

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), hereinafter referred to as the Memorandum, entered into on DATE , by and between the City of Port Colborne hereinafter referred to as the "City", " and Port Colborne Community Association for Resource Extension commonly known as "Port Cares", hereinafter referred to as the "Second Party," and collectively known as the "Parties" for the purpose of establishing and achieving various goals and objective relating to the transfer of the ownership of the city owned Chestnut Park property located at Clarke and Locke Streets, Port Colborne to Port Cares for the sole intended purpose of an affordable housing development as the property's future use

**WHEREAS**, the aforementioned Parties desire to enter into the herein described agreement in which they shall work together to accomplish the goals and objectives set forth;

**AND WHEREAS**, the Parties are desirous to enter an understanding, thus setting out all necessary working arrangements that both Parties agree shall be necessary to complete the repurposing of the Chestnut Park location to an affordable housing development

### **1. MISSION**

The purpose of this Memorandum of Understanding is to enable the completion of a comprehensive investigation and study of pre-development feasibility prior to the formal transfer of ownership of the Chestnut Park property from the city of Port Colborne to Port Cares for Port Cares for the sole purpose of creating a multi-unit apartment complex compliant with current affordable housing policies and practices.

### **2. PURPOSE AND SCOPE**

The Parties intend for this Memorandum of Understanding to provide the cornerstone and structure for any and all possibly impending binding contracts related to the transfer of property ownership from the City to Port Cares for the stated mission.

### 3. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

(a) It is the desire and the wish of the aforementioned Parties to this MOU Agreement that this document should not and thus shall not establish nor create any form or manner of a formal agreement or indenture, but rather an agreement between the Parties to work together in such a manner that would promote a genuine atmosphere of collaboration and alliance in the support of an effective and efficient partnership and leadership meant to maintain, safeguard and sustain sound and optimal managerial, financial and administrative commitment with regards to all matters related to the transfer of the Chestnut Park property from the City to Port Cares for the sole purpose of developing an affordable housing multi-unit rental development (the “**Transaction**”). The closing of the Transaction will be subject to the negotiation, execution and delivery of a mutually satisfactory definitive purchase agreement respecting the real property (the “**Purchase Agreement**”). The Purchase Agreement will evidence the terms of and implement the Transaction and will, when executed, constitute legally binding and enforceable agreements between the Parties. It is agreed that the Purchase Agreement and the completion of the Transaction are at all times subject to the approval of the Council for the City according to its sole, absolute and unfettered discretion.

(b) The memorandum in Appendix “A” hereto sets out the City’s understanding of how the Transaction is expected to proceed along with the anticipated roles and responsibilities of the Parties in connection therewith. Provided, however, it is agreed that neither Party will be required or legally bound to carry out any of the matters referred to in Appendix “A” until such time as they are incorporated into the Purchase Agreement.

### 4. TIMELINE

The above outlined scope and objective shall be contingent on Port Cares completing its pre-development feasibility study funded by Canada Mortgage and Housing and subsequently obtaining the necessary funds and financing required to proceed with the building and completion of the multi-unit affordable housing build. The term of this Memorandum of Understanding shall be for a period of 18 months from the aforementioned effective date and maybe extended upon written mutual agreement of both Parties. The Parties agree that it is their intent to enter into the Purchase Agreement within this 18 month timeline, after which time it is

agreed that the Parties will no longer make efforts to enter into the Purchase Agreement, unless otherwise agreed to in writing.

#### **5. AMENDMENT OR CANCELLATION OF THIS MEMORANDUM**

This Memorandum of Understanding may be amended or modified at any time in writing by mutual consent of both parties.

In addition, the Memorandum of Understanding may be cancelled by either party with 90 days advance written notice.

#### **6. MOU IS NON-BINDING**

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum of Understanding. The execution and delivery of this Memorandum of Understanding shall not result in the formation of any binding obligations on either Party, except as to the matters specifically referred to in section 13, which the Parties mutually agree to be binding upon execution and delivery of this Memorandum of Understanding.

#### **7. NOTICE**

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

#### **8. GOVERNING LAW**

This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the Province of Ontario

#### **9. ASSIGNMENT**

Neither party to this Memorandum of Understanding may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

## **10. ENTIRE UNDERSTANDING**

The herein contained Memorandum of Understanding constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this MOU desire or intend that any implementing contract, license, or other agreement entered into between the Parties subsequent hereto shall supersede and preempt any conflicting provision of this Memorandum of Understanding whether written or oral.

## **11. MOU SUMMARIZATION**

***FURTHERMORE***, the Parties to this MOU have mutually acknowledged and agreed to the following:

- The Parties to this MOU shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of the transfer of property and the realization of multi-unit affordable housing development.
- It is not the intent of this MOU to restrict the Parties to this Agreement from their involvement or participation with any other public or private individuals, agencies or organizations.
- The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of this affordable housing development, to the fullest extent possible.
- It is not the intent or purpose of this MOU to create any rights, benefits and/or trust responsibilities by or between the parties.
- The MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the agreement for the land transfer for its sole purpose.
- In the event that contributed funds should become necessary, any such endeavor shall be outlined in the Purchase Agreement or in a separate and mutually agreed upon written agreement by the Parties or representatives of the Parties in accordance with current governing laws and regulations, and in no way does this MOU provide such right or authority.

- The Parties to this MOU have the right to individually or jointly terminate their participation in this Agreement provided that advanced written notice is delivered to the other party.
- Upon the signing of this MOU by both Parties, this Agreement shall be in full force and effect.

## **12. ANNOUNCEMENTS**

Each of the Parties agree not to make any public announcement concerning the Transaction or related negotiations without the other Party's prior approval in writing, except as may be required by law. Where such an announcement is required by law, the Party required to make the announcement will inform the other Party of the contents of the announcement proposed to be made and will use reasonable efforts to obtain the other Party's approval for the announcement, which approval may not be unreasonably withheld.

This Agreement shall be signed by \_\_\_\_\_ and \_\_\_\_\_ and shall be effective as of the date first written above.

_____	_____
(First Party Signature)	(Date)

\_\_\_\_\_

_____	_____
(Second Party Signature)	(Date)

\_\_\_\_\_

## Appendix A

### Purpose

The purpose of this Memorandum of Understanding (MOU) is to outline and clarify the responsibilities and expectations of each party as well as next steps and estimated timelines related to Port Cares' affordable housing project to be constructed at Chestnut Park in the City of Port Colborne.

### Overview

Port Colborne, like many cities and towns across Canada, is exploring funding options, innovative approaches, and strategic partnerships to address affordable housing shortages and wait lists.

Port Cares has been developing plans to create more affordable housing units and have been reviewing the availability and suitability of various sites in Port Colborne.

At their November 24<sup>th</sup> 2020 meeting, Port Cares' Board of Directors approved a recommendation from their Property and Capital Committee to work with the City to acquire the Chestnut Park property and construct an affordable housing structure.

At their December 14<sup>th</sup> 2020 meeting, Port Colborne City Council passed a motion to support in principle an affordable housing project submitted by Port Cares and to convey the lands known as Chestnut Park to Port Cares for the development of this project.

### Land

Port Colborne City Council, at their meeting of December 14<sup>th</sup> 2020, supported a staff recommendation to declare the Chestnut Park lands as surplus and to convey the property to Port Cares for \$1.

### Zoning and Official Plan

The property is currently zoned "Public and Parks" and is designated "Urban Residential" in the City's Official Plan. This property will need to be rezoned to Fourth Density Residential (R4) to permit the use of an "Apartment Building –

Public” to allow for the proposed residential development. The City will initiate the Zoning By-law Amendment (ZBLA) application and will review setback provisions requested by Port Cares later in the development process. The City will issue notices for a public meeting as part of the planning process. The City will cover the cost of the planning application fee.

#### Survey

The City will retain a land surveyor to have the survey completed and deposited. This will be done at the City’s expense.

#### Appraisal

An appraisal will need to be completed to establish a value of the property to assist Port Cares with their financing strategy and funding applications to federal-provincial governments and other agencies. Port Cares will initiate this process and will cover the cost of the appraisal.

#### Servicing and Site Plan

Municipal water and sewer services are available for this property and are located nearby. These services will need to be brought to the property line and connected to the building once constructed. The costs of bringing the services to the property line and to the building will be at Port Cares’ expense. This project would be subject to site plan control and would require Port Cares’ consultant to attend pre-consultation meeting with the City and other agencies, and submit a servicing plan, grading plan, and site plan for review and comment.

#### Fees and Charges

Port Cares will be responsible for all building permit fees for this project. Also, as per the City’s Development Charges (DC) by-law, DCs for “multiple dwelling use” do not come into effect until October 7, 2022. Therefore, the application of DCs will depend on the construction timelines for the project and issuance of the building permits.

### Due Diligence

It is understood that Port Cares would like an extended due diligence period to allow them to secure project funding, conduct various studies and assessments of the property, complete the rezoning and Official Plan amendments, and finalize their building design. The land will not be transferred to Port Cares until they have completed their due diligence.

### Environmental Site Assessment (ESA) and Geotechnical Investigation

Port Cares are planning to complete a Phase 1 and Phase 2 Environmental Site Assessment on the property to determine if there is an soil contamination given the proximity of the site to industrial lands to the west. They will initiate this process and will cover the costs. Port Cares may also wish to have a geotechnical investigation completed. This would be at their expense.

### Park Equipment

Chestnut Park will be consolidated with nearby Lockview Park and will be upgraded into a park that is modern and more suitable for area residents. The playground equipment at Chestnut Park will be relocated to Lockview Park as part of a multi-year plan to invest in new amenities and structures for Lockview Park.

### Funding

It is understood that the City's funding commitment to Port Cares' affordable housing project is the donation of land as well as covering the cost of the planning applications and the survey.



Signed:

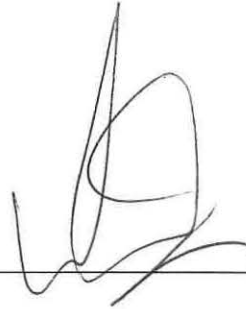
Corporation of the City of Port Colborne

Name: William C. Steele

Title: Mayor

Date: Feb 26 / 2021

Signature:



Name: Amber LaPointe

Title: City Clerk

Date: March 1 / 21

Signature:



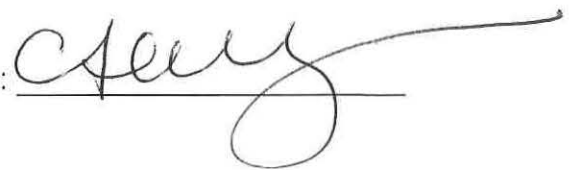
Port Cares

Name: Christine Clark Lafleur

Title: Executive Director

Date: Feb 25 / 2021

Signature:



Name: Mike Bendia

Title: Chairman, Board of Directors

Date: Feb 25 / 2021

Signature:

