

**AGREEMENT OF PURCHASE AND SALE**

**This Agreement made in duplicate, this \_\_\_\_ day of February, 2021.**

**BETWEEN:** **SILVERWOOD MOTEL COMPANY LTD.**, a duly incorporated company having its registered office at 4445 Route 102, Upper Kingsclear, New Brunswick, E3E 1N2, **hereinafter referred to as the "Vendor"**

**-AND-**

**THE CITY OF FREDERICTON**, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, **hereinafter referred to as the "City"**

**WHEREAS** the Vendor is the owner of the parcel of land designated as 3136 Woodstock Road, being more specifically identified as apparent SNB PID 75331017, (the "Vendor's Property");

**AND WHEREAS** the City is also the owner of the lands and premises designated as Westwood Drive Public, (the "City Street");

**AND WHEREAS** the Vendor has agreed to grant to the City a  $\pm 2,329.30$  m<sup>2</sup> Local Government Services Easement, (the "Vendor LGSE") over a portion of the Vendor's Property, which LGSE is more particularly described or depicted in solid blue on the sketch annexed hereto as Schedule "A";

**AND WHEREAS** the City has agreed to convey to the Vendor a  $\pm 799.00$  m<sup>2</sup> portion of the City Street, (the City Property), which City Property will need to be stopped-up and closed before being conveyed to the Vendor and subsequently consolidated with the Vendor's Property, is more particularly described or outlined and cross-hatched in red on Schedule "A";

**AND WHEREAS** prior to conveying the City Property to the Vendor, the City will register a Local Government Services Easement (the "City LGSE") over a portion of the City Property. The City LGSE is more particularly described or depicted in blue and cross-hatched on Schedule "A";

**AND WHEREAS** the Vendor LGSE and the City Property are hereinafter collectively referred to as the Exchange Properties;

**AND WHEREAS** the Parties acknowledge that this Agreement shall be subject to the final approval of Council for the City of Fredericton.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the terms and conditions herein contained, the Vendor and the City agree as follows:

**1. THE PROPERTY EXCHANGE**

1.1 Subject to the terms outlined herein, the Vendor agrees to grant the Vendor LGSE to the City and the City agrees to convey the City Property to the Vendor.

## **2. PURCHASE PRICE AND METHOD OF PAYMENT**

- 2.1 The purchase price payable by the City to the Vendor is comprised of the following:
- (a) The purchase price for the Vendor LGSE shall be the sum of Twenty Thousand Dollars (\$20,000.00) plus any applicable taxes and adjustments; and
  - (b) A contribution of up to Two Thousand Dollars (\$2,000.00) plus any applicable taxes toward the relocation costs incurred with respect to the relocation of the shed structure presently on the area to be occupied by the Vendor LGSE to another property.

The purchase price for the Vendor LGSE and the contribution toward the relocation of the shed are hereinafter collectively referred to as the "Total Purchase Price".

2.2 The Total Purchase Price, being the sum of Twenty-Two Thousand Dollars (\$22,000.00) plus any applicable taxes and adjustments, shall be payable, in trust, to the Vendors' Solicitor or by such other means of payment as the Vendors may otherwise direct on the Closing Date, subject to the adjustments stipulated within this Agreement.

## **3. ADJUSTMENTS**

3.1 Adjustments shall be made on the Closing Date for all items normally adjusted for a transaction of this nature.

## **4. CLOSING**

4.1 Subject to any other provisions contained herein, this Agreement shall be completed on April 29, 2021, or such earlier or later date as the Parties may mutually agree to in writing (the "Closing Date").

4.2 This Agreement shall be completed at a time as the Parties may mutually agree upon on the Closing Date. Delivery of documents may be made upon the Vendor or the City or their respective solicitors on the Closing Date.

## **5. ACCEPTANCE, CONDITIONS AND RESTRICTIONS**

5.1 The Parties shall indicate the date on which each has executed this Agreement in the space provided immediately above the execution line and upon such execution of the last Party signatory being communicated to the other Party or its solicitors pursuant to Section 10, this Agreement shall become a binding agreement.

5.2 The Parties acknowledge that the Due Diligence Period, as defined in Section 6, is calculated based from the date that this document becomes a binding agreement.

5.3 The Parties acknowledge and agree that the completion of the transaction as contemplated by this Agreement is conditional upon:

- (a) The Vendor granting the Vendor LGSE, such Vendor LGSE to be prepared by the City at the City's expense, to the City for the purposes of the installation of a sanitary line from Fairview Drive to Hummingbird Street. The City is also investigating the possibility of putting a crusher dust service road/trail over the Vendor LGSE and City LGSE to ensure easy accessibility to the infrastructure for future maintenance and to possibly facilitate a pedestrian corridor in the area;
- (b) Upon acceptance and execution of this Agreement, the Vendor shall grant the City a temporary construction license to access the Vendor's Property for the purposes of performing preliminary site work, including clearing the Vendor LGSE area in advance of the migratory bird season. Notwithstanding the foregoing, the City shall not place any permanent structures until the transaction is completed;
- (c) The City, at its sole cost and expense, shall be responsible for the stop-up and close process required to create the City Property and for the preparation and registration of the City LGSE on the City Property;
- (d) Other than outlined in this Agreement, the Parties agree that there shall be no additional consideration or compensation for or to either party. For certainty and once the Vendor's future development plans are finalized, the Vendor (or its successors or assigns) shall be responsible for all costs related to standard service connections/tie-ins to City service infrastructure necessary for future development(s) on the Vendor's Property (including, if necessary or desired, reconfiguration of lateral service lines running to the adjacent motel), and any planning or land use approvals, etc. required to proceed with the redevelopment of the Vendor's Property or any lot line adjustments contemplated by the Vendor following completion of this transaction. For further certainty, no infrastructure or connection fees shall be imposed by the City to recoup costs of installing the sanitary line;
- (e) All property agreements and transactions are subject to the Planning Advisory Committee's recommendation, if any, and City Council's authorization and approval; and
- (f) The Vendor and the City satisfying and complying with all other terms and conditions contained herein.

## **6. DUE DILIGENCE**

6.1 The Parties shall be allowed up to and including the Closing Date, which shall be referred to as the "Due Diligence Period", to satisfy themselves that:

- (a) the title to the Exchange Properties is good and free from restrictions, mortgages, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for:
  - (i) any registered restrictions or covenants that run with the Exchange Properties, provided that such have been complied with, (ii) any registered municipal agreements and agreements with publicly regulated utilities, provided that such have been complied with, (iii) any easements and rights-of-way, provided that such have been complied with, (iv) any qualifications, reservations, provisos and limitations contained in or imposed by any applicable statute and/or any authority having jurisdiction over the Exchange Properties provided that such have been complied with, (v) any discrepancies in title or possession which would be disclosed by an up-to-date survey; and

(b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the Exchange Properties.

6.2 If, within the Due Diligence Period, the Parties notify each other or their Solicitors of any valid objection to title or to any outstanding order, deficiency notice or directive or to the fact that the present use of the Exchange Properties may not be lawfully continued and which the Parties are unable or, in their discretion, determine not to remove, remedy or satisfy and which the Parties will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such matter, be at an end. Save as to any valid objection so made within the Due Diligence Period, and except for any objection going to the root of the title, the Parties shall be conclusively deemed to have accepted the Parties' title to the Exchange Properties.

6.3 Subject to Sections 6.1 and 6.2, the Parties covenant and agree to discharge any registered liens, mortgages or charges affecting the Exchange Properties at their own expense on or before the Closing Date.

6.4 The Parties shall not call for the production of any title deed, abstract, survey or other evidence of title to the Exchange Properties except as are in the control or possession of the Parties. The Parties agree that the Parties will deliver any sketch or survey of the Exchange Properties in the Parties' control or possession to the Parties as soon as practicable and prior to the last day allowed for examining title to the Exchange Properties. The City shall be solely liable for the cost of any up-to-date survey, surveyor's description or reference plan of the Exchange Properties that may be required in connection with the completion of the transactions contemplated by this Agreement.

6.5 The Parties shall, upon request, forthwith deliver letters in a form satisfactory to the Parties addressed to such governmental authorities as may be reasonably requested by the Parties or their solicitors authorizing the release of any information as to compliance matters which such governmental authorities may have pertaining to the Exchange Properties; provided, however, that nothing herein contained shall be deemed to authorize or permit the Parties to request any governmental or municipal inspections of the Exchange Properties. If this Agreement is not completed the Parties shall keep any such information strictly confidential and shall not use it for any purpose whatsoever.

6.6 There is no condition, representation or warranty of any kind, express or implied, that the condition of the Exchange Properties shall be appropriate for any particular use, unless expressly set out herein, or that the present use by the Parties or the future intended use by the Parties is or will be lawful or permitted, or that any sketch or survey delivered by the Parties is complete or accurate. Without limiting the generality of the foregoing, this Agreement shall not be affected by any change in the zoning or use of the Exchange Properties prior to completion.

## **7. SITE CONDITION**

7.1 Subject to the Parties satisfying themselves with respect to the prior conditions stipulated in Section 5.3, the Parties agree that the LGSE and the City Property are being exchanged on an "as is" basis.

## **8. OBLIGATIONS OF THE VENDOR AND THE CITY ON CLOSING**

8.1 The Parties shall execute and deliver to each other on or before the Closing Date, the following:

- (a) Deed/Transfer (City Property) – such Deed or Transfer in registerable form as may be required to transfer to the Vendor all of the City’s right, title and interest in the City Property;
- (b) Form 14 Easement (Vendor’s Property) – such Form 14 Easement in registerable form as may be required to grant the Vendor LGSE to the City;
- (c) Statement of Adjustments – a statement of adjustments if required;
- (d) HST Certificate – certificates of the Parties to indicate whether or not the Parties are registered under the Harmonized Sales Tax provisions of the *Excise Tax Act* and the Parties’ registration number shall be provided therein;
- (e) Corporate Resolutions – certified copies of any required corporate resolutions of the Parties approving and authorizing their respective aspects of the transaction outlined herein; and
- (f) Other – Such other documents specifically referred to in this Agreement relative to the completion of this Agreement and vacant possession of the Exchange Properties.

8.2 The documents referred to in Section 8.1 shall be prepared by the Solicitor for each Party at each Party’s expense, unless otherwise specifically stated in this Agreement.

**9. RISK**

Not applicable.

**10. NOTICE**

10.1 Any notice, approval or other communication required or permitted to be given hereunder ("Notice") shall be in writing and shall be sufficiently given if personally delivered or if sent by prepaid registered mail or if transmitted by facsimile:

Notice to the City:  
 The City of Fredericton  
 397 Queen Street  
 Fredericton, NB E3B 1B5  
Attn: Manager of Real Estate

Notice to the Vendor  
 Silverwood Motel Company Ltd.  
 4445 Route 102  
 Upper Kingsclear, NB E3E 1N2  
Attn: Neill Watt

with a copy to the Solicitor of each party.

City’s Solicitor:  
 City of Fredericton Real Estate Division  
 397 Queen Street  
 Fredericton, NB E3B 1B5  
Attn: Ryan Seymour  
 Tel: 506-460-2637  
 E-mail: [real.estate@fredericton.ca](mailto:real.estate@fredericton.ca)

Vendor’s Solicitor:  
 Drew Simpson  
 364 Springhill Road  
 Fredericton, NB E3C 1R6  
 Tel: 506-74-1293  
 E-mail: [simlaw@nb.sympatico.ca](mailto:simlaw@nb.sympatico.ca)

10.2 Any Notice so given shall be deemed conclusively to have been given and received if personally delivered, if sent by facsimile or if sent by electronic mail on the day such Notice was delivered if delivered on a Business Day and deemed to have been received on the next Business Day if such delivery was made on a non-Business Day. Any Notice sent by prepaid registered mail shall be deemed to have been delivered on the third (3<sup>rd</sup>) Business Day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a Business Day. No such Notice shall be mailed during any actual or apprehended disruption of postal services.

10.3 Either Party may from time to time change its address for service by written notice to the other Party by providing notice as stipulated under this section.

## **11. MISCELLANEOUS**

11.1 This Agreement shall constitute the entire agreement between the Parties and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise (including statutory), of any kind whatsoever except as set out in writing in this Agreement and all prior negotiations, proposals and writings pertaining to this Agreement or the subject matter hereof are superseded hereby.

11.2 This Agreement shall not be modified or amended except with the written consent of the Parties. In addition, no modification or amendment to this Agreement binds the Parties unless it is in writing and has been duly executed by both Parties.

11.3 This Agreement and everything relating hereto shall be construed and enforced in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

11.4 Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable without invalidating, limiting or impairing the remaining provisions of this Agreement.

11.5 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 in accordance with the terms of this Agreement or by an agreement in writing signed by the Parties or by their respective Solicitors who are hereby expressly appointed in this regard.

11.6 Neither Party shall assign any of the obligations and rights under this Agreement without the prior written consent of the other Party.

11.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors and assigns.

11.8 This Agreement shall be read with all changes of gender or number required by the context.

11.9 The Parties acknowledge that they have read this Agreement in its entirety. The Parties further acknowledge that they understand the terms and conditions herein contained and acknowledge that they have had the opportunity to obtain independent legal advice prior to signing this Agreement.

11.10 The Parties shall from time to time, and at all times, do or cause to be done, such further acts and execute and deliver, or cause to be executed and delivered, such further documents as shall be required in order for the Parties to fully comply with the requirements in respect to any HST imposed under any applicable legislation.

11.11 Each Party shall pay and be liable for all transfer taxes and other taxes applicable to or resulting from the transactions contemplated herein, together with all filing, registration or recording charges or fees payable in connection with the filing or registration of any deeds, transfers of land or other documents executed and delivered hereunder.

11.12 Each Party shall be responsible for their own legal fees with respect to the transactions outlined herein.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be duly executed on the date herein below written.

In Witness Whereof this Agreement has been signed  
by the Vendor on February \_\_\_\_\_, 2021.

**SILVERWOOD MOTEL COMPANY LTD.**

\_\_\_\_\_  
Neill Watt, Director

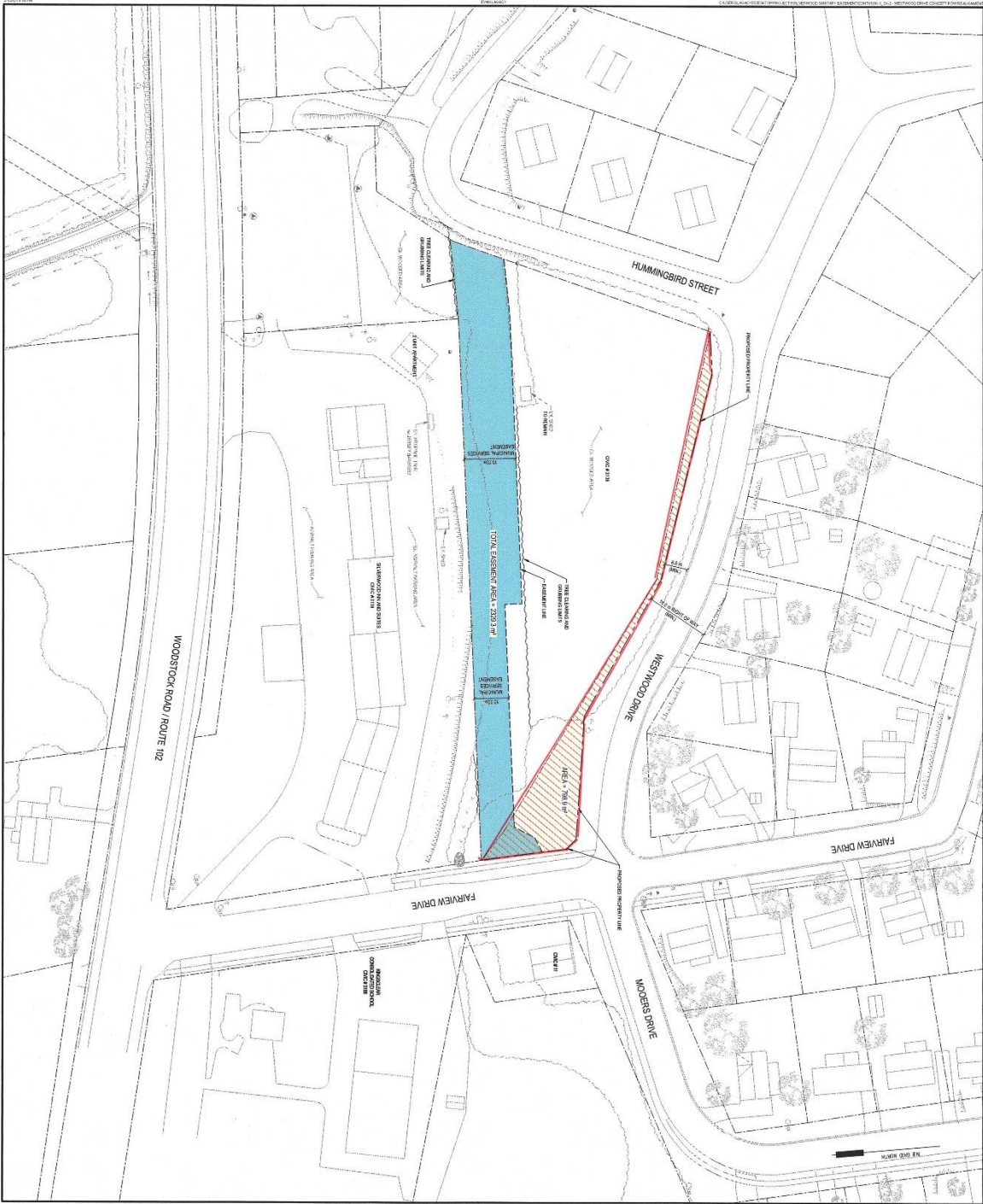
In Witness Whereof this Agreement has been signed  
by the City on February \_\_\_\_\_, 2021.

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Michael G. O'Brien  
Mayor

\_\_\_\_\_  
Jennifer Lawson Murray  
City Clerk

# Schedule "A"



**exp.**

**Frederickton**

11711 FREDERICK ROAD, SUITE 100  
FREDERICKTON, PE 10001  
TEL: 833-833-8333  
WWW.FREDERICKTONEXP.COM

• BUILDINGS • EXISTING ENVIRONMENT • ENERGY •  
• MOBILITY • IMPROVED INFRASTRUCTURE • SUSTAINABILITY •

DATE: 01/11/2024  
DRAWN BY: J. BROWN  
CHECKED BY: M. BROWN  
SCALE: AS SHOWN

**FOR INFORMATION ONLY**

No.	Revision	Date

Drawn by: **STWD**  
 Design checked by: **ETJ/STWD**  
 Project Number: **AS SHOWN**

**THE CITY OF FREDERICTON  
 SILVERWOOD SANITARY  
 MAIN REALIGNMENT  
 TENDER NO. 120-XX**

**THE WESTWOOD DRIVE  
 CONCEPT RIGHT OF WAY  
 REALIGNMENT  
 CONCEPT 2**

Project No: **FRE-00259318-AD**  
 Sheet No: **SK-2** of **0**



**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF CORPORATE EXECUTION**

I, **JENNIFER LAWSON MURRAY**, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I am the City Clerk of the City of Fredericton, one of the Parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. That the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. That the signature "Michael G. O'Brien" subscribed to the foregoing instrument is the signature of Michael G. O'Brien, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson Murray" subscribed thereto is my signature.
4. That the Mayor and ssistant City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.
5. That The City of Fredericton is a municipal corporation and has no share capital.

**SWORN TO BEFORE ME** at the )  
 City of Fredericton, in the County )  
 of York and Province of New )  
 Brunswick, this \_\_\_\_ day of )  
 February, 2021. )

\_\_\_\_\_)  
 Donna Legacy )  
 A Commissioner of Oaths )

\_\_\_\_\_)  
 Jennifer Lawson Murray