

## AGREEMENT OF PURCHASE AND SALE

This Agreement made in duplicate, this \_\_\_\_ day of March, 2023.

**BETWEEN:**

**ROSS VENTURES LTD.**, a duly incorporated company having its registered office at 535 Beaverbrook Court, in the City of Fredericton and Province of New Brunswick, E3B 1X6, hereinafter referred to as the "**Developer**"

**-AND-**

**THE CITY OF FREDERICTON**, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter referred to as the "**City**"

**WHEREAS** the City is the owner of a parcel of land designated as 100 Two Nations Crossing, Fredericton, NB and being more specifically identified as SNB PID 75401612 (the "**City Property**");

**AND WHEREAS** subject to the terms and conditions herein, the City has agreed to convey to the Developer all of that portion of the City Property identified as Parcel "A" on the attached Schedule A (the "**Development Property**") for consolidation with and development of the Developer's adjacent property identified as PID 75436907;

**AND WHEREAS** the Developer is in the process of acquiring certain properties located to the north and south of Two Nations Crossing, including the property shown on Schedule B (the "**Casey Property**") such to be conveyed to the City subject to the terms and conditions contained herein;

**AND WHEREAS** the Parties acknowledge that this Agreement shall be subject to the final approval of Council for the City of Fredericton.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the terms and conditions herein contained, the Developer and the City agree as follows:

### **1. CONVEYANCE OF PROPERTY**

1.1 The City agrees to convey to the Developer the Development Property and the Developer agrees to convey to the City the Casey Property, subject to the terms and conditions outlined herein.

## **2. PURCHASE PRICE AND METHOD OF PAYMENT**

2.1 As consideration, the Developer shall pay to the City on closing the sum of \$30,000 plus applicable taxes (if any) by way of certified cheque, bank draft, wire transfer or lawyer's trust cheque, and also convey the Casey Property to the City by way of Deed or Transfer.

2.2 Provided however, if the Developer is unable to convey the Casey Property to the City on Closing Date, the parties agree to negotiate in good faith to agree on the amount to be paid to the City in lieu of the value of the Casey Property, such amount, plus any applicable taxes, to be paid by the Developer to the City in addition to the \$30,000 plus applicable taxes referred to above. Failing an agreement between the parties on the value of the Casey Property, this agreement will be considered null and void.

## **3. ADJUSTMENTS**

3.1 On closing adjustment will be made for property tax.

## **4. CLOSING**

4.1 Subject to any other provisions contained herein, this Agreement shall be completed on or before May 31, 2023, or such earlier or later date as the Parties may mutually agree to in writing (the "**Closing Date**").

4.2 This Agreement shall be completed at 2:00pm (AST) on the Closing Date. Delivery of documents may be made upon the Developer or the City or their respective solicitors on the Closing Date.

## **5. ACCEPTANCE, CONDITIONS AND RESTRICTIONS**

5.1 The Parties shall indicate the date on which each has executed this Agreement in the space provided immediately above the execution line and upon such execution of the last Party signatory being communicated to the other Party or its solicitors pursuant to Section 10, this Agreement shall become a binding agreement.

5.2 The Parties acknowledge and agree that the completion of the sale of the Development Property as contemplated by this Agreement is conditional upon:

- (a) The City, at its sole cost and expense, completing a subdivision plan for the Development Property, a copy of which shall be provided to the Developer;
- (b) The Developer acknowledging and agreeing that any future access(es) to either 200 or 400 Two Nations Crossing properties shall be in accordance with the City's existing By-laws for access along Two Nations Crossing and, depending on the Developer's future development plans, may require planning approval from the City;
- (c) The Developer making application to the Planning Advisory Committee with respect to the approvals required to subdivide and rezone the Development Property and secure any

land use permissions required for the Developer's future intended use and development. The Developer shall be solely responsible for satisfying any Lands for Public Purposes requirements, either in the form of land or cash-in-lieu, as a result of the subdivision component of the application. The City shall consent, as owner, to the application by the Developer, provided that such consent shall not be deemed to infer or imply approval of said application through the standard planning process(es);

- (d) The parties acknowledging and agreeing that if the Developer has not awarded a contract to commence construction on the Development Property within 48 months of the Closing Date and is unable to provide reasonable evidence that the Developer is intending to proceed with development at that time, the City shall have the option at that time and in its discretion, to reacquire the Development Property upon which the development has not been commenced for the value paid for it by the Developer, free and clear of all liens, charges and encumbrances. The parties agree to execute a document evidencing the City's right and in registrable form, should the City wish to register this on title to the Development Property. For clarity, should the Developer proceed with development within 48 months of the Closing Date, the parties agree that the City's option to reacquire that property under development at that time shall be extinguished and, if registered, any document on title related to the City's option rights shall be removed from title to the property that the Developer has confirmed is under development at that time, at City's expense;
- (e) The Developer and the City shall be responsible for their own legal counsel and related services that may be required in connection with this Agreement;
- (f) The City and the Developer entering into a Development Agreement regarding the terms and conditions of the Developer's future development on the Development Property and the Developer's existing property (PID 75436907), such agreement to be to the satisfaction of both parties acting reasonably and in good faith;
- (g) All property agreements and transactions are subject to the Planning Advisory Committee's recommendation, if any, and City Council's authorization and approval;
- (h) The Developer and the City satisfying and complying with all other terms and conditions contained herein; and
- (i) The City, on or before the Closing Date, relinquishing and discharging at its expense all rights it currently has with respect to a certain 10m wide municipal services easement, located to the rear of the Developer's property, more particularly identified as PID 75436907 and as shown on the tentative subdivision plan attached hereto as Schedule A.

## **6. DUE DILIGENCE**

6.1 The Parties shall be allowed up to and including April 28, 2023 to conduct such due diligence as they deem necessary in respect of the property being purchased by them. If either party gives notice to the other on or before 5:00 pm (ADT) on April 28, 2023 that they are not satisfied with their due diligence inquiries this agreement shall be null and void.

6.2 Subject to Sections 6.1 the City covenants and agrees to discharge any registered liens, mortgages or charges affecting the Development Property at their own expense on or before the Closing Date. The Developer agrees to do the same regarding the Casey Property.

6.3 The Parties shall not call for the production of any title deed, abstract, survey or other evidence of title to the Development Property except as are in the control or possession of the Parties.

6.4 The Parties shall, upon request, forthwith deliver letters in a form satisfactory to the Parties addressed to such governmental authorities as may be reasonably requested by the Parties or their solicitors authorizing the release of any information as to compliance matters which such governmental authorities may have pertaining to the Development Property; provided, however, that nothing herein contained shall be deemed to authorize or permit the Parties to request any governmental or municipal inspections of the Development Property. If this Agreement is not completed the Parties shall keep any such information strictly confidential and shall not use it for any purpose whatsoever.

6.5 There is no condition, representation or warranty of any kind, express or implied, that the condition of the Development Property shall be appropriate for any particular use, unless expressly set out herein, or that the present use by the Parties or the future intended use by the Parties is or will be lawful or permitted, or that any sketch or survey delivered by the Parties is complete or accurate. Without limiting the generality of the foregoing, this Agreement shall not be affected by any change in the zoning or use of the Development Property prior to completion.

## **7. SITE CONDITION**

7.1 Subject to the Parties due diligence rights as set out in Section 6.1, the Parties agree that the Developer is purchasing the Development Property "as is" and the City is acquiring the Casey Property "as is."

## **8. OBLIGATIONS OF THE DEVELOPER AND THE CITY ON CLOSING**

8.1 The Parties shall execute and deliver to each other on or before the Closing Date, the following:

- (a) Transfer in the Land Titles System (City Properties) — such transfer in registerable form as may be required to transfer to the Developer all of the City's right, title and interest in the Development Property and such transfer in registerable form as may be required to transfer to the City all of the Developer's right, title and interest in the Casey Property;
- (b) Statement of Adjustments — a statement of adjustments if required;
- (c) HST Certificate — certificates of the Parties to indicate whether or not the Parties are registered under the Harmonized Sales Tax provisions of the *Excise Tax Act* and the Parties' registration number shall be provided therein;
- (e) Corporate Resolutions — certified copies of any required corporate resolutions of the Parties approving and authorizing the disposal of the Exchange Properties; and
- (f) Other — Such other documents specifically referred to in this Agreement relative to the completion of this Agreement and vacant possession of the Exchange Properties.

8.2 The documents referred to in Section 8.1 shall be prepared by the Solicitor for each Party at each Party's expense, unless otherwise specifically stated in this Agreement.

## 9. **RISK**

9.1 Until the Closing Date and completion of the sale of the Development Property, the Development Property shall be and remain at the risk of the City and the City shall hold all insurance policies and the proceeds of them in trust for the Developer, as their interest may appear. The City shall notify the Developer immediately, upon request, the particulars of insurance on The Development Property. In the event of substantial damage to the Development Property, the Developer may either have the proceeds of the insurance policy and complete the purchase or may cancel this Agreement.

9.2 Until the Closing Date and completion of the sale of the Casey Property, the Casey Property shall be and remain at the risk of the Developer and the Developer shall hold all insurance policies and the proceeds of them in trust for the City, as their interest may appear. The Developer shall notify the City immediately, upon request, the particulars of insurance on The Casey Property. In the event of substantial damage to the Casey Property, the City may either have the proceeds of the insurance policy and complete the purchase or may cancel this Agreement.

## 10. **NOTICE**

10.1 Any notice, approval or other communication required or permitted to be given hereunder ("Notice") shall be in writing and shall be sufficiently given if personally delivered or if sent by prepaid registered mail or if transmitted by facsimile:

Notice to the City:  
The City of Fredericton  
397 Queen Street  
Fredericton, NB E3B 1B5  
Attn: Manager of Real Estate

Notice to the Developer  
Ross Ventures Ltd.  
231 Saunders Street  
Fredericton, NB E3B 1B5  
Attn: Jeff Yerxa

with a copy to the Solicitor of each party.

City's Solicitor:  
City of Fredericton Legal Division  
397 Queen Street  
Fredericton, NB E3B 1B5  
Attn: Ryan Seymour  
Tel: 506-460-2637  
E-mail: [real.estate@fredericton.ca](mailto:real.estate@fredericton.ca)

Developer's Solicitor:  
Cox & Palmer  
77 Westmorland Street, Suite 300  
Fredericton, NB E3B 4Y9  
Attn: Daniel Stevenson  
Tel: 506-462-4754  
E-mail: [dstevenson@coxandpalmer.com](mailto:dstevenson@coxandpalmer.com)

10.2 Any Notice so given shall be deemed conclusively to have been given and received if personally delivered, if sent by facsimile or if sent by electronic mail on the day such Notice

was delivered if delivered on a Business Day and deemed to have been received on the next Business Day if such delivery was made on a non-Business Day. Any Notice sent by prepaid registered mail shall be deemed to have been delivered on the third (3<sup>rd</sup>) Business Day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a Business Day. No such Notice shall be mailed during any actual or apprehended disruption of postal services.

10.3 Either Party may from time to time change its address for service by written notice to the other Party by providing notice as stipulated under this section.

## **11. MISCELLANEOUS**

11.1 This Agreement shall constitute the entire agreement between the Parties and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise (including statutory), of any kind whatsoever except as set out in writing in this Agreement and all prior negotiations, proposals and writings pertaining to this Agreement or the subject matter hereof are superseded hereby.

11.2 This Agreement shall not be modified or amended except with the written consent of the Parties. In addition, no modification or amendment to this Agreement binds the Parties unless it is in writing and has been duly executed by both Parties.

11.3 This Agreement and everything relating hereto shall be construed and enforced in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

11.4 Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable without invalidating, limiting or impairing the remaining provisions of this Agreement.

11.5 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 in accordance with the terms of this Agreement or by an agreement in writing signed by the Parties or by their respective Solicitors who are hereby expressly appointed in this regard.

11.6 Neither Party shall assign any of the obligations and rights under this Agreement without the prior written consent of the other Party.

11.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors and assigns.

11.8 This Agreement shall be read with all changes of gender or number required by the context.

11.9 The Parties acknowledge that they have read this Agreement in its entirety. The Parties further acknowledge that they understand the terms and conditions herein contained and acknowledge that they have had the opportunity to obtain independent legal advice prior to signing this Agreement.

11.10 The Parties shall from time to time, and at all times, do or cause to be done, such further acts and execute and deliver, or cause to be executed and delivered, such further documents as shall be required in order for the Parties to fully comply with the requirements in respect to any HST imposed under any applicable legislation.

11.11 Each Party shall pay and be liable for all transfer taxes and other taxes applicable to or resulting from the transactions contemplated herein, together with all filing, registration or recording charges or fees payable in connection with the filing or registration of any deeds, transfers of land or other documents executed and delivered hereunder.

11.12 Each Party shall be responsible for their own legal fees relating to the transfer of the Development Property.

11.13 This Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be duly executed on the date herein below written.

In Witness Whereof this Agreement has been signed by the Developer on February \_\_, 2023.

**ROSS VENTURES LTD.**

\_\_\_\_\_  
Jeff Yerxa - President

In Witness Whereof this Agreement has been signed by the City on \_\_\_\_\_, 2023.

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Kate Rogers - Mayor

\_\_\_\_\_  
Jennifer Lawson – Clerk





**Schedule B**  
**The Casey Property**

