

AGREEMENT OF PURCHASE AND SALE

BETWEEN:

THE CORPORATION OF THE CITY OF THOROLD
(the "Owner")

-and-

THE REGIONAL MUNICIPALITY OF NIAGARA
(the "Niagara Region")

WHEREAS the Owner is the registered owner of the lands legally described as

PCL 12-1 SEC D3; UNIT 43 PL D3 EXCEPT PT 1 59R8245 AS CONFIRMED BY PL 59BA1111; Thorold, being PIN 64429-0076, in the City of Thorold, in the Regional Municipality of Niagara (the "Owner's Lands");

AND WHEREAS Niagara Region has constructed new infrastructure (wet well) located partially on the Owner's lands to allow safe access by operations and maintenance members. (the "Works");

AND WHEREAS Niagara Region requires a portion of the Owner's Lands to facilitate construction of the Works;

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. The Owner hereby agrees to sell and Niagara Region agrees to purchase a portion of the Owner's Lands as shown on Schedule "A" (the "Lands") for a purchase price of **ONE DOLLAR** (\$1.00) (the "Purchase Price").
3. Areas and calculations shown are approximate and Niagara Region shall prepare and register at its own expense a reference plan that accords substantially to the draft plan attached hereto as Schedule "A", which reference plan shall include area calculations of each part to be acquired.
4. The parties hereto agree that any and all improvements, trees or shrubs within the Lands are included in the Purchase Price.
5. The Owner acknowledges and agrees that the Purchase Price represents full and final compensation and includes, without limitation, compensation for market value of the Lands, injurious affection, disturbance damages, reduction in market value of the remainder of the Owner's Lands and any and all claims that the Owner may make pursuant to the *Expropriations Act*, R.S.O. 1990, c. E.26 for Niagara Region's purchase of the Lands.
6. This offer shall be irrevocable by the Owner until 4:30 p.m. on **November 14, 2023**, after which time, if not accepted by Niagara Region, this Agreement shall be null and void.
7. *[Deposit clause intentionally deleted.]*
8. Except as otherwise provided in this Agreement, if this transaction is subject to Harmonized Sales Tax imposed by Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "HST"), then such HST shall be in addition to and not included in the Purchase Price, and Niagara Region hereby covenants to self-assess and remit applicable HST in addition to the Purchase Price in accordance

with the provisions of the *Excise Tax Act*. If this transaction is not subject to HST, the Owner agrees to provide to Niagara Region, on or before the Closing Date, a certificate in a form reasonably satisfactory to Niagara Region certifying that the transaction is not subject to HST.

9. **The closing date of this transaction shall be December 5, 2023**, or prior thereto if mutually agreed in writing (the "Closing Date"). Vacant possession of the Lands shall be given to Niagara Region on the Closing Date, unless otherwise provided for in this Agreement.

10. **Niagara Region shall be allowed until the Closing Date to investigate the title to the Lands at its own expense.** If within that time any valid objection to title is made in writing to the Owner and which the Owner is unable to remove and which is not waived by Niagara Region, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be null and void and the deposit paid herein shall be returned to Niagara Region without interest or deduction.

11. Niagara Region 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 the Owner.

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 Owner 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 Owner 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. The Owner covenants and agrees to deliver to Niagara Region, or to whom it may direct, a transfer for the Lands suitable for registration and drawn in the name of "The Regional Municipality of Niagara" to provide it with good title, free and clear from all restrictions, charges, liens and encumbrances, including, but not limited to, leases, agreements and notices.

14. The Owner covenants that it will deliver to Niagara Region on or before the Closing Date, each of the following:

- (a) vacant possession of the Lands;
- (b) an executed Transfer/Deed of Land in registerable form duly executed by the Owner in favour of Niagara Region (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) satisfactory evidence that realty taxes and any instalments which are outstanding prior to closing have been paid in full;
- (e) a direction regarding the payment of funds;
- (f) statement of adjustments, which shall be delivered at least two (2) business days prior to the Closing Date; and
- (g) such other deeds, conveyances and other documents as Niagara Region or its solicitors may reasonably require in order to implement the intent of this Agreement.

15. Niagara Region covenants that it will deliver to the Owner on or before the Closing Date:
- (a) a negotiable cheque 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; and
 - (d) H.S.T. Declaration, if applicable.
16. The Owner warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, unless the Owner's spouse has executed the consent hereinafter provided.
17. The Owner shall provide on closing any certificates, affidavits, declarations or any other documents required for compliance with the *Family Law Act*, the *Income Tax Act*, R.S.C. 1985, as amended, and any other statutes, where such certificates, affidavits, declarations or documents are required to permit the conveyance of the Lands to Niagara Region free of any claim, lien or interest of any person or government.
18. Niagara Region shall be credited towards the Purchase Price with the amount, if any, necessary for Niagara Region to pay to the Minister of National Revenue to satisfy Niagara Region's liability in respect of tax payable by the Owner under the non-residency provisions of the *Income Tax Act* by reason of this sale. Niagara Region shall not claim such credit if the Owner delivers to Niagara Region, prior to the Closing Date, the prescribed certificate or a statutory declaration that the Owner is not then a non-resident of Canada.
19. 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, negotiable cheque or bank draft.
20. Niagara Region will reimburse the Owner for its reasonable legal fees incurred in connection with Niagara Region's acquisition of the Lands, upon receipt of an itemized statement of account. Payment of the Owner's legal fees shall not be a condition of completing this transaction.
21. The Owner represents and warrants to Niagara Region that:
- (a) the Owner has not received notice of any violation or alleged non-compliance with any laws, regulations, by-laws, guidelines, or policies pertaining to the environmental condition of the Owner's Lands, nor have any proceedings, investigations or other evaluations been commenced to determine whether any such violation or non-compliance exists; and
 - (b) the Owner has not received notice of any claims or demands pertaining to the environmental condition of the Owner's Lands or of adjacent lands.
22. The Owner represents and warrants to Niagara Region that to the best of their knowledge, information and belief:
- (a) there has been no release, deposit, spill, disposal, leakage or discharge of any contaminant, waste, pollutant, or hazardous substance on, from, under or to the Owner's Lands;
 - (b) there are no facts or conditions relating to the Owner's Lands that could give rise to any remedial obligations, claims, demands or orders;
 - (c) the Owner's Lands have not been used as a waste disposal site; and
 - (d) no storage tanks are or have been on, at or under the Owner's Lands.
23. The Owner shall provide Niagara Region with all consents or authorizations (written or otherwise) necessary or desirable to enable Niagara Region to obtain

information as Niagara Region may consider necessary or advisable in determining the environmental condition of the Lands within three (3) days after the request therefor. The Owner shall further provide Niagara Region with all documents and reports in its control or possession relating to the environmental condition of the Lands within three (3) days after the request therefor.

24. In the event that Niagara Region is not satisfied, in its absolute discretion, with results of any inspection, environmental test, survey, or response to inquiries or if any environmental contaminants are released prior to closing, Niagara Region may, without limiting any other right that Niagara Region may have at its sole option, rescind this Agreement by delivering a notice of termination to the Owner and in such event Niagara Region shall be released from all obligations hereunder.

25. 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 Owner to:

The Corporation of the City of Thorold
3540 Schmon Parkway
Thorold, ON, L2V 4A7
Attention: Sean Dunsmore

On the Owner's Solicitor to:

Sullivan Mahoney LLP
40 Queen Street,
St Catharines, ON L2R 5G3
Attention: David M. Willer

On Niagara Region to:
The Regional Municipality of Niagara
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7

Attention: Director of Legal and Court Services
Facsimile: 905-685-7931

26. The Owner and Niagara Region acknowledge that this Agreement constitutes the entire Agreement between the Owner and Niagara Region and there are no representations, warranties, collateral agreements or conditions affecting this Agreement or the Lands other than as expressed herein in writing.

27. Execution of this Agreement by Niagara Region shall be deemed to grant to Niagara Region, its agents and contractors the right to enter into possession of the Lands and Niagara Region to exercise any and all rights of the Owner as of the date of acceptance and without prejudice to its rights herein or acknowledgement of title.

28. 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 the Owner and Niagara Region or by their respective solicitors who are hereby expressly appointed in this regard.

29. 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.

30. 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.

31. All covenants, representations and warranties contained in this Agreement on the part of both the Owner and Niagara Region shall survive and not merge upon the closing of this transaction.
32. 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.
33. Schedules "A" – "The Lands" and Schedule "B" – "Additional Clauses" attached hereto form an integral part of this Agreement.

[Remainder of page intentionally left blank]

34. This Agreement, when executed by Niagara Region's authorized signing officer(s), shall constitute a binding agreement.

IN WITNESS WHEREOF the Owner has on the ____ day of _____, 2023 signed this Agreement.

THE CORPORATION OF THE CITY OF THOROLD

Per: _____

Name: **Sean Dunsmore**

Title: Engineering Manager

I have authority to bind the Corporation.

IN WITNESS WHEREOF The Regional Municipality of Niagara has on the ____ day of _____, 2023 affixed its name under the hand of its duly authorized signing officer.

THE REGIONAL MUNICIPALITY OF NIAGARA

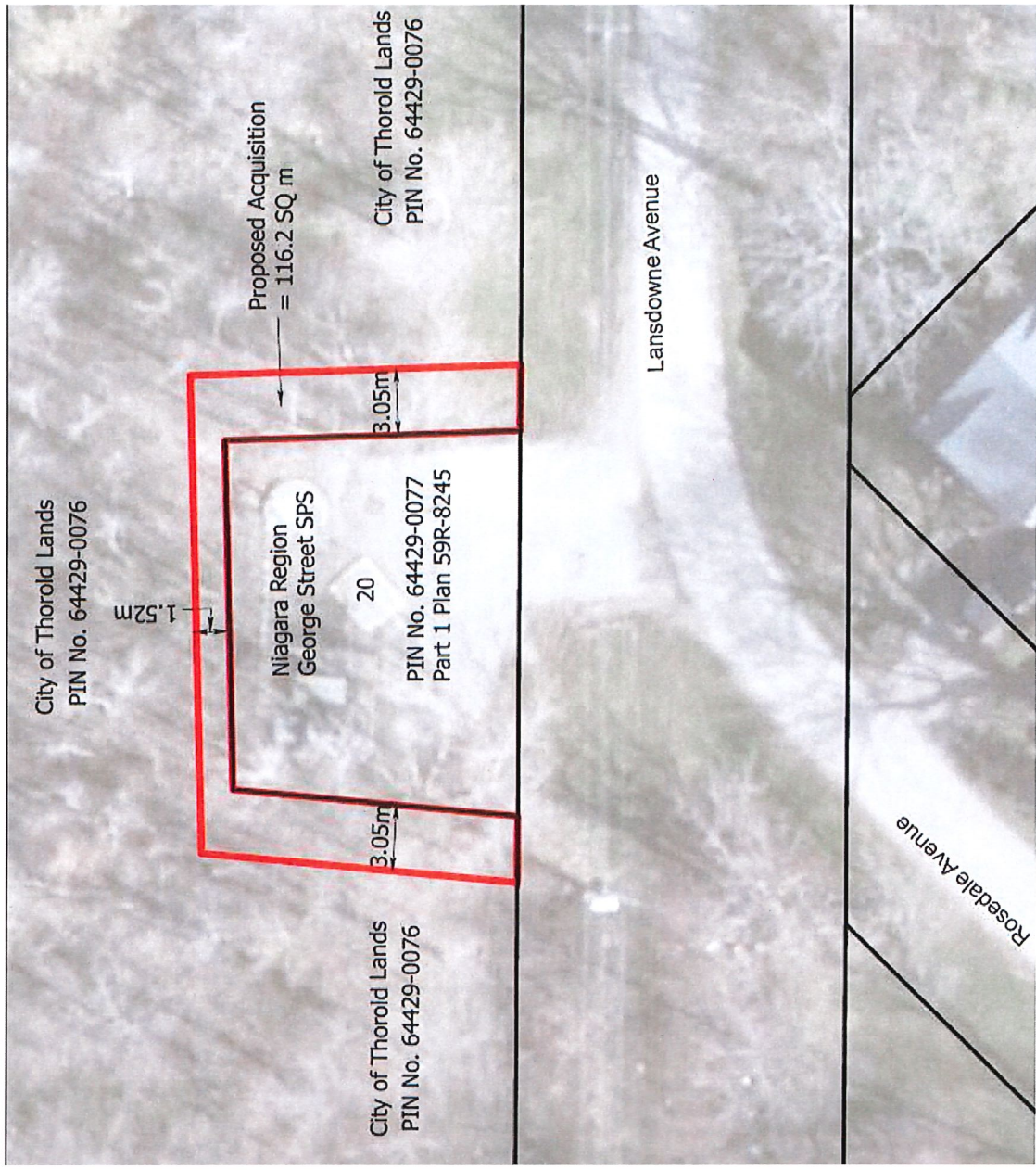
Per: _____

Name: **Dan Carnegie**

Title: Commissioner of Public Works (Acting)

I have authority to bind the Corporation.

SCHEDULE "A" – THE LANDS



SCHEDULE “B” – ADDITIONAL CLAUSES

1. If deemed necessary, Niagara Region may require the right to access the balance of the Owner’s Lands for the purposes of grading and reinstatement of the property including lawns, tress or driveways, and the Owner has agreed to allow Niagara Region to do so. The Owner hereby grants to Niagara Region, its agents and contractors the permission to enter for those purposes, and this right shall survive the closing of this transaction.