



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 72-2017

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### **Being a By-law to Authorize the Acceptance of an Offer to Purchase Partnership Lands Owned by The Corporation of the Town of Fort Erie and the Niagara Catholic District School Board on the North Side of Catharine Street from 2495365 Ontario Inc., in Trust (Fernando Pingue)**

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**Whereas** By-law No. 120-12 passed by the Municipal Council of The Corporation of the Town of Fort Erie authorized the entry into a Letter of Agreement with the Niagara Catholic District School Board (NCDSB) to develop, market and sell combined NCDSB and Town-owned lands on the north side of Catharine Street (the "partnership lands"); and

**Whereas** the Letter of Agreement provided for selling the partnership lands following the completion of certain prerequisites which have now been met; and

**Whereas** part of the lands were sold to The Regional Municipality of Niagara on December 21, 2016 for the sum of \$71,200.00; and

**Whereas** the remainder of the lands were advertised for sale in 4 newspapers on May 18 and 25, June 1<sup>st</sup>, with a deadline for submitting Offers on a prescribed form by June 13, 2017; and

**Whereas** three Offers were received, with the highest Offer from 2495365 Ontario Inc., In Trust, for \$90,000.00; and

**Whereas** it is deemed desirable to accept the Offer from 2495365 Ontario Inc., In Trust and enter into the Agreement of Purchase and Sale;

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

1. **That** the acceptance of an Offer to purchase partnership lands owned by The Corporation of the Town of Fort Erie and the Niagara Catholic District School Board legally described as Part of Elgin Street, Plan 502, being Part 3, Plan 59R-14676, aka North Street (Closed by By-law SN379857); Town of Fort Erie, being all of PIN No. 64227-0169 (LT); and Lots 134, 135, 136, Part Lots 133, 164, Plan 512, being Part 2, Plan 59R-15706; Town of Fort Erie, being all of PIN No. 64227-0175 (LT), from 2495365 Ontario Inc., In Trust, for \$90,000.00 and the entry into an Agreement of Purchase and Sale in the form attached hereto as Schedule "A" and forming part of this by-law, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Agreement of Purchase and Sale, and to affix the corporate seal thereto.
3. **That** the Town Solicitor, or in his absence, the Chief Administrative Officer or his designate, is authorized and directed to execute all documentation necessary to complete the transaction, and to affix the corporate seal thereto.

4. **That** the Town of Fort Erie's share of the proceeds from the sale shall be credited to the Major Capital Expenditure Reserve Fund of The Corporation of the Town of Fort Erie.
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 19<sup>th</sup> day of June, 2017.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Laura Bubanko, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 72-2017 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

## Agreement of Purchase and Sale

This Agreement of Purchase and Sale dated this 9th day of JUNE 2017

**BUYER,** 2495365 ONTARIO INC IN TRUST, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** ..... THE CORPORATION OF THE TOWN OF FORT ERIE and .....  
..... NIAGARA CATHOLIC DISTRICT SCHOOL BOARD. ., the following  
(Full legal names of all Sellers)

### REAL PROPERTY:

Address. .... 0 Catharine Street. ....

being vacant land fronting on the north side of Catharine Street, in the Town of Fort Erie and having a frontage of 43.893 metres (144 feet) more or less by a depth of 40.171 to 40.193 metres (131.79 to 131.86 feet) (irregular)

and legally described as Part of Elgin Street, Plan 502, being Part 3, Plan 59R-14676, aka North Street (Closed by By-law SN379857); Town of Fort Erie, being all of PIN No. 64227-0169 (LT); and Lots 134, 135, 136, Part Lots 133, 164, Plan 512, being Part 2, Plan 59R-15706; Town of Fort Erie, being all of PIN No. 64227-0175 (LT). (All of the lands are also described as Parts 1 & 2 on 59R-15706)

..... (the "property").  
(Legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** NINETY THOUSAND DOLLARS Dollars (CDN\$). 90 000.00  
NINETY THOUSAND DOLLARS Dollars

**DEPOSIT:** Buyer has submitted TEN THOUSAND DOLLARS  
..... Dollars (CDN\$). \$ 10 000.00

by negotiable cheque payable to **Niagara Catholic District School Board** and to be credited toward the Purchase Price on completion. The parties to this Agreement hereby acknowledge that no interest shall be earned, received or paid on the deposit.

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

**SCHEDULE(S) A.** ..... attached hereto form(s) part of this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

1. **IRREVOCABILITY:** This Offer shall be irrevocable by the Buyer until 6:00 p.m. on the 31<sup>st</sup> day of July, 2017, 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.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 15<sup>th</sup> day of August, 2017. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: (905) 356-6904 (For delivery of Documents to Seller) FAX No.: 905 323 5002 (For delivery of Documents to Buyer)

Email Address: bamadio@broderickpartners.com (For delivery of Documents to Seller) Email Address: fernando.pique@gmail.com (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:** N/A

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:** N/A

6. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable: N/A.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST) then such tax shall be in addition to the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the purchase price.

INITIALS OF BUYER(S):

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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 8<sup>th</sup> day of August, 2017, (Requisition Date) to examine the title to the property at 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 Buyer that there are no outstanding work orders or deficiency notices affecting the Property, and that its present use ( . . . . . vacant land . . . . . ) may be lawfully continued ~~and that the principal building may be insured against risk of fire.~~ Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by 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 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 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 (Title Insurance) 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 Brokerage and Co-operating Brokerage 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

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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 Seller and Buyer 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.

**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 understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller. ~~The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.~~

**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, 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, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller~~

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



~~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 Seller's 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. ~~and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer.~~ If requested by Buyer, 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:** 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. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.~~

~~18. **ADJUSTMENTS:** Any rents, mortgage interest, 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 Buyer.~~

**19. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, ~~or any Brokerage, Broker, or Salesperson,~~ for any changes in property tax as a result of a re-assessment of the property, ~~save and except any property taxes that accrued prior to the completion of this transaction.~~

**20. 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 Seller and Buyer or by their respective lawyers or representatives who may be specifically authorized in that regard.

**21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers or representatives on the day set for completion. Money may be tendered with funds drawn on a lawyer's trust account in the form of a bank draft or certified cheque. ~~or wire transfer using the Large Value Transfer System.~~

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**22. ~~FAMILY LAW ACT:~~** ~~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.~~

**23. ~~UFFI:~~** ~~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 ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. 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.~~

**24. ~~LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:~~** ~~The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.~~

**25. ~~CONSUMER REPORTS:~~** ~~The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.~~

**26. 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.

**27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):






28. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

**SIGNED, SEALED AND  
DELIVERED** in the  
presence of:

.....  
(Witness)

**IN WITNESS** whereof I have  
hereunto set my hand and seal:

.....  
(Buyer)  2495365 ONTARIO INC (Seal)  
FERNANDO PINGUE  
905 323 5002

DATE June 9/17

.....  
(Witness)

..... (Seal)  
(Buyer)

DATE .....

**The Undersigned Seller, agrees to the above Offer.**

**SIGNED, SEALED AND  
DELIVERED** in the  
presence of:

**IN WITNESS** whereof I have  
hereunto set my hand and seal:

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

Per: ..... (Seal)  
Wayne H. Redekop, Mayor  
(Seller)

DATE .....

Per: ..... (Seal)  
Laura Bubanko, Clerk  
(Seller)

DATE .....

We have authority to bind the corporation.

**NIAGARA CATHOLIC  
DISTRICT SCHOOL BOARD**

Per: ..... (Seal)  
Fr. Paul MacNeil, Chairperson  
(Seller)

DATE .....

Per: ..... (Seal)  
John Crocco, Director of Education  
(Seller)

DATE .....

We have authority to bind the Board.

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 between:

**BUYER,** 2495365 ONTARIO INC. m TRUST ....., and  
**SELLER,** THE CORPORATION OF THE TOWN OF FORT ERIE and  
NIAGARA CATHOLIC DISTRICT SCHOOL BOARD

for the purchase and sale of: 0 Catharine Street, being vacant land fronting on the north side of Catharine Street, in the Town of Fort Erie and having a frontage of 43.893 metres (144 feet) more or less by a depth of 40.171 to 40.193 metres (131.79 to 131.86 feet) (irregular) and legally described as Part of Elgin Street, Plan 502, being Part 3, Plan 59R-14676, aka North Street (Closed by By-law SN379857); Town of Fort Erie, being all of PIN No. 64227-0169 (LT); and Lots 134, 135, 136, Part Lots 133, 164, Plan 512, being Part 2, Plan 59R-15706; Town of Fort Erie, being all of PIN No. 64227-0175 (LT). (All of the lands are also described as Parts 1 & 2 on 59R-15706)

**The Buyer agrees to pay the balance as follows:**

in cash or by certified cheque on closing subject to the usual adjustments.

**The Buyer acknowledges and agrees that:**

1. The deposit paid by the Buyer shall be forfeited without interest or deduction, to the Seller, in the event that the Buyer does not complete the transaction for any reason other than one contemplated in this Agreement of Purchase and Sale.
2. The Buyer acknowledges that the Seller makes no warranties or representations of any nature or kind that the property is free of environmental contamination, hazards or risks.

The Buyer 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 prior to the closing date of the transaction. The Buyer is required to remit objections (if any) concerning the environmental condition of the property, as a result of searches of Governmental records or an environmental audit to the Seller by the date for submitting requisitions set out herein, failing which, the Buyer is required to complete the transaction as herein contemplated.

If, as a result of any search of Governmental records or the result of an environmental audit, the Buyer's future intended use of the property will not be allowed, the Buyer at its option, may terminate the Agreement of Purchase and Sale and the Buyer's deposit shall be returned in full without interest or deduction. In that event, the Buyer acknowledges and agrees to provide the Seller with copies of any and all environmental audit reports and/or governmental responses.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



3. Notwithstanding Clauses 8 and 10 of the Agreement to which this Schedule is attached, the Buyer 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.

4. The Buyer acknowledges and agrees that the Seller is under no obligation by virtue of the sale of the land to grant any approvals, including approvals for changes to the Official Plan or 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 land by the Buyer.

5. Notwithstanding any other provisions of this Agreement, the Buyer and Seller 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 Buyer hereby acknowledges that the Buyer 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.

6. The Buyer and Seller acknowledge and agree that in order to complete the transaction contemplated herein, By-laws passed by the Municipal Council of The Corporation of the Town of Fort Erie will be required to:

a) Exempt the Seller, Niagara Catholic District School Board, from the part lot control provisions (Subsection 5 of Section 50) of the of the *Planning Act* with respect to Part Lot 164, Plan 512; and

b) Deem Lots 134, 135 and 136, Plan 512, not to be a registered plan of subdivision for the purposes of Subsection 3 of Section 50 of the *Planning Act*.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):

