

Agreement of Purchase and Sale Commercial

This Agreement of Purchase and Sale dated this 3rd day of November, 2022

BUYER: Niagara Regional Housing, agrees to purchase from
(Full legal names of all Buyers)

SELLER: The Corporation of the City of Port Colborne, the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address Haney Street (Closed by By-law 7022/60/22

fronting on the side of

in the City of Port Colborne

and having a frontage of more or less by a depth of more or less

and legally described as Haney St., Plan 765 Humberstone, Lying East of King Street Except VH2791; Port Colborne

..... (the "property")
(legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 2.00

Two Dollars

DEPOSIT: Buyer submits Upon Acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Dollars (CDN\$) 1.00

by negotiable cheque payable to.. the Seller "Deposit Holder"
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A **attached hereto form(s) part of this Agreement.**

1. IRREVOCABILITY: This offer shall be irrevocable by until on
(Seller/Buyer) (a.m./p.m.)

the day of, 20....., after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 2nd day of December

....., 2022 Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

3. **NOTICES:** ~~The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.~~ Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
(For delivery of Documents to Seller)

FAX No.:
(For delivery of Documents to Buyer)

Email Address:
(For delivery of Documents to Seller)

Email Address:
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
None

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**
None

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:
None

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):





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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the day of 15 days prior to closing 20..... (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (vacant land) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (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 lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** 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 Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

Niagara Regional Housing

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

(Date)

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

(Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

The Corporation of the City of Port

Colborne

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

(Date)

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

(Date)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein:

(Witness)

(Spouse)

(Seal)

(Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at this day of, 20.....
(a.m./p.m.)

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)

Listing Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

City of Port Colborne

(Seller)

(Date)

(Seller)

(Date)

Address for Service

(Tel. No.)

Seller's Lawyer Sullivan Mahoney LLP - David Willer

Address 40 Queen St., St. Catharines, ON L2R 6Z2

Email dwiller@sullivanmahoney.com

905-688-8030

905-688-5814

(Tel. No.)

(Fax. No.)

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

Niagara Regional Housing

(Buyer)

(Date)

(Buyer)

(Date)

Address for Service

(Tel. No.)

Buyer's Lawyer

Address

Email

(Tel. No.)

(Fax. No.)

FOR OFFICE USE ONLY

COMMISSION-TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale:

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)



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SCHEDULE "A"

1) Purchase Price

The Buyer agrees to pay the balance of the Purchase Price, subject to adjustments, by certified cheque drawn against a lawyer's trust account, to the Sellers, or as they may direct, on the completion of this transaction.

2) Closure of Public Highway

Prior to Closing, the Seller will register on title to the Property By-law 7022/60/22 for the City of Port Colborne which stops up and closes the Property pursuant to the provisions of the *Municipal Act, 2001*.

3) Seller's Conditions

The Seller's obligation to complete the transaction of purchase and sale contemplated under this Agreement is conditional for a period of twenty (20) business days after the date of acceptance of this Agreement (the "**Seller's Conditional Date**") upon the Seller being satisfied in its sole, absolute and unfettered discretion with respect to each of the following (the "**Seller's Conditions**"):

- (i) the Seller has obtained the approval to Council to proceed with the transactions contemplated by this Agreement; and
- (ii) the environmental condition of the Property and the review of any environmental reports relating to the Property.

The Seller's Conditions are for the sole benefit of the Seller and may be waived by the Seller in its sole, absolute and unfettered discretion in whole or in part by written notice to the Buyer or its solicitors. In the event that notice of the satisfaction or waiver of the Seller's Conditions has not been provided in writing by the Seller to the Buyer, or the Buyer's solicitors, prior to 5 pm on the Seller's Conditional Date, then this Agreement shall come to an end upon which it is agreed that neither party shall have any further rights or obligations hereunder and the Deposit will be returned to the Buyer without deduction.

4) Buyer's Conditions

(a) The Seller shall provide the Buyer with all consents or authorizations (written or otherwise) necessary or desirable to enable the Buyer to obtain information as the Buyer may consider necessary or advisable in determining the environmental condition of the Property within three (3) days after the request therefor, including unrestricted access to the Property for the purpose of Phase I and Phase II environmental testing. The Seller shall further provide the Buyer with all documents and reports in its control or possession

relating to the environmental condition of the Lands within three (3) days after the request therefor.

(b) In the event that the Buyer is not satisfied, in its absolute discretion, with results of any inspection, environmental test, survey, or response to inquiries or if any environmental contaminants are released on or before the date which is twenty (20) business days after the date of acceptance of this Agreement, the Region may, without limiting any other right that the Buyer may have at its sole option, rescind this Agreement by delivering a notice of termination to the Seller and in such event the Buyer shall be released from all obligations hereunder.

5) Post-Closing Covenants

Following Closing, the Buyer covenants with the Seller that it will use the Property to construct residential dwellings whose use will be consistent with the Seller's affordable housing policies.

6) Vacant Possession

The Seller covenants to deliver vacant possession of the Property to the Buyer on Closing.

7) Right of First Offer

(a) For a period of twenty (20) years after the Closing Date, in the event that the Buyer desires to sell the Property, or any portion thereof (the "**Subject Lands**"), then:

(i) the Buyer shall give notice in writing to the Seller (the "**Offer Notice**") of such desire, and shall stipulate in the Offer Notice the terms and conditions under which it proposes to sell the Subject Lands. The Seller shall have sixty (60) days following receipt of the Offer Notice to elect to purchase the Property on the terms set out in the Offer Notice;

(ii) if the Seller elects to so purchase the Subject Lands after receiving the Offer Notice, then the Buyer's notice of such election shall constitute a binding agreement of purchase and sale;

(iii) if the Seller does not elect to so purchase the Subject Lands after receiving the Offer Notice, then the Buyer shall be free to sell the Subject Lands, provided that the Buyer may not thereafter sell the Subject Lands on any terms more favourable in the aggregate to a purchaser than those set out in the Offer Notice without again offering the Subject Lands to the Seller on such more favourable terms in the manner provided above; and

(iv) the Buyer covenants and agrees not to sell the Subject Lands unless it has first complied with the terms hereof.

(b) The Seller acknowledges that the Buyer is unable to agree to the sale of Property by first right of refusal as set out in paragraph 6(a) above, or otherwise, without the consent of the Council for The Regional Municipality of Niagara ("**Council**") which has not yet been obtained. As a result, the Buyer agrees to seek the consent of Council within two months of closing (the "**Approval Deadline**") and the Seller acknowledges the Buyer will not expend monies to put any improvements upon the Property or bind the Property with any encumbrances prior to obtaining such consent. In the event the consent of Council is not obtained by the Buyer on or before the Approval Deadline, then the Seller, at its option and by providing written notice to the Buyer, may require a re-conveyance of title to the Property back to the Seller, and the Seller agrees to accept same with a closing date not greater than 60 business days following the Approval Deadline.

8) Assignment

The Buyer 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.

9) Notice

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Buyer's solicitors on behalf of the Buyer and by the Sellers' solicitors on behalf of the Sellers. If the last day of a time period is not a business day in the Province of Ontario, then the time period shall end on the next business day.