

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is dated for reference as of April ___, 2023.

BETWEEN:

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

- and -

13489116 CANADA INC.
(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

(a) 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 LT 28 CON 1 HUMBERSTONE ; S/T PC14323 PORT COLBORNE, being all of PIN 64156-0026 (LT) (the “**Property**”); and

(b) The Purchaser confirms its understanding that the Property will merge with the adjoining lands owned by the Vendor which are legally described as LTS 29, 30 & 31, PT LTS 41, 42 & 43, PL 861, BEING PTS 4 & 6 ON 59R9034; PORT COLBORNE, being all of PIN 64156-0026 (the “**Existing Parcel**”).

(c) At the request of the Vendor, either prior to or after Closing, the Purchaser agrees to submit an application and sign such documents or consents as may be required by the Vendor to pass a by-law under Subsection 50(4) of the *Planning Act* to deem Plan 861 not to be a registered plan of subdivision for purposes of Subsection 50(3) of the *Planning Act* with respect to the Existing Parcel. It is understood that the purpose of such a by-law would be to legally merge the Property and the Existing Parcel for purposes of the subdivision provisions of Section 50 of the *Planning Act*.

2. Payment of Purchase Price

The purchase price for the Property is ONE HUNDRED AND SIXTY-EIGHT THOUSAND AND SEVENTY-EIGHT DOLLARS (\$168,078) (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 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. The Deposit will not be invested in an interest bearing account; and

(b) On closing, the sum of ONE HUNDRED AND FIFTY-EIGHT THOUSAND AND SEVENTY-EIGHT DOLLARS (\$158,078), 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 or utilities (including, without limiting the generality of the foregoing, Instrument No. PC14323), municipal agreements, registered restrictions, restrictive covenants, municipal by-laws, or governmental enactments. The Purchaser 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 Purchaser 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 Purchaser 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 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

The Purchaser's obligation to complete the transaction of purchase and sale contemplated under this Agreement is conditional for a period of sixty business (60) days from the date of acceptance of this Agreement (the "**Conditional Date**") upon the Purchaser being satisfied in its sole, absolute and unfettered discretion with respect to each of the following (the "**Due Diligence Conditions**"):

- (a) The Purchaser's intended use of the Property complies with all zoning and other applicable laws; and
- (b) the physical and environmental condition of the Property.

The foregoing conditions are for the sole benefit of the Purchaser and may be waived by the Purchaser in its sole, absolute and unfettered discretion in whole or in part by written notice to the Vendor or its solicitors. In the event that notice of the satisfaction or waiver of this condition has not been provided in writing by the Purchaser to the Vendor, or the Vendor's solicitors, prior to 5 pm on the 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 Purchaser without deduction.

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 acknowledges that the Property is subject to an easement for electricity as in Instrument No. PC14323 and the Purchaser agrees to take title to the Property subject to this easement.
- (c) 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. The Purchaser covenants to use the Property as a parking lot in connection with the adjoining lands its owns.
- (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 the date which is fifteen (15) business days after the notice of the waiver of the Due Diligence Conditions is delivered by the Purchaser in accordance with Section 5 above (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). 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 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 Purchaser:

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 March ____, 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.

13489116 CANADA INC.

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 -

13489116 CANADA INC.
(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 LT 28 CON 1 HUMBERSTONE ; S/T PC14323 PORT COLBORNE, being all of PIN 64156-0026 (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 a multi-unit residential dwelling on the Property, or adjoining lands owned by the Purchaser which are legally described as LTS 29, 30 & 31, PT LTS 41, 42 & 43, PL 861, BEING PTS 4 & 6 ON 59R9034; PORT COLBORNE, being all of PIN 64156-0026 (the "**Adjoining Lands**"), within eighteen (18) months 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 dwelling on the Property or the Adjoining Lands, within thirty-six (36) months of registration of the Transfer of the Property;
- (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) or (II).
- (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 ONE HUNDRED AND SIXTY-EIGHT THOUSAND AND SEVENTY-EIGHT DOLLARS (\$168,078), 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:**

13489116 Canada Inc.

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.

13489116 CANADA INC.

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.