

AGREEMENT OF PURCHASE AND SALE

BETWEEN:

THE REGIONAL MUNICIPALITY OF NIAGARA
(“Niagara Region”)

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE
(the “Purchaser”)

WHEREAS Niagara Region is the registered owner of the lands legally described as Part of Light House Keeper Lot and adjacent lands, S/S of Sugar Loaf Street, Plan 987, 988 and 989; Part Lot 28, Concession I Humberstone, being Part I on Reference Plan 59R-5669, being all of PIN 64457-0100 (LT), City of Port Colborne, Regional Municipality of Niagara and municipally known as 35 King Street (the “Lands”);

AND WHEREAS Niagara Region’s By-law No. 26-2011, as amended or replaced from time to time, (the “Disposal of Land By-law”) defines the policies and procedures governing disposition of lands;

AND WHEREAS the Purchaser wishes to acquire the Lands, as more particularly detailed herein;

AND WHEREAS the Council of The Regional Municipality of Niagara has declared the Lands as surplus and has authorized the purchase herein;

NOW THEREFORE in consideration of payment of the sum of ONE (\$1.00) DOLLAR paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitals herein are true and accurate.
2. Niagara Region hereby agrees to sell and the Purchaser agrees to purchase the Lands shown on Schedule “A”, for a purchase price of **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)** (the “Purchase Price”).
3. The parties hereto agree that any and all improvements, trees or shrubs within the Lands are included in the Purchase Price.
4. This offer shall be irrevocable by Purchaser until 4:30 p.m. on November 19, 2021, after which time, if not accepted by Niagara Region, this Agreement shall be null and void.
5. Deposit clause intentionally deleted.
6. Non-refundable deposit clause intentionally deleted.
7. The balance of the Purchase Price shall be paid by certified cheque, bank draft or wire transfer on the Closing Date, subject to adjustments, if any.
8. The Purchase Price does not include any taxes payable under the *Excise Tax Act*, R.S.C. 1985, c. E.15, as amended (the “HST”). The Purchaser shall provide to Niagara Region,

on or before the Closing Date: (a) a statutory declaration that the Purchaser is an HST registrant, along with a copy of the Purchaser's HST registration certificate, including the HST registration number; (b) a covenant to self-assess in accordance with the provisions of the *Excise Tax Act* and to report the transaction and remit directly to the Receiver General of Canada any HST payable in connection with the purchase of the Lands; and (c) an indemnity to save Niagara Region harmless from any HST, penalty, interest or other amounts which may be payable by or be assessed against Niagara Region under the *Excise Tax Act* as a result of or in connection with Niagara Region's failure to collect and remit the HST applicable on the sale of the Lands. In the event the Purchaser is unable to or refuses to provide satisfactory evidence of its registration for HST purposes as of the Closing Date, the Purchaser shall pay Niagara Region the HST applicable on the sale on closing. Niagara Region shall remit to the Receiver General of Canada the HST payable in connection with the transaction following closing.

9. The closing date of this transaction shall be **December 8, 2021** or prior thereto if mutually agreed in writing (the "Closing Date"). Vacant possession of the Lands shall be provided to the Purchaser on the Closing Date, unless otherwise provided in this Agreement.
10. The Purchaser shall be allowed until 15 days prior to the Closing Date to investigate the title to the Lands at its own expense. 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 the following:
 - (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 easement for the supply of domestic utility or telephone services to the property or adjacent properties;
 - (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;
 - (e) By-law registered as RO114453.

On Closing, Purchaser accepts the Lands subject to the excepted registered restrictions, charges, liens, and encumbrances referenced in this section 10. If within the specified times referred to in paragraph 10 any valid objection to title is made in writing to Niagara Region, and which Niagara Region is unable or unwilling to remove, remedy or satisfy and which Purchaser 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 Niagara Region shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for an objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted Niagara Regions' title to the property.

11. The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Lands, except as are in the possession or control of Niagara Region.

12. This transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as amended. The Purchaser and Niagara Region agree to be bound by the Document Registration Agreement which is recommended from time to time by the Law Society of Upper Canada. The Purchaser and Niagara Region acknowledge and agree that the delivery of documents and the release thereof will: (a) not occur at the same time as the registration of the transfer/deed (and other documents intended to be registered in connection with the completion of this transaction); and (b) be subject to conditions whereby the solicitor(s) receiving documents and/or money will be required to hold them in escrow and not release them except in accordance with the terms of the Document Registration Agreement.
13. Niagara Region covenants and agrees to deliver to the Purchaser a Transfer for the Lands suitable for registration and drawn in the name of the Purchaser and to provide it with good title.
14. Niagara Region covenants that it will deliver to the Purchaser on or before the Closing Date, unless otherwise provided in this Agreement, each of the following:
 - (a) vacant possession of the Lands;
 - (b) an executed Transfer of Land in registerable form duly executed by Niagara Region in favour of the Purchaser (save for any Land Transfer Tax Affidavit);
 - (c) a Seller's Closing Certificate in the form approved by the members of the Lincoln and Welland County Law Association on September 21, 2004, including an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
 - (d) a direction regarding the payment of funds, if necessary; and
 - (e) a statement of adjustments, which shall be delivered at least two (2) business days prior to the Closing Date.
15. The Purchaser covenants that it will deliver to Niagara Region on or before the Closing Date:
 - (a) a certified cheque, bank draft or wire transfer for the balance of the purchase price due on the Closing Date;
 - (b) a direction as to title, if necessary;
 - (c) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
 - (d) H.S.T. Declaration, if applicable; and
 - (e) all such other deeds, conveyances, certificates or other documents as Niagara Region or its solicitor may reasonably require to implement the intent of this Agreement and comply with the Disposal of Land By-law.
16. Any tender of documents or money hereunder may be made upon either party or their respective solicitors on the Closing Date. Money may be tendered by wire transfer, certified cheque or bank draft.
17. The Purchaser acknowledges and agrees that:
 - (a) In entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Lands, including without limitation, the physical and environmental condition of the Lands and a review of any documentation respecting the Lands, and the Purchaser acknowledges it is not relying on any information furnished by Niagara Region or

any other person on behalf of, or at the direction of, Niagara Region in connection therewith;

- (b) The Purchaser is purchasing and shall accept, assume and take title to the Lands and any improvements thereon in an “As Is, Where Is” condition. The term “As Is, Where Is” means in its condition or state on the Closing Date without any agreement, representation or warranty of any kind whatsoever, either express or implied on the part of Niagara Region, as to the state of title, the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands, the condition of the buildings, if any, or any other matter respect the Lands whatsoever, including without limitation, compliance with all laws, the existence of any hazardous substances, or the use to which the Lands may be put and its zoning; and
 - (c) Niagara Region shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Lands or the condition thereof.
 - (d) From and including the Closing Date, the Lands shall be entirely at the risk of the Purchaser and the Purchaser shall accept and assume any and all responsibilities and liabilities arising out of or in any way connected with the Lands whether they arose before, on or after the Closing Date and, without being limited by the foregoing, any state, nature, quality or condition in, on, under or near the Lands existing as of the Closing Date, whenever and however arising, whether known or unknown and whether environmental or otherwise, and whether such responsibilities and liabilities are imposed by law, equity or any governing authority.
 - (e) The provisions of this section 17 shall survive and not merge on Closing.
18. The Purchaser hereby confirms that neither the Purchaser nor any person having a controlling interest in the Purchaser is an employee or elected official of Niagara Region, and hereby declares that there is no conflict of interest arising from this transaction.
19. All notices or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, facsimile, or registered mail, return receipt requested, postage prepaid, addressed as follows:
- On the Purchaser to: The Corporation of the City of Port Colborne
66 Charlotte Street
Port Colborne, Ontario L3K 3C8
Attention: City Clerk
- On Niagara Region to: The Regional Municipality of Niagara
1815 Sir Isaac Brock Way, P.O. Box 1042
Thorold, Ontario L2V 4T7
Attention: Director of Legal and Court Services
Facsimile: (905) 685-7931
20. Niagara Region and the Purchaser acknowledge that this Agreement constitutes the entire Agreement between them and there are no representations, warranties, collateral agreements or conditions affecting this Agreement or the Lands other than as expressed herein in writing.
21. Time shall be in all respects of the essence hereof provided that the time for doing or completing any matter herein may be extended or abridged by an agreement in writing signed by Niagara Region and the Purchaser or by their respective solicitors who are hereby expressly appointed in this regard.

- 22. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto, and each of their respective representatives, successors, heirs and assigns.
- 23. This Agreement may be executed and delivered in any number of separate counter-parts, each of which when executed and delivered is an original but all of which taken together constitutes one and the same instrument. Any party may deliver an executed copy of this Agreement by facsimile transmission.
- 24. All covenants, representations and warranties contained in this Agreement on the part of both Niagara Region and the Purchaser shall not merge upon the closing of this transaction.
- 25. Nothing in this Agreement shall be construed in a manner inconsistent with the requirements of the Disposal of Land By-law.
- 26. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- 27. Schedule “A” – “The Lands” and Schedule “B” – “Additional Clauses” attached hereto form an integral part of this Agreement.
- 28. This Agreement, when executed by the Purchaser’s and Niagara Region’s authorized signing officer(s), shall constitute a binding agreement.

IN WITNESS WHEREOF The Regional Municipality of Niagara has on the ____ day of _____, 2021 affixed its name under the hand of its duly authorized signing officer.

THE REGIONAL MUNICIPALITY OF NIAGARA

Per: _____
Name: Todd Harrison, CPA, CMA
Title: Commissioner of Corporate Services/Treasurer

I have the authority to bind the Corporation.

IN WITNESS WHEREOF the Purchaser has on the ____ day of _____, 2021 affixed its corporate seal attested by the hands of the duly authorized officer(s).

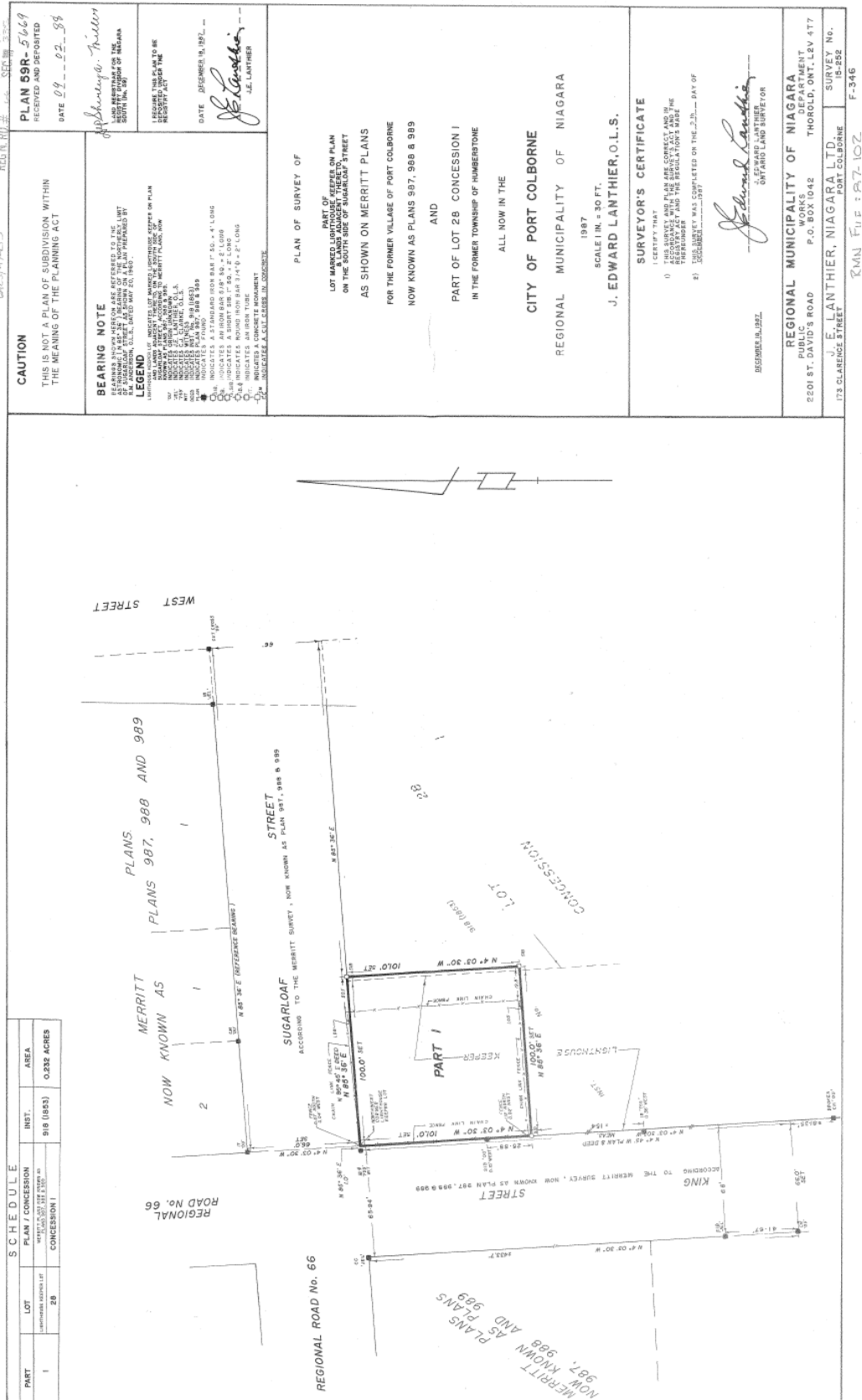
THE CORPORATION OF THE CITY OF PORT COLBORNE

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation.

SCHEDULE "A" – the LANDS



SCHEDULE “B” – ADDITIONAL CLAUSES

- I. The Purchaser also agrees to reimburse any fees, costs, and expenses incurred by Niagara Region for the sale of the Lands or chargeable by Niagara Region pursuant to its Fees and Charges By-law (inclusive of legal costs), which shall be reflected as an adjustment on the Statement of Adjustments.