

CBRM

A Community of Communities

Cape Breton Regional Municipality

**Office of Demetri Kachafanas
Regional Solicitor**

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MEMO

TO: Mayor and Council

FROM: Demetri Kachafanas, Regional Solicitor

DATE: May 13, 2015

RE: Canadian Maritime Engineering – Purchase Archibald’s Wharf

Further to the motions and direction of Council, staff has concluded negotiations with CME regarding the terms of the sale of Archibald’s Wharf.

Attached please find the following documentation:

1. Agreement of Purchase and Sale;
2. Investment Agreement;
3. Motion of Council dated December 2, 2014 and December 19, 2014;
4. Letter from Jessica McDonald Acting Provincial Director of Planning indicating approval of the Minister of municipal Affairs is not required;
5. Decision of the Nova Scotia Utility and Review Board, dismissing the Appeal of Susan Whitaker re: amendment to the planning strategy.

The Province has signed off on the amendment to the Municipal Planning Strategy and the appeal of the decision to the Nova Scotia Utility and Review Board was dismissed.

Accordingly, we ask for a motion of Council approving the terms of the sale as set out in the Agreement of Purchase and Sale and supplementary Investment Agreement subject to the execution of the Investment Agreement by the parties.

Yours truly,


Demetri Kachafanas

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this day of April, 2015.

BETWEEN

CAPE BRETON REGIONAL MUNICIPALITY, a body corporate and politic
in and for the Province of Nova Scotia

hereinafter called the " **VENDOR** "

-and-

CANADIAN MARITIME ENGINEERING LIMITED, a company
incorporated according to the laws of the Province of Nova Scotia;

hereinafter called the " **PURCHASER** "

1. *SALE OF PROPERTY*

The **Vendor** agrees to sell and the **Purchaser** agrees to purchase all that real property and land covered by water located at **Commercial Street, North Sydney, in the Cape Breton Regional Municipality, Nova Scotia and being PID #15690514** , as shown as Lot 97 1A attached in Schedule "A" and reserving out a lot presently referred to as a "paved parking lot" and more particularly set out in Schedule "B" attached hereto and hereinafter called the "**PROPERTY**".

2. *TERMS OF SALE*

The purchase price is for the sum of Five Hundred Thousand dollars (\$500,000.00) of lawful money of Canada, payable as follows:

- a) The sum of \$1.00 to the Vendor, as a deposit and to be credited on account of the purchase money on closing.
- b) Balance of the purchase price, subject to the usual adjustments, shall be paid by cash or certified cheque to the Vendor on closing.

- c) This Agreement is subject to the Vendor obtaining a Motion from Council approving the sale transaction pursuant to the terms and conditions herein.

- d) This offer is subject to an Environment Phase II Assessment to be completed by the Purchaser. The cost of the Assessment shall be divided equally between the Vendor and Purchaser. The Purchaser shall provide a copy of the Environment Phase II Assessment to the Vendor prior to closing and the Assessment shall be included in and form part of this Agreement as Schedule "C". The parties hereby agree that the Environment Phase II Assessment shall from a baseline for environmental liabilities and that all existing environment issues, known or unknown, shall be the responsibility of the Vendor and all environmental issues caused by the Purchaser subsequent to the closing date shall be the responsibility of the Purchaser.

- e) The Vendor shall have a right of first refusal to purchase the property should the Purchaser cease operations at the property or receives a bona fide offer to purchase from a third party, which the Purchaser is willing to accept, the Purchaser then shall provide the Vendor herein a copy of the offer to purchase within ten (10) days of the signed offer. Should the Vendor exercise the right of first refusal, the Purchaser shall have the property appraised by a licenced appraiser, of their choice, and the purchase price shall be of fair market value of lawful money of Canada, plus HST. A copy of the appraisal shall be provided to the Vendor. If the Vendor disagrees with the Appraisal, it may have the property appraised by a second appraiser and the purchase price/fair market value shall be deemed to be the average of the two appraisals. The second appraisal shall be provided to the Purchaser and the Purchaser shall then have fifteen (15) days from receipt of the appraisal to exercise their right of first refusal by notifying the Vendor in writing within the fifteen (15) day period and making full payment within thirty (30) days.

- f) The Vendor agrees to waive the right of first refusal as set out in clause 2(e) above provided the third party purchaser and the Purchaser warrants to the Vendor in the offer, that third party purchaser shall operate a business on the property and the business shall be in accordance with the land use zoning provisions in place for the property. A copy of the offer between the Purchaser and third party shall be provided to the Vendor and the Vendor shall provide the Purchaser with written notice of termination of Right of First refusal within 5 days of receipt of the offer.

- g) The Vendor shall provide notice to the CAW, Local 4285 and Joseph Musgrave indicating termination of their existing Lease and to vacate the premises prior to closing.

- h) This Agreement is subject to the Vendor obtaining subdivision approval for the creation of a parcel of land, to be retained by the Vendor, located behind the Royal Bank of Canada building and shown outlined in red on the attached map in Schedule "B" hereto. The Vendor shall have the property surveyed and submitted for subdivision approval. The Vendor shall provide a copy of the survey to the Purchaser for approval prior to submitting the subdivision application. The Vendor does hereby confirm that subsequent to the Subdivision as shown on the attached map in Schedule "B" hereto the Purchaser shall have frontage on Commercial Street, North Sydney and this Agreement is subject to the Purchaser having said frontage.
 - i) This Agreement is subject to the Purchaser granting an easement/right of way to the Vendor, for the benefit of the Purchaser and the Public over the driveway entrance from Commercial Street to the so called parking lot. The said easement/right of way shall be for maintenance and public use of the drive way entrance.
 - j) This Agreement is subject to the Vendor providing to the Purchaser a right of way over the driveway entrance and the aforementioned reserved out lot for the Purchaser to be able to have transport trucks and other vehicles cross the Vendor's property to access the Property.
 - k) The Purchaser shall have a right of first refusal to purchase the land or any portion of the land described in Schedule "B", commonly referred to as the "rear parking lot" should the Vendor decide to sell the property to a third party, the Vendor then shall provide the Purchaser with notice of their desire to sell the lands described in Schedule "B", or any portion thereof by registered mail. Should the Purchaser exercise the right of first refusal, the Vendor shall have the property appraised by a licenced appraiser, of their choice, and the purchase price shall be of fair market value of lawful money of Canada, plus HST. A copy of the appraisal shall be provided to the Purchaser and if the Purchaser disagrees with the appraisal, it may have the property appraised by a second appraiser and the purchase price/fair market value shall be deemed to be the average of the two appraisals. The second appraisal shall be provided to the Vendor and the Purchaser shall then have fifteen (15) days from receipt of the appraisal to exercise their right of first refusal by notifying the Vendor in writing within the fifteen (15) day period and making full payment within thirty (30) days.
- 3) *DATE OF CLOSING*
- Vacant possession to be given by the Vendor on or before the **31st day of March, A.D. 2015** (hereinafter called the Closing Date).

4) DESCRIPTION AND TITLE OBJECTIONS

- a. The Vendor, at the expense of the Vendor agrees to migrate the Property title from the Registry System under the *Registry Act* to the Land Registration System under the *Land Registration Act* at least five (5) business days prior to the Closing, and failing registration, the Purchaser, may terminate this Agreement and the deposit shall be immediately returned to the Vendor. On final registration of the Property, the Vendor shall so advise the Purchaser, after receipt whereof the Purchaser is allowed three (3) business days to investigate the title to the Property, which the Purchaser shall do at the Purchaser's expense. If within that time frame, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove, and which the Purchaser will not waive, this Agreement shall be null and void and the deposit herein shall be returned to the Purchaser, without interest, and without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser.
- b. The Vendor shall provide to the Purchaser a copy of the existing metes and bounds description for the property within ten (10) days of acceptance of this offer.
- c. The Vendor shall provide to the Purchaser, on a without warranty basis and within ten (10) days of acceptance of this offer, a copy of any survey or Location Certificate for the Property that is in the Vendor's possession.
- d. At the time the Vendor, delivers to the Purchaser, notification that the property has been migrated the Vendor shall provide a copy of the approved legal description, a copy of the SRI, applicable restrictive covenants and that portion of any applicable approved plan showing the Property in question.

5) SALES TAX

If this transaction is subject to Goods and Services Tax/Harmonized Sales Tax (imposed by Part IX of the Excise Tax Act R.S.C.1985,c. E-15 as amended) hereafter referred to as G.S.T. then such G.S.T. (HST) shall be in addition to and not included in the purchase price, and G.S.T. shall be collected and remitted in accordance with applicable legislation. If this transaction is not subject to G.S.T., (HST) the Vendor agrees to provide on or before closing to the Purchaser or Purchaser's solicitor a certificate in a form reasonably satisfactory to the Purchaser or Purchaser's solicitor certifying that the transaction is not subject to G.S.T.(HST).

6) *CONVEYANCE*

The conveyance (of the property which is the subject of this Agreement) shall be of **Warranty Deed**, drawn at the expense of the Vendor to be delivered on payment of the purchase price on the closing date. The said property is to be conveyed free from dower and other encumbrances, except as to any easements, registered restrictions or covenants that affect the property and do not materially affect the enjoyment of the property and except as specifically set out in Paragraph "I" of this Agreement.

7) *INSURANCE*

All buildings and equipment upon the real property shall be and remain at the risk of the Vendor until closing. Pending completion of the sale, the Vendor will hold all insurance policies and the proceeds thereof in trust for the parties as their interests may appear and in the event of damage to the said premises, the Purchaser may either have the proceeds of the insurance and complete the purchase, or may cancel the Agreement and have all monies theretofore paid returned without interest.

8) *ADJUSTMENTS*

Interest, rentals, insurance premiums, taxes, rates and assessments are to be adjusted to the date of closing. The cost of municipal improvements (including, but without limiting the generality of the phrase "municipal improvement", betterment charges and capital charges for utility or municipal services completed as of the date of this Agreement, whether billed or not, are to be paid by the Vendor on or before the closing date.

9) *TENDER OF DOCUMENTS*

Any tender of documents to be delivered or money payable hereunder may be made upon the Vendor or the Purchaser or any party acting for him and money may be tendered by negotiable cheque, certified by a chartered bank or trust company.

10) *FORFEITURE OF DEPOSIT*

It is understood and agreed that if the Purchaser does not complete this Agreement in accordance with the terms thereof, he will forfeit the above deposit in addition to any other claim which the Vendor may have against the Purchaser for his failure to so complete.

11) *INSPECTON*

The Purchaser reserves the right to inspect the property at any time prior to the closing, upon providing reasonable notice to the Vendor, and as well reserves the right to cancel this Agreement if there is any substantial change in the property between the time of signing this Agreement and the Closing Date.

12) TIME OF ESSENCE

Time shall be in all respects of the essence in this Agreement.

13) MISCELLANEOUS

- a. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.
- b. This Agreement is to read with all changes of gender or number required of the context.
- c. The Purchaser and Vendor agree that this Agreement may be communicated by a facsimile transmission and that when signed by all parties, this Agreement shall be binding on all parties.

14) NOTICE

Any notice required to be given with respect to this Agreement shall be in writing and shall be effectively given if delivered or if sent by ordinary or registered mail, telegram, fax or telex addressed to the party for whom the notice is intended. Any notice shall be deemed to have been received on delivery; any notice sent by telegram, fax or telex shall be deemed to have been received one (1) working day after being sent; any notice mailed shall be deemed to have been received five (5) calendar days after being mailed. Any notices shall be sent to the following:

For the Vendor:
Demetri Kachafanas
Regional Solicitor
Cape Breton Regional Municipality
320 Esplanade
Sydney, NS B1P 7B9
(902) 563-5045

For the Purchaser:
Stephen D. Ling
Landry McGillivray
P.O. Box 1200
Dartmouth, NS B2Y 4B8
(902) 463-8800

SIGNATURES ON PAGE 7

[Signature]
Witness

CAPE BRETON REGIONAL MUNICIPALITY
(VENDOR)

Per:

[Signature]
Cecil P. Clarke - Mayor

Per:

[Signature]
Deborah Campbell - Clerk

I HEREBY ACCEPT the above offer and agree to purchase on the terms as therein set out.

DATED at ~~Hamilton, Nova Scotia~~ ^{Berkeley} this ^{April} 21 day of March, 2015.

[Signature]
Witness Tanya DiAngelis

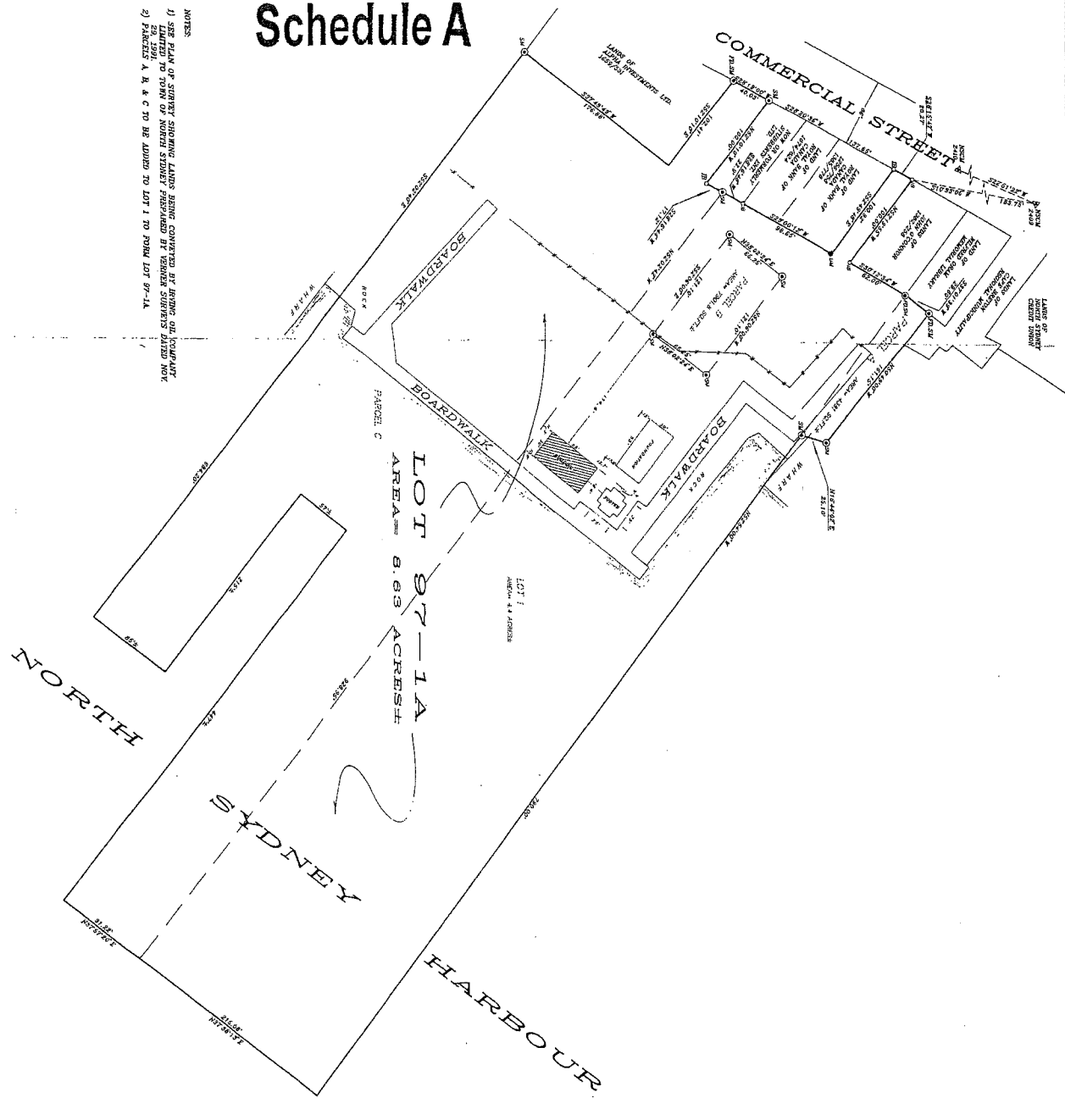
CANADIAN MARTIME ENGINEERING LTD.
(PURCHASER)

Per:

[Signature]
David Russell, CEO

Per: _____

Schedule A



NOTES:
 1) SEE PLAN OF SUBDIVISION SHOWING LANDS BEING CONSOLIDATED BY AMENDMENT TO SUBDIVISION PLAN OF 24, 1991, IN ORDER TO BE ADDED TO LOT 1 TO FORM LOT 97-1A.
 2) PARCELS A, B, & C TO BE ADDED TO LOT 1 TO FORM LOT 97-1A.

LOT 97-1A
 AREA = 6.63 ACRES

NORTH SYDNEY HARBOUR

COMMERCIAL STREET

BOARDWALK

PARCEL 1

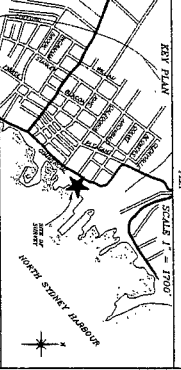
PARCEL 2

PARCEL 3

PARCEL 4



HARVEY SURVEYS
 Land Surveyors
 P.O. Box 514
 Commercial St.
 North Sydney, N.S.W.
 Ph: 296-4300 Fax: 296-4303



PLAN OF SUBDIVISION
 FOR CONSOLIDATION OF LANDS OF
 CAPE BRETON REGIONAL MUNICIPALITY
 NORTH SYDNEY
 CAPE BRETON REGIONAL MUNICIPALITY
 NOVA SCOTIA

SCALE: 1 INCH = 50 FEET

KEY PLAN

DATE: 2019

DATE: 2019

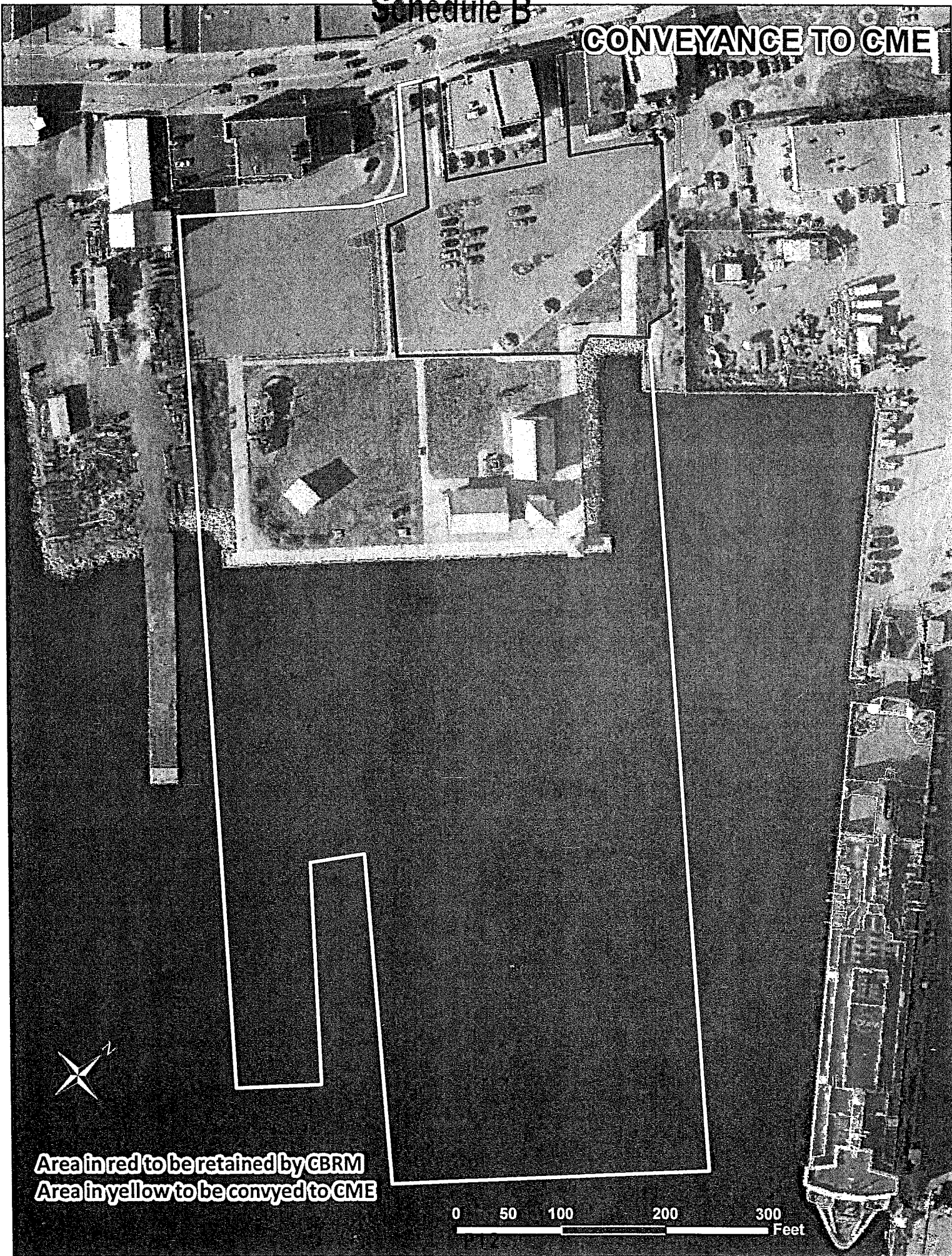
CAPE BRETON REGIONAL MUNICIPALITY
 THIS FINAL PLAN OF SUBDIVISION IS APPROVED
 FOR 2019 BY THE BOARD OF MUNICIPAL COUNCIL
 DATE: 2019

3. Single detached houses, Max. height: 15' 0".

2019
 19.132

Schedule B

CONVEYANCE TO GME



Area in red to be retained by GBRM
Area in yellow to be conveyed to GME

0 50 100 200 300
Feet

AGREEMENT

THIS AGREEMENT made this day of March, 2015.

BETWEEN

CAPE BRETON REGIONAL MUNICIPALITY, a body corporate and politic
in and for the Province of Nova Scotia

hereinafter called the "**CBRM** "

-and-

CANADIAN MARITIME ENGINEERING LIMITED, a company
incorporated according to the laws of the Province of Nova Scotia;

hereinafter called the "**CME** "

WHEREAS CME wishes to purchase property in North Sydney to expand its existing business operations;

AND WHEREAS CBRM has property in North Sydney it is desirous to sell to CME;

AND WHEREAS CME and CBRM have entered or will enter into an Agreement of Purchase and Sale dated April 21, 2015 regarding the purchase of property bearing PID # 15690514;

AND WHEREAS the parties wish this Agreement in addition to forming a stand-alone agreement, to form part of the terms of sale and be incorporated into the said Agreement of Purchase and Sale attached hereto as Schedule "A";

AND WHEREAS the term "Vendor" shall also refer to CBRM and the term "Purchaser" shall also refer to CME;

NOW THEREFORE IN CONSIDERATION of the premises and the mutual promises hereinafter expressed and confirmed, and other good and valuable consideration, CBRM and CME covenant, undertake and agree with one another that:

1. *SALE OF THE PROPERTY*

CBRM agrees to sell and the CME agrees to purchase all that real property and land covered by water located at Commercial Street, North Sydney, in the Cape Breton Regional Municipality, Nova Scotia and being PID #15690514 and reserving out a lot presently referred to as a "paved parking lot" and more particularly set out in Schedule "B" attached hereto and hereinafter called the "PROPERTY" on the terms set out in the Agreement of Purchase and Sale dated April 21, 2015 and attached hereto as Schedule "A"

2. *INVESTMENT*

CME shall expend and invest monies in the amount of Five Million (\$5,000,000.00) in its North Sydney business operations **within one year of the start of the construction season which for the purposes of this Agreement is deemed to be May 1, 2015. Any investment made pursuant to this Clause and expended prior to May 1, 2015 shall be credited to CME and shall be included in the Investment calculation.** Should CME be unable or unwilling to carry out the Five Million (\$5,000,000.00) dollar Investment, CBRM has the right to repurchase the property for the amount of Five Hundred Thousand (\$500,000.00) of lawful money of Canada plus HST. In addition to the purchase price, CBRM shall reimburse CME any fixed capital expenditures they spent to acquire, renovate or upgrade the site. Such Capital expenditures shall include such things as buildings, fixed wharves, recreation equipment/facilities and the purchase of the restaurant. For the purposes of meeting the Investment provision, investment shall include but not be limited to such things as buildings, wharf improvements, salaries paid to local contractors or employees, **mutually agreeable economic benefit to local community** and the purchase of business assets such as vehicles and equipment in the local community. IF CME meets the investment commitment the right to repurchase by CBRM shall become null and void.

3. *TERMS OF SALE OF THE PROPERTY*

The parties agree that the purchase and sale of the property set out in the Agreement of Purchase and Sale attached hereto as Schedule "A" is subject to the Investment and associated right of repurchase as set out in Clause 2 of this Agreement. And Clause 2 of this Agreement shall form part of the terms of sale of the property and Clause 2 shall be incorporated as a clause into the Agreement of Purchase and Sale for the property between the parties.

DATED at Sydney, Nova Scotia this _____ day of May, 2015.

**CAPE BRETON REGIONAL MUNICIPALITY
(VENDOR)**

Witness

Per: _____
Cecil Clarke – Mayor

Per: _____
Deborah Campbell – Clerk

DATED at _____, _____ this _____ day of May 2015.

**CANADIAN MARTIME ENGINEERING LTD.
(PURCHASER)**

Witness

Per: _____

Per: _____

Port Update:

Archibald's Wharf:

Motion: Motion:

Moved by Councillor Keagan, seconded by Councillor Prince, approval of the sale of the Archibald's Wharf property to Canadian Maritime Engineering Ltd. (CME) and to include the following elements in the proposal:

- CBRM will acquire the restaurant located on site for \$25,000;
- CBRM will sell parcel PID#15690514 to CME for \$200,000 (plus an additional \$50,000 contribution to be used for local recreational purposes);
- CBRM will use \$25,000 of the funds from the sale for on-going port development costs;
- CBRM will commit the balance of net proceeds for future recreational development on the North Sydney waterfront, with the intention that this funding can be used to leverage additional provincial and federal funding;
- CBRM will provide a one year-rent-free vendor location for Chill Zone on CBRM property;
- CBRM will relocate the monument that is on the site in consultation with the North Sydney Kinsmen;
- The Bartown Office will be relocated to the Indian Beach facility;
- CBRM will maintain the public parking space on site.

And to approve the four-month port budget to the end of March 31st, 2015, as presented.

Discussion:

The Director of Planning explained that the sale of Archibald's Wharf requires an amendment to a Policy in the CBRM Municipal Planning Strategy which will therefore require a public consultation process culminating in a Public Hearing of Council.

Council acknowledged that approval of the sale is contingent on the completion of the public consultation and public hearing process with the adoption of the necessary Policy amendment. A committee comprised of the Mayor and senior administration was tasked with the responsibility of organizing and scheduling a Public Participation Program and a Public Hearing of Council.

Motion Carried