

# PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, made as of the 17<sup>th</sup> day of DECEMBER, 2018, (the "Date of Agreement") between **TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**, having offices at 6560 Dysinger Road., Lockport, New York 14094, ("Seller"), and **CUSTOM LASER, INC.**, a corporation having offices at 4903 IDA Park Drive, Lockport, NY 14094 ("Purchaser") (the "Agreement").

## WITNESSETH:

WHEREAS, Seller holds fee title to approximately **6.8 acres of land located on 4885 IDA Park Drive, Lockport, New York**, as more particularly identified in **Exhibit A** attached hereto (hereinafter called the "Premises" or "Property");

NOW, THEREFORE, in consideration of the earnest money payment made by Purchaser as provided in Paragraph 1, Seller hereby agrees to sell and convey unto Purchaser, and Purchaser agrees to purchase and accept from Seller, subject to the terms, covenants, conditions and provisions hereinafter set forth, the Premises; and Seller and Purchaser covenant and agree as follows:

### **1. Purchase Price.**

(a) The purchase price for the Premises shall be **TWENTY THOUSAND DOLLARS** (\$20,000.00), per acre established per survey, which Purchaser shall pay to Seller as follows: (i) the full Purchase Price at Closing (as defined below), delivered by wire transfer of immediately available Federal Reserve funds, certified funds, or bank check.

### **2. Due Diligence; Surveys and Inspections.**

(a) During the term of this Agreement and prior to Closing, Purchaser or his agents shall have the right to enter upon the Premises at all reasonable times for the purposes of making any surveys, inspections and engineering tests which Purchaser may deem necessary,

including but not limited to any test borings, soil bearing, groundwater, or environmental tests. Purchaser assumes all risks and shall indemnify and hold harmless Seller from all claims, losses, damages and liability, for bodily injury, death or property damage or destruction including any damage to or destruction of the Premises, to the extent arising out of or in any way connected with Purchaser's exercise of the foregoing rights, provided that Purchaser shall not be required to indemnify Seller for seller's negligence or willful wrongful act.

(b) (i) Purchaser shall have **NINETY** (90) days from the Date of Agreement within which to determine, in its sole discretion, if the Property is suited for Purchaser's intended use. Seller agrees to fully cooperate with Purchaser including but not limited to, signing all applications, reports, acknowledgements and the like related to Purchaser's land use entitlement efforts, provided however that no such action shall constitute an expense or cost of Seller. (ii) In the event Purchaser determines, in its sole discretion, that the Premises is not satisfactory for any reason or no reason at all, Purchaser may provide notice to Seller at any time prior to the expiration of the Due Diligence period and terminate this Agreement, by providing written notice of termination to Purchaser. Upon exercise of the foregoing cancellation and termination right, neither party shall have any further liability or obligation to the other hereunder.

### **3. Title.**

(a) SELLER shall provide an **Eighty** (80) year guaranteed abstract of title conveying premises only, and a boundary survey prepared by a licensed surveyor dated subsequent to the date of this Agreement together with tax search. If Purchaser raises a valid objection to title either party may cancel this contract without further obligation.

(b) At Closing, Seller shall convey (i) good and marketable fee title to the Premises to Purchaser, free and clear of all liens and encumbrances and (ii) title to and ownership of the Property, subject to real estate taxes for the year of Closing, zoning ordinances, utility easements

of record, building and use restrictions of record, and other matters of title identified in the Title Commitment as are acceptable to Purchaser in its sole discretion (the “**Permitted Exceptions**”).

(c) Covenants of Seller. Seller covenants and agrees with Purchaser as follows:

(i) From the date hereof until the Closing Date, Seller shall promptly notify Buyer in writing if Seller receives written notice of any condemnation, environmental, zoning or other land use regulation proceedings relating to the Property, any notices of violations of any legal requirements relating to the Property, and any litigation, arbitration or administrative hearing before any court or governmental agency concerning or affecting the Property which is instituted after the date hereof.

(ii) Seller shall continue to operate, maintain, repair and manage the Property in a manner consistent with Seller’s current management practices.

#### **4. Closing.**

(a) Closing of title (“Closing”) shall take place at the Office of the Town of Lockport IDA, simultaneously with the closing of the Project for Purchaser approved by Seller at its December 13<sup>th</sup> meeting (providing for financial inducement by Seller and obligations of Purchaser) at a date and time mutually agreeable to Seller and Purchaser.

(b) Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Agreement. Real Property Taxes shall be adjusted at closing. Buyer shall pay for Transfer Tax.

(d) Possession of the Premises shall be delivered to Purchaser at Closing, free and clear of all tenancies and parties in possession.

(e) Closing shall be conditioned on the following:

(i) The Closing of the Project and execution of all closing documents including lease/leaseback agreement;

(ii) There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against the other party that would materially and adversely affect the operation or value of the Property or the other party's ability to perform its obligations under this Agreement.

(f) As of, or prior to the Closing Date, Seller shall deliver the following to the Closing Agent:

(i) Bargain and Sale Deed for the Premises; conveying good and marketable Title.

(ii) Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local law in connection with the conveyance of the Property, together with checks for the payment of the assessments shown on said forms or returns;

(iii) A non-foreign certificate in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury, Seller's United States identification number and that Seller is not a "foreign person" as that term is defined in Section 1445, duly executed by Seller;

(iv) Evidence of the existence, organization, and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy.

(v) A closing statement prepared in accordance with the provisions of this Agreement.

(vi) Such additional documents that Purchaser, Closing Agent, or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional documents shall expand any obligation, covenant, representation or warranty of Seller beyond those expressly set forth in this Agreement.)

(g) As of the Closing Date, Purchaser shall deliver the balance of the Purchase Price as adjusted,

(h) If any of the conditions precedent to the performance of Seller's obligations under this Agreement have not been satisfied, waived, or deemed waived by Seller on the Closing Date, then Seller may terminate this Agreement and neither party shall have any further liability or obligation to the other hereunder (except as provided in Section 8 herein).

(i) If any of the conditions precedent to the performance of Purchaser's obligations under this Agreement have not been satisfied, waived, or deemed waived by Purchaser on the Closing Date, then Purchaser may terminate this Agreement and neither party shall have any further liability or obligation to the other hereunder (except as provided in Section 8 herein).

**5. Condition of the Subject Property.**

Purchaser has inspected the Premises and agrees to accept the same "as is" and "where is" upon closing, subject to the satisfaction, at Purchaser's sole discretion, of Paragraph 2, without reliance upon any representations, warranties or guarantees, either express or implied, of Seller, its employees or agents, as to the condition of the Premises, excepting those set forth expressly in this Agreement.

**6. Notices.**

All notices, demands or communications required or permitted to be given hereunder shall be in writing and shall be delivered either by facsimile transmission with another copy sent by

United States Postal Service, certified mail, return receipt requested, or by overnight commercial courier service, at the following addresses:

if to Seller:           **TOWN OF LOCKPORT INDUSTRIAL  
DEVELOPMENT AGENCY**  
6560 Dysinger Road  
Lockport, New York 14094  
Attention: Administrative Director  
Phone: 716-439-9535  
Fax: 716-439-9715

with copy to:       Seaman Norris LLP  
Attn: Brian D. Seaman, Esq.  
744 Davison Road  
Lockport, New York 14094  
Phone: 716-434-3311  
Fax: 716-210-7254

if to Purchaser:   **CUTOM LASTER, INC.**  
4903 IDA Park Drive  
Lockport, New York 14094  
Attention: Gary Brockman, President  
Phone: 716-434-8600  
Fax: 716-439-4805

with copy to:       Rupp, Baase, Pfalzgraf, Cunningham, LLC  
Attn: Horace A. Gioia, Esq.  
1600 Liberty Building  
Buffalo, New York 14202  
Phone: 716-854-3400

**7. Assignment.**

This Agreement may be assigned or otherwise transferred by Purchaser to an entity wholly owned by Purchaser or controlled by Purchaser or its Principals with the prior written consent of Seller subject to all provisions of this contract. Such written consent of Seller shall not be unreasonably withheld. All other assignments or transfers require Seller's consent, not to be unreasonably withheld, conditioned or delayed.

**8. Claw Back**

If, for any reason the Project, or a similar use by Purchaser does not get built, within three (3) years of closing, then the Seller shall have the exclusive right to repurchase the Premises from Seller at the same purchase price as set forth in this Contract less five percent (5%). During this time Seller shall not sell Premises to a Third Party except as set forth herein (Principal or wholly owned subsidiary of Purchaser). The repurchase right shall exist for a period of two (2) years after the beginning of the claw-back period. This Paragraph shall expire and be of no further force and effect upon commencement of building of the buildings set forth in the Project. This Paragraph shall survive the Closing.

**9. Entire Agreement.**

This Agreement contains the entire agreement and understanding between the parties hereto as to the sale of the Premises and there are no other understandings or agreements between the parties, either oral or written, concerning the Premises. This Agreement shall not be amended or modified, except by a written agreement executed by both parties.

**10. Governing Law.**

The validity, interpretation, and performance of this Agreement shall be governed according to the laws of the New York applicable to agreements made and to be performed wholly within said state, without reference to its conflicts of laws principles.

**11. Binding Effect.**

This Agreement shall be binding upon the parties hereto and their permitted successors and assigns. The terms and provisions of this Agreement shall create no right in any person, firm or corporation other than the parties hereto and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

**12. Counterparts.**

This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall together constitute one and the same agreement.

**13. Construction.**

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**14. Waiver of Jury Trial.**

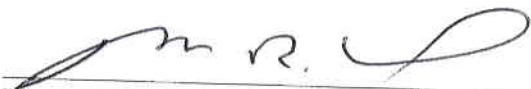
**PURCHASER AND SELLER HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT.**

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

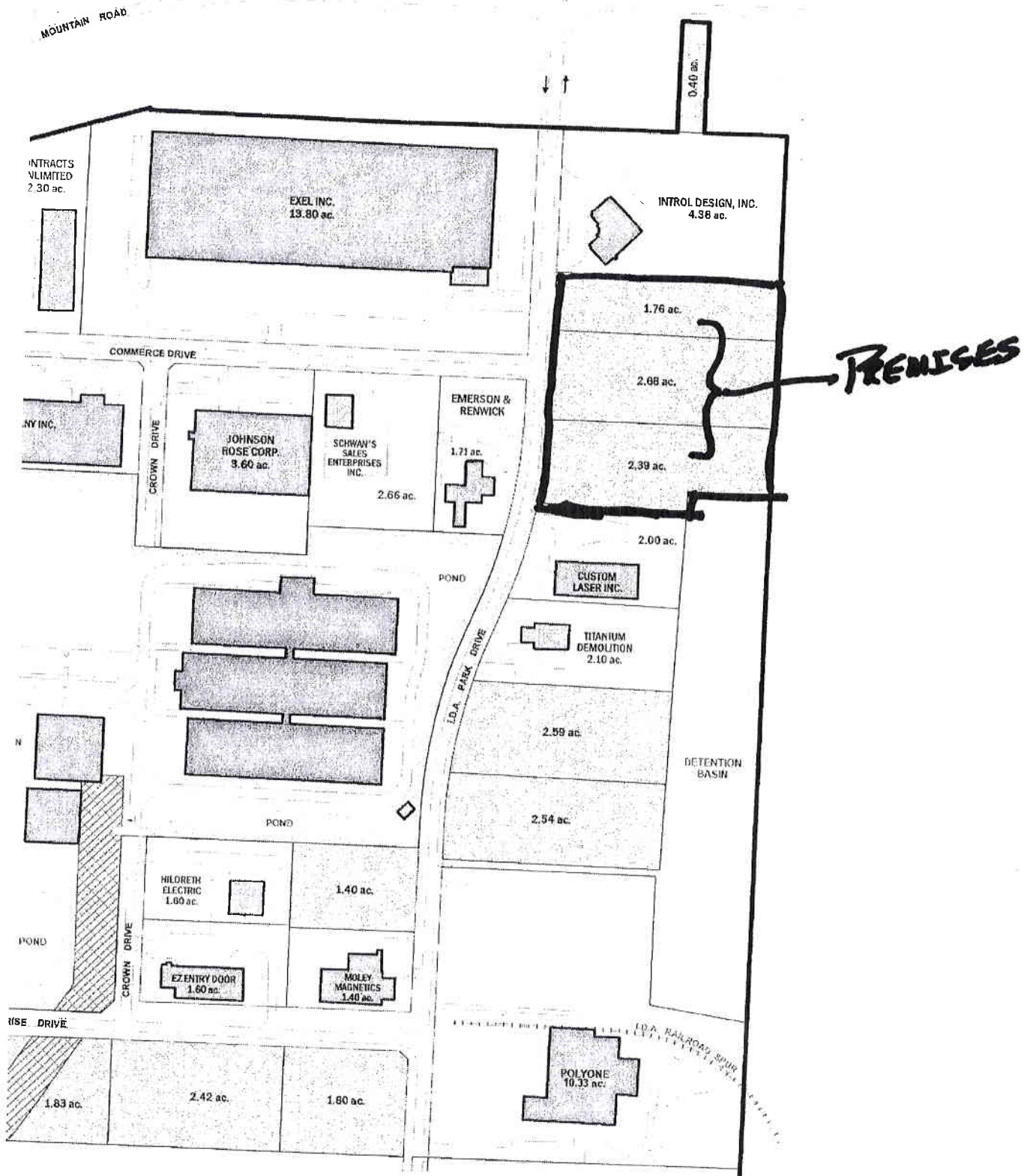
**SELLER**  
**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Marc R. Smith, Administrative Director

**PURCHASER**  
**CUSTOM LASER, INC.**

By:   
\_\_\_\_\_  
Gary Brockman, President

# EXHIBIT A



**PLUS EASEMENT TO DETENTION BASIN**