

AGREEMENT OF PURCHASE AND SALE

This Agreement made in duplicate, this ____ day of _____ 2023.

BETWEEN:

BUILDING PROSPERITY INC. In Trust for a company to be incorporated, a body corporate having its registered office at _____, **hereinafter referred to as “BPI”**

-AND-

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

WHEREAS BPI is or will become the owner of a parcel of land designated as 501 Gibson Street, located in Fredericton, New Brunswick, and being more specifically identified as SNB PID 01427780, (the “BPI Property”), which BPI Property is more particularly outlined on the sketch annexed hereto as Schedule “A”;

AND WHEREAS the City is the owner of the parcel of land designated as 762 Irvine Street, located in Fredericton, New Brunswick, and being more specifically identified as SNB PID 01476878 a portion of which is to be conveyed to BPI pursuant to the terms and conditions herein. The parent parcel is more particularly outlined on the sketch annexed hereto as Schedule “B” and the portion to be conveyed to BPI is shown in Schedule “C” (the “City Property”), such dimensions to be confirmed pursuant to this agreement;

AND WHEREAS BPI has agreed to convey to the City a $\pm 1,950$ m² portion of the BPI Property in exchange for the City conveying to BPI a $\pm 5,217$ m² portion of the City Property, (collectively the “Exchange Properties”), subject to the terms and conditions contained herein, including the payment of the Purchase Price to the City;

AND WHEREAS the Exchange Properties are generally depicted on the sketch annexed hereto as Schedule “C”;

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 BPI and the City agree as follows:

1. THE PROPERTIES

1.1 In consideration of the City agreeing to sell the City Property to BPI, BPI agrees to purchase the City Property from the City for the Purchase Price and to convey the $\pm 1,950$ m² portion of the BPI Property to the City.

2. PURCHASE PRICE AND METHOD OF PAYMENT

2.1 The Purchase Price of the City Property shall be the sum of One Hundred and Five Thousand Dollars (\$105,000.00) of lawful money of Canada, (the "Purchase Price"), plus any applicable taxes and adjustments, and subject to adjustment under Section 2.3 hereof. Should the dimensions of the BPI or City Property change (whether as a result of the land use approval process contemplated below or due to further discussion and negotiation between BPI and the City), the parties agree that the Purchase Price shall be adjusted accordingly to reflect the final dimensions and using the approach/formula used to establish the Purchase Price set out above: the Purchase Price shall be calculated at a rate of \$25.62 per square metre for the City Property and at a rate of \$14.70 per square metre for the BPI Property.

2.2 The Purchase Price shall be payable by Cheque, to the City of Fredericton, or by such other means of payment as the City may otherwise direct, on the Closing Date, subject to the adjustments stipulated within this Agreement.

3. ADJUSTMENTS

3.1 Adjustments shall be made on the Closing Date for all items normally adjusted between a vendor and purchaser in respect of the sale of Property similar to the City Property, including, without limitation and to the extent applicable to this transaction, realty taxes, local improvement rates, insurance, rentals, mortgage interest, municipal liens, water rates and fuel.

4. CLOSING

4.1 Subject to any other provisions contained herein, this Agreement shall be completed on January 15th, 2024, or such earlier or later date as the Parties may mutually agree to in writing (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 for the sale of the City Property and the conveyance of the BPI Property.

5.2 The Parties acknowledge that the Due Diligence Period, as defined in Section 6, is calculated from the date that this document becomes a binding agreement.

5.3 The Parties acknowledge and agree that the completion of the sale of the City Property and the conveyance of the BPI Property as contemplated by this Agreement is conditional upon all of the following conditions and understandings on or before the Closing Date:

(a) BPI completing the acquisition of the PID 01427780 prior to the Closing Date;

(b) BPI, at its sole cost and expense, shall be solely responsible for confirming the final dimensions of the Exchange Properties (such to be to the satisfaction of the Director of Planning and

Development) and for submitting any required application to the Planning Advisory Committee. The City shall consent to such application provided it is understood that such consent shall not be deemed to confer or imply any required approval from either the Planning Advisory Committee and/or City Council. BPI will provide the City with a copy of the tentative subdivision plan for the City's review, consideration and approval prior to going through the PAC process;

- (c) BPI, at its sole cost and expense and with the approval of the City, making application to the Planning Advisory Committee with respect to the approval of the subdivision plan for the Exchange Properties and receiving by the Closing Date any required planning or land use approvals (including any zoning approvals) required to proceed with the 88 unit residential development envisioned by BPI, such approvals to be upon terms and conditions satisfactory to BPI in its sole discretion;
- (d) Immediately upon the acquisition of the City Property, BPI undertakes to have its Solicitor consolidate the City Property with the BPI Property to create a single development which may have more than one PIDs to permit phasing of the development.
- (e) BPI and the City shall be responsible for their own legal counsel and related services that may be required in connection with this Agreement;
- (f) BPI and the City acknowledge that the Exchange Properties are being sold on an "as is, where is" basis, and that the City makes no representations or warranties whatsoever regarding the condition of the City Property, and BPI agrees to indemnify, save harmless and release the City regarding any and all claims, damages, or causes of action of any kind regarding the City Property; and that BPI makes no representations or warranties whatsoever regarding the condition of the BPI Property, and the City agrees to indemnify, save harmless and release BPI regarding any and all claims, damages, or causes of action of any kind regarding the BPI Property;
- (g) BPI acknowledges that they will be responsible, at their sole cost and expense, for any such application for any required environmental approvals or planning approvals to change any zoning, variances, etc. to meet the intended use plans for the City Property being acquired by BPI;
- (h) The parties acknowledge and agree that if BPI has not awarded a contract to commence construction and received a building permit to permit construction on the City Property within 36 months of the Closing Date and is unable to provide evidence to the City's satisfaction that BPI is intending to proceed with development of such parcel at that time, the City shall have the option at that time and in its discretion, to reacquire the City Property or any portion thereof upon which the development has not been commenced for the value paid for it by BPI, free and clear of all liens, charges and encumbrances. The parties agree to execute a document evidencing the City's right/option and in registrable form, should the City wish to register this on title to the subject land(s);
- (i) All property agreements and transactions are subject to the Planning Advisory Committee's recommendation, if any, and City Council's authorization and approval;

(j) BPI and the City satisfying and complying with all other terms and conditions contained herein;
and

(k) The Parties being satisfied with the results of their due diligence referred to in Section 6 on or before the end of the Due Diligence Period.

If either Party provides written notice to other that the conditions for such Party's benefit have not been satisfied by the date specified therefor, and such Party does not waive the conditions which are not satisfied, then this Agreement will become null and void and neither party shall have any further obligation to the other hereunder.

6. DUE DILIGENCE

6.1 The Parties shall be allowed up to and including the Closing Date, which shall be referred to as the "Due Diligence Period", to satisfy themselves that:

- (a) the title to the Exchange Properties are good and free from restrictions, mortgages, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for:
 - (i) any registered restrictions or covenants that run with the Exchange Properties, provided that such have been complied with, (ii) any registered municipal agreements and agreements with publicly regulated utilities, provided that such have been complied with, (iii) any easements and rights-of-way, provided that such have been complied with, (iv) any qualifications, reservations, provisos and limitations contained in or imposed by any applicable statute and/or any authority having jurisdiction over the Exchange Properties provided that such have been complied with, (v) any discrepancies in title or possession which would be disclosed by an up-to-date survey;
- (b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the Exchange Properties;
- (c) the Parties have conducted whatever other investigations the Parties, in their sole discretions, deem advisable with respect to the Exchange Properties including, without limitation, environmental, geotechnical, and hydrogeological matters, and any other matters of interest to the Parties with respect to the Exchange Properties and are satisfied, in their sole discretions, with the results of all such investigations.

6.2 If, within the Due Diligence Period, the Parties notify each other or their Solicitors of any valid objection to title or to any outstanding order, deficiency notice or directive or to the fact that the present use of the Exchange Properties may not be lawfully continued and which the Parties are unable or, in their discretion, determine not to remove, remedy or satisfy and which the Parties will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such matter, be at an end. Save as to any valid objection so made within the Due Diligence Period, and except for any objection going to the root of the title, the Parties shall be conclusively deemed to have accepted the Parties' title to the Exchange Properties.

6.3 Subject to Sections 6.1 and 6.2, the Parties covenant and agree to discharge any registered liens, mortgages or charges affecting the Exchange Properties at their own expense on or before the Closing Date.

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

agree that the Parties will deliver any sketch or survey of the Exchange Properties in the Parties' control or possession to the Parties as soon as practicable and prior to the last day allowed for examining title to the Exchange Properties.

6.5 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 Exchange Properties; provided, however, that nothing herein contained shall be deemed to authorize or permit the Parties to request any governmental or municipal inspections of the Exchange Properties. If this Agreement is not completed the Parties shall keep any such information strictly confidential and shall not use it for any purpose whatsoever.

6.6 There is no condition, representation or warranty of any kind, express or implied, that the condition of the Exchange Properties 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 Exchange Properties prior to completion.

7. SITE CONDITION

7.1 Subject to the Parties satisfying themselves with respect to the prior conditions stipulated in Section 5.3, the Parties agree to exchange the Exchange Properties "as is".

8. OBLIGATIONS OF BPI AND THE CITY ON CLOSING

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

- (a) Deeds/Transfers – such conveyancing documents in registerable form as may be required to transfer to BPI all of the City's right, title and interest in the City Property and as may be required to transfer to the City all of BPI's right, title and interest in the BPI property;
- (b) Subdivision Plan – such subdivision plan in registerable form as may be required to subdivide the existing PIDs 01427780 and 01476878;
- (c) Statement of Adjustments – a statement of adjustments prepared by the City;
- (d) 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

Not applicable.

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 BPI

Ali Farahani
Unit 4
920 King St W
Kitchener, ON, N2G 1G4

with a copy to the Solicitor of each party.

City's Solicitor:

Davis Law
3707 Route 102 Highway
Island View, NB E3E 1E9
Attn: Jim Davis
Tel: 506-453-1998
E-mail: jim@davislaw.ca

BPI's Solicitor:

McInnes Cooper
1700 – 1 Germain St
Saint John, NB E2L 4V1
Attn: Scott Wilson
Tel: 506-643-6500
E-mail: scott.wilson@mcinnescooper.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 (3rd) 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, provided however that BPI may assign this Agreement without the consent of the City to a new corporation controlled by BPI or Ali Farahani.

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 Exchange Properties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

PARTIES TO SIGN ON THE FOLLOWING PAGE

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 BPI on _____, 2023.

BUILDING PROSPERITY INC. – In Trust

Per: Ali Farahani, President

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

THE CITY OF FREDERICTON

Kate Rogers
Mayor

Jennifer Lawson
City Clerk

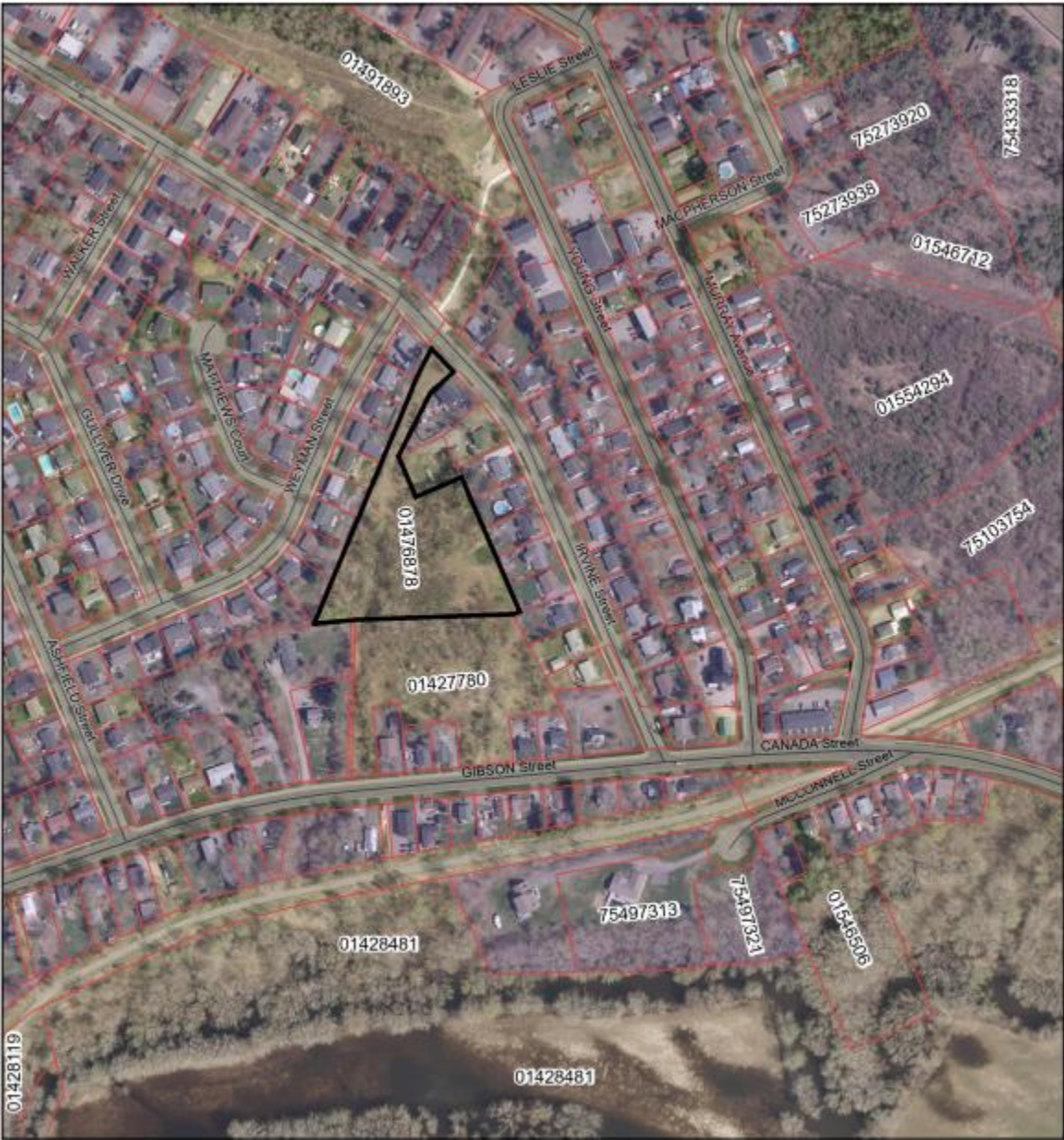
Schedule "A" – BPI Property



Scale/Échelle 1:1881

Date: 2023/08/31 14:52:18

Schedule "B" – City Property



Scale/Échelle 1:3762

Date: 2023/08/31 14:56:17

Schedule "C" – The Exchange Properties

[NOTE: dimensions to be confirmed and a final subdivision plan inserted prior to Closing]



PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, **JENNIFER LAWSON**, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

- 1. That I am the City Clerk of the City of Fredericton, one of the Parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
- 2. That the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
- 3. That the signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature “Jennifer Lawson” subscribed thereto is my signature.
- 4. That the Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.
- 5. That the City of Fredericton is a municipal corporation and has no share capital.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ____ day of)
 _____, 2023.)

_____)
 Alexa Donovan)
 A Commissioner of Oaths)
 My Commission Expires)
 December 31, 2026)

_____)
 Jennifer Lawson