

The Corporation of the City of Port Colborne

By-law No. _____

Being a By-law to Authorize Entering Into an Agreement of Purchase and Sale with 1000427593 Ontario Inc. Respecting a portion of Con 2 PT Lot 29 RP, 59R10207; PT Part 1 RP at Barrick Road and Elm Street.

Whereas at its meeting of November 28th, 2023, Council approved the recommendations of Chief Administrative Office Report, Report No. 2023-133, Subject: Sale of Surplus City Property – Elm and Barrick; and

Whereas Council is desirous of entering into an Agreement of Purchase and Sale with 1000427593 Ontario Inc. for the sale of a portion of Con 2 PT Lot 29RP, 59R10207; PT Part 1 RP at Barrick Road and Elm Street for \$224,323.47 (plus HST) legal and survey expenses;

Now therefore the Council of The Corporation of the City of Port Colborne Enacts as follows:

1. That The Corporation of the City of Port Colborne enter into an Agreement of Purchase and Sale with 1000427593 Ontario Inc. Respecting Con 2 PT Lot 29RP, 59R10207; PT Part 1 RP at Barrick Road and Elm Street for \$224,323.47 (plus HST) legal and survey expenses, which agreement is attached hereto as Schedule “A”.
2. That the Mayor and the Acting Clerk be and each of them is hereby authorized and directed to sign said agreement, together with any documents necessary to complete the conditions of said agreement, and the Clerk is hereby authorized to affix the Corporate Seal thereto.
3. That the City Solicitor be and is hereby directed to prepare and register all such documents in the proper Land Registry Office as may be required to give full force and effect to this By-law.

Enacted and passed this 28th day of November 2023.

William C. Steele
MAYOR

Saima Tufail
ACTING CITY CLERK

SCHEDULE A TO BY-LAW _____

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is dated for reference as of December ____, 2023.

BETWEEN:

**THE CORPORATION OF THE CITY OF PORT
COLBORNE**
(the “**Vendor**”)

- and -

**1000427593 ONTARIO INC. and TWELVE WIDE REALTY
CORP.**
(collectively, the “**Purchaser**”)

In consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Real Property

Upon and subject to the terms and conditions of this Agreement, the Purchaser hereby agrees to and with the Vendor to purchase, and the Vendor agrees to and with the Purchaser to sell, those lands and premises described as PT LT 29 HUMBERSTONE, as shown as #2 Parcel on Schedule “B”, which is part of PIN 64141-0386 (LT) (the “**Property**”).

2. Payment of Purchase Price

The purchase price for the Property is TWO HUNDRED AND TWENTY-FOUR THOUSAND THREE HUNDRED AND TWENTY-THREE DOLLARS AND FORTY-SEVEN CENTS (\$224,323.47) (the “**Purchase Price**”) plus Harmonized Sales Tax (“**H.S.T.**”), payable as follows:

(a) Within two (2) business Days after the acceptance date of this Agreement by the Vendor, the Purchaser shall pay Twenty-Five Thousand Dollars (\$25,000.00) Dollars by wire transfer or certified cheque drawn against the trust account of a law firm in Ontario to Sullivan Mahoney LLP, In Trust, as the Vendor’s solicitors (the “**Deposit**”). The Deposit will be held in trust pending completion or other termination of this transaction, and will be credited on account of the Purchase Price on the Closing Date. The Deposit will not be invested in an interest bearing account; and

(b) On closing, the sum of ONE HUNDRED AND NINETY-NINE THOUSAND THREE HUNDRED AND TWENTY-THREE DOLLARS AND FORTY-SEVEN CENTS (\$199,323.47), subject to the usual adjustments, if any, payable by wire transfer or a certified cheque drawn against the trust account of a law firm in Ontario, to the Vendor, or as it may direct, on the Closing Date.

3. Title Clause

This Agreement is subject to title to the Property being good and free from all encumbrances, save only (a) any easements for servicing or utilities that do not materially affect the use of the Property, (b) municipal agreements, providing such are complied with or security has been posted to ensure compliance and completion, as evidenced by a letter from the Vendor and (c) registered restrictions, restrictive covenants, municipal by-laws or governmental enactments, providing such are complied with. The Purchaser will not call for the production of any title deeds, abstracts, survey or other evidence of title except such as are in the possession of the Vendor. The Purchaser will be allowed until ten (10) days prior to Closing to examine the title at their own expense. If within that time, any valid objection to title is made in writing to the Vendor which the Vendor shall be unable or

unwilling to remove, and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objections, be null and void and the Deposit shall be returned by the Vendor to the Purchaser forthwith without interest or deduction and the parties shall have no other liabilities to each other. Save as to any valid objections so made within such time, the Purchaser shall be conclusively deemed to have accepted title of the Vendor to the Property.

4. Assignment

This Agreement may not be assigned by the Purchaser without the express written consent of the Vendor, which consent may be arbitrarily withheld.

5. Conditions

INTENTIONALLY DELETED.

6. Purchaser's Acceptance of Real Property "As Is, Where Is"

- (a) The Purchaser acknowledges that the Vendor makes no representation nor gives any warranties with respect to the Property or the fitness of the Property for the Purchaser's intended uses, and, the Property is being sold by the Vendor and accepted by the Purchaser on an "As Is, Where Is" basis, including without limitation, state of title, outstanding work orders, zoning and development approval status, locations of any and all structures, walls, retaining walls or fences (freestanding or otherwise) or encroachments by buildings or fences or otherwise on the Property or adjoining properties or streets, soil condition, environmental status and as to quantity, quality or condition.
- (b) The Purchaser agrees that the Vendor shall not be obligated to perform any work in respect of the Property in order to bring the Property, or any part thereof, into compliance with any applicable standards of any relevant authority. The Purchaser also agrees not to make any claim against the Vendor in respect of any such work that may be required in order to bring the Property, or any part thereof, into such compliance.

7. Environmental

- (a) The Purchaser acknowledges and agree that the Vendor makes no representations or warranties whatsoever, either expressed or implied, as to the existence or non-existence of any asbestos, PCBs, radioactive substances or any other substances, liquids or materials or contaminants which may be hazardous or toxic or require removal and disposal pursuant to the provisions of any applicable legislation (all of the foregoing being hereinafter called "**Environmental Matters**") and that the Purchaser takes the Property "as is" and relies upon their own investigations, if any, in this regard. From and after the Closing Date, the Property shall be the sole risk of the Purchaser, and the Vendor, its successors and assigns and its employees and agents (collectively, the "**Vendor Parties**"), will have no further liability in respect of any Environmental Matters and the Purchaser covenants and agrees, such covenant to survive closing and not to merge on closing of this transaction, to indemnify and save harmless the Vendor Parties in respect of any Claims in any way related directly or indirectly to any Environmental Matters and in respect of orders or claims, charges or requirements whatsoever of any municipal, provincial, federal or other governmental body, board, commission, authority, department or ministry, or employees, officials or representatives thereof.
- (b) As of and from the Closing Date, the Purchaser shall release the Vendor Parties, and their successors and assigns, from and against all Claims, in any way arising, directly or indirectly by reason of the presence on the Property of any containment, pollutant, dangerous substance wastes (liquid or solid) or toxic substance or the escape thereof in the air or onto adjacent properties or lands including rivers,

streams, and ground waters, (collectively the “**Substances**”), whether produced, created or generated before or after the Closing Date and such indemnity shall include any order, decree, judgment or demand under law, regulation or order applicable thereto.

- (c) The Purchaser, its successors and assigns, hereby agree to indemnify and hold harmless the Vendor Parties, and their successors and assigns, from any and all Claims arising out or in any way connected with any state, quality or condition in, or of, the Property, including, but not limited to, the existence of any Substances existing as of, or prior to the Closing Date and thereafter, whether environmental or otherwise, whether imposed by law, equity or any federal, provincial or municipal law, rules or regulations or by any regulatory authority. These provisions shall survive and not merge on the completion of this transaction and any subsequent sale or transfer of the Purchaser’s interest in the Property.

8. Future Use

- (a) The Vendor and Purchaser agrees that there is no representation or warranty of any kind that the future intended use of the Property by the Purchaser is or will be lawful except as may be specifically provided for in this Agreement.
- (b) The Purchaser acknowledges and agrees that the Vendor is under no obligation by virtue of the sale of the Property to the Purchaser, to grant any approvals, including approvals for changes to the City of Port Colborne Official Plan or Comprehensive Zoning By-law, or with respect to site plan control, minor variances, or building permits, or to support approvals required by any other approval authority which may be necessary for any contemplated use of the Property by the Purchaser.

9. Closing Date

The transaction of purchase and sale shall be completed by no later than 5:00 p.m. on February ___, 2024 (the “**Closing Date**”).

10. Adjustments, Harmonized Sales Tax and Land Transfer Tax

Realty taxes, local improvements, and assessment rates shall be apportioned and allowed to the Closing Date (with the Closing Date to be for the account of the Purchaser). **The Purchaser will pay for the Vendor’s legal and surveying costs on Closing and these costs will be shown as credits in favour of the Vendor on the Statement of Adjustments.** H.S.T. shall be in addition to the Purchase Price. The Vendor will not collect H.S.T. only if the Purchaser provide to the Vendor an H.S.T. number as proof that they are both H.S.T. registrants under the *Excise Tax Act* (“**ETA**”), together a warranty and indemnity, satisfactory to the Vendor acting reasonably, certifying, among other things, that the Purchaser will self-assess and remit the H.S.T. payable and file the prescribed form required under the ETA. The foregoing warranties shall not merge but shall survive the completion of the transaction. The Purchaser shall be responsible for Land Transfer Tax exigible respecting the transaction.

11. Closing Documents

- (a) The Vendor and Purchaser shall cause their respective solicitors to enter into a Document Registration Agreement in prescribed form and content to facilitate the electronic registration required for closing.

- (b) The Vendor represents and warrants that it is not now and shall not at the time of closing be a non-resident of Canada within the meaning of the *Income Tax Act* (Section 116), and, it shall deliver on closing an affidavit verifying same.
- (c) The Purchaser agrees to sign and deliver the Re-Conveyance Agreement attached as Schedule “A” hereto. This Re-Conveyance Agreement will be registered on title to the Property on Closing in priority to any charges, liens or other encumbrances.
- (d) In addition to the other deliveries contemplated herein, the Vendor shall prepare and deliver the Transfer, save for the Land Transfer Tax Statements, and, the parties shall exchange, Undertakings to Readjust and Statement of Adjustments, as necessary.
- (e) The Vendor and Purchaser acknowledges and agrees that the exchange of closing funds, non-registrable documents and other items (the “**Requisite Deliveries**”) and the release thereof to the Vendor and Purchaser, will (a) not occur at the same time as the registration of the Transfer (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said solicitors.

12. Non-Merger

It is agreed that all covenants, representations and warranties of the parties herein contained shall not merge on the closing of the transaction or the delivery of the transfer but shall survive thereafter.

13. Binding Agreement/Time of the Essence

This Agreement, when executed by both parties shall constitute a binding contract of purchase and sale, and time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and Purchaser, or, by their respective lawyers who may be specifically authorized in that regard.

14. Entire Agreement

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported thereby other than as expressed herein in writing.

15. Tender

Any tender of documents or money hereunder may be made upon the solicitor acting for the party on whom tender is desired on the Closing Date, and, it shall be sufficient that a negotiable bank draft or certified cheque may be tendered in lieu of cash.

16. Non-Fettering

(a) Nothing in this Agreement shall derogate from, interfere with or fetter the discretion of any present or future Council in the exercise of its decisions or in the Vendor’s determinations or actions in the capacity of the Vendor as a municipal corporation, or the rights of the municipality to act or refuse to act in connection with its approval, regulatory or inspection rights as a regulator or municipal corporation.

(b) All rights, benefits and obligations of the Vendor under this Agreement shall be rights, benefits and obligations of the Vendor in its capacity as a party to this Agreement, but notwithstanding the other provisions of this Agreement, shall not derogate or interfere with or fetter the rights, benefits, and obligations of the Vendor in its function and capacity as a municipal corporation with respect to matters of general application. Without limiting the generality of the foregoing, nothing in this Agreement constitutes a waiver or exception of or from the Purchaser from complying with, obtaining and being subject to all necessary consents, permits, licenses or approvals from the Vendor in its capacity as a municipal corporation, in connection with any design, construction or development of anything on the Property.

17. Non-Registration

The Purchaser agrees not to register this Agreement nor notice thereof against the title to the Property. The Purchaser acknowledges that in the event that any registration respecting this Agreement or notice thereof occurs, the Vendor, in addition to any other rights or remedies it may have, shall be entitled to injunctive relief, and the Vendor may rely upon this provision in support thereof.

18. Business Day

For purposes of this Agreement, a business day means a day other than Saturday, Sunday or a statutory holiday for the Province of Ontario.

19. Severability

If any provision contained herein shall be found by a court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this Agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

20. Notices

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, facsimile transmission or registered mail to the address set out below or to such other address or facsimile number as may from time to time be the subject of a Notice:

To the Vendor:

The Corporation of the City of Port Colborne
66 Charlotte Street, Port Colborne L3K 3C8

Attention: Chief Administrative Officer

To the Purchaser:

10 Wilfrid Laurier Crescent
St. Catharines, ON L2P 0A1

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery, and if sent by registered mail, shall be deemed to have been validly and effectively given and received five (5) business days after the date it was sent, and if sent by facsimile transmission with confirmation of transmission prior to 5 p.m., shall be deemed to have been validly and effectively given and received on the day it was sent, unless the confirmation of transmission was after 5 p.m. or on a non-

business day, in which case it shall be deemed to have been given and received on the next following business day.

21. Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

22. Counterparts and Electronic Delivery

The parties agree that this Agreement may be executed in counterparts and transmitted by telecopier or email and that the reproduction of signatures in counterpart by way of telecopier or email will be treated as though such reproduction were executed originals.

23. Offer Open for Acceptance

Once executed by the Purchaser and delivered to the Vendor or its representative, this document shall constitute an irrevocable offer to purchase the Property on the terms and conditions herein contained, open for acceptance by the Vendor until 5 p.m. on _____, 2023, after which time, if not accepted, such offer shall become null and void.

[next page is signature page]

IN WITNESS WHEREOF the Purchaser have executed this Agreement the ____ day of _____, 2023.

1000427593 ONTARIO INC.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

TWELVE WIDE REALTY CORP.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the Vendor has executed this Agreement the ____ day of _____, 2023.

**THE CORPORATION OF THE CITY OF
PORT COLBORNE**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

SCHEDULE "A"

[Re-conveyance Agreement]**RIGHT TO RE-CONVEYANCE AGREEMENT**

THIS AGREEMENT is made as of the ____ day of _____, 2023.

BETWEEN:

**THE CORPORATION OF THE CITY OF PORT
COLBORNE**
(the "City")

- and -

**1000427593 ONTARIO INC. and TWELVE WIDE REALTY
CORP.**
(the "Purchaser")

RECITAL:

- A. By-law No. _____ passed by the Council for The Corporation of the City of Port Colborne on _____, 2023, authorized the acceptance of an Agreement of Purchase and Sale from the Purchaser for the lands legally described as XXXXXXXX, being all/part of PIN XXXXX (LT); (the "**Property**"), and, subject to the City reserving the right to a re-conveyance of the Property.
- B. The Purchaser has agreed to enter into an Agreement with the City to secure the City's right to a re-conveyance of the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. RIGHT TO RE-CONVEYANCE

- (a) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the Property in the event the Purchaser fails to:
 - I. enter into a Site Plan Agreement with the City for the construction of a multi-unit residential complex, within two (2) years of registration of the Transfer of the Property from the City to the Purchaser, and, which Site Plan Agreement shall be registered on the title to the Property at the Purchaser's expense;
 - OR**
 - II. obtain building permits and begin construction of a multi-unit residential complex, within three (3) years and six (6) months of registration of the Transfer of the Property;
 - OR**
 - III. fails to legally merge the Property with the adjoining lands owned by 1000427593 Ontario Inc. which are described as PT LT 29 CON 2 HUMBERSTONE PT 1 59R4355 & AS IN RO425838; PORT COLBORNE, being all of PIN 64141-0024 (LT) (the "**Adjoining Parcel**") on or before the date which is two (2) years from the date of registration of the Transfer for the Property. For greater certainty, this means that the right to re-conveyance in favour of the City will be triggered on or before two (2) years from the date of registration of the Transfer of the Property unless the Property and the Adjoining Parcel are both only owned by 1000427593

Ontario Inc. and neither the Property nor the Adjoining Parcel can be conveyed or mortgaged separately from another due to the application of Subsections 50(3) or (5) of the *Planning Act*.

In the event that the Purchaser has not satisfied the conditions within the timelines in (I) , (II) and/or (III) above for reasons which are beyond the control of the Purchaser, then the Purchaser and the City agree to enter into good faith discussions with respect to possible amendments to any of the timelines.

- (b) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the Property in the event the Purchaser becomes insolvent or makes an assignment for the benefit of creditors, prior to the completion of the actions described in Sections 1(a)(I), (II) or (III).
- (c) The right to re-conveyance is exercisable by notice in writing from the City to the Purchaser.
- (d) In the event the City exercises its right to a re-conveyance of the Property as provided for in Sections 1(a) or (b), it shall do so for the sum of TWO HUNDRED AND TWENTY-FOUR THOUSAND THREE HUNDRED AND TWENTY-THREE DOLLARS AND FORTY-SEVEN CENTS (\$224,323.47), subject to adjustments for the amount of any taxes then due and owing against the Property and the amount of Land Transfer Tax payable by the City for registration of the Transfer of the Property. Despite any improvements or investments made by the Purchaser, the Purchaser shall be deemed to have forfeited any investment so made and shall not be entitled to any compensation for same whatsoever, including monies expended for installing services. Further, there shall be no adjustment in respect of monies drawn upon by the City in respect of securities provided by the Purchaser.
- (e) On the date which is thirty (30) days after the City exercises its right to receive a re-conveyance of the Property (the “**Closing Date**”), the Purchaser will convey the Property to the Purchaser subject to the terms provided for in this Agreement. The Purchaser shall give vacant possession of the Property to the Purchaser on the Closing Date.
- (f) In addition to Section 1(e) above, the Purchaser undertakes to obtain and register good and valid discharges and/or releases of all liens, charges and any other encumbrances, which the Purchaser has caused to be registered against the title to the Property, forthwith following the City's notice of exercising its option to purchase the Property. Notwithstanding the foregoing, the Purchaser shall at all times indemnify and save harmless the City against all actions, suits, claims and demands whatsoever, which may be brought against or made upon the City and from and against all losses, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the City for or by reason of or on account of such liens, charges or other encumbrances.

2. **NON-ASSIGNMENT**

The Purchaser shall not have the right to assign this Agreement to any person or other entity without the prior written consent of the City, which consent may be unreasonably denied.

3. **SEVERABILITY**

If any provision contained herein shall be found by a Court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this Agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

4. **NOTICES**

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, facsimile transmission or email to the address set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) **City:**

The Corporation of the City of Port Colborne
66 Charlotte Street
Port Colborne, ON L3K 3C8
Attention:
Facsimile: (905) 835-2939
Telephone: (905) 835-2900

(b) **Purchaser:**

10 Wilfrid Laurier Crescent
St. Catharines, ON L2P 0A1

Attention:
Facsimile:
Telephone:

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile transmission or email with confirmation of transmission prior to 5:00 p.m., shall be deemed to have been validly and effectively given and received on the business day it was sent unless the confirmation of transmission was after 5:00 p.m. in which case it shall be deemed to have been received on the next following business day.

5. **SUCCESSORS AND ASSIGNS**

All of the covenants and terms in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

6. **COUNTERPARTS AND ELECTRONIC DELIVERY**

This Agreement may be executed and delivered by facsimile or electronic transmission and the parties may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Right to Re-Conveyance Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

[Signature page follows.]

IN WITNESS WHEREOF the Purchaser has executed this Agreement the ____ day of _____, 2023.

1000427593 ONTARIO INC.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

TWELVE WIDE REALTY CORP.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the City has executed this Agreement the ____ day of _____, 2023.

**THE CORPORATION OF THE CITY OF
PORT COLBORNE**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.