations and warranties of the Developer or the Purchaser set forth in this Agreement or in any document delivered in connection with the sale and purchase of the Lot will survive the closing of the sale and purchase of the respective Lot for a period of two years only from the Closing Date, after which they will be of no further force or effect except in respect of claims made by either party within such two year period from such Closing Date.
- 31. **Private Contractor.** For the purposes of The Workplace Safety and Health Act ("**WS&H**"), the Purchaser shall be the prime contractor, as defined in the WS&H, for all work performed by the Purchaser on the Lot pursuant to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**Kling Holding Ltd.**

per: \_\_\_\_\_

**[Purchaser]**

per: \_\_\_\_\_

**Schedule "A"**

**ARCHITECTURAL GUIDELINES**

**1. Purpose of the Guidelines**

The purpose of these Guidelines is to ensure a well-coordinated and completed development that will be consistent with the standard and design reflecting a natural extension of the Lister Rapids Park neighborhood.

**2. Form of "Letter of Approval"**

A "Letter of Approval" in the format attached to this Schedule "B" will be provided by the Developer upon its approval of the Plans.

**3. Guidelines**

The minimum size or area of the house must be 1400 square feet for a Bungalow, 1950 square feet for a Split Level and 1950 Square Feet for a Two Story. Basements are not included in these area calculations. Each house must include a minimum double attached garage.

Setbacks and yard requirements must be in accordance with the Municipality's Zoning and Building By-Laws.

Exterior materials should be higher quality with brick or stone encouraged for at least 20% of the house façade.

Color schemes are encouraged to be tasteful with reasonable contrast.

All well locations should be at a convenient location to allow for de-commissioning and hook up to municipal water at a later date when Municipal water service is provided to the area.

Driveways must be constructed in a manner designated by the Municipality in accordance with the Development Agreement. The sides of the Driveways must be appropriately sodded and landscaped to be aesthetically pleasing and consistent. All Driveways must be fully paved with concrete or interlocking pavers or asphalt.

Lots grading must be in accordance with Municipality's lot grading plans and the water drainage plans provided in Schedule "E" to the Development Agreement. Each Lot must be graded to handle all storm water falling within its property lines without draining onto adjacent Lots.

Accessory buildings must be constructed of the same materials and colour scheme and approximately roof pitch as the house in accordance with Municipality's Zoning and Building By-Laws for such buildings. Prefabricated metal or vinyl construction will not be allowed. Accessory buildings must be located in the rear yards.

All fencing must comply with Municipality Zoning and Building By-laws. No Fencing is permitted in the front yard of any Lot.

Landscaping (grading, sodding and planting or trees and shrubs on the yard) must be completed within 36 months of the transfer of title to the Lot Owner. Extensions will be allowed in extenuating circumstances.

All building sites are to be kept safe and orderly during construction with all garbage stored in appropriate storage containers during the construction period in accordance with requirements of this agreement. Work hours must also be in compliance with the Municipality's By-Laws.



**"Letter of Approval"**

LOT

OWNER: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

RE: LOT \_\_\_\_\_

# \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CIVIC \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

**ATTACHMENTS:**

Site Plan (showing all house & lot dimensions, driveway & any Developer fencing)

House Elevations

(Front, Sides & Rear elevations)

**HOUSE TYPE:**

Total Square Footage (above ground excluding garage and basement area): \_\_\_\_\_

**SITING:**

Lot width (FF) \_\_\_\_\_

Front Setback \_\_\_\_\_

Left Side  
Yard: \_\_\_\_\_

House Width: \_\_\_\_\_

Right Side \_\_\_\_\_

Yard: \_\_\_\_\_

**COLOURS AND MATERIALS:**

|                      | <b>Material</b> | <b>Colour</b>  |
|----------------------|-----------------|----------------|
| Predominant Material | _____           | _____          |
| Secondary Material   | _____           | _____          |
| Masonry/Stone        | _____           | _____          |
| Trim                 | _____           | _____          |
| Window Units         | _____           | _____          |
| Other                | _____           | _____          |
| Gutters & Downspouts | _____           | _____          |
| Fascia & Soffits     | _____           | _____          |
| Front Door           | _____           | _____          |
| O.H. Garage Door(s)  | _____           | _____          |
| Roof Shingles        | _____           | _____          |
| Stucco Finish Type   | body: _____     | details: _____ |

Developer Approval: \_\_\_\_\_