

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is dated for reference as of December ____, 2022.

BETWEEN:

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

- and -

KENNETH WAYNE BUSCH and WENDY SUE BUSCH
(collectively, the “Purchasers”)

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

(a) Upon and subject to the terms and conditions of this Agreement, the Purchasers hereby agree to and with the Vendor to purchase, and the Vendor agrees to and with the Purchaser to sell, those lands and premises described as Part of Borden Avenue Plan 792 Humberstone, E/S of Knoll Street; Port Colborne as shown on Schedule “A” attached (the “Property”);

(b) Notwithstanding paragraph 1(a) above, it is agreed that:

(i) the lands which are hatched in Schedule “A” hereto (which are approximately 26 feet of frontage and 120 feet of depth) will be conveyed in one Transfer to both Kenneth Wayne Busch and Wendy Sue Busch, as registered owners, and title to these lands will merge for purposes of the *Planning Act* with the lands to the south which are legally described as Part of Lot 16 Plan 792 Humberstone; Port Colborne, being PIN 64140-0132 (LT) and municipally known as 848 Steele Street, Port Colborne, and which are also owned by Kenneth Wayne Busch and Wendy Sue Busch; and

(ii) the lands which are cross-hatched in Schedule “A” hereto (which are approximately 40 feet of frontage and 120 feet of depth) will be conveyed in a second Transfer to Kenneth Wayne Busch as the sole registered owner. The Purchasers covenant with the Vendor not to merge these lands with any adjoining lands for purposes of the *Planning Act*; and

(c) Prior to Closing, the Vendor will obtain a reference plan (the “Reference Plan”), at its sole expense, which will describe the lands in Schedule “A” using registerable legal descriptions. The Purchase Price for each of the two Transfers described in paragraph (b) above will be allocated based upon the area of each of those parcels of lands as shown on the Reference Plan. For greater certainty, the Purchase Price (as defined herein) will not change based on the actual acreage of the Property as shown on the Reference Plan.

(d) Prior to Closing, the Vendor will register on title to the Property By-law 6990/28/22 for the City of Port Colborne which stops up and closes the Property (and other lands) pursuant to the provisions of the *Municipal Act, 2001*.

2. Payment of Purchase Price

The purchase price for the Property is ONE HUNDRED AND FIFTY NINE THOUSAND ONE HUNDRED AND SEVENTY FOUR DOLLARS (\$159,174.00) (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 Purchasers shall pay Ten Thousand Dollars (\$10,000.00) 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; and

(b) On closing, the sum of ONE HUNDRED AND FORTY NINE THOUSAND ONE HUNDRED AND SEVENTY FOUR DOLLARS (\$149,174.00), 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 the title to the Property being good and free from all encumbrances, save only any easements for servicing, municipal agreements, registered restrictions, restrictive covenants, municipal by-laws, or governmental enactments. The Purchasers are not to 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 Purchasers are to 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 Purchasers will not waive, then this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objections, be null and void and any deposit shall be returned by the Vendor to the Purchasers 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 Purchasers shall be conclusively deemed to have accepted title of the Vendor to the Property.

4. Assignment

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

5. Catch Basin and Servicing

(a) The Purchasers confirm their understanding that: (i) the Vendor will, at the request of the Purchasers, be re-locating a catch basin and related piping (collectively, the "**Catch Basin Equipment**") onto the Property prior to the Closing; and (ii) the Purchasers will assume all responsibility for, and all costs relating to, the operation, maintenance, repair and replacement (as the case may be) of the Catch Basin Equipment following Closing. The Purchasers hereby release the Vendor, its agents, contractors, or employees (collectively, the "**Vendor Parties**") from and against any all claims, losses, costs, damages, expenses, actions, lawsuits, liabilities and other obligations (collectively, "**Claims**") relating to the installation of the Catch Basin Equipment. The Purchasers also indemnify and save harmless the Vendor Parties in connection with any Claims that the Vendor Parties may incur in connection with the Catch Basin Equipment.

(b) The Purchasers acknowledge that the Purchasers shall be responsible, at their own expense, after obtaining any applicable permits, to install (if so required by the Purchasers) services or arrange for third parties to install such services, in compliance with applicable laws, which services include or may include curbs and curb cuts, sidewalks, internal roads and accesses to internal roads, internal lighting, storm water management systems, water mains, storm sewers and sanitary sewers. The Purchasers shall be responsible for obtaining all service connection approvals and paying service connection charges as applicable.

- (c) The Purchasers acknowledge that they shall be responsible to pay any fees, levies and charges relating to the Property as required by applicable laws at such time such payments are required whether presently foreseen or unforeseen.

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

- (a) The Purchasers acknowledge that the Vendor makes no representation nor gives any warranties with respect to the Property or the fitness of the Property for the Purchasers' intended uses, and, the Property is being sold by the Vendor and accepted by the Purchasers 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 Purchasers agree 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 Purchasers also agree 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 Purchasers acknowledge 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 Purchasers take 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 Purchasers, and the Vendor, its successors and assigns, will have no further liability in respect of any Environmental Matters and the Purchasers covenant and agree, 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 Purchasers 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 Purchasers, their heirs, 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 Purchasers' interest in the Property.

8. Future Use

- (a) The Vendor and Purchasers agree that there is no representation or warranty of any kind that the future intended use of the Property by the Purchasers is or will be lawful except as may be specifically provided for in this Agreement.
- (b) The Purchasers acknowledge and agree 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 Purchasers.

9. Closing Date

The transaction of purchase and sale shall be completed by no later than 5:00 p.m. on February 3, 2023 on which date vacant possession of the Property shall be given to the Purchasers (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 Purchasers). H.S.T. shall be in addition to the Purchase Price. The Vendor will not collect H.S.T. only if the Purchasers 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 Purchasers 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 Purchasers shall be responsible for Land Transfer Tax exigible respecting the transaction.

11. Closing Documents

- (a) The Vendor and Purchasers 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) 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.
- (d) The Vendor and Purchasers acknowledge and agree 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 Purchasers, 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 Purchasers 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 Purchasers agree not to register this Agreement nor notice thereof against the title to the Property. The Purchasers acknowledge 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 Purchasers:

Kenneth Wayne Busch and Wendy Sue Busch
848 Steele Street, Port Colborne, L3K 4Z6

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 Purchasers 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 December ____, 2022, after which time, if not accepted, such offer shall become null and void.

IN WITNESS WHEREOF the Purchasers have executed this Agreement the ____ day of _____, 2022.

WITNESS:

KENNETH WAYNE BUSCH

WENDY SUE BUSCH

IN WITNESS WHEREOF the Vendor 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.

SCHEDULE "A"
REAL PROPERTY

Part of Borden Avenue Plan 792 Humberstone, E/S of Knoll Street; Port Colborne, as more particularly shown in the sketch attached hereto.