



TO: GENERAL COMMITTEE

SUBJECT: SALE OF CITY OWNED PROPERTY ON ARDAGH ROAD

WARD: 6

PREPARED BY AND KEY CONTACT: A. MILLS, MANAGER OF LEGAL SERVICES, EXT. 5051

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That The Corporation of the City of Barrie (the "City") remove its condition on Council approval contained in the Agreement of Purchase and Sale (the "APS") between the City and 2596843 Ontario Inc. (the "Buyer") attached as Appendix "B" to Staff Report LGL004-19.
2. That should the Buyer remove its rezoning and due diligence condition contained in the APS, the City owned property legally described as Part of Block 264, Plan 51M-371, being Part 4 on 51R-24641 save and except Part 5 on 51R-24641 and Part 3 on 51R-28750, S/T Easement over Part 1 on Plan 51R-29350 as in LT427282; City of Barrie and being part of PIN# 58763-0093 (LT) as shown on Appendix "A" to Staff Report LGL004-19 (the "Subject Property") be sold to the Buyer.
3. That the City Clerk be authorized to execute all associated and required documents necessary to remove the condition of sale or amend any term contained in the APS on the recommendation of and in a form approved by the Director of Legal Services.
4. That the sale proceeds be transferred to the Tax Capital Reserve.

PURPOSE & BACKGROUND

Report Overview

5. The purpose of this staff report is to recommend the sale of the Subject Property in accordance with the terms and conditions contained in the attached APS.
6. The Subject Property is approximately .22 hectares in area and was acquired by the City for \$2.00 on May 9, 1995 pursuant to council motion 1994-P-17, which required its dedication as consideration for an Official Plan Re-Designation.
7. On April 16, 2018, City Council adopted motion 18-G-069 regarding SURPLUSSING OF PROPERTY - ARDAGH ROAD (WARD 6) as follows:
 1. That the Property identified on Appendix "A" to Staff Report LGL006-18, being all of PIN# 587630093 (LT) respectively (the "Subject Property") be declared surplus to the needs of The Corporation of the City of Barrie (the "City").
 2. That the Subject Property be offered for sale to 2596843 Ontario Inc. (the "Purchaser") in order to facilitate the development of a residential extension of the mixed-use development contemplated for the adjacent property at 224 Ardagh Road.

3. That the City Clerk be authorized to execute an Agreement of Purchase and Sale (“APS”) conditional upon Council approval in a form approved by the Director of Legal Services.
4. That the Purchaser be permitted to make Official Plan and Zoning By-law Amendment applications for the Subject Property and include it in Development Applications. (LGL006-18) (File: L17-97)

ANALYSIS

8. An appraisal of the Subject Property was completed by Andrew, Thompson and Associates which estimated market value based upon its highest and best use to be \$325,000.00 with an effective date of valuation being May 10, 2018.
9. The purchase price contained in the APS reflects the appraised value.
10. The Subject Property is currently zoned Major Institutional (I-M) and designated Institutional in the Official Plan.
11. The Purchaser will require an Official Plan and Zoning By-Law amendment as well as site plan approval for its proposed development. This is entirely at the Purchaser’s risk and expense and will be considered independently of the sale process.
12. The APS is conditional upon the Purchaser obtaining a rezoning and completing its due diligence investigations. This condition must be removed within 18 months following the removal of the City’s condition pertaining to Council approval.
13. The notice provisions of the Sale of Property By-law 95-104 have been complied with by way of publication of a notice in a newspaper having general circulation in Barrie.
14. Disposition of the Subject Property and development in conjunction with lands to the east currently owned by the Purchaser will create a revenue source for the City through the sale proceeds, development charges and future property taxation while reducing City liability on the unutilized vacant land.

ENVIRONMENTAL MATTERS

15. The Purchaser has agreed to purchasing the Subject Property on an “as is, where is” basis that is absent of any representations or warranties made by the City with respect to soil or environmental condition.
16. The existing trees on the Subject Property have been excluded from the sale and will be relocated by staff prior to the transaction closing.

ALTERNATIVES

17. The following alternative is available for consideration by General Committee:

Alternative #1 General Committee could choose not to sell the Subject Property to the Purchaser and retain ownership.

This alternative is not recommended as pursuant to an internal circulation, the Subject Property is not required for City purposes and the sale would create a



source of revenue to the City while reducing the City's liability and maintenance costs upon unutilized land.

FINANCIAL

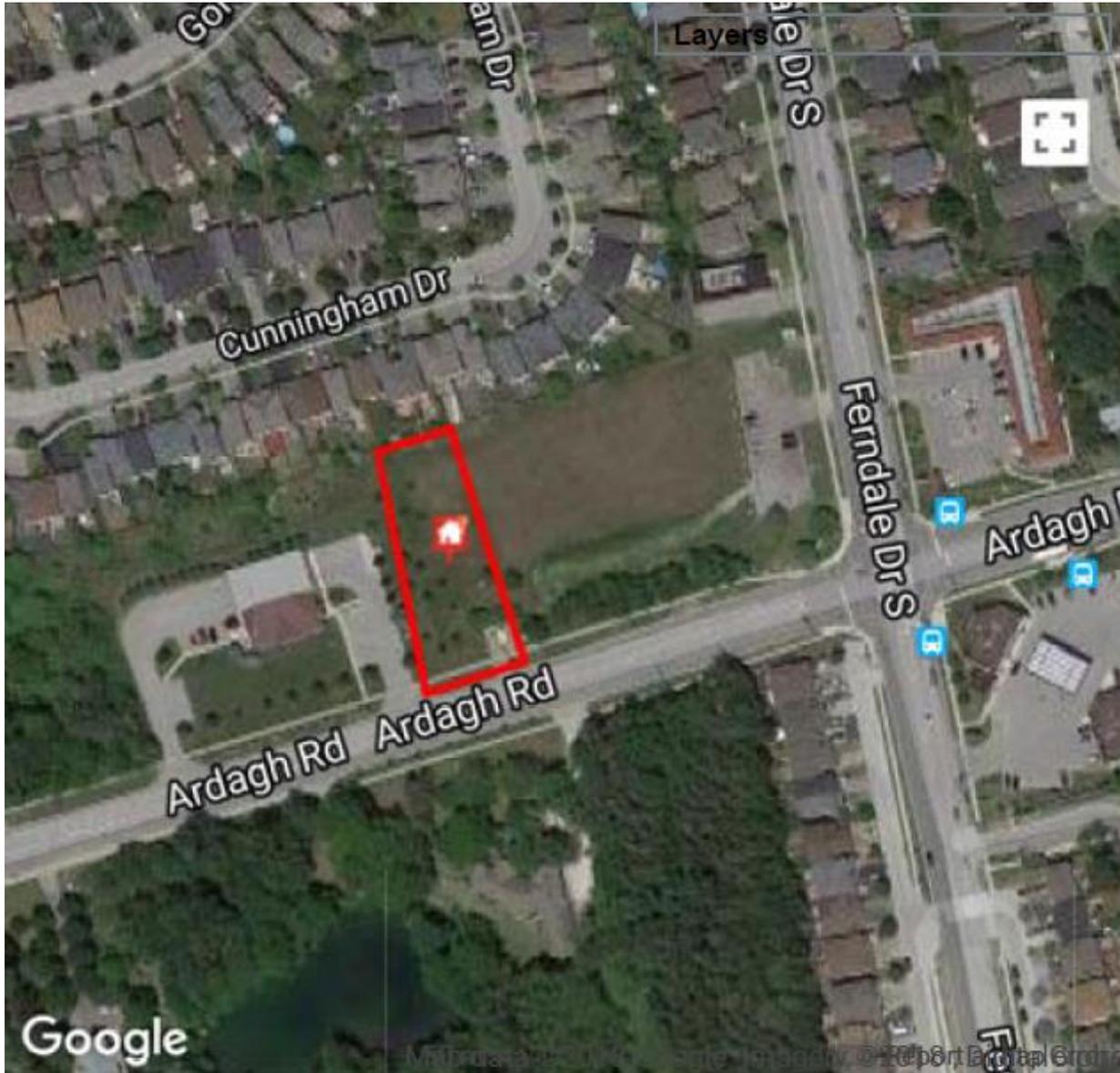
18. The Purchaser shall pay all of the City's costs and fees associated with the transfer of the Subject Property including appraisal, advertising, survey and legal.
19. The sale proceeds will be transferred to the Tax Capital Reserve.

LINKAGE TO 2018–2022 STRATEGIC PLAN

20. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2018-2022 Strategic Plan.

APPENDIX "A"

Subject Property



APPENDIX "B"

Agreement of Purchase and Sale (APS)



Agreement of Purchase and Sale
Commercial

Form 500
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 8 day of January, 2019

BUYER, 2596843 ONTARIO INC. (Full legal names of all Buyers), agrees to purchase from

SELLER, THE CORPORATION OF THE CITY OF BARRIE (Full legal names of all Sellers), the following

REAL PROPERTY:

Address Ardagh Road

fronting on the N/A side of N/A

in the City of Barrie

and having a frontage of N/A more or less by a depth of N/A more or less

and legally described as Part of Block 264, Plan 51M371, being Part 4 on 51R-24641 save and except Parts 5 of Plan

51R-24641, save and except Part 3 of 51R-28750, S/T Easement over Part 1 on Plan 51R-29350 as is L.P. 427282
in the City of Barrie, County of Simcoe and being Part of PIN 587630093
as shown on Schedule B. (Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 325,000.00

THREE HUNDRED TWENTY FIVE THOUSAND Dollars

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

TEN THOUSAND Dollars (CDN\$) 10,000.00

by negotiable cheque payable to Seller's Solicitor in Trust "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 B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 5:00 a.m./pm on the 1st day of February, 2019, 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 day of See Schedule A, 20. 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):

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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the day of 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 [..... See Schedule "A"] 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 telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone 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 Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office 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, Credit Union, 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 SELLER(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:

.....
(Witness)
.....
(Witness)
2596843 Ontario Inc. (Seal) DATE Jan. 08, 2019
(Buyer/Authorized Signing Officer) (Seal)
.....
(Buyer/Authorized Signing Officer) (Seal)

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:

.....
(Witness)
.....
(Witness)
The Corporation of the City of Barrie (Seal) DATE Jan 22/19
(Seller/Authorized Signing Officer) (Seal)
.....
(Seller/Authorized Signing Officer) (Seal)

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 3:55 a.m. (p.m) this 22nd day of January, 2019.

.....
(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage	Tel.No.(.....)
(Salesperson / Broker Name)	
Co-op/Buyer Brokerage	Tel.No.(.....)
(Salesperson / Broker 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.

.....
(Seller) DATE Jan 22/19
.....
(Seller) DATE

Address for Service

..... Tel.No.(.....)

Seller's Lawyer

Address

Email

..... 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.

..... DATE

..... DATE

Address for Service

..... Tel.No.(.....)

Buyer's Lawyer **Bianchi Presta LLP Attn: Mr. Domenic Presta**

Address **9100 Jane St., Bldg A, 3rd Fl, Vaughan, ON, L4K 0A4**

Email **dpresta@bianchipresta.com**

..... 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
Agreement of Purchase and Sale - Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, 2596843 ONTARIO INC., and

SELLER, THE CORPORATION OF THE CITY OF BARRIE

for the purchase and sale of **Ardagh Road**

..... dated the **8** day of **January**, 20**19**

Buyer agrees to pay the balance as follows:

1. BALANCE DUE ON CLOSING

The Buyer agrees to pay the balance of the Purchase Price, subject to adjustments, in cash or by certified cheque to the Seller on completion of this transaction.

2. DEPOSIT

The Buyer agrees to deliver the deposit cheque payable to The Corporation of the City of Barrie upon acceptance to the Seller's solicitor, to be held in escrow pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

3. CLOSING

The Seller agrees to provide vacant possession of the property on or before closing.

4. DATE AND PLACE OF CLOSING

This Agreement shall be completed by no later than 4:30 p.m. sixty (60) days following the removal of the due diligence condition set out in clause 7 below (the "Date of Closing").

5. CONDITIONS

This Agreement is conditional upon the Buyer obtaining a rezoning for the property for commercial/multiple residential use and the Buyer performing their due diligence relating to soil conditions, planning approvals or any study necessary to the Buyer's intended development of the property to the satisfaction of the Buyer, in their sole and absolute discretion by no later than eighteen (18) months from the removal of the condition pertaining to Council unless the Buyer gives notice in writing that the Buyer is not proceeding with the transaction. Thereafter, the deposit will be returned to the Buyer without any deduction to the Buyer. Upon the rezoning being completed to the Buyer's satisfaction in their sole and absolute discretion and Buyer shall close

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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Form 500
for use in the Province of Ontario

Schedule A Agreement of Purchase and Sale – Commercial

this transaction as set out in Section ⁴ herein.

This Agreement of Purchase and Sale is conditional for one hundred fifty (150) days following acceptance upon the Seller's Council approving of this Agreement of Purchase and Sale. Unless the Seller gives notice in writing delivered to the Buyer that this condition has been fulfilled, this offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction.

The Buyer acknowledges and agrees that it is purchasing the property in its present condition "AS IS". The Seller makes no representation or warranty for the soil and/or environmental condition of the property.

6. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):



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