



The Municipal Corporation of the Town of Fort Erie

By-law No. 112-2019

Being a By-law to Authorize the Sale of Lands in the Fort Erie Business Park 0 Commerce Parkway (Harber Realty Holdings Inc. – Andrew Harber)

Whereas By-law No. 60-2017 establishes a policy for the sale of land owned by The Corporation of the Town of Fort Erie (the "Policy"), and

Whereas Report No. EDTC 01-2019 was considered and approved at the Council-in-Committee Meeting held on February 19, 2019 directing the Economic Development and Tourism Corporation (the "EDTC") to negotiate an Agreement of Purchase and Sale with Harber Realty Holdings Inc. for the purchase of approximately 9.94 acres of land at the terminus of Commerce Parkway, in the amount of \$30,000.00 per acre and that a by-law be submitted accordingly, and

Whereas the EDTC has negotiated an Agreement of Purchase and Sale with Harber Realty Holding Inc. for the lands described below, on those terms, and

Whereas the Agreement of Purchase and Sale attached hereto as Schedule "A" has been signed by the Purchaser and the Deposit amount has been received, and

Whereas it is deemed desirable to enter into an Agreement of Purchase and Sale with Harber Realty Holdings Inc. for the sale of the property;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into an Agreement of Purchase and Sale with Harber Realty Holdings Inc. (the "Purchaser") for the lands described as Part of Lot 6, Concession 5, Niagara River, except Part 1 on Reference Plan 59R-13086, except Parts 1, 2 and 3 on Reference Plan 59R-15664, formerly in the Township of Bertie, now in the Town of Fort Erie, being part of PIN 64238-0102 (LT), subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910, and containing approximately 9.94 acres, for the amount of \$30,000.00 per acre plus H.S.T. (\$298,200.00), subject to an adjustment if necessary once the Reference Plan describing the lands is prepared at the Town's expense, and subject to the following conditions:
 - (a) A "Right to Re-Conveyance" clause in the Agreement and secured on title, providing that the Town may exercise a right to a re-conveyance of the entire Property in the event the Purchaser fails to:
 - (i) construct and occupy the first phase of an industrial building of at least 10,000 square feet on the Property within two (2) years of registration of the Transfer of the Property from the Town to the Purchaser.

and

- b) A "No Speculation" clause in the Agreement and secured on title, preventing the Purchaser from selling all or any portion of the land which is not built upon for a period of 20 years, without the Town first having the option to re-purchase at the price per acre paid by the Purchaser.

in the form attached hereto as Schedule "A" and satisfactory to the Town Solicitor, is authorized and approved.

2. **That** the proceeds from the sale shall be credited to the Major Capital Expenditure Reserve Fund of The Corporation of the Town of Fort Erie.
3. **That** the Mayor and Clerk are authorized and directed to execute the Agreement of Purchase and Sale and to affix the corporate seal thereto.
4. **That** the Town Solicitor, or in his absence, the Chief Administrative Officer, is authorized and directed to execute any and all other documentation necessary to complete the transaction and to affix the corporate seal thereto.
5. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 15th day of July, 2019.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 112-2019 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20____.

AGREEMENT OF PURCHASE AND SALE

B E T W E E N:

HARBER REALTY HOLDINGS INC.
(hereinafter called the "Purchaser")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE
(hereinafter called the "Vendor")

OF THE SECOND PART

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Real Property

The Purchaser, having inspected the Real Property (as defined herein), hereby agrees to and with the Vendor to purchase and the Vendor agrees to and with the Purchaser to sell, those lands and premises in the Town of Fort Erie, in the Regional Municipality of Niagara, being part of Lot 6, Concession 5, Niagara River, except Part 1 on Reference Plan 59R 13086, except Parts 1, 2, and 3 on Reference Plan 59R-15664, formerly in the Township of Bertie, now in the Town of Fort Erie, being part of PIN 64238-0102 (LT), subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910, and containing approximately 9.94 acres as shown as Parcel 1 on Schedule "A" annexed hereto which forms part of this Agreement (the "Real Property").

2. Purchase Terms

(a) Price and Payment

The purchase price for the Real Property shall be the sum of Two Hundred & Ninety-Eight Thousand Two Hundred Dollars (\$298,200.00) plus HST, if applicable, in lawful money of Canada, payable as follows:

- (i) The sum of Twenty-Nine Thousand Eight Hundred & Twenty Dollars (\$29,820.00) by certified cheque or bank draft submitted to the Vendor with this Agreement executed by the Purchaser, as a deposit to be held by the Vendor pending completion or other termination of this transaction, and to be credited on account of the purchase price on closing;
- (ii) The sum of Two Hundred & Sixty-Eight Thousand Three Hundred & Eighty Dollars (\$268,380.00) subject to the usual adjustments, if any, payable by certified cheque or bank draft to the Vendor on the Closing Date.

(b) Acreage Adjustment

The purchase price has been calculated on the basis that the Real Property contains 9.94 acres at a price of Thirty Thousand Dollars (\$30,000.00) per acre. Prior to closing the Vendor shall obtain at its expense a reference plan of survey of the Real Property which shall contain a certificate of acreage. In the event that

the acreage of the Real Property is more or less than 9.94 acres, the parties agree that the purchase price shall be adjusted accordingly.

3. Vendor's Right to Re-Conveyance of the Real Property

- (a) The Vendor reserves a right to a re-conveyance of the Real Property upon the terms and conditions contained in the Agreement attached hereto as Schedule "B".
- (b) Upon execution of this Agreement of Purchase and Sale by both parties, and the final determination of the purchase price in accordance with Section 2 (b) above, the Vendor will provide the completed "Right to Re-Conveyance Agreement" in the form of Schedule "B" to this Agreement to the Purchaser, and the Purchaser shall forthwith execute the said Agreement as provided, and deliver same to the Vendor in triplicate.
- (c) On or before the Closing Date of this transaction, the Purchaser shall deliver to the Vendor a good and valid duly executed Acknowledgement & Direction authorizing the Vendor to electronically sign and register on its behalf a Transfer of the Real Property for the purchase price of \$448, 200.00 as outlined in paragraph 3(d) of the Right to Re-Conveyance Agreement", in favour of The Corporation of the Town of Fort Erie, which the Vendor shall hold in escrow and not register unless and until such time as it exercises its right to a re-conveyance of the Real Property. This clause shall survive and not merge on the closing of this transaction.
- (d) The said Right to Re-Conveyance Agreement or Notice of same shall be registered on the title to the Real Property on the Completion Date, in priority to any mortgage/charge or other encumbrance, and at the expense of the Purchaser.
- (e) The Purchaser shall not transfer the Real Property to a third party unless and until it has completed the actions described in Sections 3(a)(i) and (ii) of the Right to Re-Conveyance Agreement. This clause shall survive and not merge on the closing of this transaction.

4. No Speculation

- (a) It is the express intention and agreement of the Purchaser and Vendor that there shall be no speculation with respect to all or any portion of the Real Property, and that the Vendor shall have for a period of twenty (20) years from the date of registration of the Transfer to the Purchaser, the option to re-purchase at the price per acre paid by the Purchaser herein, any part of the Real Property which has not been built upon by the Purchaser and which the Purchaser is desirous of selling, leasing or otherwise disposing of.
- (b) Prior to entering into any agreement respecting a sale, lease or other disposition of all or any portion of the Real Property which has not been built upon by the Purchaser, the Purchaser shall give notice thereof to the Vendor, and the Vendor shall have a period of fifteen (15) days from actual receipt of such notice to notify the Purchaser of its intention to re-purchase that portion of the Real Property not built upon (the "Unbuilt Lands") referred to in the notice; failing such notification

by the Vendor, the Purchaser shall be permitted to enter into such agreement within a period of six (6) months following receipt by the Vendor of the notice; and in the event that such agreement is not completed, then the within option shall be deemed reinstated.

- (c) In the event that the Vendor exercises its option, there shall be constituted a binding agreement of purchase and sale between the parties to be completed thirty (30) days after such exercise. There shall be deducted from the re-purchase price any amount for taxes then due and owing against such lands, and upon payment of the re-purchase price the Purchaser shall convey to the Vendor, free from all encumbrances whatsoever, all its right, title and interest in and to the said Unbuilt Lands.
- (d) In the event the Purchaser has substantially completed a building, the Plans for which have been approved by the Vendor, and such building has been built in accordance with such Plans, then the Purchaser may request a release respecting the provisions of this paragraph, and in the event that the Vendor determines, acting reasonably, that there remain no Unbuilt Lands on the Real Property, the Vendor shall execute an acknowledgment and release respecting the provisions of this paragraph.
- (e) The Purchaser acknowledges and agrees that the Vendor's right to a re-purchase the Real Property as contained herein shall be preserved by way of a Notice registered on the title to the entire Real Property on closing, or by such other instrument as may be determined by the Vendor prior to closing, and registered immediately after the Transfer on closing. The Purchaser further agrees to execute such documents as may be required by the Land Registry Office either before or after closing, to effect the registration of the said Notice or instrument.
- (f) Sections 4(a) to (e) inclusive herein, shall not merge on the closing of this transaction, but shall remain in full force and effect thereafter.
- (g) Unbuilt Lands shall not include lands without any structures that are ancillary to the use of a structure on the Property.

5. Development and Servicing Matters

(a) Vendor Services:

The Purchaser acknowledges that the various services within the Fort Erie Business Park presently in place with respect to the Real Property are water, sanitary and storm sewer services (the "Vendor Services"). The Purchaser acknowledges that the Vendor shall not be obliged to carry out any further Vendor Services.

(b) Services Provided by Third Parties Directly:

The Purchaser acknowledges that hydro, telephone, telecommunication, cable and gas services are not provided by the Vendor to service the Fort Erie Business Park, and that the Purchaser will satisfy itself respecting appropriate service from third parties (the "Other Services") (collectively the Vendor Services and Other Services being referred to as the "Services").

(c) **Damage to Services:**

The Purchaser agrees to pay to the Vendor on demand the cost of repairing or reinstating any of the Services damaged by the Purchaser (or any employee, agent, contractor or other party for whom the Purchaser is in law responsible), and the amount of damage shall, if required, be determined by the Vendor's consulting engineer for Fort Erie Business Park, which determination shall be final and binding upon the parties.

(d) **Purchaser to Comply with Municipal By-laws and Site Plan Agreement:**

The Purchaser agrees to comply with all applicable municipal by-laws and the Site Plan Agreement required herein, relating to the construction of Purchaser Services and relating to development of the Real Property and to indemnify and hold the Vendor harmless in respect of all losses, damages and liabilities arising from any breach of the Purchaser's obligations herein.

(e) **No Removal of Top Soil Prior to Obtaining a Building Permit**

Without limiting the generality of Section 5(d) herein, the Purchaser acknowledges that the Purchaser shall not be permitted to remove top soil prior to obtaining a building permit for the construction of a building pursuant to Plans approved by the Vendor.

(f) **Fill**

The Purchaser shall be solely responsible for any fill materials which may be required to develop the Real Property, in accordance with the Site Plan Agreement. Without limiting the generality of the foregoing, the Purchaser acknowledges that the Purchaser shall be permitted to place fill materials on the Real Property prior to obtaining a building permit for the construction of a building pursuant to the Site Plan Agreement and Plans approved by the Vendor, provided that such fill meets the Ministry of the Environment requirements and is approved by the Director of Infrastructure Services of the Town of Fort Erie.

(g) **Drainage**

The Purchaser shall be responsible for all drainage requirements relating to the Real Property, which shall be in accordance with plans approved by the Ministry of the Environment and as approved by the Director of Infrastructure Services of the Town of Fort Erie.

6. Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete this transaction shall be conditional upon the satisfaction of all of the following matters, each of the following matters being a condition which has been inserted solely for the benefit of the Purchaser, and if not satisfied, which solely the Purchaser may waive by notice in writing to the Vendor within the time fixed for compliance of such condition, failing which the specific condition shall be deemed not to have been satisfied or waived and this Agreement shall be terminated with the deposit held by the Vendor returned to the Purchaser without interest or deduction, and the parties shall have no further liabilities to each other. Waiver by the Purchaser of any one or any portion of any one of the conditions shall not be deemed to be a waiver of any other

condition or the remainder of such conditions. The conditions (the "Conditions") are as follows:

- (i) On or prior to 5:00 p.m., _____, 2019 (the "**Due Diligence Date**"), the Purchaser has satisfied itself in its sole discretion with respect to soil suitability for construction, environmental status of the Real Property, zoning, development charges status, and any other matters of due diligence conducted by the Purchaser.
- (ii) On or before the Due Diligence Date, the Purchaser has obtained any financing approvals or internal or external approvals that the Purchaser requires.

7. No Environmental Warranties and Representations

- (a) The Purchaser acknowledges that The Corporation of the Town of Fort Erie makes no warranties or representations of any nature or kind that the property is free of environmental risks and/or hazards.
- (b) The Purchaser is advised to seek the advice of its own solicitor with respect to conducting searches of Governmental records or obtaining an environmental audit of the subject lands. The Purchaser is required to remit its objections concerning the environmental condition of the property as a result of searches of Governmental records or an environmental audit, to The Corporation of the Town of Fort Erie by the Due Diligence Date (as defined in Section 6 herein), failing which, the Purchaser is required to complete the transaction as herein contemplated.
- (c) If, as a result of any search of Governmental records or the result of an environmental audit, the Purchaser's future intended use of the property will not be allowed, the Purchaser at its option, may terminate this Agreement of Purchase and Sale on before the Due Diligence Date, and the Purchaser's deposit shall be returned in full without interest or deduction. In that event, the Purchaser acknowledges and agrees to provide The Corporation of the Town of Fort Erie with copies of any and all environmental audit reports and/or governmental responses.

8. Inspections by Purchaser

From and after the date of execution of this Agreement by both the Vendor and the Purchaser, and until the Due Diligence Date, the Purchaser and its agents and employees shall have access to the Real Property upon reasonable prior written notice to the Vendor, for the purposes of conducting inspections and tests relating to soil suitability for construction and environmental assessment. Any access shall be at the Purchaser's sole risk and expense and shall be solely for the purpose of making such tests and inspections. The Purchaser hereby indemnifies the Vendor against any and all claims arising out of such access by the Purchaser or its agents or employees, which indemnification shall survive termination or completion of this transaction, notwithstanding anything else to the contrary contained herein. Following any such tests and inspections, and in the event of termination of this Agreement, the Purchaser covenants to re-instate the Real Property to its condition as existed prior to the undertaking of any such tests or inspections, and to make available, upon request, without cost to the Vendor, copies of any studies, reports or results with respect to the Real Property.

9. **Closing Date**

The transaction of purchase and sale shall be completed by no later than 5:00 p.m. on the **August 2, 2019**, (or as otherwise mutually agreed by the parties), on which date vacant possession of the Real Property shall be given to the Purchaser (the "Closing Date").

10. **Future Use**

- a) The Vendor and Purchaser agree that there is no representation or warranty of any kind that the future intended use of the Real Property by the Purchaser is or will be lawful except as may be specifically provided for in this Agreement.
- b) The Purchaser acknowledges and agrees that the Vendor is under no obligation by virtue of the sale of the Real Property to the Purchaser, to grant any approvals, including approvals for changes to the Town of Fort Erie's Official Plan or Comprehensive Zoning By-law, or with respect to site plan control, minor variances, and building permits, or to support approvals required by any other approval authority which may be necessary for any contemplated use of the Real Property by the Purchaser.

11. **Harmonized Sales Tax (HST)**

The Purchaser represents that at the time of execution of this Agreement and at the Closing Date the Purchaser and the transferee of the Real Property will be registrants under Part IX of the *Excise Tax Act* (Canada) (the "HST Legislation") and will provide to the Vendor the necessary registration numbers, together with an indemnity satisfactory to the Vendor acting reasonably, failing which the Vendor shall be entitled to a credit on the statement of adjustments equal to the amount of harmonized sales tax exigible. In the event the Purchaser so complies with the preceding sentence, the Vendor and Purchaser acknowledge that this purchase is governed by the "commercial activity" provisions of the HST Legislation, and as such, the Vendor has no obligation to collect HST and the Purchaser shall self-assess the HST owing in respect of the purchase and report accordingly.

12. **Purchaser's Representations**

Regardless of any independent investigations the Vendor may make, the Purchaser represents to the Vendor, as representations that are true and correct at the date this Agreement is executed by the Purchaser and will be true and correct on the Closing Date, that:

- a) the Corporation is in good standing under the laws of the Province of Ontario, and it has sufficient power, authority and capacity to deliver this Agreement to the Vendor and to purchase the Real Property from the Vendor;

- b) there is no action or proceeding pending or, to the Purchaser's knowledge, threatened against the Purchaser before any court, arbiter, arbitration panel, administrative tribunal or agency, which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform its obligations under this Agreement; and
- c) the Purchaser has no knowledge that any person associated with the Vendor has any direct or indirect interest in this transaction.

13. Title Clause

This Agreement is subject to the title to the Real Property being good and free from all encumbrances, save only any easements for servicing, municipal purposes, registered restrictions, restrictive covenants, municipal by-laws, or governmental enactments. The Purchaser is not to call for the production of any title deeds, abstracts, survey or other evidence of title except such as are in the possession of the Vendor. The Purchaser is to be allowed until the Due Diligence Date (as defined in Section 6 herein) to examine the title at its own expense. If within that time, any valid objection to title is made in writing to the Vendor which the Vendor is unable or unwilling to remove, remedy or satisfy, and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objections, be null and void and the deposit shall be returned by the Vendor to the Purchaser forthwith without interest or deduction and the parties shall have no other liabilities to each other. Save as to any valid objections so made within such time and except for any objection going to the root of title, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Real Property.

14. Property Purchased "As Is Where Is"

Notwithstanding Section 13 of this Agreement, the Purchaser agrees to accept the property on an "as is where is" basis on the date of closing without regard for the property's condition and state of repair, including but not limited to any outstanding work orders or deficiency notices, and the locations of any and all structures, walls, retaining walls or fences (freestanding or otherwise) or encroachment by buildings or fences or otherwise on the subject property or adjoining properties or streets.

15. Closing Arrangements

Where each of the Vendor and Purchaser retain a lawyer to complete the Agreement of Purchase and Sale of the Real 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 Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Vendor and Purchaser, 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 Vendor and Purchaser 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.

16. Document Preparation

The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of the Vendor.

17. Tender

Any tender of documents or money hereunder may be made upon the solicitor acting for the party on whom tender is desired on the Closing Date and it shall be sufficient that a negotiable bank draft or certified cheque may be tendered in lieu of cash.

18. Non-Registration

The Purchaser agrees not to register this Agreement nor notice thereof against the title to the Real Property. The Purchaser acknowledges that in the event that any registration respecting this Agreement or notice thereof occurs, the Vendor, in addition to any other rights or remedies it may have, shall be entitled to injunctive relief, and the Vendor may rely upon this provision in support thereof.

19. Consumer Reports

The Purchaser is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

20. Assignment

This Agreement may not be assigned by the Purchaser without the express written consent of the Vendor, which consent may be arbitrarily withheld.

21. Commissions

The Purchaser hereby represents to the Vendor that it has not done any act or thing to incur any liability to any real estate agent for any fee or commission in respect of the sale of the Real Property to the Purchaser and the Purchaser hereby indemnifies the Vendor with respect to any breach of such representation.

22. Non-Merger

It is agreed that all rights, conditions, covenants, representations and warranties of the parties herein contained shall not merge on the closing of the transaction or the delivery of the transfer but shall survive thereafter.

23. Binding Agreement/Time of the Essence

This Agreement, when executed by both parties shall constitute a binding contract of purchase and sale, and 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

Vendor and Purchaser or by their respective lawyers who may be specifically authorized in that regard.

24. Entire Agreement

It is agreed that there is no representation, warranty, collateral agreement or condition which affects this Agreement or the Real Property or supported thereby other than as expressed herein in writing. This Agreement shall be read with all changes of gender or number required by the context.

25. No Fettering of Council's Authority

Notwithstanding any other provisions of this Agreement, the Purchaser and Vendor agree with each other that none of the provisions of this Agreement (including a provision stating a party's intention) is intended to operate, nor shall have the effect of operating, in any way to fetter either the Municipal Council which authorized the execution of this Agreement or any of its successor councils in the exercise of any of Council's discretionary powers, duties or authorities. The Purchaser hereby acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

26. Severability

If any provision contained herein shall be found by a Court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this Agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

27. Arbitration

The validity, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and any dispute that may arise under or in relation to this Agreement, including its validity, construction or performance, shall be determined by arbitration upon application to a single Judge in the Superior Court of Justice in accordance with and pursuant to the provisions of the *Arbitration Act 1991*, S.O. 1991, c.17 and the arbitrator's decision shall be final and binding upon the parties and upon their respective successors and assigns and shall not be subject to appeal.

28. Notices

All communications and notices required or contemplated by this Agreement shall be in writing and shall be considered to have been validly given when delivered by hand, or by courier, to the address of the party to whom such notice is directed (as set forth below), or sent by facsimile transmission or e-mail or other means of written communication that effectively conveys the message to the party to whom such notice is directed, as follows:

If to the Purchaser: Harber Realty Holdings Inc.

Attention: Andrew Harber, CEO

1388 York Road
St. David's, ON L0S 1P0
Facsimile: 905-871-8291
E-mail: aharber@abatement.ca

If to the Town to: Town of Fort Erie

Attention: Ed Lustig, Town Solicitor

1 Municipal Centre Drive
Fort Erie, ON, L2A 2S6
Facsimile: (905) 871-4022
E-mail: elustig@forterie.ca


or such other address of which either party has notified the other, in writing, and any such notice shall be considered received when actually received at such address.

29. Headings

The headings used herein shall be for convenience of reference only, and shall not affect the interpretation of this Agreement.

30. Successors and Assigns

The successors and assigns of the undersigned are bound by the terms herein.
IN WITNESS WHEREOF the Purchaser has executed this agreement the day of , 2019.

HARBER REALTY HOLDINGS INC.
Per: 
Andrew Harber, CEO
c/s
Per: _____
Name:
Title:
I/We have authority to bind the corporation.

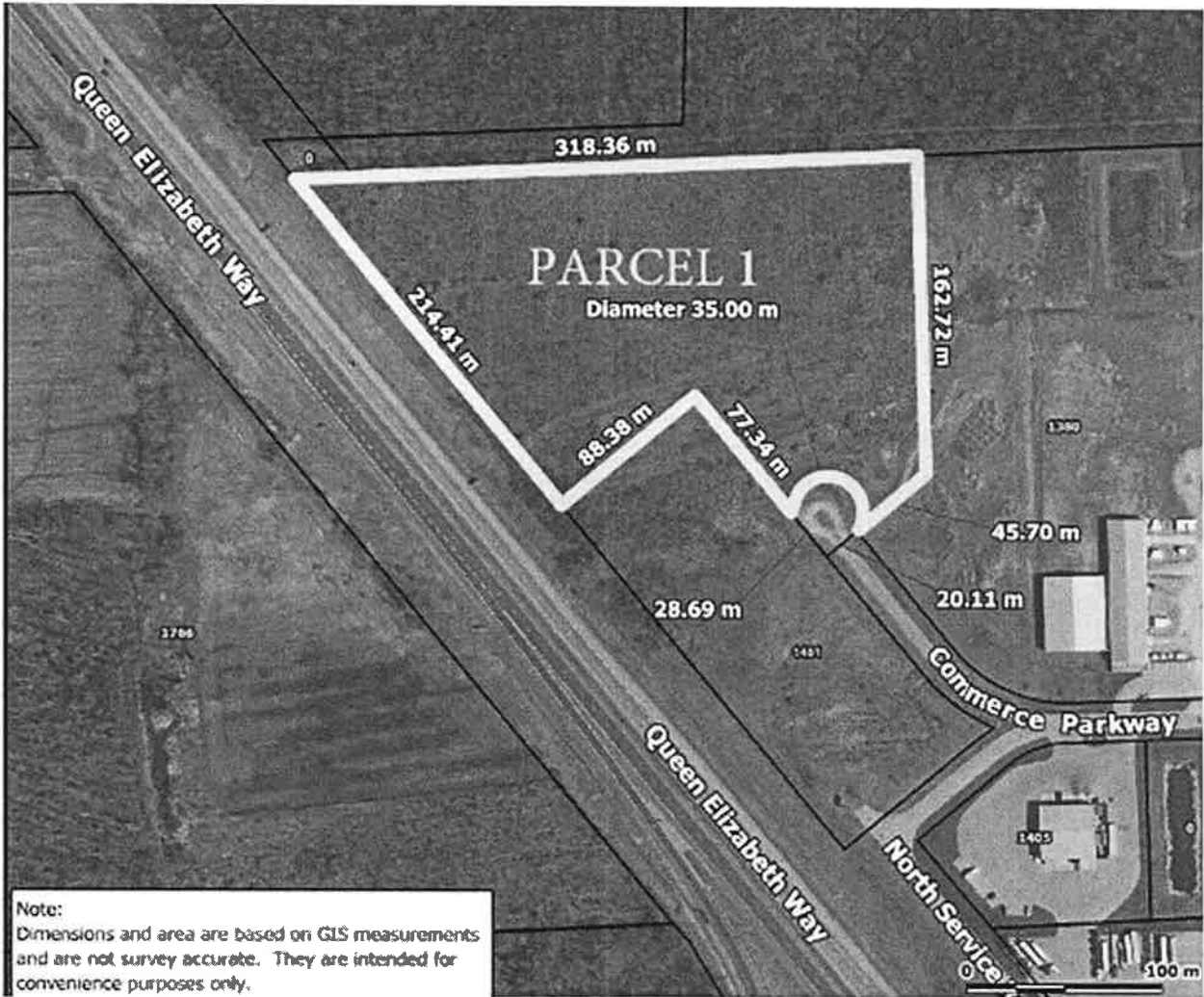
IN WITNESS WHEREOF the Vendor has executed this agreement the day of , 2016.

THE CORPORATION OF THE TOWN OF FORT ERIE

Per: _____
Wayne H. Redekop, Mayor
c/s

Per: _____
Carol Schofield, Clerk
We have authority to bind the corporation.

SCHEDULE "A"



SCHEDULE "B"

RIGHT TO RE-CONVEYANCE AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2019.

B E T W E E N:

HARBER REALTY HOLDINGS INC.

(hereinafter called the "Purchaser")

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE

(hereinafter called the "Town")

WHEREAS By-law No. XX-2019 passed by the Municipal Council of the Town of Fort Erie on July 15, 2019, authorized the acceptance of an Agreement of Purchase and Sale from the Purchaser for the lands described as Part of Lot 6, Concession 5, Niagara River, Bertie, Part X, 59R-XXXXX; Fort Erie, being part of PIN 64238-0102 (LT) subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910 (the "Property"), and subject to the Town reserving the right to a re-conveyance of the Property, and

WHEREAS the Purchaser agreed to enter into an Agreement with the Town to secure the Town's right to a re-conveyance of the Property;

IN CONSIDERATION OF the mutual covenants contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Definitions

This Agreement, unless otherwise stated, includes the following terms and phrases defined as follows:

- a) **"Purchaser"** means Harber Realty Holdings Inc.;
- b) **"Property"** means the lands and premises described in Section 2 of this Agreement;
- c) **"Town"** means The Corporation of the Town of Fort Erie.

2. Property

The Property being the subject of this Agreement is described as follows:

- (a) Part of Lot 6, Concession 5, Niagara River, Bertie, Part X, 59R-XXXXX; Fort Erie, being part of PIN 64238-0102 (LT) subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910; and
- (b) Part of Lot 6, Concession 5, Niagara River, Bertie, Parts 1, 2 & 3, 59R-15664; Fort Erie, being all of PIN 64238-0101 (LT) subject to an Easement in favour of the Bell Telephone Company of Canada registered as Instrument

Number BE43910, Part of Lot 6, Concession 5, Niagara River, Bertie, Parts 4, 5 & 6, 59R-15664; Fort Erie, being all of PIN 6428-0066 (LT) subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910, and Part of Lot 6, Concession 5, Niagara River, Bertie, Parts 7, 8 & 9, 59R-15664; Fort Erie, being all of PIN 64238-0103 (LT) subject to an Easement in favour of The bell Telephone Company of Canada registered as Instrument Number BE43910.

3. Town's Right to Re-Conveyance of the Property

RIGHT TO RE-CONVEYANCE

- (a) The Purchaser hereby grants to the Town the irrevocable right to a re-conveyance of the entire Property in the event the Purchaser fails to:
 - (i) construct and occupy the first phase of an industrial building of at least 10,000 square feet on the Property within two (2) years of registration of the Transfer of the Property from the Town to the Purchaser..

Notwithstanding the foregoing, the time limits set out in Subsection (i) above may be extended to a mutually agreed upon date in the event that it cannot be completed due to circumstances beyond the control of the Purchaser, all of which is at the reasonable discretion of the Town.

- (b) The Purchaser hereby grants to the Town the irrevocable right to a re-conveyance of the entire Property in the event the Purchaser becomes insolvent or makes an assignment for the benefit of creditors, prior to the completion of the actions described in Sections 3 (a) (i) and (ii), at the reasonable discretion of the Town.

EXERCISE OF RIGHT TO RE-CONVEYANCE

- (c) This option is exercisable by notice in writing from the Town to the Purchaser.
- (d) Should the Town exercise its right to a re-conveyance of the Property as provided for in Sections 3 (a) and (b), it shall do so for the sum of Four Hundred Forty-Eight Thousand, Two Hundred Dollars (\$448,200.00), subject to adjustments for the amount of any taxes then due and owing against the Property and the amount of Land Transfer Tax payable by the Town for registration of the transfer of the Property. Despite any improvements or investment made by the Purchaser, the Purchaser shall be deemed to have forfeited any investment so made and shall not be entitled to any compensation for same whatsoever, including monies expended for installing services. Further, there shall be no adjustment in respect of monies drawn upon by the Town in respect of securities provided by the Purchaser. Notwithstanding the foregoing, the Purchaser shall retain ownership of all studies, reports, drawings, plans and documents of any nature or kind, which have been commissioned, supplied or paid for solely by the Purchaser.
- (e) The Town acknowledges having received in escrow a good and valid duly executed Acknowledgement and Direction authorizing the Town

and its solicitor to electronically sign and register on its behalf a Transfer of the Property for the consideration of Four Hundred Forty-Eight Thousand, Two Hundred Dollars (\$448,200.00) in favour of The Corporation of the Town of Fort Erie, which the Town undertakes to hold in escrow and not register unless and until such time as it exercises its right to a re-conveyance of the Property, and in accordance with Section 3 (f) below.

- (f) Within twenty-one (21) days of the Town exercising its right to a re-conveyance as aforesaid, the Purchaser shall vacate the Property, and deliver to the Town all keys to the Property, if any. Following the expiration of the twenty-one (21) day period, the Town shall be at liberty to register the Transfer in favour of The Corporation of the Town of Fort Erie. If the Purchaser does not vacate the Property in the time provided, the Town shall take all steps necessary to take possession of the Property.
- (g) In addition to Section 3 (f) above, the Purchaser undertakes to obtain and register good and valid Discharges and/or Releases of all Liens, Charges and any other encumbrances which the Purchaser has caused to be registered against the title to the Property, forthwith following the Town's notice of exercising its option. Notwithstanding the foregoing, the Purchaser shall at all times indemnify and save harmless the Town against all actions, suits, claims and demands whatsoever, which may be brought against or made upon the Town and from and against all losses, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the Town for or by reason of or on account of such Liens, Charges or other encumbrances.

4. **Non-Assignment**

This agreement may not be assigned by the Purchaser without the express written consent of the Town, which consent may be arbitrarily withheld.

5. **Severability**

If any provision contained herein shall be found by a Court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

6. **Arbitration**

The validity, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and any dispute that may arise under or in relation to this Agreement, including its validity, construction or performance, shall be determined by arbitration upon application to a single Judge in the Superior Court of Justice in accordance with and pursuant to the provisions of the *Arbitration Act 1991*, S.O. 1991, c.17 and the arbitrator's decision shall be final and binding upon the parties and upon their respective successors and assigns and shall not be subject to appeal.

7. Notices

All notices required by this Agreement shall be in writing and shall be considered to have been validly given when delivered by hand, or deposited for mailing by Canada Post, Registered Mail service, to the address of the party to whom such notice is directed (as set forth below), or sent by facsimile transmission or e-mail or other means of written communication that effectively conveys the message to the party to whom such notice is directed, as follows:

If to the Purchaser: Harber Realty Holdings Inc.

Attention: Andrew Harber, CEO

1388 York Road
St. David's, ON L0S 1P0
Facsimile 905-871-8291
E-mail: aharber@abatement.ca

If to the Town: Town of Fort Erie

Attention: Rick Brady,
Director, Planning & Development Services
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6
Facsimile: 905-871-6411
E-mail: rbrady@forterie.ca

or such other address of which either party has notified the other, in writing, and any such notice shall be considered received when actually received at such address.

8. Headings

The headings used herein shall be for convenience of reference only, and shall not affect the interpretation of this agreement.

9. Successors and Assigns

The successors and assigns of the undersigned are bound by the terms herein.

IN WITNESS WHEREOF the Purchaser has executed this agreement the day of , 2019.

HARBER REALTY HOLDINGS INC.

Per: 
Andrew Harber, CEO
c/s

Per: _____
Name: _____
Title: _____
I/We have authority to bind the
corporation.

IN WITNESS WHEREOF the Vendor has executed this agreement the day of , 2019.

**THE CORPORATION OF THE
TOWN OF FORT ERIE**

Per: _____
Edward Lustig, Town Solicitor
I have authority to bind the corporation.