

The Corporation of the Municipality of Brockton



By-Law 2019-002

Being a By-Law to Authorize the Sale of Municipal Land to 1535323 Ontario Ltd.

Whereas the *Municipal Act S.O. 2001, c 25*, Section 5(3), as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by By-Law;

And Whereas the Corporation of the Municipality of Brockton is the owner of the land legally described as PT LT 34 CON 1 NDR BRANT, PT 1 3R10027; MUNICIPALITY OF BROCKTON; being part of parcel identifier number 33196-0558 (LT); and which are located in the East Ridge Business Park;

And Whereas notice of this by-law has been published and the provisions of the Municipal Act, 2001, S.O. 2001, c.25, and the provisions of the procedural by-law governing the sale of land, have been complied with;

And Whereas Resolution Number 01-29-524 authorized the sale of surplus municipal land located in the East Ridge Business Park;

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

- 1.0 That the lands described as PT LT 34 CON 1 NDR BRANT, PT 1 3R10027; MUNICIPALITY OF BROCKTON; being part of parcel identifier number 33196-0558 (LT); be sold to 1535323 Ontario Ltd. for the amount of \$30,250.00 plus HST and on the terms and conditions set out in the Offer to Purchase, attached as Schedule "A" to this By-Law.
- 2.0 That the Municipality of Brockton has declared the said lands to be surplus to the requirements of the Municipality is confirmed.
- 3.0 That the Mayor and Clerk be and are hereby authorized on behalf of the Corporation to execute all deeds, undertakings, agreements and other documents as may be required to complete the sale of the said lands, and to affix the corporate seal as and when required.
- 4.0 This By-Law shall come into full force and effect upon final passage.
- 5.0 This By-Law may be cited as the "Sale of Municipal Lands to 1535323 Ontario Ltd. By-Law".

Read, Enacted, Signed and Sealed this 8th day of January, 2019.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

Offer to Purchase

AGREEMENT OF PURCHASE AND SALE

I/WE 1535323 Ontario Ltd. of the Municipality of Brockton (as Purchaser), having inspected the property hereby agree to and with

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON (as Vendor) through **Wilfred McIntee & Co. Limited**, Agent for the Vendor to purchase

All and Singular the premises being **As per Schedule B**, consisting of approximately 1.1 acres with approximately _____ feet of frontage on _____ and a depth of approximately _____ feet on _____ as shown on the sketch attached to and forming part of this agreement as Schedule B (hereinafter called the "real property")

at the price of: **Twenty-Seven Thousand, Five Hundred Dollars (\$27,500) plus HST per acre, totaling _Thirty Thousand, Two Hundred Fifty Dollars_ (\$30,250) plus HST for the _One Thousand Dollars (\$1,000)** of lawful money of Canada, payable to the said Agent on this date as a deposit to be held in trust pending completion or other termination of this Agreement and to be credited on account of the purchase price on closing, and agree to pay the balance of the purchase price subject to all usual adjustments in cash or certified cheque to the Vendor on the completion of this transaction.

Harmonized Sales Tax

With respect to Harmonized Sales Tax ("HST") payable pursuant to the Excise Tax Act ("the Act"), the parties covenant and agree as follows:

- (a) subject to clause (b) below, the Purchaser shall pay to the Vendor on Closing by certified cheque all HST payable as a result of this transaction in accordance with the Act, and the Vendor shall remit such HST to the Receiver General for Canada when and to the extent required by the Act;
- (b) notwithstanding clause (a), the Vendor shall not collect the HST from the Purchaser in this transaction if the Purchaser is registered under the Act, and in that event the Purchaser shall file returns and remit such HST to the government when and to the extent required by the Act;
- (c) the Vendor and Purchaser shall each indemnify the other and hold the other harmless from any liability of the other under the Act arising because of breach of the obligations of the Vendor or Purchaser, as the case may be, set out in this section or arising under the Act, together with all loss, costs and expenses resulting from such breach;
- (d) the Purchaser shall provide a statutory declaration on Closing confirming its HST registration number under the Act; and
- (e) the provisions aforesaid shall survive Closing.

Legal Description

Prior to the date of completion the Vendor shall cause a reference plan to be prepared and deposited at the Bruce County Registry Office for the purpose of describing the real property.

Handwritten signature and initials, possibly "BT", in the bottom right corner of the document.

ENVIRONMENTAL MATTERS

Vendor's Environmental Representations & Warranties

(a) For the purposes of this Agreement, the following terms and expressions shall have the following meanings:

(i) "Environmental Laws" means all applicable statutes, regulations, ordinances, by-laws, and codes and all international treaties and agreements, now or hereafter in existence in Canada (whether federal, provincial or municipal) and in the United States (whether federal, state or local) relating to the protection and preservation of the environment, occupational health and safety, product safety, product liability or Hazardous Substances, including, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E. 19 (Ontario), as amended from time to time (the "EPA"), and the *Canadian Environmental Protection Act*, R.S.C. 1985, c. 16 (4th Supp.), as amended from time to time (the "CEPA");

(ii) "Environmental Permits" includes all orders, permits, certificates, approvals, consents, registrations and licences issued by any authority of competent jurisdiction under Environmental Laws;

(iii) "Hazardous Substance" means, collectively, any contaminant (as defined in the EPA), toxic substance (as defined in the CEPA), dangerous goods (as defined in the *Transportation of Dangerous Goods Act*, R.S.C. 1985, c. T17 (Canada), as amended from time to time) or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health;

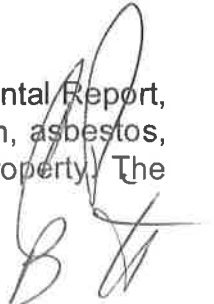
(iv) "Release" means any release, spill, leak, emission, discharge, leach, dumping, escape or other disposal which is or has been made in contravention of any Environmental Laws;

(v) "Environmental Report" means the Phase 1 Environmental Assessment Report prepared by George Davis & Associates on behalf of the Vendor.

(b) Except as may be disclosed in the Environmental Report, the real property, and the use, maintenance and operation thereof have been and are in compliance with all Environmental Laws. The Vendor has complied with all reporting and monitoring requirements under all Environmental Laws. The Vendor has not received any notice of any non-compliance with any Environmental Laws, and the Vendor has never been convicted of an offence for non-compliance with any Environmental Laws or been fined or otherwise sentenced or settled such prosecution short of conviction.

(c) Except as disclosed in the Environmental Report, there are no Hazardous Substances located on or in any of the land, and no Release of any Hazardous Substances has occurred on or from the land. The Vendor has not used any of its land to produce, generate, store, handle, transport or dispose of any Hazardous Substances and none of the Real Properties has been or is being used as a landfill or waste disposal site.

(d) Without limiting the generality of the foregoing, except as disclosed in the Environmental Report, there are no underground or surface storage tanks or urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls (PCBs) or radioactive substances located on or in the real property. The



Vendor is not, and there is no basis upon which the Purchaser could become, responsible for any clean-up or corrective action under any Environmental Laws.

The Environmental Report

(a) The Vendor agrees to provide to the Purchaser a Phase 1 Environmental Assessment prepared by George Davis & Associates (the "Environmental Report") dated existing 

(The Conditional Period)

(b) Within 90 days from the date of the last execution of this agreement or from the date when the Environmental Report is delivered to the Purchaser, whichever is latest, the Purchaser has the option to:

(i) review the environmental report and accept the lands in their present condition on an "as is" basis; or

(ii) conduct further test to satisfy himself with respect to all matters respecting the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the property, all encumbrances and all regulations and by-laws governing the property and the use thereof and the Vendor grants to the Purchaser the right to enter upon the property and to conduct such inspections, surveys and tests as the Purchaser deems necessary in this regard, provided the Purchaser takes all reasonable care in the conduct of such inspections, surveys and tests.

(c) If for any reason the Purchaser is not satisfied with respect to such matters within the Conditional Period, he may deliver a notice ("Notice of Termination") to the Vendor indicating that he is not satisfied with respect to such matters and desires to terminate this Agreement and release the Vendor from any further obligations. Upon delivery by the Purchaser of a Notice of Termination to the Vendor, this Agreement shall be at an end and the Vendor shall return the deposit to the Purchaser without interest or deduction and neither party shall have any further obligation to the other respecting the agreement.



(d) The Purchaser agrees to deliver to the Vendor forthwith upon receipt an original copy of the Purchaser's soil tests to be retained by the Vendor regardless of the termination or completion of this agreement.

Use of the Environmental Report

(a) The Vendor acknowledges that the Purchaser is obtaining funds for the acquisition of the property and construction of the project from a lender and the Vendor agrees that:

(i) the Vendor will, subject to applicable laws, co-operate in any reasonable manner requested by the Purchaser, in order to assist the Purchaser in his attempts to satisfy his lender's requirements including promptly providing copies of any documents or instruments in the Vendor's control or possession, reasonably requested by the Purchaser on behalf of the lender and if necessary, meeting with the lender;

(ii) subject to the foregoing the Vendor will not communicate with the Purchaser's lender concerning any aspect of the project unless the Purchaser requests it to do so in writing;

(iii) the Vendor authorizes the Purchaser to release copies of the Environmental Report to his lenders for their review and consideration. It is agreed and understood that the contents of the report in no way constitute any representations or warranties by the Vendor or its consultant George Davis as to the condition of the land or the accuracy of the report and there shall be no reliance on the contents of the report by the purchaser or any third party to whom it is provided.

Vendor's Conditions

The completion of this transaction is conditional on the following matters being completed within 45 days of the date of the execution of this agreement by the Purchaser:

- (a) The authorization and approval of this agreement by a by-law enacted by the council of the Municipality of Brockton.
- (b) Completion of all requirements as prescribed by the Municipality of Brockton Surplus Land Disposition By-law and the Ontario Municipal Act.

Failure to fulfill such conditions shall result in this agreement becoming null and void and the Purchaser shall be entitled to the return of his deposit without interest.

Vendor Covenants

The Vendor agrees that the purchase price for the said lands includes the extension of water main, sanitary sewer, electricity, telephone and natural gas to the frontage of the property.

East Ridge Business Park Provisions

It is acknowledged by the Purchaser that the real property is part of a municipal development known as the Brockton East Ridge Business Park and the Purchaser acknowledges that the schedule attached to this agreement related to the Brockton East Ridge Business Park forms part of this agreement and the parties covenant and agree to abide by all of the terms and conditions of the said schedule.

Building Covenants

The purchaser agrees to construct, within two years of the completion of this contract, a building or buildings equivalent or greater than 10% of the total lot area, failing which the vendor may purchase the property at 80% of the original purchase price, less the municipality's legal and real estate costs.

Date of Completion

This transaction shall be completed no later than **April 30, 2019**.

This Offer shall be irrevocable by the Purchaser **4 pm on the 21th day of December, 2018**, after which time, if not accepted, this Offer shall be null and void and the deposit returned to the Purchaser without interest or deduction.



Provided the title is good and free from all encumbrances, except as aforesaid, and except local rates, and except as to any registered restrictions or covenants that run with the land provided that such are complied with, and except for any minor easements for hydro, gas, telephone or like services. Purchaser to accept the real property subject to municipal and other governmental requirements, including building and zoning by-laws, regulations and orders, provided the same have been complied with. Vendor agrees to authorize municipal and other governmental authorities to release unto the Purchaser or his solicitor any information on file pertaining to such requirements.

The Purchaser to be allowed until the removal of all conditions, to investigate the title at his own expense, and to satisfy himself that there is no breach of municipal or other governmental requirements affecting the real property, and that its present use may be lawfully continued. If within the time allowed for examining title, the Purchaser shall furnish the Vendor in writing with any valid objection to title, or to any breach of municipal or other governmental requirements, or as to the fact that the present use may not lawfully be continued, which the Vendor shall be unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations, be null and void and the deposit money returned to the Purchaser, without interest or deductions and the Vendor and the Agent shall not be liable for any costs or damages. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the real property.

The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except such as are in the possession or control of the Vendor. The Vendor agrees that he will deliver any existing survey to the Purchaser so soon as possible and prior to the last day allowed for examining title.

On the date of completion vacant possession of the real property shall be given to the Purchaser unless otherwise provided for herein.

Until completion of sale all buildings and equipment on the real property shall be and remain at the risk of the Vendor, and the Vendor will hold all policies of insurance effected on the property and the proceeds thereof in trust for the parties hereto, as their interests may appear. In the event of damage to the said buildings and equipment before the completion of this transaction, the Purchaser shall have the right to elect to take such proceeds and complete the purchase, or cancel this Agreement, whereupon the Purchaser shall be entitled to the return, without interest or deduction, of all moneys theretofore paid on account of this purchase. Vendor agrees to furnish Purchaser with copies of existing fire insurance policies within seven days of the date of acceptance hereof.

Unearned fire insurance premiums, fuel, taxes, interest, rentals, and all local improvement and water rates and other charges for municipal improvements to be apportioned and allowed to the date of completion of sale (the day itself to be apportioned to the Purchaser). Provided Purchaser may elect not to accept assignment of fire insurance in which case no adjustment for insurance premiums.

The deed or transfer, save for Land Transfer Tax Affidavit, to be prepared at the expense of the Vendor in a form acceptable to the Purchaser and if a mortgage or charge is to be given back, it shall be prepared at the expense of the Purchaser in a form acceptable to the Vendor.

Provided that this Agreement shall be effective only if the provisions of Section 49 of the Planning Act, as amended, are complied with.

The deed or transfer shall contain the statement of the Vendor and the Vendor's solicitor referred to in section 49 (21a) of the Planning Act, 1990 as amended.

Handwritten signature and initials, possibly 'BP' and 'BA', are visible in the bottom right corner of the page.

The Vendor represents and warrants that no consent to this transaction is required pursuant to section 21(1) of the Family Law Act, 1990 unless the Vendor's spouse has executed this agreement to consent thereto, and that the Transfer/Deed shall contain a statement by the Vendor as required by subsection (3) of section 21 or the spouse of the Vendor shall execute the Transfer/Deed to consent thereto.

Vendor further agrees to produce evidence that he is not now and that on closing he will not be a non-resident of Canada within the meaning of Section 116 of the Income Tax Act, or, in the alternative, evidence that the provisions of said Section 116 regarding disposition of property by a non-resident person have been complied with at or before closing.

This Offer, when accepted, shall constitute a binding contract of purchase and sale, and time in all respects shall be of the essence of this Agreement.

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the real property or supported hereby other than as expressed herein in writing.

Any tender of documents or money hereunder may be made upon the Vendor or Purchaser or upon the solicitor acting for the party on whom tender is desired, and it shall be sufficient that a cheque certified by a chartered bank or trust company be tendered instead of cash.

Each party to pay the costs of registration and taxes on his own documents.

This Offer and its acceptance to be read with all changes of gender or number required by the context.

This Agreement may be registered by the Vendor against the title to the parcel to be transferred to the Purchaser and the Purchaser consents to such registration and all unfulfilled terms and conditions are deemed to run with the land and be binding on the parties and their successors and assigns.

DATED at:

This:

12th day of December 2018

IN WITNESS WHEREOF

have hereunto set

Hand and seal.

Signed, Sealed and Delivered

IN THE PRESENCE OF:

}
}
}
}
}
}

1535323. 
(Affix Seal) ONTARIO LTD - Purchaser

(Affix Seal)

- Purchaser



I/We, hereby accept the above offer, and covenant, promise and agree to and with the above-named Purchaser to duly carry out the same on the terms and conditions above mentioned, and I hereby accept the deposit of **One Thousand Dollars (\$1,000) Dollars** out of which the agent Wilfred McIntee & Company Limited hereby authorized to retain a commission of **6%** per cent of an amount equal to the above mentioned sale price. Commission payable only if, as and when transaction is completed.

DATED at _____ this _____ day of _____ 2018

IN WITNESS WHEREOF we _____ have hereunto set our _____ hands and seal.

Signed, Sealed and Delivered

IN THE PRESENCE OF

THE CORPORATION OF THE
MUNICIPALITY OF BROCKTON

Per: _____
(Affix Seal)

Mayor → David Inglis

Per: _____
(Affix Seal)

Clerk – Sonya Watson

We have authority to bind the Corporation.

[Handwritten signature]
B91

**TERMS TO BE APPENDED TO
AGREEMENT OF PURCHASE AND SALE
FOR THE SALE OF LAND IN THE
EAST RIDGE BUSINESS PARK**

The Purchaser agrees that the terms and conditions contained on the schedule attached hereto form part of the Agreement of Purchase and Sale and are binding on the parties.

VENDOR'S CONDITION

The completion of this transaction is conditional on the final approval of this agreement by a by-law enacted by the Council of the Municipality of Brockton.

Failure to comply with such condition shall result in this agreement becoming null and void and the purchaser shall be entitled to the return of his deposit without interest or deduction.

CLOSING DATE

The date of completion in the agreement of purchase and sale should be stated as being **Closing Date shall be: April 30, 2019.**

See Schedule A -1 and B re: Buyer's Conditions:

This offer is conditional until the 29th day March, 2019, upon

(1). The Buyer at the Buyer's own expense being able to investigate the construction of storage units and all building guideline and associated costs in construction, with the Buyer being satisfied in the Buyer's sole and absolute discretion.

(2). The Buyer being able to investigate the required site plan agreement and storm water management plan and all associated costs with the Buyer being satisfied in the Buyer's sole and absolute discretion.

Failing which this offer shall be null and void the deposit will be returned to the Buyer without interest or deduction.

Handwritten initials: A.P. B.H.

SCHEDULE TO AGREEMENT OF PURCHASE AND SALE FOR LANDS IN THE MUNICIPALITY OF BROCKTON EAST RIDGE BUSINESS PARK

1. General

If there is conflict between any provision written or typed in this Agreement (including any schedule to this agreement) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This agreement including any schedules attached hereto, shall constitute the entire agreement between the Purchaser and the Vendor. There is on representation, warranty, collateral agreement or condition, whether direct or collateral or expressed or implied, which induced any party hereto to enter into this agreement or on which reliance is placed by any such party, or which affects this agreement or the property or supported hereby, other than as expressed herein. This agreement shall be read with all changes of gender or number required by the context.

2. Subject Lands

The lands which are the subject of this Agreement of Purchase and Sale are described as See Schedule Attached being a portion of the East Ridge Business Park.

3. Permitted Uses

The Purchaser acknowledges that the subject lands are designated as "Industrial" in the Walkerton Zoning By-law #92-35 (as amended). The Purchaser is reminded that the Municipality's zoning by-law is a matter of public record, and the Purchaser is advised to review these documents to satisfy him/herself of the impact of the Municipality's planning policies on the subject property and to ascertain whether the intended use of the property is in full conformity with the zoning by-law.

4. Disposition of Surplus Land

The sale of the subject land will be subject to the procedures which must be completed pursuant to the Municipality's surplus land disposition By-law and the provisions of the Municipal Act.

5. Lot Grading

The Purchaser hereby agrees to abide by the Lot Grading Plan for this property as prepared by George Davis Associates Ltd. The Purchaser agrees that any building that is to be erected on the subject lands shall be in conformity with the proposed elevations as shown on the George Davis Associates Ltd. Lot Grading Plan dated November, 2001, as amended.

6. Site Plan Control

If the Purchaser applies to construct a building on the subject lands then the Purchaser acknowledges that he/she will be subject to the provisions of the Site Plan Control By-law and a Site Plan Agreement will be required at the expense of the purchaser prior to the issuance of a building permit.

7. Provision of Services

The Vendor agrees to provide a sanitary sewer lateral connection plus a water lateral connection to the property line in exchange for a connection fee equal to the **Time and Material** necessary to complete these connections. These service connection fees are to be paid to the Vendor prior to the issuance of a building permit for the subject lands. The Vendor agrees to provide Municipal services to the lot line, water, sewer, and natural gas to the metre location on the subject property.

8. Building Covenant

All deeds for lands sold in the East Ridge Business Park shall contain a condition requiring the purchaser to substantially complete, within the meaning of the Construction Lien Act of Ontario, within two (2) years of the closing date, the development (building) as detailed on the Site Plan attached to the Site Plan Agreement for the subject lands. If the development (building) is not completed as outlined herein, the Municipality may purchase the property at 80% of the original purchaser's price less the Municipality's legal and real estate fees.

Handwritten signature and initials, possibly 'BA' or similar, located at the bottom right of the page.

9. Covenants on Title

The purchaser acknowledges the right of the vendor to register such covenants on the title to the lands as may be required to notify subsequent purchasers of any continuing obligations of the purchaser, including the provision of covenants in the deed given to the Purchaser on the closing of this transaction.

10. HST

HST if applicable will be in addition to the purchase price of the land.

MUNICIPALITY OF BROCKTON**PURCHASER**

Date

Date

TO: THE CORPORATION OF THE MUNICIPALITY OF BROCKTON
(the Vendor)

FROM: 1535323 Ontario Ltd (the Purchaser)

RE: Sale of Lands located in the East Ridge Business Park
and described as: as per schedule attached
(the Purchased Lands)

ACKNOWLEDGEMENT AND AGREEMENT OF THE PURCHASER

The purchaser acknowledges and agrees that it is acquiring the Purchased Lands without any agreement, representation or warranty from the Vendor, either expressed or implied as to the condition of the Purchased Lands, the subsoil, environmental matters, condition of any structure, if any, or any other matters respecting the Purchased Lands and without any obligation on the part of the Vendor (except as otherwise required by law) to inform or advise the Purchaser regarding the fitness or suitability of the Purchased Lands for any use intended by the Purchaser. The Purchaser accepts full responsibility for all conditions related to the Purchased Lands and the Purchaser shall comply with all orders relating to the conditions of the Purchased Lands issued by any competent governmental authority, court or administrative tribunal, including any order issued against the Vendor. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards including awards of costs, that may arise as a result of the condition of the Purchased Lands, any order issued in connection with the condition of the Purchased Lands, or any loss, damage or injury caused either directly or indirectly as a result of the condition of the Purchased Lands. The Purchaser covenants and agrees, that if it obtains any environmental reports, such reports and the information contained therein is strictly confidential and the Purchaser represents and warrants that neither the Purchaser nor its employees, or agents will release the reports or any of the information contained therein to any other individual, or corporation, or to any federal, provincial or municipal agency or institution or to any other government body, domestic or foreign, without the express written consent of the Vendor, and the Purchaser shall refuse all requests for such reports or information in the absence of the Vendor's express written consent, unless compelled to do so by competent judicial or administrative authority. The provisions hereby shall not merge and shall survive the closing of the purchase and sale of the Purchased Lands and shall be a continuing obligation of the Purchaser.

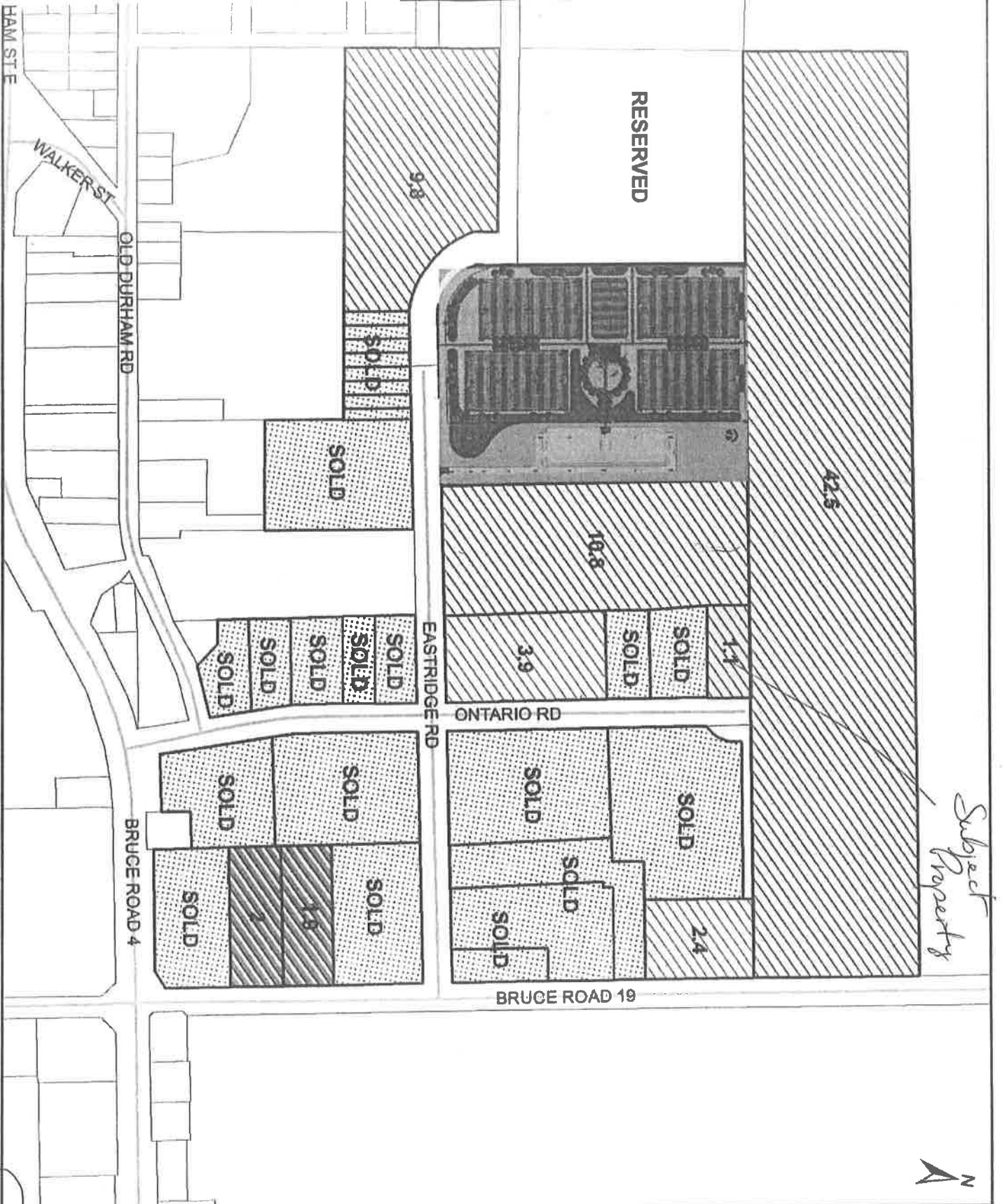
The Purchaser shall not assign this Agreement without the consent of the Vendor, which consent may be arbitrarily withheld. If the Vendor consents to an assignment, the Purchaser shall cause the Assignee and

the Purchaser, to covenant in writing in favour of the Vendor to be jointly and severally bound by and to jointly and severally perform their respective obligations of this Agreement. The Purchaser shall not be released from his liabilities and obligations hereunder in the event of an assignment.

DATED at 4:55 PM this 12 day of December, 2018

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

Schedule B



**Walkerton E
Business**

Pricing Schedule

	SOLD
	\$27,500
	\$38,500
	\$49,600
	Bruce Power

Note: The land measurements are approximate and all unless stated otherwise.



This map has been prepared by the Municipality of Brockton for information purposes only. The Municipality does not guarantee the accuracy of the contents and assumes no liability for any consequences arising out of reliance on the information. Prepared by: Jessica Ro
Date: October-04-18