

1. Vendor's Right to Re-Conveyance of the Property

- (a) The Vendor reserves a right to a re-conveyance of the Property upon the terms and conditions contained in the Agreement substantially in the form attached as Schedule "B".
- (b) Upon execution of the Agreement of Purchase & Sale by both parties, the Vendor will provide the completed "Right to Re-Conveyance Agreement" in the form of Schedule "B" to this Agreement to the Purchaser, and the Purchaser shall forthwith execute the said Agreement as provided, and deliver same to the Vendor.
- (c) The Right to Re-Conveyance Agreement or Notice of same shall be registered on title to the Property on the Closing Date, in priority to any mortgage/charge or other encumbrance, and, at the expense of the Purchaser.
- (d) The Purchaser shall not transfer the Property to a third party unless and until it has completed the actions described in Sections 2(a)(I) and (II) of the Right to Re-Conveyance Agreement. This clause shall survive and not merge on closing of this transaction.

2. No Speculation

- (a) It is the express intention and agreement of the Purchaser and Vendor that there shall be no speculation with respect to all or any portion of the Property, and, that the Vendor shall have for a period of 20 years from the date of registration of the Transfer to the Purchaser, the option to re-purchase at the price per acre paid by the Purchaser herein, any part of the Property which has not been built upon by the Purchaser and which the Purchaser is desirous of selling, leasing or otherwise disposing of.
- (b) Prior to entering into any agreement respecting a sale, lease or other disposition of all or any portion of the Property which has not been built upon by the Purchaser, the Purchaser shall give notice thereof to the Vendor, and the Vendor shall have a period of thirty (30) days from actual receipt of such notice to notify the Purchaser of its intention to re-purchase that portion of the Property not built upon (the "**Unbuilt Lands**") referred to in the notice; failing such notification by the Vendor, the Purchaser shall be permitted to enter into such agreement within a period of six (6) months following receipt by the Vendor of the notice; and in the event such agreement is not completed, then the within option shall be deemed reinstated.
- (c) In the event that the Vendor exercises its option, there shall be constituted a binding agreement of purchase and sale between the parties to be completed thirty (30) days after such exercise. There shall be deducted from the re-purchase price any amount

for taxes then due and owing against such lands, and upon payment of the repurchase price, the Purchaser shall convey to the Vendor, free from all encumbrances whatsoever, all its right, title and interest in and to the said Unbuilt Lands.

- (d) In the event the Purchaser has substantially completed a building, the plans for which have been approved by the Vendor, and such building has been built in accordance with such plans, then the Purchaser may request a release respecting the provisions of this paragraph, and in the event that the Vendor determines, acting reasonably, that there remains no Unbuilt Lands on the Property, the Vendor shall execute an acknowledgment and release respecting the provisions of this paragraph.
- (e) The Purchaser acknowledges and agrees that the Vendor's right to a repurchase of the Property as contained herein shall be preserved by way of a Notice registered on the title to the entire Property on closing, or by such other instruments as may be determined by the Vendor prior to closing, and registered immediately after the Transfer on closing. The Purchaser further agrees to execute such documents as may be required by the Land Registry Office either before or after closing, to effect the registration of the said Notice or instruments.
- (f) Subsections (a) to (e) inclusive herein, shall not merge on the closing of this transaction, but shall remain in full force and effect thereafter.
- (g) Unbuilt Lands shall not include lands without any structures that are ancillary to the use of a structure on the Property.

**SCHEDULE “B”
RIGHT TO RE-CONVEYANCE AGREEMENT**

THIS AGREEMENT is made as of the ____ day of _____, 2022.

BETWEEN:

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

- and -

(the “**Purchaser**”)

RECITAL:

- A. By-law No. _____ passed by the Council for The Corporation of the City of Port Colborne on _____, 2022, authorized the acceptance of an Agreement of Purchase and Sale from the Purchaser for the lands described as [**NTD: Insert Legal Description**], being PIN [**NTD: Insert PIN**] (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 is hereby acknowledged), the parties agree as follows:

1. DEFINITIONS

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) “**Purchaser**” means [**NTD: Name of Purchaser**];
- (b) “**Property**” means the lands and premises described in Recital A of this Agreement;
and
- (c) “**City**” means The Corporation of the City of Port Colborne.

2. RIGHT TO RE-CONVEYANCE

- (a) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the entire Property in the event the Purchaser fails to:

- I. enter into a Site Plan Agreement with the City for the development of the Property [**NTD: Details of what is to be constructed**] within one (1) year 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. construct and occupy the [**NTD: Details of what is to be constructed**] on the Property within two (2) years of registration of the Transfer of the Property from the City to the Purchaser.

Notwithstanding the foregoing, the conditions in Subsection (I) may be altered, and/or, the time limits set out in Subsections (I) and (II) may be extended to a mutually agreed upon date in the event that it cannot be completed due to circumstances beyond the control of the Purchaser, all of which is at the reasonable discretion of the City.

- (b) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the entire 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 2(a)(I) and (II), at the reasonable discretion of the City.
- (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 2(a) and (b), it shall do so for the sum of [**NTD: Provide Original Purchase Price**], 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. Notwithstanding the foregoing, the Purchaser shall retain ownership of all studies, reports, drawings, plans and documents of any nature or kind, which have been commissioned, supplied or paid for solely by the Purchaser.
- (e) Within twenty-one (21) days of the City exercising its right to a re-conveyance as aforesaid, the Purchaser shall vacate the Property, and deliver to the City all keys to the Property, if any. Following the expiration of the twenty-one (21) day period, the Purchaser will electronically sign and release for registration, and the City shall be at liberty to register, a Transfer in favour of The Corporation of the City of Port Colborne. If the Purchaser does not vacate the Property in the time provided, the City shall take all steps necessary to take possession of the Property.

- (f) In addition to Section 2(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. 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.

3. NON-ASSIGNMENT

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

4. 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.

5. ARBITRATION

The validity, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and any dispute that may arise under or in relation to this Agreement, including its validity, construction or performance, shall be determined by arbitration upon application to a single Judge in the Superior Court of Justice in accordance with and pursuant to the provisions of the *Arbitration Act 1991, S.O. 1991 c. 17* and the arbitrator's decision shall be final and binding upon the parties and upon their respective successors and assigns and shall not be subject to appeal.

6. 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:
Telephone:

(b) **Purchaser:**

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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.

7. **HEADINGS**

The headings used herein shall be for convenience of reference only, and shall not affect the interpretation of this Agreement.

8. **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.

9. **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 _____, 2022.

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 _____, 2022.

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.