



PURCHASE AND SALE CONTRACT FOR RESIDENTIAL PROPERTY

WARNING: THIS CONTRACT FORM CANNOT BE USED IF THIS TRANSACTION IS COVERED BY THE HOME EQUITY THEFT PREVENTION ACT (Section 265-a of New York Real Property Law).

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**COMMISSIONS OR FEES FOR THE REAL ESTATE SERVICES TO BE PROVIDED
ARE NEGOTIABLE BETWEEN REALTOR® AND CLIENT.**

When signed, this document becomes a binding contract. Buyer and seller should consult their own attorney. Buyer acknowledges that information contained in the Multiple Listing Service is not guaranteed and should be independently verified before signing this Contract.

TO: Silver Springs Associates and _____ (the "Seller")

FROM: Town of Canandaigua and _____ (the "Buyer")

Seller agrees to sell, and Buyer agrees to purchase, the real property described below on the terms stated in this Purchase and Sale Contract for Residential Property, as well as the Addenda referenced herein and attached hereto (collectively, the "Contract"). Seller and Buyer may each be referred to individually as a "Party" and collectively as the "Parties."

1. PROPERTY.

(A) Property Description; Seller's Power and Authority. Real Property known as 4351 Tichenor Point Dr in the County of Ontario ☒ Town ☐ City ☐ Village of Canandaigua, State of New York, Zip 14424 also known as Tax No. 126.16-1-1.100, including all buildings and any other improvements and all rights which the Seller has in or with the premises (the "Property"). Approximate Lot Size: 4.077 acres. Description of buildings on Property: 2 Cottages, Boathouse/Shed, Tennis Court.

Seller represents to Buyer that: (i) Seller owns the Property and has the power and authority to sell it, (ii) Seller is not in bankruptcy, and (iii) Seller has sufficient funds (including the proceeds from this sale) to close this transaction and pay Seller's closing expenses.

(B) Other Items Included in Purchase. Any of the following items and all related equipment and accessories for such items now in or on the Property are included in this purchase and sale, which Seller represents are owned by Seller: All awnings, carbon monoxide detectors, central vacuum system, curtain and traverse rods, electric garage door opener and remote control devices, exhaust fans, fences, fireplace screens and enclosures, flowers, garbage disposal, heating systems (except as provided in Paragraph 5(G)), hoods, intercom equipment, lighting fixtures, ceiling fans, mail box, plumbing systems, septic and private water systems, satellite dishes, screens, security systems and security codes, sheds, shrubs, smoke detectors, storm doors, storm windows, sump pumps, swimming pool, trees, underground pet containment fencing with transmitter and collar receiver(s), wall-to-wall carpeting and runners, water softeners, window boxes, window blinds and shades, and the following, if built-in: air conditioning (except window units), humidifier, TV antennae, TV wall mount, basketball apparatus, cabinets, dishwashers, microwave ovens, mirrors, outdoor playsets, ovens, shelving, stoves, and trash compactors. Buyer agrees to accept these items in their present condition. Other items to be included in the purchase and sale are:

Items excluded are: _____

Seller represents that Seller has good title to all of the above items to be transferred to Buyer and will deliver a Bill of Sale for the above items at Closing (as hereinafter defined below in Paragraph 2(A)).

☒ Seller shall cause any heating, plumbing, air conditioning, electrical systems and included appliances to be in working order at the time of Closing, except for All Services are "AS IS". The prior sentence shall not be construed as a warranty or guarantee after Closing.

2. PURCHASE PRICE, ADJUSTMENTS, CREDITS AND TAXES.

(A) **Price & Payment.** The purchase price (the "Purchase Price"), payable in U.S. Dollars as follows, is _____

SEE ADDENDUM

(1) **Deposit.** The following deposit in the form of ☐ cash ☐ personal check ☐ official bank check or ☐ wire transfer (the "Deposit") _____ \$ _____

(2) **Seller Concession.** At Closing, Seller shall pay the sum of ☐ _____% of the Purchase Price or ☐ \$ _____ ("0" if left blank) toward lender approved costs and prepaid items (the "Seller Concession").

Adjusted Balance Due. Upon delivery of the deed ("Closing"), the Purchase Price less (1) the Deposit and (2) Seller Concession, subject to any closing adjustments and credits as provided in this Contract, shall be paid in cash, official bank draft or certified check at Closing (some or all of which may be paid with the proceeds of a new loan).

(B) **Deposit; Default.** Buyer ☐ has delivered ☐ will deliver within two (2) calendar days of acceptance the Deposit set forth in Paragraph 2(A)(1) payable to and held in escrow by _____ (the "Escrow Agent") which will be deposited at _____ (the "Bank") and which Deposit is to become part of the Purchase Price or returned if not accepted or if this Contract thereafter fails to close for any reason not the fault of the Buyer. If Buyer fails to complete Buyer's part of this Contract, Seller is allowed to retain the Deposit to be applied to Seller's damages and may pursue other available rights and remedies Seller has against the Buyer, including but not limited to a lawsuit for any real estate brokerage commission paid by the Seller. If Seller fails to complete Seller's part of this Contract, Buyer's Deposit will be returned to Buyer, and Buyer may pursue other available rights and remedies Buyer has against Seller.

(C) **Seller Concession.** If the Seller Concession set forth in Paragraph 2(A)(2) exceeds the lender approved costs and prepaid items, the Seller Concession shall be reduced to an amount equal to the lender approved costs and prepaid items.

(D) **Transfer Tax, Recording Costs, Mortgage Tax and Closing Adjustments.** Seller will pay the real property transfer tax and special additional mortgage recording tax, if applicable. Seller will also pay for the recording/filing of any documents necessary to convey record marketable title, including, but not limited to death certificates, bankruptcy court orders, and affidavits (ie. Alive and Well, Bankruptcy, Estate Tax, Heirship, Judgment, etc.). Buyer will pay for recording the deed and mortgage, mortgage tax and mortgage assumption charges, if any. Excluding delinquent items, interest and penalties, the following will be prorated and adjusted between Seller and Buyer as of the Closing Date (as hereinafter defined below in Paragraph 6(B)): taxes, other assessments and municipal charges computed on a fiscal year basis; rent; common charges or assessments; fuel oil; propane; water, pure water and sewer charges. If the Purchase Price is \$1,000,000.00 or more, then the additional transfer tax identified in Section 1402-a of the Tax Law shall be paid by the ☒ Seller ☐ Buyer (check one).

3. **CONTINGENCIES.** This Contract is subject to the following contingencies. If any of these contingencies are not satisfied by written notice to the other Party by the dates specified (collectively, the "Contingency Deadline Dates"), then either Buyer or Seller may cancel this Contract by written notice to the other, provided that the applicable contingency has not otherwise been satisfied by a Party after the applicable Contingency Deadline Date by written notice to the other Party and prior to any date on which this Contract is cancelled. (Check and complete applicable provisions.)

(A) Financing.

☐ (1) **Mortgage Commitment.** The Contract is subject to Buyer obtaining and accepting a written _____ mortgage loan commitment in an amount not to exceed ☐ _____% of the purchase price or ☐ \$ _____ at an interest rate not to exceed _____%, for a term of _____ years (the "Commitment"). Buyer shall immediately apply for this loan and shall have until _____, 20____ to obtain and accept a Commitment. The conditions of any such Commitment shall not be deemed contingencies of this Contract but shall be the sole responsibility of Buyer; however, a commitment that is conditioned on an appraisal of the Property shall not be deemed a "Commitment" hereunder. If the Commitment requires repairs, replacements, or improvements, Seller shall furnish the requisite materials and have the work done before Closing, at Seller's expense. However, if the cost of doing so exceeds \$ _____, Seller shall not be obligated to furnish such materials and have such work done, and Buyer will be allowed either to receive a credit at Closing for the above amount and incur any necessary expenses to comply with the Commitment requirements, or to cancel this Contract by written notice to Seller, and any Deposit shall be returned to Buyer. Acceptance of a Commitment by Buyer shall be deemed a waiver and satisfaction of this contingency.

☐ (2) **Cash Transaction.** This Contract is subject to Buyer providing Seller with written proof that Buyer has immediately available U.S. funds in the amount of the Purchase Price by _____, 20____.

☐ (3) **Additional Financing Terms.**

☐ (B) **Sale and Transfer of Title.** This Contract is subject to the sale and transfer of title of Buyer's existing real property pursuant to the terms and conditions of the Sale and Transfer of Title Contingency Addendum.

☒ (C) **Inspection of Property.** This Contract is subject to inspection(s) of the Property pursuant to the terms and conditions of the Property Inspection Addendum (the "Property Inspection").

- ☐ (D) **Building Code Compliance.** This Contract is subject to Seller delivering to Buyer, at Seller's expense, all permits, certificates of compliance and/or other comparable proof of compliance with building codes and ordinances (the "Certificates") on file with the applicable municipality within ten (10) calendar days of acceptance. The Buyer shall have five (5) calendar days from Buyer's receipt of the Certificates or receipt of written notice that no Certificates exist to deliver to Seller a written demand that Seller obtain specific/certain Certificates (the "Demand"). If the Demand is not timely delivered by Buyer, this Building Code Compliance Contingency is deemed waived by Buyer. Upon Seller's receipt of Buyer's Demand, Seller shall have five (5) calendar days to (i) provide the Certificates specifically demanded by Buyer, or (ii) enter into a written agreement with the Buyer addressing the Certificates to be provided to Buyer.
- ☒ (E) **Other Contingency(s).**

SEE ATTACHED-

1). ADDENDUM to Purchase and Sale

2). CONTINUATION OF THE PURCHASE AND SALE CONTRACT

4. **APPROVAL OF ATTORNEY(S).** This Contract is subject to the written approval of attorneys for Buyer and Seller within 3 days (no less than three (3) days, *excluding Saturdays, Sundays and public holidays* and "3" if left blank), from date of acceptance (the "Approval Period"). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the "Objections") the Contract within the Approval Period and the Objections are not cured by written approval by both attorneys and all of the Parties within the Approval Period, then (A) either Buyer or Seller may cancel this Contract by written notice to the other and any Deposit shall be returned to the Buyer or (B) the approving attorney may notify the other Party and any attorney listed below in writing that no approval has been received and that the noticed Party has two (2) days, *excluding Saturdays, Sundays and public holidays*, from receipt of the notice (the "Grace Period") to provide written attorney approval or disapproval of the Contract. The approving attorney shall provide to the noticed Party and to any attorney listed below a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, then this Approval of Attorney(s) contingency shall be deemed waived by the noticed Party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed Party.

5. **CONDITION OF PROPERTY.**

(A) **Seller's Property Condition Disclosure Statement. (check one box only)**

- ☐ (1) Seller has provided Buyer with the attached Seller's Property Condition Disclosure Statement.
- ☐ (2) Seller has not provided Buyer with Seller's Property Condition Disclosure Statement, and Seller shall credit Buyer \$500.00 at Closing in lieu of such Statement.
- ☒ (3) Is not applicable.

(B) **Representations Pertaining to the Home Equity Theft Prevention Act ("HETPA"). (check applicable box(es))**

- ☐ (1) **Buyer.** Buyer represents to Seller as of the date of acceptance that Buyer is acquiring the Property to use the Property as Buyer's primary residence and that Buyer will occupy the Property as Buyer's primary residence.
- ☒ (2) **Seller.** To Seller's actual knowledge, Seller represents to Buyer as of the date of acceptance that there is no active Lis Pendens filed against the Property to foreclose a mortgage pursuant to Article 13 of the New York Real Property Actions and Proceedings Law, the Property is not on an active property tax lien sale list, and Seller is not two (2) months or more behind in Seller's mortgage payments with respect to the Property.

- (C) **Certificate of Occupancy.** If applicable laws require, Seller shall apply for a Certificate of Occupancy for the Property no less than ten (10) calendar days after acceptance and furnish it before Closing. However, if the cost of obtaining the Certificate of Occupancy exceeds \$ 0.00, Seller shall not be obligated to provide the Certificate of Occupancy, and Buyer will be allowed either to receive a credit at Closing for the above amount, or to cancel this Contract by written notice to Seller, and any Deposit shall be returned to Buyer.

- (D) **Zoning Code Compliance.** Seller represents to Buyer that the Property is zoned for use as a Single Family Residential and the Property is in compliance with applicable zoning codes and ordinances.

- (E) **Condition of Property.** Buyer agrees to purchase the Property and any items included in the purchase **AS IS** except as provided in Paragraph 1(B), subject to reasonable use, wear, tear, and natural deterioration between now and Closing. However, this paragraph shall not relieve Seller from furnishing a Certificate of Occupancy as called for in Paragraph 5(C) and/or certificate(s) of compliance as called for in Paragraph 3(D), if applicable.

- (F) **Gas, Mineral, Oil and Timber Rights.** Seller represents that all gas, mineral, oil and timber rights will transfer with the Property except:

no exceptions

- (G) **Services.** Seller represents the Property is serviced by: ☒ Electric, ☐ Fuel Oil, ☐ Gas (Natural), ☐ Propane, ☒ Public Sewers, ☒ Public Water, ☐ Septic System, ☐ Well, ☐ Other: _____.
- If Propane is checked, Seller represents that the propane tank **(check one box only)** ☐ is not ☐ is owned by Seller and that there **(check one box only)** ☐ is not ☐ is an existing written contract to provide propane between the propane company and Seller.

6. **CLOSING AND POSSESSION.**

- (A) **Pre-Closing Walkthrough.** Buyer shall have the right to walk through the Property within forty-eight (48) hours before the time of Closing to ensure that the Property is in the condition existing at the time of acceptance subject to reasonable use, wear, tear and natural deterioration between the date hereof and the Closing. Seller agrees that all utilities shall be on at that time. Seller shall continue to maintain the Property in the condition existing as of acceptance, through Closing, including, but not limited to, utility service continuation, lawn and landscaping care, and snow plowing.

(B) **Closing Date and Place.** Closing shall take place at the Ontario County Clerk's Office or the offices of Buyer's lender on or before April 1, 2021 (the "Closing Date"). At any time after such specified date, any Party who has completed its obligations under this Contract which are to be completed prior to Closing may notify the other Party that time is of the essence to close (the "Time of Essence Notice") which Time of Essence Notice shall set forth a specific time for Closing on a day that is at least seven (7) calendar days after delivery of the Time of Essence Notice to such other Party pursuant to Paragraph 8(D) below.

(C) **Possession of Property.**

- ☒ (1) Buyer shall have possession of the Property upon Closing, in broom-clean condition, with all keys to the Property delivered to Buyer at Closing.
- ☐ (2) Seller shall have the right to retain possession for _____ calendar days after Closing at the cost of \$_____ per day inclusive of real property taxes, plus utilities, continuation of lawn, landscaping, pool, and snow maintenance, and refuse collection, and an escrow deposit by Seller of \$_____. At Closing, a key to the Property shall be delivered to Buyer. At delivery of possession to Buyer, the Property shall be in broom-clean condition and the remaining keys to the Property shall be delivered to Buyer.
- ☐ (3) Buyer shall have right of early possession for _____ calendar days prior to Closing at the cost of \$_____ per day inclusive of real property taxes, plus utilities, continuation of lawn, landscaping, pool, and snow maintenance, and refuse collection, and an escrow deposit by Buyer of \$_____. At possession, the Property shall be in broom-clean condition and a key to the Property shall be delivered to Buyer; the remaining keys shall be delivered to Buyer at Closing.

In the event of retained possession or early possession, the Parties shall enter into a written Pre-Closing Occupancy Agreement or Post-Closing Occupancy Agreement, the form of which shall be the Monroe County Bar Association's recommended form.

(D) **Risk of Loss.** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Buyer may cancel this Contract without any further liability to Seller and Buyer's Deposit is to be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

7. **TITLE MATTERS.**

(A) **Title and Related Documents.** Seller shall deliver at Seller's expense:

- (1) Not later than five (5) calendar days after acceptance of this Contract by Buyer and Seller, Seller shall order (i) an abstract of title, fully guaranteed tax and U.S. Court searches, with a local tax certificate for Village or City taxes, if any (collectively the "Abstract") and (ii) an instrument survey map, certified and prepared to meet the Standards of the Monroe County Bar Association and Buyer's mortgage lender, if any (the "Survey"). Both the Abstract and Survey shall be dated or re-dated after the date of acceptance, and Seller shall endeavor to deliver the Abstract and Survey along with the draft of the proposed deed to Buyer or Buyer's attorney within thirty (30) calendar days thereafter, but in any event, not later than fifteen (15) calendar days prior to the Closing Date in Paragraph 6. Seller will pay for such searches to and including the day of Closing; and
- (2) At the Closing, to Buyer, a properly signed and notarized, (i) Warranty Deed with lien covenant (or Executor's, Administrator's or Trustee's Deed, if Seller holds title as such), (ii) carbon monoxide detector and smoke alarm affidavits, (iii) documents required by law, (iv) documents required by Buyer's lender, provided there is no cost or liability to Seller, and (v) assignment of leases and transfer of security deposits, if any.

(B) **Marketability of Title.** Seller shall convey good and marketable title to the Property in fee simple, free and clear of all liens and encumbrances. The Parties acknowledge and agree that good and marketable title to the Property, free and clear of all liens and encumbrances, means, without limit, that all gas, mineral, oil and timber rights will transfer with the Property to Buyer except as otherwise provided in Paragraph 5(F) above. However, Buyer agrees to accept title to the Property subject to: (a) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these covenants have not been violated or the time for objection to any violation has expired, (b) public utility easements within fifteen (15) feet of lot lines which do not interfere with any existing improvements on the Property or with any improvements that Buyer may construct in compliance with all present restrictive covenants or record and zoning and building codes, and (c) fences deviating from the actual Property line one foot or less, provided the fence placement does not impair access to the Property from a right of way or cause the Property to be in violation of any restrictive covenant, easement or agreement of record or of any building, zoning or subdivision code. Seller and Buyer agree that potential objections revealed by the Survey furnished pursuant to Paragraph 7(A)(1) above shall be resolved pursuant to the "Suggested Title Standards for Treating Discrepancies Revealed by Surveys" of the Monroe County Bar Association.

(C) **Objections to Title.** If Buyer raises a valid written objection to Seller's title which indicates that title to the Property is unmarketable, then Seller may cancel this Contract upon written notice to Buyer, and the Deposit shall be returned to Buyer. However, if Seller: (a) is able to cure the objection on or before the Closing or (b) is able to insure the title objection and Buyer is willing to accept insurable title, then this Contract shall continue, subject to the Seller curing the title objection and/or providing insurable title at Seller's expense. If Seller fails to cure the title objection on or before the Closing Date, or if Buyer is unwilling to accept insurable title, Buyer may cancel this Contract upon written notice to Seller and the Deposit shall be returned to Buyer.

8. **BROKERS & MISCELLANEOUS.**

(A) **Real Estate Broker.**

- ☒ (1) The Parties agree that Mitchell "Trip" Pierson, III and Bill Wheeler of Mitchell Pierson, Inc. brought about this purchase and sale.
- ☐ (2) It is understood and agreed by Buyer and Seller that no broker brought about this purchase and sale.

(B) **Attorney Disclaimer:** In participating in the transaction, an attorney renders no opinion whatsoever as to the value of the Property. Unless an attorney has actual knowledge to the contrary, it should not be inferred from an attorney's participation in the transaction that the attorney knows, or is aware of, the facts behind the history of the price negotiations between the Parties.

(C) Responsibility of Persons Under This Contract; Non-Assignability. If more than one person signs this Contract as Buyer, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Buyer in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. However, this Contract is personal to the Parties and may not be assigned by either without the other's consent.

(D) Notices.

(1) In General.

- (i) Notices under this Contract shall be in writing and deemed delivered upon receipt. Except as otherwise provided in Paragraph 8(D)(2) below, notices under this Contract may be made by a Party or by the attorney or the listing/selling agent for such Party and may be received by the other Party or by the attorney or the listing/selling agent for such other Party. Seller and Buyer agree that notices under this Contract may be delivered to any address, fax number, and/or e-mail set forth on the Administrative Information page of this Contract for a Party, the attorney for a Party, or the listing/selling agent for a Party, as applicable.
- (ii) Delivery of notices under this Contract shall be made by personal delivery, overnight courier, first class mail, fax, or e-mail, except as otherwise provided in Paragraph 8(D)(2) below.
- (iii) If delivery is made by personal delivery, the notice(s) delivered shall be deemed received on the date delivered. If delivery is made by overnight courier or first-class mail, the notice(s) delivered shall be deemed received one calendar day, excluding Saturdays, Sundays and public holidays, following the date upon which the notice(s) are deposited with the overnight courier service with delivery charges prepaid or charged to sender's account or with the postal service with required postage affixed. If delivery is made by fax, the notice(s) transmitted shall be deemed received on the date the sender receives confirmation from the recipient's equipment that the entire transmission has been received. If delivery is made by e-mail, the notice(s) transmitted shall be deemed received on the date the sender's e-mail is located in the sent e-mail folder of the sender, except as otherwise provided in Paragraph 8(D)(2) below.

- (2) **Special Notices.** Any (i) Time of the Essence Notice, (ii) notice of cancellation or termination of the Contract, (iii) bump notice of Seller, (iv) Buyer's notice of removal of sale and transfer of title contingency, or (v) Buyer's notice of preservation of Buyer's transfer of title contingency made under this Contract (each, a "Special Notice") may only be made by a Party or the attorney for such Party and may only be received by the other Party with a copy to such other Party's attorney and to the listing/selling agent of such other Party, if designated on this Contract. Further, if any Special Notice is delivered by e-mail, then a true and complete copy of the e-mailed Special Notice shall also be mailed by first class prepaid mail within one calendar day, excluding Saturdays, Sundays and public holidays, following the date of the e-mail, and the e-mailed Special Notice shall be deemed received on the date the sender's e-mail is located in the sent e-mail folder of the sender, provided the required mailing by first class prepaid mail is completed.

(E) Entire Contract; Miscellaneous. This Contract when signed by both Buyer and Seller will be the record of the complete agreement between the Buyer and Seller concerning the purchase and sale of the Property. This Contract may be signed in counterparts. No oral agreements or promises will be binding. Seller's representations in this Contract shall not survive after Closing. If any provision of this Contract is rendered invalid or unenforceable, it shall not affect the validity or enforceability of the remaining provisions. This Contract shall be construed, enforced and interpreted under the laws of the State of New York, without regard to principles of conflicts of laws.

(F) Electronic Signatures. The Parties agree and consent that this Contract, and every demand, notice and objection given under this Contract, may be signed and initialed in any manner permitted by New York State law, including the Electronic Signatures and Records Act and applicable regulations.

(G) Addenda. The following Addenda are incorporated into and attached to and made a part of this Contract:

- | | | |
|---|---|--|
| <input type="checkbox"/> Agricultural Districts/Farming Activity Disclosure | <input checked="" type="checkbox"/> Personal Property Agreement | <input type="checkbox"/> Uncapped Natural Gas Well |
| <input type="checkbox"/> All Parties Agreement (FHA/VA) | <input checked="" type="checkbox"/> Property Inspection | <input type="checkbox"/> Disclosure |
| <input type="checkbox"/> Contingency Addendum | <input type="checkbox"/> Rented Property | <input type="checkbox"/> Utility Surcharges |
| <input type="checkbox"/> Electric Availability | <input type="checkbox"/> Sale & Transfer of Title | <input type="checkbox"/> Wayne County Disclosure |
| <input type="checkbox"/> Home Warranty | <input type="checkbox"/> Short Sale Approval | <input type="checkbox"/> Notice for all Residential Property |
| <input type="checkbox"/> Lead Compliance | | <input type="checkbox"/> Well and Septic System |

☒ Other: 1) . ADDENDUM and 2) . CONTINUATION OF PURCHASE AND SALE CONTRACT

9. OTHER TERMS. (If blank, this paragraph is not applicable) In the event of a conflict between the provisions of this paragraph and the provisions of any other paragraph of this Contract, the provisions of this paragraph will control.

SEE ATTACHED ADDENDUM & CONTINUATION OF PURCHASE AND SALE CONTRACT

10. LIFE OF OFFER. This offer shall expire on January 8th, 2021, at 5 pm.m.

☐ **PROPERTY INSPECTION DECLINED.** Buyer has reviewed the terms and conditions of the Property Inspection Addendum and Buyer elects not to conduct a Property Inspection.

Authentisign

Doug Finch - Town Manager

01/04/2021

Buyer
1/4/2021 2:56:22 PM EST

Date

Buyer

Date

☐ **ACCEPTANCE OF OFFER BY SELLER.** Seller accepts the offer of Buyer and agrees to sell on the terms and conditions set forth in the Contract.

☐ **COUNTEROFFER BY SELLER.** Seller agrees to sell the Property in accordance with the terms and conditions of the Contract, except as amended and modified as follows: **(attach additional sheets if necessary)**

In any conflict of terms and conditions between this counteroffer and the Contract, the terms and conditions of this counteroffer shall prevail.

This counteroffer shall expire on _____, 20____, at _____ .m.

Seller

Date

Seller

Date

☐ **ACCEPTANCE OF COUNTEROFFER BY BUYER.** Buyer accepts the offer of Seller and agrees to buy on the terms and conditions set forth in the Contract.

Buyer

Date

Buyer

12/31/2020

Date

Douglas E. Finch, Town Manager

ADMINISTRATIVE INFORMATION

Property Address: 4351 Tichenor Point Dr Canandaigua NY 14424 MLS#

Seller Silver Springs Associates

Seller

Address

City, State, Zip

Telephone No.

Email address

Seller's Attorney Dana Campbell/Stephanie Seiffert

Address 1300 Clinton Square

City, State, Zip Rochester, NY 14604

Telephone No. (585) 263-1672 **Fax** (585) 451-0779

Email address dcampbell@nixonpeabody.com

Listing Broker Mitchell Pierson, Jr., Inc.

NY License No. 109939231

Address 4 South Main St

City, State, Zip Pittsford NY 14534

Phone 585-586-6622 **Fax** 585-383-0875

Listing Agent Mitchell "Trip" Pierson, III

NY License No. 10311205636

Phone (585) 202-0742 **Fax**

Cell 12793 **Public ID#**

Email Address trip@piersonrealtors.com

Buyer Town of Canandaigua

Buyer Doug Finch- Town Manager

Buyer

Address

City, State, Zip

Telephone No.

Email Address

Buyer's Attorney Chris Nadler

Buyer's Attorney

Address

City, State, Zip

Telephone No. **Fax**

Email address

Selling Broker

NY License No.

Address

City, State, Zip

Phone **Fax**

Selling Agent

NY License No.

Phone **Fax**

Cell **Public ID#**

Email address



GREATER ROCHESTER ASSOCIATION OF REALTORS®, INC.
Continuation Form to Purchase and Sales Contract



Published by and only for the exclusive use of the Greater Rochester Association of REALTORS®, Inc.

DATED: _____
 BUYER: _____ Town of Canandaigua _____
 SELLER: _____ SILVER SPRINGS ASSOCIATES _____
 PROPERTY: _____ 4351 Tichenor Point Dr, Canandaigua, NY 14424 _____


☐ Counter Offer

☒ Addendum

Permissive Referendum. This Purchase and Sale Contract is subject to, and contingent upon, Buyer's municipal approval, which approval shall be subject to permissive referendum. Buyer shall timely proceed to procure such approval and publish a Notice of Permissive Referendum, all in accordance with NYS Town Law.

DATED: _____ 12/31/2020 _____

DATED: _____



 Douglas E. Finch, Town Manager

DATED: _____

DATED: _____

ADDENDUM TO PURCHASE AND SALE CONTRACT
4351 TICHENOR POINT DRIVE

1. PURCHASE PRICE. The Purchase Price shall be determined as follows:

- a. Within 30 days after the date of this Contract, the parties shall each retain an independent appraiser to value the Property. The Appraisers shall be MAI certified by the Appraisal Institute and shall be licensed to practice in New York State.
- b. The Appraisers shall ascertain the fair market value of the Property based on its current condition.
- c. The Purchase Price for the Property shall be determined as follows:
 - (i) If the two appraisals are within ten percent (10%) of each other, the Purchase Price shall be the average of the two appraisals;
 - (ii) If the two appraisals vary by more than ten percent (10%), a third appraiser shall be chosen by the parties and the purchase price shall be the average of all three appraisals.

d. Limited Right to Cancel Contract.

- a. If the final Purchase Price, as determined by the appraisals described above does not exceed ~~\$5,250,000.00~~ Seller shall have the right to cancel this contract by providing notice to Purchaser within 48 hours of determination of the final Purchase Price. ~~\$5,375,000-~~ see COUNTER OFFER, below
- b. If the final Purchase Price, as determined by the appraisals described above exceeds \$7,000,000.00 the Purchaser shall have the right to cancel this contract by providing notice to Seller within 48 hours of determination of the final Purchase Price.

MPii

- e. Each party shall pay for its own appraisal. In the event a third appraisal is needed pursuant to paragraph 1(c)(ii) above, the parties shall each pay for half of the cost of the third appraisal.
- f. Seller agrees to cooperate with the appraisers so that they can value the Property in an efficient, cost-effective manner.
- g. The parties shall instruct the appraisers to produce final appraisals within ~~sixty (6) days~~ following their engagement. Each party shall deliver to the other a copy of the appraisals within five (5) days of receipt.

Six (6) days

MPii

DF

~~2. PERMISSIVE REFERENDUM This Purchase and Sale Contract is subject to, and contingent upon, a permissive referendum to be held in accordance with New York State Town Law~~

MPii

SILVER SPRINGS ASSOCIATION

TOWN OF CANANDAIGUA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

We accept the above Purchase Offer, except:

- 1). Minimum Sales Price - Silver Springs Associates has the opportunity to withdraw from contract if minimum sales prices (average of appraisals) is not equal to or greater than \$5.375M (Mitchell Pierson appraisal)
- 2). Naming Rights - Name of property honoring Kellogg family. For example, Kellogg Park at Tichenor Point. Final name TBD subject to Town process with Silver Springs Associates involvement.
- 3). Dedication Ceremony - Dedication ceremony in 1st year that will hopefully allow for Paul and Shirley Kellogg to be present.
- 4). Family Memorial Gathering - At an agreed upon date in the future, the Silver Springs Associates will be given the sole use of the park for one day to hold a memorial gathering/party celebrating the life of Paul R. Kellogg.
- 5). Identification and Removal of Possessions - Silver Springs Associates is entitled to take any and all personal possessions (e.g., furniture, art work, boats, tools, etc.) that it desires which will not transfer with the property. Any items left will be the left to the Town and will be the Town's responsibility to remove. Town will agree to allow Kellogg family to have flexibility on timing of removal of identified possession post-March 1, 2021 closing. Final clearout date TBD, subject to discussion.
- 6). The BUYER is responsible for the full payment of the Transfer Tax due at closing, referenced in Section 1402-a of the New York Tax Law.
- 7). Attorney Approval - All agreements and sales contract subject to final attorney approval.

Submitted by Mitchell "Trip" Pierson, III

MPii

DF



ADDENDUM FORM To Purchase and Sale Contract ~ Property Inspection

Published by and for the exclusive use of the Greater Rochester Association of REALTORS®, Inc.,
the Monroe County Bar Association, and those County Bar Associations
that have approved its use.

SELLER Silver Springs Associates BUYER Town of Canandaigua

PROPERTY 4351 Tichenor Point Dr, Canandaigua, NY 14424

PROPERTY INSPECTION

This Contract shall be contingent upon (check all that apply):

☒ licensed engineer, licensed home inspector, registered architect, contractor, or other Buyer representative;
☒ radon; ☒ chimney; ☒ pest infestation; ☐ other _____ inspection(s) to be
 made within 7 calendar days of the acceptance of the Contract ("First Time Period"), at Buyer's expense. Seller
 agrees to have all utilities in service at the time of the inspection(s). If Buyer is not satisfied with the inspection
 report(s), within 3 calendar days after completion of all of the inspection(s) ("Second Time Period"), Buyer shall
 deliver to the Seller a written notice listing the specific deficiencies and corrections needed, together with a copy of
 any relevant written inspection report(s). Upon receipt of such notice, the Seller and Buyer shall have 2 calendar
 days ("Third Time Period") to enter into a written agreement addressing the Buyer's objections. Any work to be
 performed shall be completed 48 hours prior to the closing date.

If (i) the inspection(s) are not made within the First Time Period, (ii) Buyer has not delivered to Seller written notice of
 specific deficiencies and corrections and relevant written inspection report(s) within the Second Time Period, or (iii)
 the parties have not reached a written agreement addressing Buyer's objections within the Third Time Period, then
 either party may cancel this Contract by written notice to the other, provided that the applicable contingency has not
 otherwise been satisfied after the applicable time period and prior to any date on which the Contract is cancelled.

SELLER _____ BUYER 

SELLER _____ BUYER _____

DATE _____ DATE 12/31/2020





Division of Licensing Services

New York State
Department of State
Division of Licensing Services
P.O. Box 22001
Albany, NY 12201-2001
Customer Service: (518) 474-4429
www.dos.ny.gov

New York State Disclosure Form for Buyer and Seller

THIS IS NOT A CONTRACT

New York State law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales agents.

Throughout the transaction you may receive more than one disclosure form. The law may require each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

Disclosure Regarding Real Estate Agency Relationships

Seller's Agent

A seller's agent is an agent who is engaged by a seller to represent the seller's interests. The seller's agent does this by securing a buyer for the seller's home at a price and on terms acceptable to the seller. A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A seller's agent does not represent the interests of the buyer. The obligations of a seller's agent are also subject to any specific provisions set forth in an agreement between the agent and the seller. In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

Buyer's Agent

A buyer's agent is an agent who is engaged by a buyer to represent the buyer's interest. The buyer's agent does this by negotiating the purchase of a home at a price and on terms acceptable to the buyer. A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A buyer's agent does not represent the interest of the seller. The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer. In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the

agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not consistent with the agent's fiduciary duties to the buyer.

Broker's Agents

A broker's agent is an agent that cooperates or is engaged by a listing agent or a buyer's agent (but does not work for the same firm as the listing agent or buyer's agent) to assist the listing agent or buyer's agent in locating a property to sell or buy, respectively, for the listing agent's seller or the buyer agent's buyer. The broker's agent does not have a direct relationship with the buyer or seller and the buyer or seller cannot provide instructions or direction directly to the broker's agent. The buyer and the seller therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or buyer's agent do provide direction and instruction to the broker's agent and therefore the listing agent or buyer's agent will have liability for the acts of the broker's agent.

Dual Agent

A real estate broker may represent both the buyer and the seller if both the buyer and seller give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer and seller. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the buyer and seller. An agent acting as a dual agent must explain carefully to both the buyer and seller that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer and seller are giving up their right to undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A seller or buyer may provide advance informed consent to dual agency by indicating the same on this form.

Dual Agent with Designated Sales Agents

If the buyer and seller provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the buyer and another sales agent to represent the seller. A sales agent works under the supervision of the real estate broker. With the informed consent of the buyer and the seller in writing, the designated sales agent for the buyer will function as the buyer's agent representing the interests of and advocating on behalf of the buyer and the designated sales agent for the seller will

New York State Disclosure Form for Buyer and Seller

function as the seller's agent representing the interests of and advocating on behalf of the seller in the negotiations between the buyer and seller. A designated sales agent cannot provide the full range of fiduciary duties to the landlord or tenant. A designated sales agent cannot provide full range of fiduciary duties to the buyer or seller. The designated sales agent must explain that like the dual agent

under whose supervision they function, they cannot provide undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation. A seller or buyer provide advance informed consent to dual agency with designated sales agents by indicating the same on this form.

This form was provided to me by Mitchell "Trip" Pierson, III/William Wheeler of Mitchell Pierson, Jr. Inc.
(Print Name of Licensee) (Print Name of Company, Firm or Brokerage)

a licensed real estate broker acting in the interest of the:



Seller as a (check relationship below)

☒ Seller's Agent

☐ Broker's Agent



Buyer as a (check relationship below)

☐ Buyer's Agent

☐ Broker's Agent



Dual Agent



Dual Agent with Designated Sales Agent

For advance informed consent to either dual agency or dual agency with designated sales agents complete section below:



Advance Informed Consent Dual Agency



Advance Informed Consent to Dual Agency with Designated Sales Agents

If dual agent with designated sales agents is indicated above: _____ is appointed to represent the buyer; and _____ is appointed to represent the seller in this transaction.

(I) (We) Silver Springs Associates acknowledge receipt of a copy of this disclosure form:

Signature of



Buyer(s) and/or



Seller(s):

BUYER-

Authentisign

Doug Finch- Town Manager

1/4/2021 2:56:39 PM EST

SELLER-

SELLER-

SELLER-

SELLER-

Date: _____

Date: _____



Division of Licensing Services

New York State
Department of State, Division of Licensing Services
(518) 474-4429
www.dos.ny.gov

New York State
Division of Consumer Rights
(888) 392-3644

New York State Housing and Anti-Discrimination Disclosure Form

Federal, State and local Fair Housing Laws provide comprehensive protections from discrimination in housing. It is unlawful for any property owner, landlord, property manager or other person who sells, rents or leases housing, to discriminate based on certain protected characteristics, which include, but are not limited to **race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income or familial status**. Real estate professionals must also comply with all Fair Housing Laws.

Real estate brokers and real estate salespersons, and their employees and agents violate the Law if they:

- Discriminate based on any protected characteristic when negotiating a sale, rental or lease, including representing that a property is not available when it is available.
- Negotiate discriminatory terms of sale, rental or lease, such as stating a different price because of race, national origin or other protected characteristic.
- Discriminate based on any protected characteristic because it is the preference of a seller or landlord.
- Discriminate by “steering” which occurs when a real estate professional guides prospective buyers or renters towards or away from certain neighborhoods, locations or buildings, based on any protected characteristic.
- Discriminate by “blockbusting” which occurs when a real estate professional represents that a change has occurred or may occur in future in the composition of a block, neighborhood or area, with respect to any protected characteristics, and that the change will lead to undesirable consequences for that area, such as lower property values, increase in crime, or decline in the quality of schools.
- Discriminate by pressuring a client or employee to violate the Law.
- Express any discrimination because of any protected characteristic by any statement, publication, advertisement, application, inquiry or any Fair Housing Law record.

YOU HAVE THE RIGHT TO FILE A COMPLAINT

If you believe you have been the victim of housing discrimination you should file a complaint with the New York State Division of Human Rights (DHR). Complaints may be filed by:

- Downloading a complaint form from the DHR website: www.dhr.ny.gov;
- Stop by a DHR office in person, or contact one of the Division’s offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint. A list of office locations is available online at: <https://dhr.ny.gov/contact-us>, and the Fair Housing HOTLINE at (844)-862-8703.

You may also file a complaint with the NYS Department of State, Division of Licensing Services. Complaints may be filed by:

- Downloading a complaint form from the Department of State’s website
https://www.dos.ny.gov/licensing/complaint_links.html
- Stop by a Department’s office in person, or contact one of the Department’s offices, by telephone or by mail, to obtain a complaint form.
- Call the Department at (518) 474-4429.

There is no fee charged to you for these services. It is unlawful for anyone to retaliate against you for filing a complaint.



Division of Licensing Services

New York State
Department of State, Division of Licensing Services
(518) 474-4429
www.dos.ny.gov

New York State
Division of Consumer Rights
(888) 392-3644


New York State Housing and Anti-Discrimination Disclosure Form

For more information on Fair Housing Act rights and responsibilities please visit
<https://dhr.ny.gov/fairhousing> and <https://www.dos.ny.gov/licensing/fairhousing.html>.

This form was provided to me by Mitchell "Trip" Pierson, III (print name of Real Estate Salesperson/
Broker) of Mitchell Pierson, Jr., Inc. (print name of Real Estate company, firm or brokerage)

(I)(We) Silver Springs Associates

(Buyer/Tenant/Seller/Landlord) acknowledge receipt of a copy of this disclosure form:

Buyer/Tenant/Seller/Landlord Signature  Date: 12/31/2020

Buyer/Tenant/Seller/Landlord Signature _____ Date: _____

Real Estate broker and real estate salespersons are required by New York State law to provide you with this Disclosure.

Town of Canandaigua

5440 Routes 5 & 20 West
Canandaigua, NY 14424
(585) 394-1120 ~ townofcanandaigua.org
Established 1791

December 22, 2020

Mr. Mitchell "Trip" Pierson, III
Silver Springs Associates
4351 Tichenor Point Drive
Canandaigua, NY 14424

Dear Mr. Pierson and the Kellogg Family:

It is my honor to write to you today to inform you the Town Board of the Town of Canandaigua has voted unanimously pursuant to Town Board Resolution No.2020 – 267 to authorize me as the Town Manager to execute a purchase offer and enter into an agreement with you regarding the purchase of 4351 Tichenor Point Drive, Canandaigua (4.077 acres) Tax Map No.126.16-1-1.100.

We recently uncovered a video as part of the Town's West Lake Legacy Collection that was filmed at this property by our Town Historian, the Ontario County Historical Society and Mr. Paul Kellogg. In the video (which is also available through YouTube "West Lake Legacy – Tichenor Point and Silver Springs") Mr. Kellogg talks about the history of the property (minute mark 6:30), and what he himself has done to protect the property from development. This is exactly the direction the Town wishes to take with this property acquisition, and permanently protect this property for future generations to enjoy.

As previously outlined and seems to be coming together; the Town's intended use for the parcel includes a museum (using the main cabin), protection of the existing trees and stream, protection and maintenance of the existing buildings, a swim area, fishing access, non-motorized watercraft launch, and areas such as picnicking for the public to enjoy. We have begun conversations with the neighbors about measures that the Town would likely take on once the land is in the Town park system such as additional plantings, likely the removal of the tennis court, possible relocation of the driveway to the northern property border, small parking area, and a needed bathroom facility for the public.

As the Town Manager I have also begun having conversations with the Seneca-Iroquois National Museum Tribal Historic Preservation Office, the Ontario County Historical Society, the Town of Canandaigua's former Historian (who was in the video with Mr. Kellogg), and the Town of Canandaigua's history team about a possible small museum and use of the property. We are very interested in being able to show the general public the Kellogg lacy, the collection of items with the general public that Mr. Kellogg has gathered, items others have gathered from the property over the years including items relating to what is believed to have been a fishing village on the property, and later a camp as outlined in the book entitled, "The Natural Science Camp at Tichenor Point 1890-1905" by former Town Historian Ray Henry. Ray also has items from over the years associated with the point and Steamboat landing spot that we would like to showcase in the museum.

12/22/2020 Page 2:
Kellogg Offer

We are extremely excited to preserve this parcel and buildings to be able to not only grant the public additional access to Canandaigua Lake, but also to be able to share the story of the property as Mr. Kellogg has done over the years.

In response to the purchase offer we received from Trip Pierson, dated December 15, 2020; I would like to offer the following and request you make changes so that we can execute the purchase agreement together as quickly as possible. The request to execute the purchase agreement as quickly as possible is so that we may be able to order an appraisal (once the document is executed) to determine the sales prices as identified in the offer.

- Page 2, section 2, D - Seller to be responsible for transfer tax;
- Page 9, section 1, D – price changed to \$5,375,000 (ok and acknowledged);
- Page 9, section 1, G – please change from 6 days to 30 days;
- Page 10, 2 – strike through ok;
- Page 10, exceptions:

1. OK
2. Naming rights – the TM to offer a ^{member of the} ~~letter~~ family to work with him to make recommendation to Town Board regarding name, Kellogg name to be included in park name ok;
3. OK – could we remove from offer (TM to provide letter authorizing as Chief Officer);
4. OK – could we remove from offer (TM to provide letter authorizing as Chief Officer);
5. Would like to work together to show as much of collection as possible due to intended use as a museum, perhaps a walk through with family and perhaps some items could be loaned to Town by family for display?
6. Need changed to seller
7. OK


12/30/2020

Sincerely,



Doug Finch
Town Manager


[DF]



GREATER ROCHESTER ASSOCIATION OF REALTORS®, INC.
Continuation Form to Purchase and Sales Contract



Published by and only for the exclusive use of the Greater Rochester Association of REALTORS®, Inc.

DATED: December 31st, 2020

BUYER: Town of Canandaigua

SELLER: Silver Springs Associates

PROPERTY: 4351 Tichenor Point Dr, Canandaigua, NY 14424

☒ Counter Offer

☐ Addendum

We, the members of Silver Springs Associates, accept the additions and alterations made to the initial proposal as laid out in the letter written by Town Manager Doug Finch on December 22, 2020, except that:

1). Because the BUYER of the property located at 4351 Tichenor Point Drive, Canandaigua is the Town of Canandaigua the transaction is exempt from both the Transfer and Mansion Taxes normally associated to a real estate transaction. Therefore neither side is responsible for either tax.

2). Silver Springs Associates will make a good faith effort to support the Town's Museum objective. All possessions, personal property or equipment left will be donated to the Town, to preserve any potential tax benefit. All other terms and conditions remain the same.

[M.Pii] [M.Pii]
 12/30/2020


DATED: _____

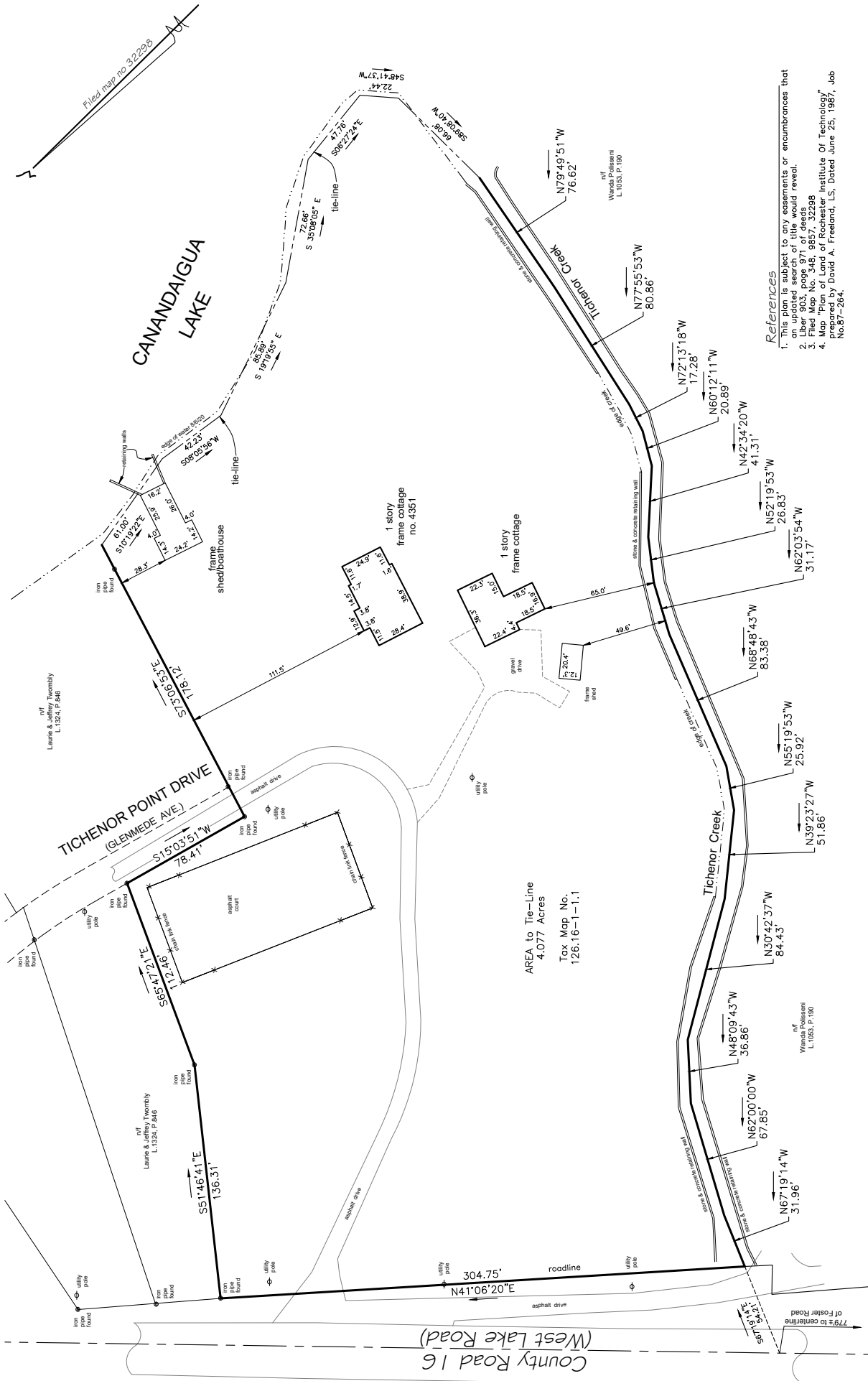
DATED: _____

Accepted by Town Manager

DATED: 12/31/2020

DATED: _____


Douglas E. Finch, Town Manager
Town of Canandaigua



Plan of Land of
SILVER SPRINGS ASSOCIATES
Town of Canandaigua, Ontario County, New York
Scale: 1 inch = 40 feet August 6, 2020

Freeland-Parrinello
LAND SURVEYORS
42 Beeman Street
Canandaigua, New York 14424
(585)394-5110



This plan was prepared August 6, 2020 from
not of information completed August 5, 2020 and
from materials referenced hereon.

David M. Parrinello NYSPLS 049724