

The Corporation of the Municipality of Brockton



By-Law 2020-013

Being a By-Law to Authorize the Signing of an Agreement With Wai Ching Wong for the Purpose of an Agreement of Purchase and Sale for a property located on Durham Street in Walkerton.

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter into an Agreement of Purchase and Sale with Wai Ching Wong with respect to an Agreement of Purchase and Sale for a property located on Durham Street in Walkerton;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That The Corporation of the Municipality of Brockton Council hereby enter into an Agreement of Purchase and Sale with Wai Ching Wong which is attached as "Schedule A" for the lands shown in "Schedule A " to the Agreement of Purchase and Sale which is attached and forms part of this By-Law.
- 2.0 The execution by the Mayor and Chief Administrative Officer of said Agreement of Purchase and Sale dated January 22, 2020, between the Corporation of the Municipality of Brockton and Wai Ching Wong is hereby authorized, ratified, and confirmed.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Durham Street Walkerton Wai Ching Wong Agreement of Purchase and Sale By-Law".

Read, Enacted, Signed and Sealed this 11th day of February, 2020.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

Agreement of Purchase and Sale

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this day of December, 2019.

BUYER, THE CORPORATION OF THE MUNICIPALITY OF BROCKTON agrees to purchase from

SELLER, WAI CHING WONG the following

REAL PROPERTY:

Municipal Address: 312 Durham St. E., Walkerton, Ontario

Legally Described as: PT LT 4 N/S DURHAM RD AND W/S VICTORIA ST PL 7, PTS 2 AND 6 ON 3R-7839; BROCKTON; being Part of PIN 33196-0147(LT),

For clarification the said land being purchased is highlighted on Plan 3R-7839 attached and marked hereto as **Schedule B** to this Agreement of Purchase and Sale

PURCHASE PRICE: \$100,000.00 Dollars (CDN\$)
ONE HUNDRED THOUSAND DOLLARS

DEPOSIT: ~~2000~~ \$5,000.00 payable to David McLean in Trust *DF*

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULES A and B attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This Offer shall be irrevocable by the ~~BUYER~~ *SELLER* until 5:00 p.m. on the ~~21st~~ *29th* day of ~~January~~ *MARCH*, 2020, 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. *DF*

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 5:00 p.m. on the ~~21st~~ *31st* day of ~~January~~ *MARCH*, 2020. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement. *DF*

3. **NOTICES:** The parties hereto agree that either party may make and/or accept this offer or any counter-offer and communicate the same by facsimile and/or email transmission which transmission shall be binding upon the party as if the document transmitted by facsimile and/or email transmission was an original duly executed document.

For Delivery of Notices to the Buyer:

Buyer's Lawyer: Tammy W. Grove-McClement, Grove-McClement & Fischer LLP
Firm Address: 11 Durham Street East, P.O. Box 880, Walkerton, Ontario N0G 2V0
Phone No.: 519-881-3230


INITIALS OF BUYER(S): *DF*

INITIALS OF SELLER(S): *DF*

Fax No.: 519-881-3595
Email Address: tammygm@walkertonlaw.ca

For Delivery of Notices to the Seller:

Seller's Lawyer:
Firm Address:
Phone No.:
Fax No.:
Email Address:

David McLean


4. CHATELS INCLUDED: N/A

5. FIXTURES EXCLUDED: N/A

6. RENTAL ITEMS: N/A

7. HST: If the property is subject to Harmonized Sales Tax (HST), then such tax shall be 'in addition to' the Purchase Price. The Seller will not collect HST on closing if the Buyer provides to the Seller a statutory declaration that the Buyer is a registrant within the meaning of Part IX of the Excise Tax Act of Canada (the "Act") and that the Buyer's registration is in full force and effect; reasonable evidence of the Buyer's registration under the Act; and an undertaking by the Buyer to remit any tax eligible under the Act in respect of this transaction and to indemnify the Seller against all loss, costs and damages resulting from the Buyer's failure to do so. If the sale of the property is not subject to HST, the Seller agrees to certify on or before closing that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

8. TITLE SEARCH: The Buyer shall be allowed until 5:00 p.m. on the 10th day of February, 2020, (Requisition Date) to examine the title to the property at the Buyer's 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 (Vacant Land) may be lawfully continued and that the principal building may be insured against risk of fire. The Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. FUTURE USE: The Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by the 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 present 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

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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 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 Broker and Co-operating Broker 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 form of which is as 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 accordance with the Document Registration Agreement prepared by the Law Society of Upper Canada, which document version was adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on October 1, 2003, and posted January 28, 2004 on The Law Society of Upper Canada website and which can be viewed on The Law Society of Upper Canada's website. For the purposes of this Agreement, any references to the "Law Society of Upper Canada" shall be deemed to include reference to the "Law Society of Ontario", which is the organization's present operating name.
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 agrees that except as may be specifically provided for in this Agreement, the buyer will not be obtaining a property inspection. The Buyer 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,

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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, the Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

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~~ ^{BUYER} and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. The 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:** The Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the Income Tax Act, R.S.C. 1985, c 1 (5th Supp), which representation and warranty shall survive and not merge on the completion of this transaction and the Seller shall deliver to the Buyer a statutory Declaration that the Seller is not then a non-resident of Canada. 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. The Buyer shall not claim such credit if the Seller delivers on completion the prescribed Certificate or a Statutory Declaration that the Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, 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 the 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 the Seller and Buyer or their respective lawyers who may be specifically authorized in that regard.
20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer's 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.
21. **FAMILY LAW ACT:** The Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
22. **UFFI:** ~~The 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 urea formaldehyde and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. 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.~~ Intentionally Deleted

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

- 23. 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.
- 24. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.
- 25. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

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INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



Schedule A

Agreement of Purchase and Sale

This Schedule is attached to and forms part of the Agreement of Purchase and Sale dated the day of December, 2019 between:

BUYER, THE CORPORATION OF THE MUNICIPALITY OF BROCKTON and
SELLER, WAI CHING WONG

for the Purchase and Sale of 312 Durham St. E., Walkerton, Ontario, more particularly described as PT LT 4 N/S DURHAM RD AND W/S VICTORIA ST PL 7, PTS 2 AND 6 ON 3R-7839; BROCKTON; being Part of PIN 33196-0147(LT),

1. The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.
2. The Agreement may be executed by the parties by facsimile or PDF transmission and in one or more counterparts, all of which when so executed and delivered shall be deemed to be the original but all such counterparts shall together constitute one and the same instrument.
3. The parties hereto agree that either party may make and/or accept this offer or any counter-offer and communicate the same by facsimile transmission which transmission shall be binding upon the party as if the document transmitted by facsimile transmission was an original duly executed document.
4. The Buyer acknowledges that the vacant lot is being sold "as is, where is".
5. As a condition of the purchase, on closing, the Seller shall donate from the sale proceeds the sum of \$26,000.00 to The Corporation of the Municipality of Brockton. On receipt of the donation, The Corporation of the Municipality of Brockton shall issue a donation receipt to the Seller. The Corporation of the Municipality of Brockton shall also arrange for a recognition plaque to be made and erected on the said property in the Wong family name (as directed by the Seller), as recognition of the Wong family presence in Walkerton, with photos included. The details of the plaque to be agreed upon by the parties acting reasonably and the plaque shall be erected after closing on the property once the proposed parkette has been finalized. These terms shall not merge on closing but shall remain.
6. This Agreement of Purchase and Sale is subject to the remainder of PIN 33196-0147(LT) being sold to 2360305 Ontario Ltd. (a company operated by Ryan Spitzig) ("Spitzig"). The within transaction shall be completed prior to the transaction with Spitzig but shall occur on the same day. This transaction shall be null and void if the Spitzig transaction is not completed and vice versa.
5. The Buyer shall be responsible for its own legal fees along with the Seller's reasonable legal fees and disbursements for this transaction.

U The seller is making the donation of \$26,000.00 on the condition that the buyer use the property as a "parkette" to be used as an area for the enjoyment of the residents of Brockton.


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DATED at Walkerton, Ontario this day of December, 2019.

SIGNED, SEALED AND DELIVERED in the presence of:	IN WITNESS whereof I have hereunto set my hand and seal:	DATE:
..... (Witness)	THE CORPORATION OF THE MUNICIPALITY OF BROCKTON PER: (Buyer) Sonya Watson, CAO I have authority to bind the Corporation	2019/12/20 yyyy/mm/dd

DATED at Walkerton, Ontario this 22 day of January ~~2019~~ 2020

SIGNED, SEALED AND DELIVERED in the presence of:	IN WITNESS whereof I have hereunto set my hand and seal:	DATE:
<u>D.M'Gan</u> (Witness)	 <u>Dan Wong Pof A</u> (Seller) Wai Ching Wong	2020/01/22 yyyy/mm/dd

Schedule 'B'

