

**From:** Marisa Carpino  
Director, Community Services

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**Subject:** Commercial Lease Agreement  
- Don Beer Memorial Park  
- Property PIN 614679; 614680-1; 614687; 614688; 614689  
- File: A-1440

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**Recommendation:**

1. That the Mayor and Clerk be authorized to execute the renewal of the Commercial Lease Agreement with Transport Canada set out in Attachment 1 to this report, subject to minor revisions acceptable to the Director, Community Services and the Director, Corporate Services & City Solicitor; and,
  2. That the appropriate officials of the City of Pickering be authorized to take the necessary action as indicated in this report.
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**Executive Summary:** Don Beer Memorial Park was relocated in 2014 to its current location on Transport Canada lands to allow for the expansion of Highway 407. The City of Pickering entered into a five year commercial lease agreement with Transport Canada for the period of January 1, 2014 to December 31, 2019 for Property PIN Nos. 614679; 614680-1; 614687; 614688; and 614689 which was expropriated by the Federal Government for the purposes of an Airport.

In recent months, City staff have been working with staff from Transport Canada to formally renew the lease agreement for Don Beer Memorial Park. As such, staff are seeking approval from Council to enter into an extended ten year lease agreement for Property PIN Nos. 614679; 614680-1; 614687; 614688; and 614689 for the period of January 1, 2020 to December 31, 2029.

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**Financial Implications:** Under the existing agreement, the City is responsible for the full costs of maintenance of the lands and the rental per annum for the Don Beer Memorial Park, paid to Transport Canada is \$10.00 plus HST.

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**Discussion:** Don Beer Memorial Park was re-established in a separate commercial Lease Agreement between the City of Pickering and Transport Canada for the term of January 1, 2014 to December 31, 2019 after the relocation of the park in 2014 due to the expansion of Highway 407. Don Beer Memorial Park contains a lit gravel parking lot, one playground, one lit fastball diamond used primarily by Pickering Baseball Association, one concrete utility bunker, and one multi-use basketball/ball hockey court. The Director, Community Services recommends that a

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commercial Lease Agreement extending the term of the existing commercial Lease Agreement for an additional ten year term (from January 1, 2020 to December 31, 2029) be entered into, and that the Council of the City of Pickering authorize the Mayor and City Clerk to execute the agreement in its final form.

**Attachments:**

1. Commercial Lease – Don Beer Memorial Park

**Prepared By:**

Rob Gagen  
Supervisor, Parks & Property

**Approved/Endorsed By:**

Marisa Carpino  
Director, Community Services

RG:mc

Recommended for the consideration  
of Pickering City Council



Dec. 10, 2019

Tony Prevedel, P.Eng.  
Chief Administrative Officer

**PINs 614679, 614680-1, 614687, 614688, 614689**

**COMMERCIAL LEASE**

**Don Beer Memorial Park**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

**AND**

**THE CORPORATION OF THE  
CITY OF PICKERING**

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**Schedule “A” Description of Land**  
**Schedule “B” Plan of Site**

THIS LEASE effective on the 1<sup>st</sup> day of JANUARY, 2020.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
represented by the Minister of Transport  
(the “Landlord”)

OF THE FIRST PART

AND:

**THE CORPORATION OF THE CITY OF PICKERING,**  
a municipal corporation incorporated pursuant to the laws of the Province of  
Ontario  
(the “Tenant”)

OF THE SECOND PART

**WHEREAS** the Premises are part of lands expropriated by Her Majesty for the purpose of an airport;

**AND WHEREAS** it is deemed expedient that the Premises be leased for so long as they are not required for public purposes;

**THIS AGREEMENT WITNESSES** that, in consideration of the Premises, the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

**ARTICLE I - DEFINITIONS AND INTERPRETATIONS**

***Section 1.01 Definitions***

When used in this Lease, unless the context otherwise requires, the following expressions have the meaning hereinafter set forth.

**“Additional Improvement”** means any structure, fixed equipment or fixed machinery constructed on or affixed to the Land after the Date of Commencement and includes any alteration or replacement of any such Additional Improvement.

**“Additional Rent”** means any sum of money or charge required to be paid by the Tenant under this Lease, other than Rent.

**“Architect”** means a person who is appointed by, but who is at arm’s length with, the Tenant and is as an architect in the Jurisdiction.

**“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in the Jurisdiction.

**“Claims”** means any claims, proceedings, actions, judgments, executions and liabilities.

**“Costs”** means all expenses, losses, charges and payments relating to an event and includes any professional, consultant and legal fees (on a “substantial indemnity” basis).

**“Damage”** means any loss of or damage to property and includes loss of profits or revenue; or loss of tenants, lenders, investors or patrons, direct, indirect, incidental, special, exemplary or consequential damage, interference with business operations, inability to use any part of the Premises, and Costs.

**“Date of Commencement”** means the 1<sup>st</sup> day of January, 2020.

**“Deleterious Substance”** means any substance which is deleterious or hazardous to persons; animals, fish, plants, property, soil, water or the environment, including pesticides and herbicides.

**“Engineer”** means a person who is appointed by, but who is at arm’s length from the Tenant and is licensed to practice public engineering in the Jurisdiction.

**“Event of Bankruptcy”** means, with respect to a Person,

(a) whenever any resolution or action is taken or consented to in respect of its liquidation, dissolution or winding-up, whether by extra-judicial means or under any statute of any applicable jurisdiction, or an assignment is made for the benefit of its creditors or an assignment in bankruptcy is filed under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation or any comparable statute of any applicable jurisdiction, or any resolution or action is consented to or taken in respect of a proposal for any reorganization, arrangement, or extension of time in respect of any of its debts or obligations, whether by extra-judicial means or under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies’ Creditors Arrangement Act* (Canada) or any successor legislation or any comparable statute of any applicable jurisdiction;

(b) whenever a trustee, receiver or agent for a secured creditor, or other Person with similar powers is appointed for any substantial portion of its properties or assets, whether by a court or by extra-judicial means; or

(c) whenever a petition or other legal process in respect of its bankruptcy, insolvency, liquidation, dissolution or winding-up is filed against it, unless the same is dismissed or discharged within sixty (60) days.

**“Force Majeure”** means a strike, lockout, riot, insurrection, war, fire, tempest, Act of God or lack of material causing a delay, notwithstanding the best efforts of the party delayed, in the performance of any obligation under this Lease.

**“HST”** has the meaning ascribed in Section 8.03.01.

**“Injury”** means any personal injury including any personal discomfort, libel, slander, invasion of privacy, discrimination, wrongful entry and eviction, and any bodily injury including death resulting therefrom and whether the death occurs before or after the end of the Term.

**“Interest Rate”** means, during any part of a Lease Year, the Bank of Canada prime rate applicable on the date of default plus two percent (2%).

**“Jurisdiction”** means the Province of Ontario.

**“Land(s)”** means a portion of the land legally described as Lots 9 to 16, Plan 10 (Part of Lot 19, Concession 5), Lots 7 to 18, Plan 530, except Part 6, Plan 40R-405747, Pickering (part of PIN 26402-0011), more fully described in Schedule “A”, and shown outlined in green on the location map and aerial image in Schedule “B”, both attached hereto.

**“Law(s)”** means law, regulation, order, decision, policy, directive or rule, and similar enactments and statements, and shall be read, where applicable, as being “relevant as made or amended from time to time”.

**“Lease Year”** means a twelve-month period commencing on January 1<sup>st</sup> and ending on December 31<sup>st</sup>.

**“Leasehold Improvements”** means all equipment installed and alterations made by the Tenant or any occupant which serve the Premises whether or not easily disconnected or moveable, and includes production equipment, service equipment, all ceiling and wall fixtures and floor covering, but does not include trade fixtures.

**“Leasehold Interest”** means the right, title and interest of the Tenant in the Premises.

**“Minister”** means the Minister of Transport, and includes any of the following:

- (a) a Person acting for; or if the office vacant, in place of, the Minister of Transport,
- (b) his successors in office,

(c) and his lawful deputy.

**“Moveable Property”** means chattels, goods, supplies and materials.

**“Net Rent”** means the Rent payable by the Tenant pursuant to Section 7.02.

**“Other Taxes”** means any tax or other charge including any fines or cost which are imposed against the Premises including local improvement charges and development charges and water, snow and sewer rates of every kind whatsoever that are imposed from time to time by any taxing authority save and except Real Property Taxes.

**“Person(s)”** means any individual, sole proprietorship, partnership, corporation, trust or government authority, howsoever designated.

**“Premises”** means the Land, all Additional Improvements, and all Utilities serving the premises.

**“Property”** means all Moveable Property and all fixtures, including all Additional Improvements, Leasehold Improvements and Utilities.

**“Real Property Taxes”** means all taxes and assessments (excluding local improvement charges and development charges and water, snow and sewer taxes and rates), of every kind whatsoever that are imposed from time to time by any taxing authority, whether federal, provincial, municipal, school or otherwise or which would have been so imposed but for any attribute of the Landlord which resulted in an exemption or partial exemption therefrom against:

(a) the Premises; and

(b) includes any taxes or other amounts, which are imposed instead of, or in lieu of, or in addition to, any such taxes and assessments.

**“Rent”** means all Net Rent and Additional Rent collectively.

**“Replacement Costs of the Improvements”** means the costs to replace the Additional and Leasehold Improvements to the condition immediately prior to the happening of an event of damage or destruction.

**“Term”** has the meaning ascribed to it in Section 4.01.01.

**“Utility(ies)”** means utilities and services, and all related systems, facilities and equipment.

**“Work”** means all material and services furnished or performed pursuant to this Lease including all the maintenance, repair, alterations and replacement of all Additional Improvements and Leasehold Improvements.

### ***Section 1.02 Extended Meanings***

**1.02.01** Where this Lease provides that the Tenant shall “ensure” a covenant or obligation of an occupant, transferee or leasehold mortgagee (“Transferee”) or provides that the Tenant agrees to a specific matter on behalf of a Transferee, the obligation of the Tenant shall be deemed to have been performed if the Tenant has obtained from such transferee an agreement no less stringent, and in the event of a breach of such agreement by the Transferee, the Tenant has used diligent efforts to enforce such agreement, including the prosecution of legal proceedings.

**1.02.02** In this Lease “includes” means “includes without limitation” and each obligation or agreement of either party is considered a “covenant”, and all references in this Lease to laws, policies, schedules, manuals, directives, specifications and similar enactments and statements shall be read, where applicable, as being “relevant as replaced or amended from time to time”, and, with regard to the Premises and the Land, “in” shall be read as “on”, “in”, “over”, “under”, “through” or “across”.

**1.02.03** Words importing the singular number include the plural number and vice versa and words importing gender include the masculine, feminine and neuter genders.

**1.02.04** If the day on which any act or payment is required to be done or made under the terms of this Lease is a day which is not a Business Day, then such act or payment is duly done or made if done or made on the next following Business Day.



***Section 1.03 Entire Agreement***

This Lease constitutes the entire agreement between the Landlord and the Tenant and supersedes and revokes all previous arrangements, including pre-contractual representations, if any, whether oral or in writing, between the parties hereto.

***Section 1.04 Schedules***

The following Schedules are attached to and from part of the Lease:

Schedule “A” Description of Land  
Schedule “B” Plan of Site

***Section 1.05 Law***

This Lease shall be interpreted in accordance with the laws in force in the Jurisdiction, subject, so long as Her Majesty is the Landlord, to any Federal Crown prerogative and any paramount or applicable federal law.

***Section 1.06 Time of the Essence***

Time is of the essence of this Lease except as otherwise expressly provided herein.

**ARTICLE 2 - GRANT**

***Section 2.01 Grant***

In consideration of the rents, covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Premises in “as is” condition for the Term.

**ARTICLE 3 - USE**

***Section 3.01 Use***

The Tenant shall use the Premises as a municipal park and for no other purpose whatsoever and shall comply with all Laws in such use. The Tenant agrees that it has examined the Premises and is familiar with the condition and permitted use thereof.

***Section 3.02 Nuisance***

The Tenant shall not do, suffer or permit to be done any act or thing on the Premises which constitutes a nuisance to any Person on any lands or premises or to the public generally.

***Section 3.03 Signage***

The Tenant shall not, on or after the Date of Commencement, construct, erect, place or install on the outside of or on the Premises any new or additional poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the Landlord, which consent shall not be unreasonably withheld.

***Section 3.04 Archeological Finds***

The Landlord shall not be responsible for, nor shall She assume any costs of restoration with respect to any archaeological finds or any items salvaged by the Tenant pursuant to the exercise

of any rights under this Agreement. Should the Tenant make any archaeological finds, the Tenant shall advise the Landlord forthwith and shall cease work on the Premises until further notice from the Landlord.

## **ARTICLE 4 - TERM**

### ***Section 4.01 Term and Landlord's Right to Terminate***

**4.01.01** The term of this Lease shall be for a Ten (10) Year period ("Term"). The Term commences on January 1<sup>st</sup>, 2020 and terminates on December 31<sup>st</sup>, 2029.

**4.01.02** The Landlord reserves the right to terminate this Lease at any time during the currency of the Lease, for any purpose, as determined by the Landlord by giving the Tenant six (6) months notice in writing.

### ***Section 4.02 Surrender or Termination***

**4.02.01** On expiry of the Term or any period of overholding, or on surrender or sooner determination of this Lease, the Tenant shall surrender and deliver up to the Landlord vacant possession of the Premises in the state of good order, condition and repair in which, by this Lease, the Tenant has covenanted to keep them during the Term, and free and clear of all mortgages, charges or encumbrances created by the Tenant or its assignees, and of all Deleterious Substances, and all rights of the Tenant under this Lease shall then terminate.

### ***Section 4.03 Removal of Property***

**4.03.01** Except as otherwise provided in this Lease, the Tenant shall, on expiry of the Term or any period of overholding, or on surrender or sooner determination of this Lease, forthwith remove from the Premises all Property and, shall also, to the satisfaction of the Landlord, repair all damage to the Premises by reason of the installation or removal thereof, without compensation. Unless the Landlord so requests, no Property shall be so removed until all Rent due or to become due under this Lease is fully paid. The Tenant hereby agrees that if it fails to effect such removal forthwith, that the said Property shall be deemed abandoned and worthless, and that the Landlord may, in Her absolute and unfettered discretion immediately dispose of the Property in any manner She sees fit, all without service of notice by the Landlord or resort by Her to any legal process, and without Her being considered guilty of trespass or becoming liable for any loss or Damage. The Tenant further agrees to indemnify the Landlord for all expenses incurred by Her, in effecting such removal, and in returning the Premises to a state of good order, condition and repair.

### ***Section 4.04 Removal of Improvements***

**4.04.01** At any time prior to expiry of the Term or expiry of any period of overholding or sooner determination of this Lease, or within six (6) months after such expiry or sooner determination, the Landlord may notify the Tenant in writing that the whole or any part of any Additional Improvement or any Leasehold Improvement", (the "Improvements") must be removed, in which event, removal will occur:

- (a) within (10) ten days of such notification where the Improvements are deemed by the Landlord, acting reasonably, to pose a safety or environmental concern, or
- (b) prior to expiry of this Lease if the Landlord's notice is received prior to such the expiry, or
- (c) within one hundred eighty (180) days of such notification, if the Landlord's notice is received on or after such expiry, or
- (d) within one hundred eighty days (180) days of such notification or in the event of any overholding, the Tenant shall, at its own cost, in the case of any Improvements, remove any such improvement and repair any damage made in constructing, erecting or removing it and leave the area upon which had stood in a similar condition to which existed prior to its erection, installation or construction and in a clean, neat and tidy condition to the satisfaction of the Landlord.

***Section 4.05 Obligations Survive Expiry, Surrender or Termination***

**4.05.01** Notwithstanding the expiry, surrender or termination of this Lease in any manner,

(a) the Tenant remains liable to the Landlord for any loss or damage suffered by the Landlord arising from this Lease, and

(b) the obligations of the Tenant

(i) to indemnify and save harmless the Landlord with respect to liability by reason of any matter arising prior to the expiry, surrender or termination of this Lease, and

(ii) to respect the rights of the Landlord contemplated in Articles 16 and 17 and Sections 4.03 and 4.04, shall, notwithstanding any other provision of this Lease or any Law now or hereafter in force, continue in full force and effect until discharged whether before or after the expiry, surrender or termination of this Lease.

***Section 4.06 Overholding***

**4.06.01** If the Tenant remains in possession of the Premises after the expiry of the Term or any extension thereof, whether with or without the consent of the Landlord, there shall be no tacit renewal or extension of this Lease. In this event, notwithstanding any statutory provision or legal presumption to the contrary, the Tenant shall be deemed exclusively to be occupying the Premises as a tenant at will, on the same terms as set forth in this Lease (including the payment of Rent), except that the monthly Net Rent shall be an amount equal to the aggregate of

(a) one hundred and fifty percent (150%) of the Rent payable for the last month of the Term, and

(b) Additional Rent for the current month, where applicable.

**4.06.02** The Tenant shall promptly indemnify and save harmless the Landlord from and against any and all Costs incurred by Her as a result of the Tenant remaining in possession of the Premises after the expiry of the Term and the Tenant shall not make any counterclaim, against the Landlord.

***Section 4.07 Option to Extend***

**4.07.01** The Parties agree that the Tenant has no right to extend the Term of this Lease. Should the Tenant wish to extend the Term of the Lease, the Tenant must give the Landlord one (1) year's notice of its desire to remain on the Premises. The Landlord, acting in Her sole and unfettered discretion, shall decide whether the Lease will be extended and advise the Tenant of Her decision no later than six (6) months prior to the expiration of the Term.

**ARTICLE 5 - QUIET ENJOYMENT**

***Section 5.01 Quiet Enjoyment***

**5.01.01** Subject to the other provisions of this Lease, if the Tenant pays the Rent and other sums herein provided when due, and punctually observes and performs all of the covenants, terms and conditions hereunder, the Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming under the Landlord.

**ARTICLE 6 - NET LEASE**

***Section 6.01 Net Lease***

**6.01.01** The Tenant agrees that the Premises are leased in an "as is" condition and this Lease

shall be an absolutely net lease to the Landlord except as expressly herein set out. The Tenant shall pay all charges and expenses of every kind, extraordinary as well as ordinary and foreseen as well as unforeseen, relating to:

- (a) its use and its occupancy of the Premises and its contents;
- (b) the business carried on therein, and
- (c) the carrying out of any construction or maintenance and the making of any alterations or repairs in the Premises by or for the Tenant during the Term or any extension thereof.

**6.01.03** The Tenant acknowledges that any amount and any obligation with respect to the Premises which is not expressly declared in this Lease to be the responsibility of the Landlord shall be the responsibility of the Tenant to be paid or performed in accordance with the terms of this Lease.

## **ARTICLE 7 - RENT**

### ***Section 7.01 General Provisions***

**7.01.01** The Tenant covenants that it shall, during the Term or any extension thereof, pay to the Landlord Rent in accordance with the terms of this Lease.

### ***Section 7.02 Rent***

**7.02.01** Tenant shall pay Net Rent in the amount of \$10.00 plus HST for each Lease Year commencing January 1<sup>st</sup>, 2020, and ending December 31<sup>st</sup>, 2029 such Net Rent payable in advance on the first (1<sup>st</sup>) day of each Lease Year.

### ***Section 7.03 Manner of Payment***

**7.03.01** The Tenant shall pay all Rent and Additional Rent when due, without any prior demand therefore and without any set-off or alteration whatsoever, and the Tenant hereby waives the benefit of any statutory or other right in respect of any Claims, such payment to be made to the Receiver General for Canada at:

Transport Canada – Corporate Services  
4900 Yonge Street, 3<sup>rd</sup> Floor Cashier  
Toronto, ON M2N 6A5

**7.03.02** Any payment by the Tenant of any Rent, Net Rent, Additional Rent or an amount less than the monthly payment of Net Rent or Additional Rent, shall be credited to the earliest of any arrears of Rent.

### ***Section 7.04 Interest on Arrears of Rent***

**7.04.01** If the Tenant fails to pay any amount of Rent on the date on which it becomes due and payable, the Tenant shall pay interest at the Interest Rate on any such amount, calculated from the date the Tenant was required to pay such amount to the date all arrears are paid. Such interest shall be deemed to be part of the Rent reserved in this Lease and the remedies available to the Landlord relating to Rent herein and at law shall apply mutatis mutandis thereto.

**7.04.02** The Interest Rate applicable to any amount on which the Tenant is paying interest shall be the rate in effect at the close of business on the last Business Day of the previous month.

**7.04.03** All interest shall be compounded monthly and shall apply retroactively from the date it is due.

**7.04.04** In the event of non-sufficient funds or the Bank refusing to process the Landlord's request for payment for any other reason, the Tenant shall immediately issue a certified cheque

which shall include any interest at the Interest Rate and an administrative charge to be set in accordance with the Landlord's current policy.

## **ARTICLE 8 - TAXES**

### ***Section 8.01 Payments in Lieu of Real Property Taxes***

**8.01.01** The Landlord shall not be required to make any Payments in Lieu of Real Property Taxes or any charges imposed in lieu thereof including any fine, interest and cost related thereto during the Term of this Lease or any extension thereof.

### ***Section 8.02 Other Taxes***

**8.02.01** The Tenant shall, on or before their due date, pay to the taxing authorities and shall discharge when they become due and payable:

(a) any Other Tax or charge imposed in lieu thereof and other charges including any fines and costs which are imposed against or in respect of any Leasehold Improvement, trade fixtures or personal property in the Premises, and

(b) any tax and license fee including any cost related thereto which is imposed against any business or undertaking carried on in the Premises or in respect of any use or occupancy thereof:

whether any such tax, other charge or license fee is imposed by any federal, provincial, municipal, school or other authority.

### ***Section 8.03 Harmonized Sales Tax***

**8.03.01** The Tenant shall pay an amount equal to any and all taxes, rates, levies, fees, charges and assessments whatsoever, whether or not in existence at the Date of Commencement, assessed, charged, imposed, levied or rated by any taxing authority whether federal, provincial, municipal or otherwise, on or against the Landlord or the Tenant, with respect to the Rent payable by the Tenant to the Landlord under this Lease or the rental of space under this Lease or the, provision or supply of any goods, services or utilities whatsoever by the Landlord to the Tenant under this Lease, whether any such tax, rate, duty, levy, fee, charge or assessments called or characterized as a sales, use, consumption, value-added, business transferor goods and services tax or otherwise (collectively, "HST"). If the applicable legislation requires that any HST is to be collected by the Landlord, the amount of the HST so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid by the Tenant to the Landlord at the same time as the Minimum Rent is payable or at such other time or times as the applicable legislation may from time to time require. Despite any other provision of this Lease, the amount or amounts from time to time payable by the Tenant under this Section 8.03 shall be deemed not to be consideration for the supply of space under this Lease, but shall be considered to be Rent for the purposes of the Landlord's rights and remedies for non-payment and recovery of any such amounts.

## **ARTICLE 9 - UTILITIES**

### ***Section 9.01 Landlord Not Obligated***

**9.01.01** The Landlord shall not be obligated to furnish to the Premises any Utilities or to pay for their consumption.

### ***Section 9.02 Tenant to Pay for Utilities***

**9.02.01** The Tenant shall, at its cost, be solely responsible for the installation and maintenance of and for alteration to any connecting system to all utilities including, when supplied, the Landlord's water, sanitary sewage and storm sewage, to the point of connection designated by the Landlord.

**9.02.02** The Tenant shall pay when due, all charges for all utilities consumed on or supplied to the Premises and shall indemnify the Landlord against any liability or damages pertaining thereto.

***Section 9.03 Suspension of Utilities***

**9.03.01** The Tenant shall not make any Claims or bring any action against the Landlord, and the Tenant hereby releases the Landlord from any Claims for any Injury or any Damage by reason of any interruption, in whole or in part, from whatever cause arising in the supply of any Utilities serving the Premises, whether supplied by the Landlord or by others.

**ARTICLE 9A – DRINKING WATER QUALITY**

***Section 9A.01 Compliance with Drinking Water Quality Laws***

**9A.01.01** The Tenant shall, at its own cost, comply with all applicable federal, provincial, and municipal Laws, Regulations, Guidelines, Standards and codes relating to drinking water quality matters, herein referred to as “Drinking Water Legislation”, specifically including but not limited to the Ontario Safe Drinking Water Act and Health Protection and Promotion Act, as amended, and shall assume all responsibilities of “occupier” or “operator” as defined in the aforementioned Acts with respect to all water distribution systems located on the Premises.

**9A.01.02** The Tenant shall immediately give electronic written notice to the Landlord of the occurrence of any event on the Premises in violation of any of the aforementioned Drinking Water Legislation and in such event at its own expense promptly correct any deficiency which is not in conformity and compliance with any of the Drinking Water Legislation, and/or cease any activity which is not in conformity and compliance with any of the Drinking Water Legislation, and if requested by the Landlord, obtain a certificate from an independent consultant/contractor approved by the Landlord, at the Tenant’s expense, verifying the complete and proper compliance with the requirements of any of the Drinking Water Legislation or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provision, and remedial actions proposed by the consultant/contractor.

**9A.01.03** The Tenant shall provide and maintain a potable water supply to the Premises at its sole cost.

**9A.01.04** The Landlord may, at any time, enter the Premises to determine the Tenant’s compliance with all Drinking Water Legislation and for such purpose the Landlord may carry out any drinking water quality tests on the Premises. If any such inspection or testing by the Landlord reveals non-compliance, the Tenant shall in addition to its other obligations, forthwith on demand, pay to the Landlord the full cost of such inspection or tests as Additional Rent.

***Section 9A.02 Copies of Reports***

**9A.02.01** The Tenant shall provide the Landlord with copies of:

- (a) every test result obtained in respect of the sampling required in compliance with all Drinking Water Legislation;
- (b) annual reports required to be sent to the Ministry of the Environment Conservation and Parks, the Ministry of Health and Long-Term Care, and/or any Regional Water/Health Inspection Offices and;
- (c) all correspondence between the Tenant and the Ministry of the Environment Conservation and Parks, the Ministry of Health and Long-Term Care and/or any Regional Water/Health Inspection Offices with respect to compliance with applicable Drinking Water Legislation.

***Section 9A.03 Termination for Default***

**9A.03.01** Notwithstanding any other provision of this Lease, the Landlord may terminate this Lease if the Tenant fails to rectify or commence diligently to rectify (and thereafter proceed

diligently to rectify) any breach of Section 9A.01 within forty-eight (48) hours after written notice by the Landlord to the Tenant or such other time as is reasonable with respect to the nature of the breach.

## **ARTICLE 10 - MAINTENANCE AND REPAIRS**

### ***Section 10.01 Landlord Not Obligated***

**10.01.01** The Premises are leased in “as is” condition, and the Landlord shall not be obligated to make any repairs or perform any maintenance to the Premises unless expressly set out in this Lease.

### ***Section 10.02 Tenant’s Obligations***

**10.02.01** The Tenant shall, at its cost, at all times during the Term or any extension thereof, continuously and diligently keep the Premises in a clean and safe condition and operate, maintain and repair the Premises, Leasehold Improvements and all the contents thereof and all Utilities located in or primarily serving the Premises as would a careful and prudent owner, in first-class order, condition and repair, and in accordance with all Laws and the Landlord’s requirements.

### ***Section 10.03 Repair By Landlord***

**10.03.01** If the Premises require repair, replacement or alteration or become damaged or destroyed through the fault or negligence of the Tenant, or because of the Tenant’s operations, and if the Tenant does not affect the required repair, replacement or alteration within a reasonable time as determined by the Landlord, the Landlord may have such repair, replacement or alteration effected, and the Tenant shall pay as Additional Rent, the full cost plus an amount equal to twenty percent (20%) of such cost.

### ***Section 10.04 Reservations by Landlord***

**10.04.01** The Landlord may, at all reasonable times,

- (a) enter the Premises for the purpose of making alterations to any part of the Premises, and
- (b) bring onto the Premises and use such machinery, equipment, materials and workmen as may be reasonably required for making alterations, and such entry shall not constitute an eviction of the Tenant from the Premises or a re-entry or an interference with the Tenant’s possession. The Rent hereunder shall in no way abate while such alterations are being made.

**10.04.02** The Landlord may, when necessary in order to make any alterations, cause temporary obstruction of any pedestrian or vehicular access to the Premises and may interrupt or suspend the supply of any Utility to the Premises until such alterations are completed, all without any abatement in Rent.

**10.04.03** The Landlord reserves the right to grant any easements or licenses that may be required, as determined in Her sole discretion, acting reasonably. The Tenant agrees to postpone its interests to any such license or easement granted by the Landlord.

**10.04.04** Notwithstanding the foregoing, the Landlord’s alterations shall not materially reduce the useable area of the Premises after completion. The parties agree that during the period of alterations the useable area of the Premises may be reduced as a result of the ongoing work.

## **ARTICLE 11 - ALTERATIONS**

### ***Section 11.01 Alterations***

**11.01.01** The Tenant shall not, nor shall it permit any Person to

- (a) make any Alterations, Additional Improvements, or Leasehold Improvements, or
- (b) add any Utilities to the Premises, without first submitting to the Landlord the plans, drawings and specifications (in this article “plans”) therefore and any other information requested by the Landlord, and obtaining the Landlord’s prior written approval in each instance, and further obtaining Her prior written approval to any change in such plans. The Tenant shall, before proceeding with any work based on the plans, pay to the Landlord the cost of approving the plans and any changes thereto.

**11.01.02** At the same time as the Tenant submits any plans to the Landlord for Her approval, the Tenant shall provide Her with satisfactory evidence that it has obtained an assignment to and irrevocable licence in favour of the Landlord of the copyright of the plans from the Architect (or Engineer) creating the plans unless the Landlord waives this requirement in writing. The agreement providing such assignment and licence shall expressly state that the Architect (or Engineer) shall not hold the Landlord responsible for any costs incurred or to be incurred in connection with the preparation of the plans or their subsequent use by the Landlord, and that the Landlord is entitled to use the plans for any purpose(s) related to the project which is the subject matter of such plans at any time without further consent or payment.

**11.01.03** The Tenant, once it commences any Work, shall complete such Work:

- (a) in a good and workmanlike manner;
- (b) strictly in accordance with any terms specified in the Landlord’s prior written approval;
- (c) in accordance with the plans as approved; and
- (d) free and clear of any worker’s compensation levies, liens and encumbrances whatsoever, against the Landlord’s estate or interest in the Premises and the Leasehold Interest.

**11.01.04** It is agreed that the Landlord, acting reasonably, may halt or suspend the Work without notice.

**11.01.05** Within thirty (30) days of the Landlord determining that any Work which is the subject matter of the Landlord’s prior written approval is substantially complete, the Tenant shall deliver to the Landlord two copies of the “as built” plans for such Work. At the request of the Landlord, the Tenant shall also deliver copies of any computer files embodying such plans in a format acceptable to the Landlord. If the Tenant does not deliver the plans within the said thirty (30) day period, the Landlord may have such plans prepared, and the Tenant shall pay as Additional Rent the full cost of having such plans prepared plus an amount equal to twenty percent (20 %) of such costs.

**11.01.06** It is agreed that the Landlord’s review and approval or non-approval of any such plans is not for any professional, technical or regulatory purpose but is only to protect Her interest. The Landlord, in approving or not approving any plans or in making any inspections of the Work as it progresses is not making any representations nor is She undertaking any responsibility of a planning, engineering or architectural nature. The Tenant assumes all such responsibility. Receipt by the Landlord of any plans or inspection of the Work as it progresses shall not imply that the Landlord has examined or approved such plans or the Work nor shall it operate as a waiver of any rights of the Landlord or operate as an estoppel against Her in any matter. The Tenant covenants to indemnify and save harmless the Landlord from all Claims made against the Landlord as a result of Her having reviewed and approved any plans.

## ***Section 11.02 Contract Security***

**11.02.01** For all alterations, additional improvements and leasehold improvements exceeding an estimated contract value of \$50,000.00, the Tenant shall ensure that all its contractors as well as its sub-tenants and any sub-contractors shall purchase, provide and maintain for any construction:

- (a) fifty percent (50%) Performance Bonds;
- (b) Labour and Material Payment Bonds being one hundred percent (100%) if the construction period provided for in the construction contract is three (3) months or less, and being fifty per cent (50%) if such construction period is more than three (3) months.



**11.02.02** The Tenant on demand shall provide proof of the existence of such Bonds to the Landlord. The Landlord shall be named as an obligee pursuant to such Bond or such Bonds shall, with the consent of the Bonding Company, be validly assigned to the Landlord.

***Section 11.03 Builders' Liens***

**11.03.01** The Construction or Builders' Liens legislation in the Jurisdiction shall have no jurisdiction over the Landlord or Her interest in the Premises and Leasehold Improvements as long as Her Majesty is the Landlord.

**11.03.02** The Tenant covenants that it shall not permit any construction or builder's liens to be registered against the title to the Premises or the Leasehold Interest therein and that it will cause any such liens to be discharged within fifteen (15) days of receiving notice of such liens. The foregoing shall not prevent the Tenant or anyone holding any such interest from contesting any third-party claim.

**11.03.03** If the Tenant desires to contest the amount or validity of any lien, it may pay the amount of the lien into Court and have the lien discharged.

**11.03.04** If, in the opinion of the Landlord, the Premises or the Tenant's interest therein may become liable to any forfeiture or sale or is otherwise in jeopardy, the Landlord may secure the removal of any lien registered, and any costs incurred by the Landlord for this purpose shall be paid as Additional Rent by the Tenant with interest at the Interest Rate calculated from the day the Landlord incurs the cost.

**11.03.05** The Tenant covenants to indemnify and save harmless the Landlord for and from any Claims or costs incurred by the Landlord as a result of construction or builder's liens affecting the Premises, by or on behalf of any worker, supplier, contractor or subcontractor of the Tenant or anyone holding any interest in the Land under the Tenant.

**ARTICLE 12 – INSURANCE**

***Section 12.01 Insurance***

**12.01.01** The Tenant shall, during the entire term of the Lease, purchase and keep in full force and effect and in the names of the Tenant and the Landlord the following insurance coverage:

(a) commercial general liability insurance containing provisions adequate to protect both the Tenant and the Landlord from and against any and all claims or actions at the instance of third parties for personal injury (including death) and or for property damage occurring upon the Lands and the Premises and or elsewhere occasioned directly or indirectly by any fault, default, negligence, act or omission of the Tenant or the Landlord and of any other parties for whom in law the Tenant and/or Landlord may be responsible, such insurance having personal and bodily injury and property damage limits of liability of not less than \$5,000,000 per occurrence,

(b) all risks (including flood and earthquake) property insurance containing provisions adequate to protect the Tenant's business enterprise, on all objects owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant on the Lands or relating to or servicing the Lands, with reasonable deductibles of up to three percent (3%) of the replacement cost of property insured, and

(c) any other form of insurance and with whatever higher limits the Landlord reasonably requires from time to time.

**12.01.02** The policy of insurance required by this subsection shall provide that it shall not be modified or cancelled without at least 30 days prior written notice to the Landlord and to the Tenant. The Tenant shall deliver a copy of the policy to the Landlord upon execution of the Lease and shall further deliver an updated certificate of insurance on commencement of each Lease Year of the Term and any extension thereof.

**12.01.03** The Tenant agrees that, if the Tenant fails to take out or keep any such Insurance referred to in this Article 12, or should such Insurance not be approved by the Landlord and

should the Tenant not commence diligently to rectify (and thereafter proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the Landlord to the Tenant, the Landlord has the right, without assuming any obligation in connection therewith and without prejudice to any other rights and remedies of the Landlord under this Lease, to effect any such Insurance at the sole cost of the Tenant and all outlays by Landlord plus an administration fee of twenty percent (20%) thereof shall be immediately paid by the Tenant to the Landlord on the first day of the next month following such payment by the Landlord.

## **ARTICLE 13 - DAMAGE AND DESTRUCTION**

### ***Section 13.01 Property Insurance***

**13.01.01** If the Premises are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:

- (a) the Tenant shall give the Landlord prompt notice thereof;
- (b) if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 120 clear days from the happening of such damage or destruction, then the Term shall cease from the date the damage or destruction occurred, and the Tenant shall immediately surrender the remainder of the Term and give possession of the Premises to the Landlord, and the Rent from the time of the surrender shall abate;
- (c) if the Premises can with reasonable diligence be repaired and rendered fit its intended use within 120 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the Rent shall not accrue after the day that such damage occurred and while the process of repair is ongoing, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant's obligation to pay Rent shall resume immediately after the necessary repairs have been completed;
- (d) if the Premises can be repaired within 120 days as aforesaid, but the damage is such that the Premises are capable of being partially used, then until such damage has been repaired, the Tenant shall continue in possession and the Rental shall continue in possession and the Rent shall abate proportionately.
- (e) at any time, and for any reason, the Landlord reserves the right to excise its sole discretion in determining whether to repair or rebuild the Premises. If the Landlord decides not to repair or rebuild the Premises, the Term shall cease and the Tenant shall not be required to pay Rent for the date the destruction or damage occurred. The Tenant shall remove all Property from the Premises.

**13.01.02** Any question as to causation and/or to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by a consultant retained by the Landlord.

**13.01.03** Apart from the provision of this Article 13, there shall be no abatement from or reduction of the Rent on account of damage or destruction, nor shall the Tenant be entitled to claim against the Landlord for any damages, general or special, caused by fire, water, sprinkler systems, partial or temporary failure or stoppage of services or utilities or from any cause whatsoever.

**13.01.04** Any repair or rebuilding by the Landlord hereunder to the Premises shall be made solely in the discretion of the Landlord acting reasonably, provided that if the useable area of the Premises is materially reduced following the completion of the repair or rebuilding, the Rent shall abate proportionately. The parties agree that during the period of alterations the useable area of the Premises may be reduced as a result of the ongoing work and the Tenant shall not be entitled to an abatement of Rent.

**13.01.05** If the Premises are damaged or destroyed by fire or other peril as the result of negligence on the part of the Tenant, their employees, invitees, contractors or anyone to whom the Tenant is responsible at law, then the following provisions shall apply:

- (a) the Tenant shall give the Landlord prompt notice thereof;

- (b) the Tenant shall proceed promptly at its own cost to repair or reconstruct the Premises to a state of good order and repair in which the Tenant was required to maintain them immediately prior to the damage or destruction;
- (c) this Lease shall continue in full force and effect, without any abatement or reduction of Rent, notwithstanding any present or future law or statute to the contrary;
- (d) the Premises shall, as a minimum, be repaired or reconstructed to the same height, volume, floor area, general form, mass, condition and quality as existed prior to the date of damage or destruction;
- (e) the Tenant shall comply with all provisions of this Lease applicable to alterations, and
- (f) any repairs or rebuilding shall be done using materials and workmanship at least equivalent in value and quality to those existing at the Premises prior to such damage or destruction.

## **ARTICLE 14 - LIABILITY, RELEASE AND INDEMNITY**

### ***Section 14.01 Landlord Not Responsible***

**14.01.01** The Tenant acknowledges that the Landlord, as long as the Landlord is Her Majesty in right of Canada, is self-insured and there is no policy of insurance to cover the Landlord's liability as owner.

**14.01.02** The Tenant acknowledges and agrees that the Landlord shall not be liable or responsible for any Injury to any Person (including death) or for Damage of any nature whatsoever to the Tenant or any other Person in respect of any occurrence on or after the Date of Commencement, arising from any act or omission of the Tenant or its staff, licenses, invites, or permitted guests, in, upon, at or relating to the Premises or any part thereof or from the ownership, occupancy or use of the Premises or any part thereof by the Tenant including, without limitation:

- (a) any damage to any property (including loss of use thereof) of the Tenant or of any other Person,
  - (i) from any cause whatsoever if such property is located in or on the Premises or any part thereof; and
  - (ii) if such Damage is caused by or results from any use of or any operation, occurrence or omission on the Premises, if such property is not located on the Premises;
- (b) any Damage to the Premises or the contents thereof;
- (c) any Damage caused or contributed to by reason of the condition of or any interruption, cessation, unavailability or failure in any utility, service, system or road;
- (d) any Injury or Damage insured against or required to be insured against by the Tenant except, subject to Subsection 14.01.02 (e) and (f), any Injury (including death) or Damage arising out of or in connection with any fault, default, negligence, act or omission of the Landlord, or Her agent, servant, employee, contractor or any other Person for whom the Landlord is in law responsible;
- (e) any Injury (including death) or Damage caused by, resulting from, arising out of or in connection with any fault, default, negligence, act or omission of the Landlord, or Her agent, servant, employee, contractor or any other Person for whom the Landlord is in law responsible, not insured against but required to be insured against by the Tenant; and
- (f) any Injury (including death) or Damage caused by, resulting from, arising out of or in connection with the ownership, occupancy or use of the Premises or any part thereof including any Claims against the Landlord or the Tenant resulting from occupiers liability.

Notwithstanding any of the foregoing, nothing in this lease shall absolve the Landlord from liability for any injury or damage resulting from the fault, default, negligence or omission of the Landlord or any Person for whom the Landlord is in law responsible.

**14.01.03** The Tenant further acknowledges that the liability of the Landlord, if any, will be subject to the provisions of the Crown Liability and Proceedings Act, R.S.C. 1985, as amended from time to time.

***Section 14.02 Release and Indemnity***

**14.02.01** The Tenant hereby expressly releases the Landlord from any and all Claims whatsoever which the Tenant would be entitled to advance but for this release, and covenants and agrees to indemnify and save harmless the Landlord from and against any and all claims, demands, losses, liabilities, obligations and expenses (including legal costs) the Landlord may suffer or incur by reason of any claim asserted by any Person resulting or arising out of or relating to:

- (a) the Premises and Utilities and any act, omission, misconduct, default or negligence of the Tenant, its agents, contractors, employees and servants;
- (b) any breach, violation or non-performance of any covenant, condition, agreement or obligation in this Lease on the part of the Tenant;
- (c) the occupancy or use of the Premises and Utilities by the Tenant, its agents, contractors, employees, servants, licensees or anyone permitted to be on the Premises and for whom in law the Tenant may be responsible;
- (d) directly or indirectly from the state or condition or any activity or event occurring in, upon or about the Premises;
- (e) any inability to develop any part of the Premises for any reason whatsoever;
- (f) any substance:
  - (i) which is present on the Premises at any time during the Term or any extensions thereof or after the expiry or termination of this Lease, or
  - (ii) which was released, spilled, leaked or flowed from the Lands any time during the Term or after the expiry or termination of this Lease provided it was present on the Lands prior to the expiry or termination of this Lease and which causes or contributes to an adverse environmental condition.

***Section 14.03 Tenant to Defend Action***

**14.03.01** The Tenant shall, whenever the Landlord is made a party to any legal proceeding in respect of a Claim to which the Tenant's obligation to indemnify the Landlord under this Lease extends, if so requested by the Landlord, defend such legal proceeding in the name of the Landlord and pay all Costs; provided that the Tenant may not compromise, or satisfy any such legal proceeding without the Landlord's consent which consent may be unreasonably withheld.

**ARTICLE 15 – LAWS AND CONTROL**

***Section 15.01 Compliance with all Laws***

**15.01.01** In complying with the requirements of this Lease, the Tenant covenants with the Landlord to comply with all applicable Laws of governmental authorities and to conduct its business in accordance with and comply with any direction or certificate or occupancy permit issued pursuant to any applicable Law by any public officer.

**15.01.02** The Landlord shall not be responsible to the Tenant for non-observance or violation of any Law by any other Person.

**15.01.03** The Tenant shall, upon receipt, deliver to the Landlord a copy of any notice of non-compliance with or violation of any applicable Law, and shall promptly commence to remedy

such non-compliance or violation and with due diligence complete such action within a reasonable period of time.

**15.01.04** The Tenant hereby authorizes the Landlord to make inquiries of any governmental agency with respect to the Tenant's compliance with any Law pertaining to the Tenant and to the Premises or any business conducted thereon; and the Tenant covenants that it will, on demand, provide to the Landlord such written authorization as She may reasonably require.

**15.01.05** The Tenant acknowledges that the Landlord is subject to the federal Access to Information Act and the Federal Privacy Act.

**15.01.06** The Landlord acknowledges that the Tenant is subject to the Municipal Freedom of Information and Protection of Privacy Act.

### ***Section 15.02 Copies of Reports***

**15.02** The Tenant shall provide the Landlord with copies of:

- (a) every test result obtained in respect of a test required in compliance with all Laws;
- (b) copies of annual reports required to be sent to public authorities in compliance with applicable Laws.

### ***Section 15.03 Termination for Default***

**15.03** Notwithstanding any other provision of this Lease, the Landlord may terminate this Lease if the Tenant fails to rectify or commence diligently to rectify (and thereafter proceed diligently to rectify) any breach of Article 15 within two (2) business days after written notice by the Landlord to the Tenant.

## **ARTICLE 16 – ENVIRONMENT**

### ***Section 16.01 Compliance with Environmental Laws***

**16.01.01** The Tenant shall not cause or permit any Deleterious Substance to be brought onto or used on the Premises, any business or undertaking on the Premises, or the use of or activity on the Premises which may cause or contribute to an adverse environmental effect with respect to the Premises, the surrounding area or the environment.

**16.01.02** The Tenant shall, at its own cost, comply with, and shall ensure that all Transferees comply with, all Laws and codes relating to environmental matters requiring the Tenant to take any action in respect of the release or leaking of any Deleterious Substance into the Premises or the groundwater or surface water, or from the Premises onto any adjacent property, land, air or water, or which results in any Deleterious Substance being released into the environment, or requiring a clean-up of any Deleterious Substance or the remedying of any damage caused by such Deleterious Substance, and shall immediately give written notice to the Landlord of the occurrence of any event in the Premises constituting an offence thereunder or a breach of this provision and, if any such event shall happen, the Tenant shall, at its own cost:

- (a) immediately notify the Landlord and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's or the Transferee's compliance with the following provisions of this section,
- (b) promptly correct any Work which is not in conformity and compliance with all Laws or codes, or cease any activity which is not in conformity and compliance with all Laws or codes, and if requested by the Landlord, obtain a certificate from an independent consultant approved by the Landlord, verifying the complete and proper compliance with the requirements of all Laws or codes or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provision;
- (c) promptly cease any activity which causes or permits any Deleterious Substance to be released or leaked into the Premises, the groundwater or surface water, or from the Premises onto

any adjacent property, land, air or water, or which results in any Deleterious Substance being released into the environment; and verifying that this activity has ceased;

(d) remedy any damage to the Premises (including surface water and groundwater), adjacent property, or adjacent land, air or water caused by any action or failure to act occurring in the Premises or caused by the performance or lack of performance of any of the Tenant's obligations under this Article 16.

**16.01.03** If any governmental authority having jurisdiction requires the cleanup of any Deleterious Substance held, released, leaked, abandoned, flowing into or placed in the Premises (including surface water and groundwater) or released, leaked or flowing from the Premises onto adjacent property, or adjacent land, air or water or released into the environment, then the Tenant shall, at its own cost prepare all necessary studies, plans and proposals and submit them to the Landlord for approval, provide all bonds and other security required by such authorities and carry out the Work required, keep the Landlord fully informed with respect to proposed plans and the Work, and comply with the Landlord's reasonable requirements with respect to the plans and Work. The Tenant further agrees that if the Landlord determines, in Her sole discretion, that Her property or Her reputation is placed in jeopardy by the requirement for any such Work, the Landlord may Herself undertake such Work or any part thereof and the Tenant shall forthwith pay to the Landlord the cost of the Work plus twenty percent (20%) of such cost.

#### ***Section 16.02 Landlord's Right to Environmental Assessment***

**16.02.01** The Landlord may, at any time, enter the Premises to determine the existence of any Deleterious Substance in the Premises (including surface water and groundwater) or whether any Deleterious Substance is released or leaks from the Premises and which may cause or contribute to an adverse environmental effect, and for such purpose the Landlord may carry out any tests in the Premises. The Landlord will use best efforts to minimize the effects of the testing on the Tenant. If any assessment, which the Landlord causes to be done, determines that there is an adverse environmental effect, the Tenant shall, in addition to its other obligations, forthwith on demand, pay to the Landlord the full cost of such assessment as Additional Rent.

#### ***Section 16.03 Tenant to Perform***

**16.03.01** The Tenant shall, promptly on notice, at its cost, carry out and conclude any Work required by applicable Laws or codes, or requested by the Landlord to remedy any adverse environmental effect caused or contributed to by:

- (a) the existence of any Deleterious Substance in the Premises (including groundwater and surface water);
- (b) the release or leaking of any Deleterious Substance from the Premises;
- (c) the release or leaking of any Deleterious Substance into the sewer system, storm drains or surface drainage facilities at or on the Premises; or
- (d) any act or omission of any Person for whom the Tenant is in law responsible.

#### ***Section 16.04 Landlord May Perform***

**16.04** If the Tenant fails to promptly commence and diligently complete any Work it is required to perform pursuant to Sections 16.01 or 16.03, the Landlord may enter the Premises and perform any such Work at the cost of the Tenant, but having commenced such Work, the Landlord shall not be obligated to complete it. No such entry shall be deemed a re-entry under this Lease or a breach of the covenant for quiet enjoyment.

#### ***Section 16.05 Ownership of Deleterious Substances***

**16.05.01** If the Tenant brings, permits, creates or uses in the Premises any Deleterious Substance or if the conduct of any business or any other activity in the Premises or the use of the Premises causes there to be any substances in the Premises which cause or contribute to any adverse environmental effect, then, notwithstanding any provision of this Lease or rule of law to the contrary, such Deleterious Substance or substances shall be and remain the sole and exclusive

property of the Tenant, notwithstanding the degree of affixation of such Deleterious Substance or substances or the goods containing them to the Premises and notwithstanding the expiry, surrender or early termination of this Lease.

**16.05.02** To the extent that the performance by the Tenant of the obligations contemplated in this Article 16 requires access to the Premises after the expiry, surrender or early termination of this Lease, the Tenant shall have such access only upon such terms and conditions as the Landlord may from time to time specify; and the Landlord may, at the Tenant's cost, undertake the performance of any Work in order to complete such obligations of the Tenant, but having commenced such Work the Landlord shall not be obligated to complete it.

#### ***Section 16.06 Removal of Deleterious Substances***

**16.06.01** At least one (1) year prior to the termination or expiry of this Lease, the Tenant shall, at its own cost, engage an independent consultant approved by the Landlord to perform an environmental assessment of the Premises to:

(a) determine the existence and extent of any Deleterious Substance in the Premises (including surface water and groundwater), or being released or leaked from the Premises into adjacent premises, land, air or water, or into the environment; and

(b) establish the estimated cost (including the usual contingencies) to clean up such Deleterious Substance or repair the damage caused by it and, in either case, returning the Premises or damaged property to a condition which is in compliance with environmental laws and codes.

**16.06.02** The Tenant shall ensure that the independent consultant provides the Landlord with a copy of the environmental assessment immediately after its completion.

**16.06.03** The Tenant shall, at its cost, promptly commence the Work required to remedy any such adverse environmental effect and thereafter continue such Work to completion within a reasonable time. If the Tenant fails to do so or thereafter to diligently pursue to completion the remedying of such adverse environmental effect, the Landlord may, at the Tenant's cost, Herself undertake the performance of any necessary Work, but having commenced such Work, the Landlord shall not be obligated to complete it.

### **ARTICLE 17 - DEFAULT**

#### ***Section 17.01 Tenant's Default***

**17.01.01** Notwithstanding any Laws to the contrary, each of the following shall constitute an event of default ("Event of Default"):

(a) the Tenant defaults in the payment of any Rent on the day appointed and such default continues for three (3) Business Days after the Landlord's written notice;

(b) any of the goods and chattels of the Tenant are at any time seized in execution or attachment by any creditor of the Tenant;

(c) an Event of Bankruptcy has occurred with respect to the Tenant;

(d) the Tenant enters into an Assignment or Sublet of this Lease without the prior written consent of the Landlord;

(e) the Tenant ceases to use the Premises for their stated purposes;

(f) any breach of the representation or warranty provisions of this Lease;

(g) the Tenant fails to observe any of the covenants and obligations in this Lease to be observed by it (other than the payment of Rent) and such failure continues for a period of fifteen (15) days (or such shorter period as may be specified in this Lease for a particular default) after the Landlord's written notice of such failure (herein "Notice of Default"). If any default under this paragraph reasonably requires more time to cure than the fifteen days required therein the Tenant shall not be in default provided that the curing of the default is promptly commenced upon receipt of the Notice of Default, and with due diligence is thereafter continued to completion and

is completed within a reasonable time and provided that the Tenant keeps the Landlord well informed at all times of its progress in curing the default.

**17.01.02** The occurrence of an Event of Default shall give rise to the rights in relation thereto set out in s. 17.02 to s. 17.03 inclusive.

***Section 17.02 Landlord's Rights***

**17.02.01** Where there is an Event of Default, it shall be lawful for the Landlord, at Her option:

- (a) with or without entry, to terminate this Lease, and all the rights of the Tenant shall terminate upon the date of receipt of a notice of termination;
- (b) to enter the Premises for the purpose of curing any default of the Tenant, and the Tenant shall permit such entry, and the Tenant shall pay, as Additional Rent, all Costs of the Landlord in curing any default, plus a sum equal to twenty percent (20%) thereof and together with interest on the total amount at the Interest Rate as defined, but the Landlord shall not be obligated to cure or continue to cure such default, it being understood that the Landlord shall not be liable to the Tenant for any loss or damage to the Tenant's stock or business caused while curing or attempting to cure any default of the Tenant;
- (c) to pay on behalf of the Tenant, when due, any moneys which the Tenant has covenanted to pay under this Lease other than a sum payable to the Landlord, and the Tenant shall reimburse the Landlord for any amount so paid together with interest thereon at the Interest Rate as defined;
- (d) to restrain the Tenant by injunction;
- (e) to deny the Tenant services such as the supply of electricity, water etc.; and
- (f) to claim Damages from the Tenant.

**17.02.02** Whenever the Tenant shall be in default in the payment of any money hereunder, the Landlord may, without notice or any legal process enter upon the Lands and seize, remove and sell the Tenant's property therefrom and seize, remove and sell any property at any place to which the Tenant or any other Person may have removed it, in the same manner as if it had remained upon the Lands.

**17.02.03** All Costs incurred by the Landlord as a result of any default by the Tenant shall forthwith on demand be paid by the Tenant as Additional Rent together with interest, at the rate for rent in arrears, from the date any such Costs are incurred until they are fully paid.

**17.02.04** The Landlord may use such force as She deems necessary for the purpose of gaining entry to and retaking possession of the Premises, and the Tenant hereby releases the Landlord from all actions, claims and demands whatsoever in respect of any such entry or any loss or Damage in connection therewith.

**17.02.05** Notwithstanding any Laws to the contrary, whenever re-entry is specifically permitted under any provision of this Lease, the Landlord's rights and the Tenant's obligations shall not be affected.

**17.02.06** The Tenant agrees that if the Landlord is not able to deliver a Notice of Default or a Notice of Termination to the Tenant's last address, She may affect notice on the Tenant by posting it in the Premises, and such notice shall be deemed to have been given from the date it is so posted.

**17.02.07** If the Landlord re-enters or this Lease terminates prior to the end of the term of the Lease:

- (a) notwithstanding any such termination or the Term thereby becoming forfeited, the provisions of this Lease relating to the consequences of termination shall survive;
- (b) Rent shall immediately become due and be paid up to the time of such re-entry or termination together with an amount equal to the Rent for the next ensuing three (3) months and the reasonable expenses of the Landlord as hereinafter defined;
- (c) the Landlord may re-let the Premises for a term to be fixed at Her discretion;



(d) the Landlord may require the Tenant to pay monthly on the first day of each month following such re-entry or termination and until the expiration of the original Term any deficiency between:

(i) the aggregate of the monthly installment of Rent which would otherwise have been payable for that calendar month; and

(ii) the net amount of any rents received on account of the re-letting of the Premises; and

(e) the Tenant shall pay such Costs as the Landlord may incur in re-letting the Premises.

**17.02.08** The Tenant hereby waives;

(a) the benefit of any present Laws, statutory or otherwise, which in any way may take away or diminish the Landlord's right to terminate this Lease or re-enter into possession of the Premises in pursuance of Her rights or remedies in this Lease; and

(b) any rights of redemption granted by or under any present Laws, statutory or otherwise, in the event of the Tenant being evicted or dispossessed, or the Landlord obtaining possession of the Premises by reason of the violation by the Tenant of any of the terms or conditions of this Lease or otherwise.

### ***Section 17.03 Remedies not Exclusive***

**17.03.01** The rights and remedies of the Landlord specified in this Lease are cumulative and are in addition to Her rights and remedies at law or in equity or by statute, and are not exclusive or dependent upon any other right or remedy. The right of the Landlord to claim arrears of Rent and loss or damages against the Tenant shall survive the surrender or termination of this Lease.

## **ARTICLE 18 - FORCE MAJEURE**

### ***Section 18.01 Force Majeure***

**18.01** To the extent that either party is unable, in good faith, to fulfill or is delayed or restricted in fulfilling any of its obligations under this Lease by an event of Force Majeure, such party shall be relieved from the fulfillment of the part of its obligations affected by Force Majeure while it lasts, provided that the Tenant notifies the Landlord within five (5) Business Days of the commencement of any event which is an event of Force Majeure and provides the Landlord with a description of the facts and circumstances of the event of Force Majeure and the action to be taken to minimize the delay, all of which, in the opinion of the Landlord, justifies the delay.

**18.02** Notwithstanding an event of Force Majeure, the party affected shall proceed with the performance of its obligations not thereby affected.

**18.03** The provisions of this Article shall not excuse the Tenant from the payment of any Rent or any other obligation under this Lease including the obligation with respect to Insurance.

## **ARTICLE 19 - ASSIGNMENT AND SUBLETTING**

### ***Section 19.01 Prohibition against Assignment or Subletting***

**19.01.01** The Tenant shall not assign or sublet this Lease without the Landlord's prior written consent.

### ***Section 19.02 Assignment by Landlord***

**19.02.01** In the event of the sale, lease or other disposition by the Landlord of the Land, or the assignment by the Landlord of this Lease or any interest herein to the extent that the purchaser, lessee or assignee assumes the covenants and obligations of the Landlord, the Landlord shall be relieved of all liability with respect to such covenants and obligations. The Tenant shall, upon request, attorn in writing to such successor-in-interest.

## **ARTICLE 20 - SUCCESSORS AND ASSIGNS**

### ***Section 20.01 Binding on Successors***

**20.01.01** Subject to Article 19, this Lease and all its covenants and agreements shall be binding upon and enure to the benefit of the parties hereto and to any their successors.

## **ARTICLE 21 - ADDITIONAL PROVISIONS**

### ***Section 21.01 Additional Rights of Landlord***

**21.01.01** The Landlord is entitled from time to time, during normal business hours and in the presence of a representative of the Tenant, to enter the Premises in order to;

- (a) inspect the Premises in order to determine the extent of compliance with all applicable Laws and this Lease;
- (b) enforce any provision of this Lease;
- (c) carry out any of Her rights;
- (d) show the Premises to prospective purchasers, encumbrances, tenants or assignees and, at any time during the Term, to place upon them a notice of reasonable dimensions being reasonably placed, stating that the Premises are for sale or for rent.

**21.01.02** Notwithstanding any other provision herein, the Landlord may enter the Premises at any time where, in the Landlord's judgment, there is a real or apprehended emergency or danger to persons or property. In this event, if the Tenant is not personally present to open and permit entry into the Premises, the Landlord may, without notice or resort to any legal process, forcibly enter the Premises without rendering Her liable therefore, and without in any manner affecting the obligations and covenants of this Lease.

**21.01.03** Except where the Landlord intends to terminate this Lease, no entry by the Landlord into the Premises or anything done in or for the Premises by the Landlord pursuant to any right or remedy granted by this Lease or at law shall constitute a breach of any covenant for quiet enjoyment contained in this Lease or implied by law or (except where expressed by the Landlord in writing) a re-entry into the Premises, or an interference with the Tenant's possession, or be deemed to be a forfeiture, surrender or termination of this Lease, or an actual or constructive eviction, or a derogation from the Landlord's grant.

**21.01.04** Nothing in this Lease shall be construed to impose upon the Landlord any obligation, responsibility or liability whatsoever for the maintenance or repair of the Premises except as otherwise herein specifically provided.

### ***Section 21.02 Notices***

**21.02.01** All notices or other communication required or permitted by this Lease shall be in writing and shall be delivered or sent by an acceptable means to an acceptable address. Acceptable means are:

- (a) delivery during normal business hours to the person who is the addressee or to a person responsible for receiving communications in the addressee's office, in which case it is effective when delivered;

- (b) delivery by registered mail, in which case it is effective when the postal system obtains a signature accepting delivery; and
- (c) electronic transmission to the addressee's office, in which case it is effective when receipt is acknowledged by a specific message to that effect.

**21.02 .02** The acceptable addresses are

- (a) in the case of the Landlord:

Transport Canada – Ontario Region  
Programs Branch – Pickering Lands  
4900 Yonge Street, 4<sup>th</sup> Floor  
Toronto, Ontario M2N 6A5

- (b) in the case of the Tenant:

The Corporation of the City of Pickering  
One The Esplanade  
Pickering, Ontario L1V 6K7

Such addresses may be changed from time to time by either party giving written notice as above provided.

***Section 21.03 Amendments***

**21.03.01** No amendment to this Lease shall have any effect unless it is in writing and is signed by both the Landlord and the Tenant.

***Section 21.04 No Partnership or Joint Venture***

**21.04.01** The parties hereto expressly disclaim any intention to create a partnership, joint venture or principal and agent relationship and agree that nothing in this Lease nor any acts on their part constitute them as partners, joint ventures or principal and agent in any way, nor shall any such acts create any relationship other than that of Landlord and Tenant, and the Tenant shall not represent itself to be an agent of the Landlord.

***Section 21.05 Members of House of Commons Not to Benefit***

**21.05.01** No member of the House of Commons shall be admitted to any share or part of this Lease or to any benefit to arise therefrom.

***Section 21.06 Waiver***

**21.06.01** The failure of the Landlord to insist on the strict performance of any provisions or to exercise any right under this Lease shall not be construed as a waiver for the future of any such provisions or right or any other provision or right, or as a waiver of any subsequent breach. The consent by the Landlord to any act by the Tenant requiring such consent shall not be construed as a waiver of the requirement of such consent to any subsequent similar act. The acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term of this Lease, regardless of the Landlord's knowledge of such preceding breach, and no term of this Lease shall be deemed to have been waived by the Landlord unless such waiver is in writing signed by the Landlord.

***Section 21.07 Further Assurances***

**21.07 .01** The parties hereto shall execute such further assurances as may reasonably be required to give effect to any provision of this Lease.

***Section 21.08 Registration***

**21.08.01** If the Tenant decides to register this Lease on title to the Land, the Tenant shall notify the Landlord of its intention to register the Lease and shall provide a copy of the registered instrument to the Landlord. All relevant Costs shall be the responsibility of the Tenant, it being agreed that upon the surrender or termination of this Lease, the Tenant shall at its cost remove and discharge this Lease from the title to the Land.

***Section 21.09 Bribes***

**21.09.01** The Tenant hereby represents and warrants that it has not, nor has any person on its behalf, given, promised or offered to any Member of the House of Commons or to any official or employee of the Landlord, for or with a view to obtaining this Lease, any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person, other than a recognized real estate broker, to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage or contingency fee.

***Section 21.10 Dispute Resolution***

**21.10.01** In the event of disagreement arising out of this Agreement, the parties hereto agree, that prior to having recourse to a court of competent jurisdiction to resolve a dispute, the parties will try to resolve their differences, and will consider alternative dispute resolution processes before resorting to litigation.

***Section 21.11 Parking and Maintenance of Premises***

**21.11.01** The Tenant shall be responsible at its sole cost and expense for all maintenance of the Premises and all Property located thereon, including without limitation, all parking areas and all walkways incident thereto. The Tenant is responsible for the maintenance of all lawns and for the removal of snow and ice from all parking areas, walkways, sidewalks, and stairs.

**IN WITNESS WHEREOF,**

THE **LANDLORD** has executed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
AS REPRESENTED BY THE MININSTER OF TRANSPORT**

Per: PERRY PAPADATOS  
REGIONAL MANAGER, PICKERING LANDS SITE

\_\_\_\_\_

THE **TENANT** has executed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**THE CORPORATION OF THE CITY OF PICKERING**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

I/We have authority to bind the Corporation

**SCHEDULE “A”**

**DESCRIPTION OF LAND**

**PINs 614679, 614680-1, 614687, 614688, 614689**

**1. PIN 614679**

**Description of All of PWGSC PIN 614679**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 3.5 acres, being part of Lot 19, Concession 5, Geographic Township of Pickering more particularly described a Part of Lot 14, Registered Plan 10, Village of Brougham as Instrument Number 139441 and shown in RED and labelled as 679 on the attached Schedule B: PIN 614679 Sketch.

PWGSC PIN 614679 is part of the Durham Land Registry Office (No. 40) property identifier number 26402 – 0011 (LT).

**2. PIN 614680-1**

**Description of All of PWGSC PIN 614680**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 3.0 acres, being part of Lot 19, Concession 5, Geographic Township of Pickering being more particularly described as Part of Lot 14, Registered Plan No. 10, Village of Brougham save and except Part 6, Plan 40R-5747, All of Lots 12, 13 and 15 and part of Lot 16, Registered Plan 530, Village of Brougham as in Instrument Number 137817 and shown in RED on the attached Schedule B: PIN 614680 Sketch.

PWGSC PIN 614680 is part of the Durham Land Registry Office (No. 40) property identifier number 26402 – 0011 (LT).

**Description of the Land being All of PWGSC PIN 614680-1**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 2.1 acres, being part of Lot 19, Concession 5, Geographic Township of Pickering being more particularly described as Lot 14, Registered Plan No. 10, Village of Brougham save and except Part 6, Plan 40R-5747, Part of Lots 13, 15 and 16, Registered Plan 530, Village of Brougham being that Part of PWGSC PIN 614680 shown in RED and labeled 680-1 on the attached Schedule B: PIN 614680 Sketch.

**3. PIN 614687**

**Description of All of PWGSC PIN 614687**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 0.7 acres, being Part of Lot 19, Concession 5, Geographic Township of Pickering more particularly described as All of Lots 13 and 14, Registered Plan 530, Village of Brougham as in Instrument Numbers 150839 and 156164 and shown in RED and labelled as 687 on the attached Schedule B: PIN 614687 Sketch.

PWGSC PIN 614687 is part of the Durham Land Registry Office (No. 40) property identifier number 26402 – 0011 (LT).

## **DESCRIPTION OF LAND**

**PINs 614679, 614680-1, 614687, 614688, 614689**

### **4. PIN 61688**

#### **Description of All of PWGSC PIN 614688**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 0.35 acres, being Part of Lot 19, Concession 5, Geographic Township of Pickering, more particularly described as All of Lot 12, Registered Plan 530, Village of Brougham as in Instrument Number 197963 and shown in RED and labelled as 688 on the attached Schedule B: PIN 614688 Sketch.

PWGSC PIN 614688 is part of the Durham Land Registry Office (No. 40) property identifier number 26402 – 0011 (LT).

### **5. PIN 61689**

#### **Description of All of PWGSC PIN 614689**

That parcel or tract of land situate, lying and being in the City of Pickering in the Regional Municipality of Durham containing approximately 0.35 acres, being Part of Lot 19, Concession 5, Geographic Township of Pickering more particularly described as All of Lot 11, Registered Plan 530, Village of Brougham as in Instrument Number 188929 and shown in RED and labelled as 689 on the attached Schedule B: PIN 614689 Sketch.

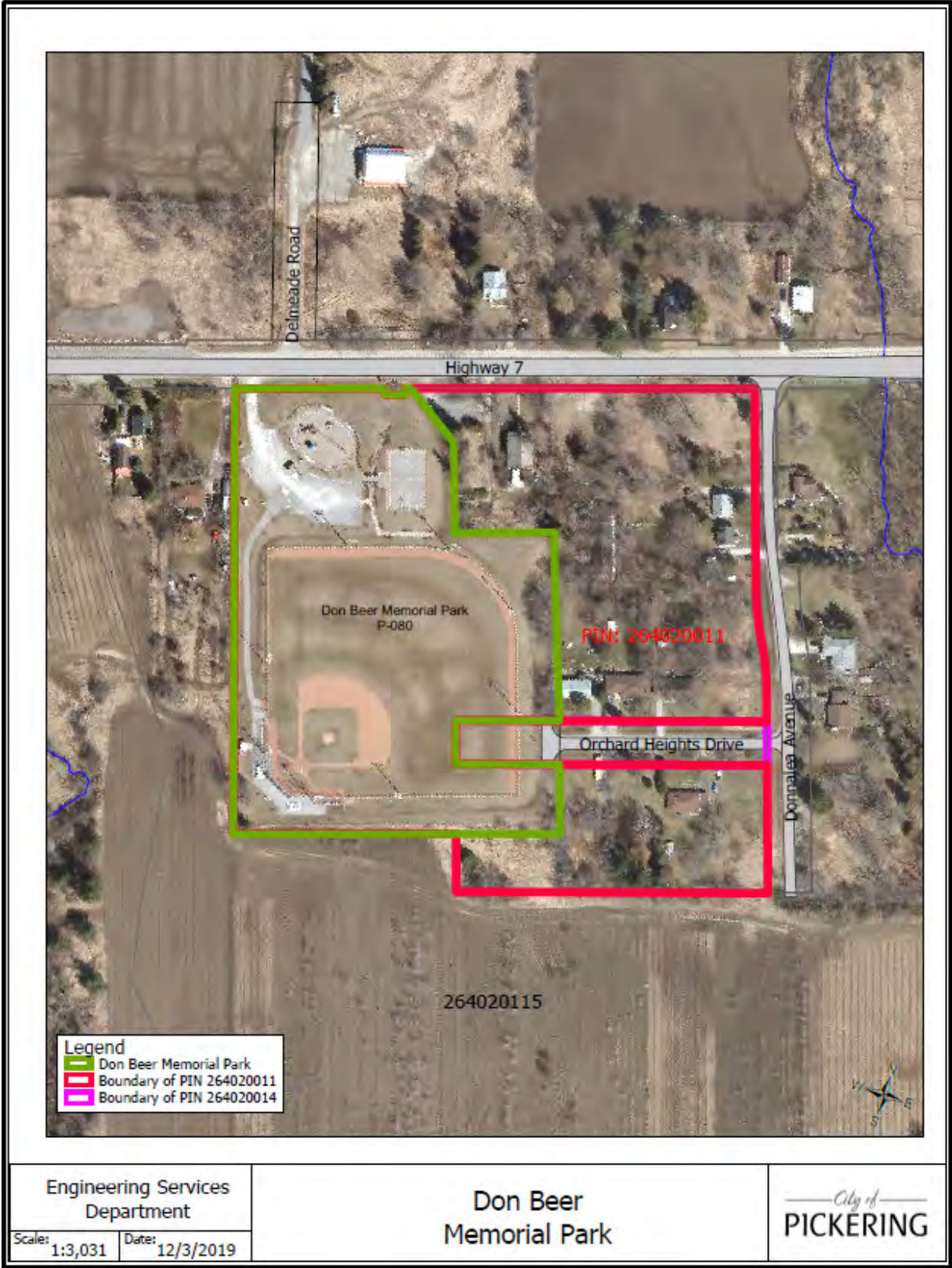
PWGSC PIN 614689 is part of the Durham Land Registry Office (No. 40) property identifier number 26402 – 0011 (LT).

SCHEDULE “B”

PLAN OF SITE

PINs 614679, 614680-1, 614687, 614688, 614689

Location Map





PLAN OF SITE

PINs 614679, 614680-1, 614687, 614688, 614689

Pickering Lands Site PINs 614679, 614680-1, 614687, 614688, 614689 Sketch



Imagery Date: March 2016