

**From:** Tony Prevedel  
Chief Administrative Officer

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**Subject:** Land Acquisition and Disposal

- Pickering Innovation Corridor - Seaton
- Purchase of 22 acres from Infrastructure Ontario
- File: L-4610-009-18

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**Recommendation:**

1. That Council approve the Agreement of Purchase and Sale dated May 31, 2018 between Ontario Infrastructure and Land Corporation, as vendor, and the City, as purchaser;
  2. That Council approve the Agreement of Purchase and Sale dated March 19, 2018 between the City, as vendor, and Kubota Canada Ltd., as purchaser;
  3. That Council authorize the Chief Administrative Officer to waive the City sale condition contained in Section 6.04(a) of the Agreement of Purchase and Sale with Ontario Infrastructure and Land Corporation, provided that the Chief Administrative Officer shall not waive the said condition unless and until Kubota Canada Ltd. has waived all conditions in its Agreement of Purchase and Sale with the City dated March 19, 2018;
  4. That, upon waiver of the above-noted conditions, City staff be directed to proceed with completion of both the said Agreements of Purchase and Sale; and
  5. That the appropriate City of Pickering officials be authorized to take the necessary actions as indicated in this Report.
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**Executive Summary:** The City has entered into an Agreement of Purchase and Sale (the "22 Acre Purchase Agreement") dated May 31, 2018, whereby it has agreed to purchase approximately 22 acres (the "22 acre parcel") of Seaton employment lands from Ontario Infrastructure and Land Corporation (the "Province"). The Agreement is conditional upon the approval of City Council prior to October 12, 2018.

The City has also entered into a separate Agreement of Purchase and Sale (the "50 Acre Sale Agreement") whereby it has agreed to sell approximately 50 acres (the "50 acre parcel") of Seaton employment lands to Kubota Canada Ltd. ("Kubota"). The 50 acre parcel being sold to Kubota includes the 22 acre parcel being purchased from the Province. The 50 Acre Sale Agreement is conditional for Kubota's benefit until October 5, 2018.

At the present time, Kubota is completing its various due diligence searches. Kubota has until October 5<sup>th</sup> to complete its searches, however, the last scheduled Council meeting prior to the

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2018 municipal election will be held on October 1<sup>st</sup>. Staff therefore recommend that Council authorize the Chief Administrative Officer to waive the City sale condition in the 22 Acre Purchase Agreement provided that Kubota waives its condition in the 50 Acre Sale Agreement. This will enable the City to proceed with both Agreements of Purchase and Sale without the need for an additional special meeting. This will also ensure that the City buys the 22 acre parcel only if Kubota has unconditionally agreed to buy it in turn from the City as part of the 50 acre sale.

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**Financial Implications:** The financial plan for the 22 Acre Purchase Agreement is for the purchase cost, including associated fees, to be recovered from the imminent sale of the 50 acre parcel to Kubota. The closing of the 22 Acre Purchase Agreement will be scheduled to occur within 30 days of the closing of the 50 Acre Sale Agreement, such that the City's cash flow will not be materially impacted.

The initial cost of the purchase is approximately \$2.2 million plus HST, Land Transfer Tax and Provincial Top-up payment shortfall. During the period of the City's ownership of the lands, the City will be responsible for any development-related cash calls pursuant to the Seaton Landowners' Cost Sharing Agreement. Pursuant to Report CAO 02-17, Council has already provided pre-capital 2018 budget approval in the amount of \$6.0 million to meet any of these obligations as they relate to the purchase of the 22 acre parcel. All of the City's costs will be passed onto Kubota at the time it completes its purchase of the 50 acre parcel.

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**Discussion:** The Seaton employment lands (Pickering's Innovation Corridor) are designated as prestige employment, and consist of approximately 323 hectares (800 acres) owned by the Province. The City's Official Plan designates this land as being suitable for light manufacturing, assembly and processing of goods, research and development facilities, business services, graphics and design, data and communications, offices and ancillary retail uses.

On March 31, 2018, the City completed its purchase of 28 acres of Seaton employment lands from the Province.

Pursuant to Council direction, the Chief Administrative Officer executed the 22 Acre Purchase Agreement dated May 31, 2018 between the Province, as vendor, and the City, as purchaser. A copy of the 22 Acre Purchase Agreement is Attachment No. 1 to this Report. Upon completion of the 22 Acre Purchase Agreement, the City's total inventory of Seaton employment land will be 50 acres.

Pursuant to Council's direction in Report CAO 02-17, the City has also entered into the 50 Acre Sale Agreement whereby it has agreed to sell its 50 acre parcel of Seaton employment lands to Kubota. A copy of the 50 Acre Sale Agreement is Attachment No. 2 to this Report. The 50 Acre Sale Agreement is conditional for Kubota's benefit until October 5, 2018.

At the present time, Kubota is completing its various due diligence searches. Kubota has until October 5<sup>th</sup> to complete its searches, however, the last scheduled Council meeting prior to the 2018 municipal election will be held on October 1<sup>st</sup>. Staff therefore recommend that Council authorize the Chief Administrative Officer to waive the City sale condition in the 22 Acre Purchase Agreement provided that Kubota waives its condition in the 50 Acre Sale Agreement. This will

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enable the City to finalize both Agreements of Purchase and Sale without the need for an additional special meeting. This will also ensure that the City buys the 22 acre parcel only if Kubota has unconditionally agreed to buy it in turn from the City as part of the 50 acre sale.

**Attachments:**

1. 22 Acre Purchase Agreement dated May 31, 2018
2. 50 Acre Sale Agreement dated March 19, 2018

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**Prepared By:**



Paul Bigioni  
Director, Corporate Services & City Solicitor

PB:ks

Recommended for the consideration  
of Pickering City Council



*for* Tony Prevedel, P.Eng.  
Chief Administrative Officer

ATTACHMENT# 1 TO REPORT# CAO 09-18 Execution Version  
1 .of. 52

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE  
MINISTER OF INFRASTRUCTURE**

as "Vendor"

and

**THE CORPORATION OF THE CITY OF PICKERING**

as "Purchaser"

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**AGREEMENT OF PURCHASE AND SALE**

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**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF INFRASTRUCTURE**  
(hereinafter collectively called the "Vendor")

OF THE FIRST PART

- and -

**THE CORPORATION OF THE CITY OF PICKERING**  
(hereinafter called the "Purchaser")

OF THE SECOND PART

**RECITALS:**

- A. The Vendor is the owner in fee simple of the property defined as the "Lands" in Section 1.01(w) of this Agreement.
- B. Vendor and OILC hereby confirm that OILC is the designated agent of the Vendor.
- C. The Lands are within the area covered by the "Central Pickering Development Plan" issued pursuant to the *Ontario Planning and Development Act, 1994*, S.O. 1994, c.23.
- D. The Purchaser and the Vendor did enter into an Option Agreement dated March 26, 2018 which provides that the Purchaser may acquire certain lands, including the Lands at a price to be agreed upon during the term of such Option Agreement.
- E. The Lands are subject to the Development Agreements, and the Purchaser has agreed to assume the Development Agreements as they relate to the Lands.
- F. The Lands are "Phase 1 Prestige Employment Lands" as such term is defined by the Phase 1 RFEA.
- G. The Lands are subject to the Lease, and the Purchaser has agreed to assume the Lease as they relate to the Lands.
- H. The Purchaser has offered to purchase the Property from the Vendor on the terms and conditions hereinafter set forth.

**NOW THEREFORE** in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1 DEFINITIONS

### 1.01 Definitions

Unless the context expressly or by necessary implication indicates a contrary meaning, the terms defined in this Section 1.01 for all purposes of this Agreement, shall have the meanings set out below:

- (a) **“Adjustments”** means the adjustments to the Purchase Price provided for and determined pursuant to this Agreement.
- (b) **“Affiliate”** has the meaning set out in the *Business Corporations Act*, R.S.O. 1990, c. B. 16.
- (c) **“Agreement”** means collectively, this agreement of purchase and sale, all Schedules attached hereto and every properly executed instrument which by its terms amends, modifies or supplements this Agreement.
- (d) **“Applicable Laws”** means, collectively, all statutes, laws, by-laws, regulations, ordinances and orders of any governmental Authority, including without limitation all Land Use Regulations.
- (e) **“Approval Term”** has the meaning ascribed to it in Section 7.03.
- (f) **“As Is Where Is”** has the meaning ascribed to it in Section 5.01.
- (g) **“Assignee”** has the meaning ascribed to it in Section 15.02.
- (h) **“Assignment and Assumption Agreement”** means an agreement by which the Vendor shall assign and the Purchaser shall become a party to a Development Agreement, Lease or Permitted Encumbrance and whereby the Purchaser assumes the responsibility of the Vendor with regard to the Property pursuant to such Development Agreement, Lease or Permitted Encumbrance.
- (i) **“Attribution Development Charges”** means the Regional Attribution Water Supply DC and the Regional Attribution Sanitary Sewerage DC (as such terms are defined in the Phase 1 RFEA) from time to time.
- (j) **“Attribution Prepayment”** means the sum of the “Regional Attribution Water Supply DC Prepayment” and the “Regional Attribution Sanitary Sewerage DC Prepayment” (as such terms are defined in the Phase 1 RFEA) from time to time.
- (k) **“Authority”** means any governmental or quasi-governmental authority, regulatory authority, government department, agency, commission, board, tribunal, body or department, or any court, whether federal, provincial or municipal, having jurisdiction over the Property, or the use thereof, and includes the City and the Region.

- (l) “**Buildings**” means, individually or collectively, as the context requires, all buildings, structures and fixed improvements located on, upon or under the Lands, and all improvements and fixtures of the Vendor contained in, upon or on such buildings and structures which are used in the operation of same, and “**Building**” means any one of the Buildings.
- (m) “**Business Day**” means any day on which the Government of Ontario normally conducts business.
- (n) “**City**” means the City of Pickering.
- (o) “**City Sale Approval**” means the necessary internal approvals required for the Transaction by the Council for the City.
- (p) “**Class EA**” means the Class Environmental Assessment Process for the Ministry of Infrastructure as it applies to OILC realty activities (being as at the Execution Date, the “Ministry of Infrastructure Public Work Class Environmental Assessment (Office Consolidation)”, as approved April 28, 2004 and amended on September 11, 2008 and on October 31, 2012), as approved, amended, or renewed from time to time by the Minister of the Environment and Climate Change pursuant to Section 14 of the *Environmental Assessment Act*, R.S.O. 1990, c. E.18.
- (q) “**Class EA Requirements**” has the meaning ascribed to it in Section 8.01.
- (r) “**Closing**” means the closing of the Transaction, including without limitation, the payment of the Purchase Price and the delivery of the closing documents in accordance with the provisions of this Agreement.
- (s) “**Closing Date**” means the day which is thirty (30) Business Days next following the date the Purchaser waives or satisfies its condition(s) contained in Section 5 and Section 6.04 of this Agreement.
- (t) “**Community Use Land**” has the meaning ascribed to it in the Seaton CSA.
- (u) “**Contaminant**” has, for the purposes of this Agreement, the same meaning as that contained in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and shall include the requirements of any and all guidelines and/or policies issued by the Ontario Ministry of the Environment and Climate Change and/or the Ministry of Labour.
- (v) “**Cost Shared Service**” has the meaning ascribed to it in the Seaton CSA.
- (w) “**Crown Right Request**” has the meaning ascribed to it in Section 12.01.
- (x) “**DC Credit Recovery Payment**” has the meaning ascribed to it in Section 16.03.
- (y) “**Deposit**” has the meaning ascribed to it in Section 3.01.



- (z) **“Developable Area Share”** has the meaning ascribed to it in the Seaton CSA.
- (aa) **“Development Agreements”** means, collectively, the Phase 1 RFEA, the Seaton CSA, the Pickering FIA, the Seaton-Durham CSA and the Master Parks Agreement, and **“Development Agreement”** means any one of such agreements.
- (bb) **“Development Agreement Payment”** means any payment required to be made, or security to be provided, to an Authority, to the Vendor, or to a trustee named under a Development Agreement, by the Purchaser at Closing hereunder and whether required by an Assignment and Assumption Agreement or otherwise, and includes, but is not limited to, the DC Credit Recovery Payment, Attribution Prepayment, Development Agreement Security, Development Charge Payments, and Private Land Landowner Equivalency Payment.
- (cc) **“Development Agreement Security”** means any security required to be delivered by a Private Landowner pursuant to a Development Agreement, whether by letter of credit or otherwise.
- (dd) **“Development Charge Credits”** means the development charge credits earned pursuant to the Phase 1 RFEA.
- (ee) **“Development Charge Prepayments”** means the prepayments on account of the Regional Attributions Development Charges required to be paid to the Region pursuant to the Phase 1 RFEA upon the development of Employment Lands.
- (ff) **“Drainage Area Share”** has the meaning ascribed to such term in the Seaton CSA.
- (gg) **“Durham Owners”** has the meaning ascribed to it in the Seaton-Durham CSA.
- (hh) **“Employment Lands”** means those lands designated as “Prestige Employment Lands” in the ‘Central Pickering Development Plan’.
- (ii) **“Environmental Law”** means, collectively, all Applicable Laws and agreements with governmental Authorities and all other applicable federal and provincial statutes, municipal and local laws, common law and deed restrictions, all by-laws, regulations, codes, licences, permits, orders, directives, guidelines, decisions rendered by any governmental Authority relating to the protection of the environment, natural resources, public health, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance, and all authorizations issued pursuant to such Applicable Laws, agreements or statutory requirements.
- (jj) **“Environmental Objection”** has the meaning ascribed to it in Section 5.02.
- (kk) **“Environmental Reports”** means the reports relating to the environmental condition of the Lands as identified in Schedule C.

- (ll) **"Execution Date"** means the date on which this Agreement has been executed and delivered by all parties hereto.
- (mm) **"Existing Participation Agreement"** has the meaning ascribed to it in Section 21.01.
- (nn) **"Expiry Date"** has the meaning ascribed to it in Section 7.03.
- (oo) **"Further Class EA Extension Period"** has the meaning ascribed to it in Section 8.02(d)(i).
- (pp) **"Further Extension Period"** has the meaning ascribed to it in Section 8.03(b).
- (qq) **"Hazardous Substance"** includes, but is not limited to any hazardous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, asbestos, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of, which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Law.
- (rr) **"Heritage Requirements"** has the meaning ascribed to it in Section 8.01(b).
- (ss) **"HST"** has the meaning ascribed to it in Section 4.01 of this Agreement.
- (tt) **"Initial Class EA Extension Period"** has the meaning ascribed to it in Section 8.02.
- (uu) **"Initial Extension Period"** has the meaning ascribed to it in Section 8.03.
- (vv) **"Inspection Period"** means that period of time which is seventy (70) Business Days following the Execution Date.
- (ww) **"Lands"** means the land(s) described in schedule A-1 and outlined in red on the sketch plan attached hereto as Schedule A-2.
- (xx) **"Land Use Regulations"** means collectively, any land use policies, regulations, by-laws, or plans of any Authority that apply to the use of the Property, including the existing Official Plans, zoning by-laws and zoning orders.
- (yy) **"Land Transfer Tax Affidavit"** has the meaning ascribed to it in Section 17.01.
- (zz) **"Lease"** means the lease dated January 22, 2016 made between the Vendor, as landlord and 1018105 Ontario Inc o/a Hunter Farms, as tenant.
- (aaa) **"Master Parks Agreement"** means the Master Parks Agreement dated May 1, 2017 entered into by the City, and the owners of other development land in the Seaton

Community for the purpose of establishing arrangements pertaining to the satisfaction of the park dedication requirements for the Seaton Community.

- (bbb) **"Municipality"** means the municipality (or municipalities) where the Property is located.
- (ccc) **"Offer Date"** means the date the offer herein is submitted to the Vendor by the Purchaser.
- (ddd) **"OILC"** means Ontario Infrastructure and Lands Corporation.
- (eee) **"Open Data"** means data that is required to be released to the public pursuant to the Open Data Directive;
- (fff) **"Open Data Directive"** means the Management Board of Cabinet's Open Data Directive, updated on April 29, 2016, as same may be amended from time to time;
- (ggg) **"Participation Agreement"** means the Participation Agreement attached hereto as schedule G and to be entered into between the Vendor and the Purchaser at Closing.
- (hhh) **"Permitted Encumbrances"** means, collectively, the encumbrances listed in Schedule B and any encumbrances created under the terms of this Agreement.
- (iii) **"Phase 1 RFEA"** has the meaning ascribed to such term in the Seaton CSA.
- (jjj) **"Phase 1 RFEA Lands"** has the meaning ascribed to such term in the Phase 1 RFEA.
- (kkk) **"Phase 1 Development"** has the meaning ascribed to such term in the Seaton CSA.
- (lll) **"Pickering FIA"** means the Financial Impacts Agreement dated November 26, 2015 entered into by the City, and the owners of other development land in the Seaton Community for the purpose of confirming arrangements pertaining to the financing and construction of certain infrastructure and other related matters affecting the development of lands in Seaton.
- (mmm) **"Prior Purchased Lands"** has the meaning ascribed to it in Section 2.02(b).
- (nnn) **"Private Landowner"** has the meaning ascribed to such term in the Seaton CSA.
- (ooo) **"Private Landowner Equivalency Payment"** has the meaning ascribed to it in Section 16.06.
- (ppp) **"Property"** means, collectively, all of the right, title and interest of the Vendor in and to the Lands and the Buildings.
- (qqq) **"Property Documents"** means the documents in OILC's current possession and related to the Property, as set out in Schedule C, and shall include, but shall not be limited to:

- (A) executed copies of any assignable service contracts, operating agreements and management agreements;
  - (B) copies of assignable guarantees and warranties of materials, workmanship, labour and materials relating to the Property that are still in effect;
  - (C) copies of the Environmental Reports, heritage reports, archaeological reports or any other report relating to the physical, geotechnical or environmental condition of the Property;
  - (D) a copy of the Lease;
  - (E) copies of all Permitted Encumbrances which are not registered against title to the Property; and
  - (F) any plan of survey of the boundaries of the Property.
- (rrr) **“Provincial Successor”** has the meaning ascribed to such term in the Seaton CSA.
- (sss) **“Purchase Price”** means the total amount determined by Section 2.02 that shall be paid by the Purchaser to the Vendor for the Property, exclusive of HST and subject to the Adjustments.
- (ttt) **“Purchaser’s Reports”** has the meaning ascribed to it in Section 5.06.
- (uuu) **“Region”** means the Regional Municipality of Durham.
- (vvv) **“Regional Infrastructure”** has the meaning ascribed to it in the Seaton CSA.
- (www) **“Requisition Date”** has the meaning ascribed to it in Section 14.01.
- (xxx) **“Sale Approval”** means the necessary internal governmental approvals required for the Transaction including, but not limited to, the approval of the Lieutenant Governor-in-Council pursuant to Section 9 of the *Ministry of Infrastructure Act, 2011 S.O. 2011, C. 9, Sched. 27*.
- (yyy) **“Sale Approval Date”** means the date that the Sale Approval was granted.
- (zzz) **“Seaton Community”** means the developable land as determined by the Central Pickering Development Plan, as may be further refined, and as determined by the Seaton CSA.
- (aaaa) **“Seaton CSA”** means the Amended and Restated Cost Sharing Agreement dated November 26, 2015 between the Vendor and other owners of development land in the Seaton Community to provide for the sharing of the costs of development in the Seaton Community.

- (bbbb) **“Seaton-Durham CSA”** means an agreement dated November 26, 2015 between the Vendor, the Private Landowners and the Durham Owners to provide for the recovery of certain costs of construction of Regional Infrastructure to be incurred by the Vendor and the Private Landowners pursuant to the Phase 1 RFEA from the Durham Owners.
- (cccc) **“Seaton Trustee”** means the trustee as provided for in the Seaton CSA, as it is from time to time. As of the Execution Date, the Seaton Trustee is North Pickering Community Management Inc.
- (dddd) **“Servicing Costs”** has the meaning ascribed to it in Section 16.07.
- (eeee) **“SWM Facility”** has the meaning ascribed to it in Section 2.02(b).
- (ffff) **“SWM Price Reduction”** has the meaning ascribed to it in Section 2.02(b).
- (gggg) **“Subsequent Phase”** means development of land in the Seaton Community, the development of which is not covered by the Phase 1 RFEA, and for which no allocation of sewer or water capacity has currently be granted by any Authority.
- (hhhh) **“Transaction”** means, collectively, the purchase and sale of the Property provided for in this Agreement and all other matters contemplated in this Agreement.
- (iiii) **“Vendor”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure and includes, for the purpose of any exculpatory clause and indemnity included in this Agreement in favour of the Vendor, OILC, any ministries, agencies, representatives, servants, employees, agents, invitees, officers, directors, contractors and licensees of Her Majesty the Queen in right of Ontario and OILC, and their brokers, service provider(s) and any other entity over whom the Vendor or OILC may reasonably be expected to exercise control.

## SECTION 2 AGREEMENT OF PURCHASE AND SALE

- 2.01 The Vendor agrees to sell, transfer and assign to the Purchaser all of the right, title and interest of the Vendor in the Property and the Purchaser agrees to purchase, acquire and assume the Property from the Vendor for the Purchase Price which shall be paid by the Purchaser to the Vendor for the Property, exclusive of HST and subject to the Adjustments on the Closing Date.
- 2.02
  - (a) Subject to Section 2.02(b), the Purchase Price shall be calculated by multiplying the area of the Lands in acres by a per acre price of ONE HUNDRED thousand dollars (\$100,000.00) per acre, subject to the SWM Price Reduction. It is estimated that the area of the Lands is 22.0 acres more or less, which would result in a Purchase Price of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000.00) subject to the

SWM Price Reduction. Prior to Closing the area of the Lands shall be conclusively determined by the reference plan to be prepared in accordance with Section 13.01 hereof.

- (b) The Purchaser has purchased an abutting parcel of land, being Part of Lots 23 and 24, Concession 5 Pickering, designated as Part 1 on Plan 40R-29998 (the "**Prior Purchased Lands**"). The parties acknowledge that the Prior Purchased Lands included lands that show on Seaton Neighbourhood Plan 21 – Phase 1 to be required for a storm water management facility with an area of 2.94 acres (the "**SWM Facility**"). The Purchaser and the Vendor agree to reduce the Purchase Price of the Property by an amount equal to the area of the SWM Facility multiplied by \$50,000/acre for a product of \$147,000 (the "**SWM Price Reduction**").

- 2.03 The Purchaser shall NOT be entitled to direct title of the Property to any other person or entity at Closing.

### SECTION 3 DEPOSIT / PAYMENT OF PURCHASE PRICE

- 3.01 The Purchaser will pay to Vendor's solicitor in trust, by certified cheque or wire transfer:
  - (a) Upon the submission of this offer to purchase, a sum equal to five percent (5%) of the Purchase Price, as estimated at Section 2.02 hereof, as a deposit to be credited towards the Purchase Price on the Closing Date; and
  - (b) Within forty-eight (48) hours of the Execution Date a further sum equal to five percent (5%) of the Purchase Price, as estimated at Section 2.02 hereof, as a further deposit to be credited towards the Purchase Price on the Closing Date (collectively, the "**Deposit**").
- 3.02 The parties authorize OILC to invest the Deposit with a Canadian bank as identified in *Schedule I* of the *Bank Act*, R.S., 1991, c. B.46 (Canada) in a term or certificate of deposit (such investment to be available to OILC through its trust account bank and which investment allows liquidation of the investment as necessary for the anticipated Closing Date or earlier termination of this Agreement as herein provided) if OILC determines, acting reasonably, that anticipated interest to be earned will justify any related expenses, considering the rate of interest to be earned and the anticipated time the Deposit will be held before Closing. Any and all interest earned thereon shall accrue to the benefit of and, subject to Sections 3.03 and 5.03, be paid to the Purchaser forthwith following the Closing Date or earlier termination of this Agreement.
- 3.03 In the event that this Agreement is terminated due to a specific default by the Purchaser, then the Deposit, together with all interest accrued thereon, shall be forfeited to the Vendor as liquidated damages.
- 3.04 If the Transaction is completed, the Deposit shall be credited against the Purchase Price due on Closing and all interest accrued thereon shall be paid to the Purchaser or as it may direct forthwith following Closing.

- 3.05 On Closing the Purchase Price shall be paid and satisfied as follows:
- (a) by release of the Deposit to the Vendor; and
  - (b) the balance of the Purchase Price, as adjusted pursuant to this Agreement shall be paid on the Closing Date by the Purchaser to OILC in trust by way of wire transfer, such payment being deemed to have been made when OILC's financial institution confirms receipt of such wire transfer.
- 3.06 In addition to the Purchase Price, at Closing the Purchaser shall pay, or cause to be paid, all Development Agreement Payments to the Vendor, to the applicable Authority, or to the applicable trustee under a Development Agreement, as applicable.
- 3.07 The Purchaser acknowledges that at Closing it will be required to provide, or cause to be provided, Development Agreement Security to the appropriate Authority pursuant to one or more of the Development Agreements.
- 3.08 The Transaction shall be completed on the Closing Date at the offices of the Vendor's solicitors.

#### SECTION 4 HARMONIZED SALES TAX

- 4.01 The Purchase Price does not include the Harmonized Sales Tax ("HST") payable by the Purchaser in respect of the purchase of the Property pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E.15 (Canada) (the "Act"). Subject to Section 4.02, the Purchaser agrees to pay to the Vendor, on the Closing Date, as a condition of completion of this Transaction by wire transfer, certified cheque or bank draft, all HST payable as a result of this Transaction in accordance with the Act.
- 4.02 Notwithstanding Section 4.01 above, the Vendor shall not collect HST from the Purchaser in this Transaction if, on Closing, the Purchaser is registered under the Act and in that event, the Purchaser shall:
- (a) file returns and remit such HST to the Receiver General for Canada when and to the extent required by the Act; and
  - (b) provide to the Vendor, on the Closing Date, a certificate confirming that the Purchaser is registered under the Act for the purposes of collecting and remitting HST, and confirming its HST registration number under the Act, together with an indemnity in favour of the Vendor for any and all HST, fines, penalties, actions, costs, losses, claims, damages or expenses and/or interest which may become payable by, or assessed against, the Vendor as a result of the Vendor's failure to collect HST from the Purchaser on the Closing Date, such certificate and indemnity to be in a form satisfactory to the Vendor's solicitor, acting reasonably,

failing which the Purchaser shall pay to the Vendor on Closing the HST payable by the Purchaser with respect to this Transaction and the Vendor shall remit such HST to the appropriate Authority in accordance with the Act.

4.03 The Purchaser's obligations under this Section 4 shall survive and not merge on Closing.

**SECTION 5**  
**"AS IS WHERE IS",**  
**PURCHASER'S INSPECTION PERIOD, AND ENVIRONMENTAL INDEMNITY**

5.01 The Purchaser acknowledges and agrees that:

- (a) in entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Property, including, without limitation, the physical and environmental condition of the Property and a review of any documentation respecting the Property, and the Purchaser acknowledges it is not relying on any information furnished by the Vendor or any other person on behalf of, or at the direction of, the Vendor in connection therewith;
- (b) the Purchaser is purchasing and shall accept, assume and take title to the Property and any improvements thereon in an "As Is, Where Is" condition. The term "As Is, Where Is" means in its condition or state on the Offer Date, without any agreement, representation or warranty of any kind whatsoever, either express or implied on the part of the Vendor, as to the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands, suitability for development, physical characteristics, profitability, the condition of the Buildings, or any other matter respecting the Property whatsoever, including without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant, the use to which the Property may be put and its zoning, the development potential of the Property or the ability of the Purchaser to obtain approvals with respect to the Purchaser's intended development of the Property, or as to the accuracy, currency or completeness of any information or documentation supplied to the Purchaser in connection with the Property; and
- (c) the Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Property or the condition thereof. The provisions of this Section 5.01 shall survive and not merge on Closing.

Without limiting the foregoing, the Purchaser accepts, assumes and takes title to the Property subject to the land uses currently permitted on the Property by the applicable Land Use Regulations and the Purchaser shall not make and is not authorized by the Vendor to make, prior to completion of this Transaction, any applications to the Municipality or any governmental Authority for changes or variances to the uses currently permitted on the Property, including without limitation changes or variances to official plans and/or zoning by-laws applicable to the Property.

5.02 During the period of time commencing on the Execution Date and expiring on the expiration of the Inspection Period, the Purchaser may carry out whatever investigations it considers necessary to satisfy itself with respect to the condition of the soil, the subsoil, the ground and surface water



or any other environmental matter relating to the Property, including, without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant.

If as a result of such investigations the Purchaser has or acquires evidence within the Inspection Period that there exists a condition of non-compliance with Environmental Law or the presence of a Hazardous Substance or Contaminant on, in, at, under, emanating from or onto the Property that would be in excess of the guidelines for any of the permitted uses under the current zoning by-law affecting the Property, the risk or presence of which the Purchaser is not prepared to assume, then the Purchaser shall, by written notice, provide such evidence to the Vendor within the Inspection Period by way of a report of a recognized and qualified environmental consultant who shall specify in detail the nature of the non-compliance, Hazardous Substance or Contaminant and quantify the remediation cost (collectively, an "Environmental Objection"). Upon receipt of an Environmental Objection, the Vendor may, at its option and in its sole discretion:

- (a) undertake, as the Purchaser's sole and exclusive remedy, to take such actions, complete such work and/or implement such measures, in the Vendor's sole discretion as to means and methods, as may be necessary to correct the matter of non-compliance prior to the Closing Date or as soon as reasonably possible after the Closing Date if compliance prior to Closing is not, in the Vendor's opinion, reasonably possible;
- (b) credit the Purchaser, as the Purchaser's sole and exclusive remedy, the quantified cost of correcting the matter of non-compliance as an adjustment to the Purchase Price, in which event the Purchaser shall, on Closing, expressly assume the obligation and undertake to correct the matter of non-compliance as soon as possible after the Closing Date and shall indemnify and save harmless the Vendor from and against any and all claims, demands, costs, damages, expenses and liabilities whatsoever arising from the Purchaser's failure to remediate the Hazardous Substance, Contaminant and/or matter of non-compliance;
- (c) terminate this Agreement in which event the Deposit shall, subject to Section 5.03, be returned to the Purchaser with accrued interest, and without further liability to the Vendor; or
- (d) refuse to do either (a), (b), or (c) above in which event the Purchaser shall have the option of either: (i) completing the Transaction without adjustment to the Purchase Price; or (ii) terminating this Agreement in which event the Deposit shall, subject to Section 5.03, be returned to the Purchaser with accrued interest, and without further liability to the Vendor.

The Vendor shall have ten (10) Business Days from receipt of the Environmental Objection to make its election under (a), (b), (c) or (d) above by notice in writing to the Purchaser and in the event the Vendor fails to make an election within said ten (10) Business Day period, the Vendor will be deemed to have elected option (d) above. The Purchaser shall have ten (10) days from the date of the Vendor's election or deemed election under (d) above to elect, by notice in writing to the Vendor, to terminate or complete as per paragraph (d) above and in the event the Purchaser

fails to make an election within said ten (10) day period the Purchaser shall be deemed to have elected to complete the Transaction without adjustment to the Purchase Price.

**5.03** During the Inspection Period, the Vendor will permit the Purchaser together with its employees, agents or consultants access to the Property, at reasonable times and upon a minimum of two (2) Business Days' prior written notice to the Vendor, to carry out, at the Purchaser's sole expense and risk, such investigations, tests and inspections as the Purchaser deems necessary, provided that the Purchaser takes all reasonable care in the conduct of such investigations, tests and inspections. All tests, investigations and inspections conducted by the Purchaser or its representatives shall be commenced and completed prior to the expiration of the Inspection Period and shall be carried out as expeditiously as possible and at times and in such manner so as to not interfere with any tenants, occupants or licensees on the Property or the operation and maintenance of the Property. The Purchaser covenants and agrees to promptly repair or pay the cost of repair of any damage occasioned during or resulting from such investigations, tests and inspections of the Property conducted by the Purchaser or its representatives and to return the Property to substantially the same condition it was in prior to such investigations, tests and inspections. The Vendor assumes no responsibility for and the Purchaser shall indemnify and save harmless the Vendor from and against any and all claims, demands, costs, damages, expenses and liabilities whatsoever arising from the Purchaser's and/or its agents' or consultants' presence on the Property or the Purchaser's and/or its agents' or consultants' activities on or in connection with the Property. The Vendor shall be entitled to deduct from the Deposit paid by the Purchaser hereunder the amount of any losses, costs, claims, third party actions, damages and expenses which the Vendor may suffer as a result of a breach of this Section 5.03. The obligations in this Section 5.03 shall survive termination of this Agreement for a period of two (2) years and shall not merge on Closing.

**5.04** Intentionally Deleted.

**5.05** The Vendor agrees to provide to the Purchaser, within five (5) days of the Execution Date, the Property Documents listed in Schedule C. The Purchaser acknowledges and agrees that: (i) the Property Documents are being provided to the Purchaser for informational purposes only and the Vendor makes no representations or warranties whatsoever with respect to the content, completeness or accuracy of the Property Documents, or the environmental or any other condition of the Property; (ii) the Vendor shall not be liable to the Purchaser, its agents, employees or lending institution in any way for any error, omission or inaccuracy contained in any Property Document; and (iii) as of the Closing Date, the Purchaser shall become solely liable for all conditions and Hazardous Substances and/or Contaminants existing at the Property, whether known or unknown by the Purchaser, and whether or not such conditions or Hazardous Substances and/or Contaminants are disclosed in the Property Documents or have been discovered by Purchaser in the course of its due diligence or other investigations or inspections of the Property.

**5.06** The Purchaser covenants and agrees that the Property Documents provided by the Vendor and any and all third party reports, findings, recommendations, opinions and information resulting from the Purchaser's due diligence ("**Purchaser's Reports**") and the information contained therein shall be held in accordance with the confidentiality provisions set out in section 23. If this

Agreement is terminated for any reason, the Purchaser will promptly return to the Vendor all Purchaser's Reports and Property Documents without keeping copies. The Purchaser shall deliver to the Vendor forthwith following receipt, copies of any and all Purchaser's Reports the Purchaser commissions or obtains during the course of its investigations.

- 5.07 In the absence of the Purchaser delivering: (i) an Environmental Objection; and (ii) a notice to terminate the Agreement under Section 5.02(d), the Purchaser shall be conclusively deemed to accept the Property in its As Is, Where Is condition, having waived all requisitions concerning any matters relating to the Property, save for any valid requisition on title made prior to the expiry of the Requisition Date, and the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply, at its sole cost, with all orders relating to the condition of the Property issued by any competent government Authority, court or administrative tribunal, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Law or relating to the existence of any Hazardous Substance or Contaminant.
- 5.08 As an inducement to, and as further consideration for, the Vendor agreeing to sell the Property to the Purchaser upon the terms and conditions set forth in this Agreement, the Purchaser covenants and agrees that, effective as of the Closing Date, the Purchaser shall forever release and covenant not to sue the Vendor and its affiliates, subsidiaries, related legal entities, employees, directors, officers, appointees and agents with respect to anything arising out of the environmental or any other condition of the Property or the presence of Hazardous Substances or Contaminants in, on, under, or emanating from or onto the Property, regardless of whether such environmental conditions or the presence of Hazardous Substances or Contaminants is known or unknown by the Purchaser and regardless of whether such condition is set forth in the Property Documents, the Purchaser's Reports or any other report, document or information discovered during the course of the Purchaser's due diligence or otherwise. The foregoing release and covenant not to sue shall apply to all claims at law or in equity, including, but not limited to, claims or causes of action for personal injury or death, property damage, statutory claims under Environmental Laws and claims for contribution.
- 5.09 From and after the Closing Date, the Purchaser shall be responsible for, and hereby agrees to indemnify, defend and save harmless the Vendor and its employees, directors, officers, appointees and agents from, any and all costs (including legal, consultant and witness costs and fees), claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgments, awards (including awards of costs) and liabilities (including sums paid in settlement of claims), that may arise as a result of the condition of the Property, the presence of Hazardous Substances or Contaminants in, on or under the Lands, the Buildings or any structure or paved surface, or in any environmental medium (including, but not limited to, the soil, groundwater, or soil vapour on or under, or emanating from the Property), any order issued by any Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Law or the existence of any Hazardous Substance or Contaminant. Without limiting the generality of the foregoing, this indemnification shall specifically cover costs incurred, from and after the Closing Date, in connection with any claim for personal injury and/or death, property damage, investigation of site conditions and/or any

clean-up, remedial, removal, monitoring or restoration work required by any federal, provincial, or local government agency or political subdivision because of the presence of Hazardous Substances, in, on or under the Lands, the Buildings or any environmental medium, structure or paved surface or emanating therefrom.

- 5.10 The parties agree to execute and exchange at the time of Closing such further documentation as either party reasonably requests, including, but not limited to, an agreement whereby the Purchaser shall reaffirm the release, covenant not to sue and indemnifications regarding the condition of the Property and environmental matters set forth in this Section 5 in the form attached hereto as schedule F. Notwithstanding the foregoing, the release, covenant not to sue and indemnifications set forth in this Section 5 shall become effective and enforceable automatically upon the registration of the Transfer/Deed of Land in respect of the Property in favour of the Purchaser, and Purchaser shall be bound by them, regardless of whether or not Purchaser executes any separate instrument at the time of Closing.
- 5.11 Unless otherwise expressly set out herein, this Section 5 shall not merge but shall survive the Closing Date and shall be a continuing obligation of the Purchaser.

#### SECTION 6 CLOSING CONDITIONS

- 6.01 The obligation of the Vendor to complete the Transaction is conditional upon fulfillment of each of the following conditions on or before the Closing Date or any earlier date or time specified in this Agreement:
- (a) the Vendor shall have obtained the Sale Approval pursuant to Section 7 of this Agreement;
  - (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated in this Agreement;
  - (c) the representations and warranties of the Purchaser set forth in this Agreement shall be true and accurate in all material respects as if made as of the Closing;
  - (d) the Purchaser shall have executed all documents required to assume the obligations of the Vendor pursuant to the Development Agreements, including all required Assignment and Assumption Agreements; and
  - (e) all documents and deliveries required to be executed and/or delivered by the Purchaser shall have been executed and delivered to the Vendor in accordance to this Agreement.
- 6.02 The conditions set forth in Section 6.01 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor, or by its solicitors on its behalf, in the sole and absolute

discretion of the Vendor by written notice to the Purchaser. The conditions are conditions precedent to the obligation of the Vendor to complete the herein Transaction on the Closing Date.

- 6.03** If a condition set forth in Section 6.01 is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's solicitors that such condition has been waived or the time period for compliance has been extended within the applicable time period allowed, if any (save and except for any condition which is to be satisfied on the Closing in connection with which it is hereby agreed that upon successful completion of the Transaction, such condition shall be deemed to have been satisfied), at the Vendor's sole option, this Agreement shall be null and void, notwithstanding any intermediate act or negotiations, and (i) in the event the Agreement is terminated as a result of the non-fulfilment of the condition set forth in Section 6.01(a), neither the Vendor nor the Purchaser shall, subject to Section 5.03, be liable to the other for any loss, costs or damages, and the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction, and (ii) in the event the Agreement is terminated as a result of the non-fulfilment of any of the conditions set forth in Section 6.01(b), 6.01(c) or 6.01(d), the Deposit shall be forfeited to the Vendor as liquidated damages and without derogating from any claims or causes of action the Vendor may have pursuant to this Agreement and at law against the Purchaser arising from the Purchaser's default therein.
- 6.04** The obligation of the Purchaser to complete the Transaction is conditional upon fulfillment of the following conditions on or before the expiration of the Inspection Period:
- (a) the City has obtained the City Sale Approval, which approval may be provided in the sole and unfettered discretion of the City and which the Vendor acknowledges may be arbitrarily and unreasonably withheld.
- 6.05** The condition set forth in Section 6.04 is for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser, or by its solicitors on its behalf, in the sole and absolute discretion of the Purchaser by written notice to the Vendor. The condition is a condition precedent to the obligation of the Purchaser to complete the herein Transaction on the Closing Date.
- 6.06** If the condition set forth in Section 6.04 is not fulfilled within the applicable time period and/or the Purchaser fails to notify the Vendor or the Vendor's solicitors that such condition has been waived, this Agreement shall be null and void, and the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction.

#### **SECTION 7 SALE APPROVAL**

- 7.01** The obligation of the Vendor to complete the Transaction is conditional upon fulfillment of the following condition: within ninety (90) days from the Offer Date, the Vendor shall have obtained the Sale Approval, which approval the Purchaser acknowledges may be arbitrarily and unreasonably withheld. The Vendor shall notify the Purchaser if and when such approval is

obtained, and the date of such notification if obtained shall be the date of commencement of the Inspection Period.

- 7.02 The Purchaser agrees that should the Vendor be unable to satisfy the condition set out in Section 7.01 within the said ninety (90) day period, then the Vendor may, at its option and in its sole discretion, extend this time period for an additional sixty (60) days by notice in writing to the Purchaser within the initial ninety (90) day period.
- 7.03 The Purchaser acknowledges that any Sale Approval that the Vendor obtains with respect to the Property may be subject to the limitations stated therein, including but not limited to a limitation that such approval shall be valid for a specified period of time from the date of such Sale Approval (the "**Approval Term**"), in which event such Sale Approval shall cease to be valid on the date upon which the Approval Term concludes (the "**Expiry Date**"), or on such date that such other limitation(s), if any, is/are not met and satisfied. In the event that the Vendor shall have obtained a Sale Approval for the Property in satisfaction of the condition set out in Section 7.01, and in the event that the completion of the Transaction has not occurred on or before the Expiry Date set out in such Sale Approval or such date that such other limitation(s), if any, is/are not met and satisfied, notwithstanding any waiver of the condition set out in Section 7.01, this Agreement shall then be null and void, the Deposit and any interest accrued thereon shall, subject to Section 5.03, be returned to the Purchaser and neither the Vendor nor the Purchaser shall, subject to Section 5.03, be liable to the other for any loss, costs or damages.

#### SECTION 8 CLASS EA REQUIREMENTS / ABORIGINAL CLAIMS

- 8.01 The obligation of the Vendor to complete the Transaction is conditional upon fulfillment of the following condition on or before the Closing Date: the Vendor shall have completed the Class EA for the Property and the Transaction (collectively, the "**Class EA Requirements**"). For purposes of this condition, the Class EA Requirements shall, without limitation, include and be deemed to include the following specific requirements:
- (a) the requirements of the *Environmental Assessment Act*, R.S.O. 1990, c.E. 18, as approved, amended, or renewed from time to time, as they apply to the Property and the Transaction (the "**Environmental Requirements**"); and
  - (b) the requirements of the Standards & Guidelines for Conservation of Provincial Heritage Properties issued by the Ministry of Tourism, Culture and Sport pursuant to Section 25.2 of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as approved, amended, or renewed from time to time, as they apply to the Property and the Transaction (the "**Heritage Requirements**").
- 8.02 Notwithstanding any other provision of this Agreement, the completion of the Transaction is subject to continuing compliance to the Closing Date with all Class EA Requirements. In the event that prior to the Closing Date:
- (a) any governing Authority makes or issues, or the Vendor receives any notice or communication from any governing Authority that it is considering whether to make or

issue, any order or directive pursuant to the Class EA Requirements that necessitates that the Vendor, in addition to the actions and measures taken aforesaid, take other or different actions or measures to comply with the Class EA Requirements (including, without limitation, an order or directive requiring the Vendor to comply with Part II of the *Environmental Assessment Act*);

- (b) a written request has been made to the Minister of the Environment, of which the Vendor has notice, that other or different measures be taken to comply with the Class EA Requirements;

then the Vendor may, at its option and in its sole discretion, extend the Closing Date for at least an additional thirty (30) days (the "**Initial Class EA Extension Period**") by notice in writing to the Purchaser during which time the Vendor shall:

- (c) use reasonable efforts to determine whether the request in subsection (b) above has been satisfied or has been refused; and
- (d) at its option and in its sole discretion, either:
  - (i) comply with such order or directive (as the same may be modified or withdrawn) at its own expense, in which event the Vendor may extend the Closing Date up to (but no more than) three times, for a further period of thirty (30) days each (for a maximum of ninety (90) days in the aggregate) (collectively, the "**Further Class EA Extension Period**"); or
  - (ii) within the Initial Class EA Extension Period or at any time within the Further Class EA Extension Period, terminate this Agreement by written notice to the Purchaser, in which case this Agreement shall be null and void and of no further force and effect and the Deposit and any interest accrued thereon shall, subject to Section 5.03, be returned to the Purchaser and neither party shall be further liable to the other pursuant to this Agreement other than the Purchaser's obligations pursuant to Section 5.03 of this Agreement.

**8.03** Notwithstanding any other provision of this Agreement, if at any time prior to the Closing Date the Vendor receives notification or otherwise becomes aware of any claim or potential claim whatsoever for an interest in respect of the Property, by any First Nation or other aboriginal group or individual, in relation to any constitutional right, treaty right, land claim, surrender agreement or consultation right, including, without limitation, an interest in the title to the Property, a right to the use of the whole or any part of the Property, a restriction on the use of the Property or any part thereof for any purpose, a restriction on access to the Property or any part thereof, a claim for compensation, arising out of any interest or claimed interest in the Property or a right of consultation in relation to the Property, then the Vendor may at its option and in its sole and unfettered discretion extend the Closing Date for at least an additional thirty (30) days (the "**Initial Extension Period**") by notice in writing to Purchaser during which time the Vendor shall:

- (a) determine in its sole and unfettered discretion if such claim, potential claim or interest is capable of being satisfied or whether appropriate releases can be obtained from all interested parties to enable the Vendor to complete the sale of the Property to the Purchaser by the Closing Date free and clear of any such claim, potential claim or interest;
- (b) enter into arrangements which enable the Vendor to complete the sale of the Property in accordance with Section 8.03(a), for which purpose it may extend the Closing Date up to (but no more than) three times, for a further thirty (30) days each (for a maximum of ninety (90) days in the aggregate) (collectively, the "**Further Extension Period**"); or
- (c) within the Initial Extension Period or at any time within the Further Extension Period, have the right to terminate this Agreement by written notice to the Purchaser in which case the Agreement shall be null and void and of no further force and effect and neither party shall be further liable to the other pursuant to this Agreement other than the Purchaser's obligations pursuant to Section 5.03 of this Agreement.

**8.04** If at any time prior to Closing, the Vendor receives notification or otherwise becomes aware of any requirements imposed by an Authority, including without limitation any additional Heritage Requirements, not otherwise contemplated in this Section 8 and with which the Vendor must comply as a condition of completing the Transaction, then the Vendor may at its option and in its sole and unfettered discretion extend the Closing Date up to three (3) times for a period of thirty (30) days each time (maximum ninety (90) days) by notice in writing to Purchaser during which time the Vendor shall:

- (a) determine in its sole and unfettered discretion if such requirement can be satisfied so as to enable the Vendor to complete the sale of the Property to the Purchaser by the Closing Date; or
- (b) have the right, with or without a determination pursuant to subsection (a) above, to terminate this Agreement by written notice to the Purchaser in which case the Agreement shall be null and void and of no further force and effect and the Deposit plus any interest accrued thereon shall, subject to Section 5.03, be returned to the Purchaser and neither party shall be further liable to the other pursuant to this Agreement other than the Purchaser's obligations pursuant to Section 5.03 of this Agreement.

## SECTION 9 RISK

**9.01** Until completion of this Agreement on the Closing Date, the Property shall be and remain at the risk of the Vendor, except as otherwise provided in Section 5. The Purchaser acknowledges that the Vendor, in respect of damage to the Property, is self-insured. In the event of damage to the Property on or before the Closing Date (other than damage occasioned during or resulting from the Purchaser's and/or its agents, consultants or representatives entries and/or activities on or to the Property, in which event Section 5.03 shall govern) (the "**Pre-Closing Damage**"), the Vendor may elect (i) to forthwith repair the Property to the same state and condition as it was in at the



Offer Date in which event the Purchaser will complete the Transaction without an abatement in the Purchase Price; or (ii) to reduce the Purchase Price by an amount equal to the cost required to complete the repair as estimated by an independent qualified architect or engineer jointly retained by the Vendor and the Purchaser, acting reasonably and at arm's length in which event the Purchaser will complete the Transaction and accept a price reduction equal to such cost, or (iii) to terminate this Agreement in which case the Deposit shall, subject to Section 5.03, be immediately returned to the Purchaser, with interest and without deduction, and neither party shall, subject to Section 5.03, have any further rights or obligations hereunder.

- 9.02 From and including the Closing Date, the Property shall be entirely at the risk of the Purchaser and the Purchaser shall accept and assume any and all responsibilities and liabilities arising out of or in any way connected with the Property whether they arose before, on or after the Closing Date and, without being limited by the foregoing, any state, nature, quality or condition in, on, under or near the Property existing as of the Closing Date, whenever and however arising, whether known or unknown and whether environmental or otherwise, and whether such responsibilities and liabilities are imposed by law, equity or any governing Authority.

#### SECTION 10 VENDOR'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- 10.01 The Vendor represents and warrants to the Purchaser that the Vendor is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.).
- 10.02 Any information provided by the Vendor or its agents, including the Property Documents, and any comments made by the Vendor, its employees, officers, directors, appointees, agents or consultants are for the assistance of the Purchaser in allowing it to make its own inquiries. The Vendor makes no representations or warranties as to, and takes no responsibility for, the accuracy or completeness of the Property Documents or any other information it has provided to the Purchaser.

#### SECTION 11 PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- 11.01 The Purchaser represents and warrants to the Vendor that the Purchaser does not have a conflict of interest with the Vendor or OILC or with any of their respective directors, officers, appointees, employees or agents. The Purchaser agrees to provide a Statutory Declaration in the form attached hereto as Schedule D at the time of execution by the Purchaser of this Agreement. The Purchaser acknowledges that in the event that the information upon which the Statutory Declaration was provided has changed, the Purchaser shall inform the Vendor of such change up to and including the Closing Date.
- 11.02 The Purchaser represents and warrants to the Vendor that the execution, delivery and performance by the Purchaser of this Agreement, and each agreement to be executed and delivered pursuant hereto at Closing, to which the Purchaser is a party are within the Purchaser's

legal power and jurisdiction and, subject to the Purchaser obtaining the City Sale Approval in accordance with the condition set forth in Section 6.04; will have been duly authorized and approved by all necessary action on the part of the Purchaser.

- 11.03 The Purchaser represents and warrants to the Vendor that this Agreement has been, and, subject to the Purchaser obtaining the City Sale Approval in accordance with the condition set forth in Section 6.04, each agreement to be executed and delivered by the Purchaser pursuant to this Agreement, will be duly and validly executed and delivered by the Purchaser, and this Agreement constitutes, and each agreement to be executed and delivered pursuant hereto at Closing, when so executed and delivered will constitute, the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.
- 11.04 The Vendor shall deliver and the Purchaser shall accept possession of the Property on the Closing Date in an As Is Where Is condition, subject to: (i) the Lease; (ii) the Development Agreements; and (iii) the Permitted Encumbrances.
- 11.05 As of the Closing Date, the Purchaser shall assume and be responsible as owner for the management and administration of the Property and the Vendor shall have no further responsibility whatsoever therefor.
- 11.06 Without limiting the generality of the foregoing, the Purchaser shall comply with the terms of the Permitted Encumbrances, any agreement entered into by the Vendor with any Authority relating to the Property, all other agreements relating to public utilities and municipal services, the Land Use Regulations, all relevant municipal by-laws and all registered restrictions. The Purchaser further agrees and acknowledges that it shall be bound by any contractual obligations which the Vendor may have entered into concerning the Property prior to the Closing Date.

## SECTION 12 SEVERANCE

- 12.01 The Purchaser acknowledges that the Vendor will invoke "Crown Right" to sever property (i.e. the ability of the Crown to divide land referenced under the subdivision control provisions of the *Planning Act*) in connection with the Transaction.

## SECTION 13 REFERENCE PLAN

- 13.01 The parties acknowledge that the Property may not be conveyed until such time as a reference plan has been deposited with the Durham Land Registry Office. The Purchaser agrees, at the Purchaser's sole expense, to prepare and deposit in the appropriate Land Registry Office, a reference plan of survey of the Lands. The Purchaser shall provide the Vendor with a draft reference plan at least 10 Business Days prior to the Closing Date. All costs of preparing the above described reference plan shall be borne by the Purchaser.

**SECTION 14  
TITLE**

- 14.01 The Purchaser shall have until the day which is twenty (20) Business Days before the Closing Date (the "**Requisition Date**") to investigate title to the Property at the Purchaser's expense. The Purchaser agrees not to call for the production of any title deed, abstract, survey or other evidence of title to the Lands except such as are in the possession of OILC or the Vendor.
- 14.02 On the Closing Date, the Purchaser shall accept title to the Property in an As Is Where Is condition subject to the following:
- (a) the Land Use Regulations;
  - (b) the Development Agreements and notices thereof;
  - (c) the Lease;
  - (d) all Community Use Land obligation pursuant to the Seaton CSA; and
  - (e) the Permitted Encumbrances.

The Purchaser agrees to satisfy itself with respect to compliance with all such agreements, easements, restrictions or covenants, encumbrances and regulations referred to herein and agrees that the Vendor shall not be required to provide any evidence of compliance with same.

- 14.03 If, prior to the expiry of the Requisition Date, the Purchaser furnishes the Vendor in writing with a valid objection to title which the Vendor is unwilling or unable to remove, remedy and satisfy and which the Purchaser will not waive, this Agreement shall be terminated notwithstanding any intermediate acts or negotiations with respect to such objection, the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction and the Vendor shall not be liable for any costs or damages suffered by the Purchaser arising out of such termination or otherwise out of this Agreement.
- 14.04 The Vendor hereby consents to the relevant Municipality releasing to the Purchaser any information in its records in connection with the Property and the Vendor agrees to execute and deliver such necessary authorizations as the Purchaser may reasonably require in this regard but any such authorization shall specifically prohibit the right of or a request for an inspection of the Property by the Municipality or any other Authority.

**SECTION 15  
NO ASSIGNMENT ETC.**

- 15.01 The Purchaser shall not assign or register this Agreement, or any assignment of this Agreement, or any part of either, or register a caution in relation thereto, without, in each instance, obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld.

- 15.02 If the Vendor consents to an assignment of this Agreement to a third party (the "Assignee"), the Purchaser shall cause the Assignee and the Purchaser, to covenant in writing in favour of the Vendor to be jointly and severally bound by and to jointly and severally perform their respective obligations of this Agreement. The Purchaser shall not be released from its liabilities and obligations hereunder in the event of an assignment to an Assignee.
- 15.03 In the event of any assignment of this Agreement to an Assignee, such Assignee shall provide a similar representation, warranty and Statutory Declaration as required of the Purchaser in Section 11.01

## SECTION 16 DEVELOPMENT AGREEMENTS

- 16.01 The Purchaser agrees that at Closing it shall, as part of its acquisition of the Property, assume the obligations of the Vendor regarding the Property pursuant to the Development Agreements, and it covenants to make all payments required by such Development Agreements and provide any Development Agreement Security required pursuant to any such Development Agreement, whether such security is to be lodged with an Authority or otherwise, upon the execution of any applicable Assignment and Assumption Agreement with the intent that the Purchaser shall be treated equally with the other Private Landowners; except as explicitly provided in the Development Agreements.
- 16.02 The Purchaser acknowledges that the Development Agreements may have been registered against title to the Property and further acknowledges that the development of the Property is subject to the Development Agreements.
- 16.03 The Purchaser acknowledges and agrees that the Vendor has made payments and incurred expenses which are subject to recovery by the Vendor through the issuance of Development Charge Credits pursuant to the terms and conditions of the Phase 1 RFEA. The Purchaser agrees that at Closing, and as a condition of Closing, that it shall reimburse the Vendor for all costs that the Vendor has incurred which would be recoverable by the Vendor in the form of Development Charge Credits to be issued pursuant to the Phase 1 RFEA in respect of the Lands. The Purchaser acknowledges and agrees that the Seaton Trustee shall determine the amount Development Charge Credits entitlement earned and attributable to the Lands based on the Developable Area Share of the Lands in the Seaton Community, whether or not the Lands are within the Phase 1 Lands, and shall take into account indexing as provided for in the Phase 1 RFEA. The payment from the Purchaser to the Vendor pursuant to this section shall be referred to herein as the "DC Credit Recovery Payment".
- 16.04 The Purchaser acknowledges that the Pickering FIA creates obligations with regard to the funding of certain infrastructure in Seaton under the jurisdiction of the City. The Purchaser covenants and agrees that it will abide by the terms and conditions of the Pickering FIA, and will execute any Assignment and Assumption Agreement as reasonably required by the Vendor or the City. Furthermore, the Purchaser acknowledges that the infrastructure projects to be funded pursuant to the Pickering FIA are Cost Shared Services under the Seaton CSA, and the costs of which are to be cost shared pursuant to the terms of the Seaton CSA.

- 16.05 The Purchaser acknowledges that the Lands include Phase 1 RFEA Lands and, therefore, prior to the issuance of a building permit with respect to the development of such lands, unless otherwise provided for in a front ending agreement relating to Subsequent Phase development, the Purchaser will have to pay, in addition to any Attribution Development Charges payable with respect to the development of the Lands, the Attribution Prepayment applicable to the Property. The Phase 1 RFEA provides that Development Charge Credits earned by virtue of the payment of the Attribution Prepayment are not able to be utilized to satisfy the Attributions Development Charges payable upon the issuance of building permits for lands that are Phase 1 RFEA Lands, and further such Development Charge Credits will be administered by the Seaton Trustee.
- 16.06 The Purchaser acknowledges that on Closing the Purchaser will be a Provincial Successor (as such term is defined in the Seaton CSA). Furthermore, by virtue of being a Provincial Successor the Purchaser acknowledges and agrees that at Closing it will have to make a payment to the Seaton Trustee in an amount to be determined by the Seaton Trustee pursuant to the terms of the Seaton CSA, which will bring the Purchaser into a position in which the Purchaser will have funded the costs of Regional Infrastructure pursuant to the Phase 1 RFEA on the same basis as the other Private Landowners within the Seaton Community, this payment to be referred to herein as the "**Private Landowner Equivalency Payment**".
- 16.07 The Purchaser acknowledges and agrees that at Closing, it will make a payment to the Vendor in an amount equal to the portion of the costs incurred by the Vendor for Cost Shared Services applicable to the Lands up to the Closing Date as confirmed by the Seaton Trustee, unless otherwise provided for herein, whether on a Developable Area Share or Drainage Area share or otherwise as applicable (referred to herein as "**Servicing Costs**").
- 16.08 The Purchaser acknowledges that the Lands include Community Use Lands and that such Community Use Lands are to be transferred to an Authority or the Seaton Trustee pursuant to the terms of the Seaton CSA. The Purchaser acknowledges and agrees that it will abide by the terms of the Seaton CSA with regard to such Community Use Lands which requires that they be conveyed to an Authority or the Seaton Trustee, and further that the Assignment and Assumption Agreement with regard to the Seaton CSA will specifically provide for such transfer of the Community Use Lands.
- 16.09 The Seaton-Durham CSA provides for the recovery of certain costs of the construction of Regional Infrastructure that relate to the over-sizing of such services for which Development Charge Credits are not available. The Purchaser acknowledges that the Vendor has not made and is not making any representations or warranties that any such construction costs will be recovered from the Durham Owners.

**SECTION 17  
PREPARATION OF TRANSFER/DEED DOCUMENTS AND FEES/COSTS**

- 17.01 The Transfer/Deed of the Lands will be prepared by the Vendor, except for the Affidavit of Residence and Value of the Consideration ("**Land Transfer Tax Affidavit**"), which will be prepared by the Purchaser.
- 17.02 The Purchaser shall pay its own legal costs and registration costs. The Purchaser shall be responsible for the payment of any applicable Land Transfer Tax and registration fees and any other taxes and fees which may be payable in connection with the registration of the transfer/deed of the Property.

**SECTION 18  
TENDER**

- 18.01 Any tender of money or documents pursuant to this Agreement may be made on the Vendor or the Purchaser or their respective solicitors. Money must be tendered in Canadian funds by electronic wire, bank draft or negotiable cheque certified by a Canadian chartered bank, trust company, or credit union. The Vendor and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the Transfer/Deed of Land and any other closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitors to same, but without the necessity for the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

**SECTION 19  
ADJUSTMENTS**

- 19.01 Adjustments between the Vendor and the Purchaser shall be made on the Closing Date for taxes, local improvement rates, utility costs, rents, legal costs and other matters or items which are ordinarily the subject of adjustment for the purchase and sale of a property similar to the Property in the Province of Ontario. Such Adjustments shall be made on the basis that, except as may be otherwise expressly provided for in this Agreement:
- (a) the Vendor shall be responsible for all expenses and liabilities and entitled to all income from the Property up to the Closing Date; and
  - (b) the Purchaser shall be responsible for all expenses and liabilities and entitled to all income from the Property from and including the Closing Date.
- 19.02 Adjustments that cannot be determined on the Closing Date shall be determined by the parties as soon after the Closing Date as is reasonably possible. Any amounts payable by one party to the other, as determined by the parties, acting reasonably, shall be paid within thirty (30) days of the

request for such payment. On the Closing Date, the Vendor and the Purchaser shall exchange undertakings to re-adjust the foregoing items, if necessary.

- 19.03 All Adjustments to be made under Section 19.01 shall be completed on or before the date which is no later than six (6) months from the Closing Date and no re-adjustment may be made by either party thereafter.

#### SECTION 20 ELECTRONIC REGISTRATION

- 20.01 Where the Property is in an area where electronic registration is mandatory and the Transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, and the *Electronic Registration Act*, S.O. 1991, c.44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other closing deliverables provided for herein and the release thereof to the Vendor and Purchaser will:
- (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this Transaction); and
  - (b) be subject to conditions whereby the lawyer(s) receiving any of the closing deliverables will be required to hold same in escrow and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada (the "Document Registration Agreement").

#### SECTION 21 CLOSING DELIVERABLES

- 21.01 Subject to the provisions of this Agreement, the Vendor covenants that it shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser or the Purchaser's solicitors on or before the Closing Date, each of the following:
- (a) possession of the Property in an As Is Where Is condition, subject to the Lease, and subject to the rights of others as set out in the Permitted Encumbrances;
  - (b) an assignment of the Lease, whether complete or partial, the Development Agreements and Permitted Encumbrances, as applicable;
  - (c) notice to the tenant pursuant to the Lease informing it of the sale of the Lands and directing it to make future rent payments to the Purchaser;
  - (d) an executed Transfer/Deed of Land in registrable form duly executed by the Vendor in favour of the Purchaser (save for any Land Transfer Tax Affidavit);

- (e) an undertaking to re-adjust the statement of Adjustments, if necessary, upon written demand;
- (f) a direction regarding the payment of funds;
- (g) statement of Adjustments;
- (h) an authorization and direction together with a registrable discharge of the notice of participation agreement dated March 26, 2018 (the "**Existing Participation Agreement**") notice of which was registered on title to the Prior Purchased Lands as Instrument No. DR1696619 on April 19, 2018;
- (i) Document Registration Agreement as set out in Schedule E; and
- (j) such other deeds, conveyances and other documents as the Purchaser or its solicitors may reasonably require in order to implement the intent of this Agreement.

**21.02** Subject to the provisions of this Agreement, the Purchaser covenants that it shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor or the Vendor's Solicitors on or before the Closing Date:

- (a) confirmation of wire transfer for the balance of the Purchase Price and Adjustments due on the Closing Date;
- (b) confirmation of wire transfer for any Development Agreement Payment payable to the Vendor, including the DC Credit Recovery Payment, the Private Landowner Equivalency Payment, and Servicing Costs;
- (c) a certified cheque, bank draft or confirmation of wire transfer for any Development Agreement Payment payable to the applicable trustee under a Development Agreement;
- (d) confirmation of delivery of Development Agreement Security to any applicable authority or trustee under a Development Agreement, if applicable
- (e) an undertaking to re-adjust the statement of Adjustments, if necessary, upon written demand;
- (f) HST Declaration and Indemnity, as contemplated in Section 4, if applicable;
- (g) an updated Statutory Declaration in the form set out in Schedule D is required in the event that there have been any changes to the information contained in the Statutory Declaration provided to the Vendor prior to the Execution Date pursuant to Section 11.01;
- (h) an updated Statutory Declaration in the form set out in Schedule D is required in the event that there have been any changes to the information contained in the Statutory



Declaration provided to the Vendor prior to the date of execution of this Agreement pursuant to Section 11.01;

- (i) Document Registration Agreement in the form attached as Schedule E;
- (j) an Assignment and Assumption Agreement for the Lease;
- (k) an Assignment and Assumption Agreement for each of the Development Agreements, in substantially the same forms as were delivered as part of the closing of the Prior Purchased Lands;
- (l) a Participation Agreement in form attached hereto as schedule G;
- (m) an Assumption Agreement for the Permitted Encumbrances, as applicable;
- (n) the Purchaser's Closing Agreement in the form attached hereto as schedule F;
- (o) a certificate of the Purchaser certifying that the Purchaser's planned sale of the Prior Purchased Lands does not result in any "Profit" to the Purchaser, as such term is defined in the Existing Participation Agreement;
- (p) such other deeds, conveyances, resolutions and other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

## SECTION 22 NOTICE

**22.01** Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine (including e-mail) addressed to the Purchaser at:

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

Attention: Paul Bigioni, Director, Corporate Services and City Solicitor  
Telephone: (905) 420-4660 ext. 2048  
Email: [pbigioni@pickering.ca](mailto:pbigioni@pickering.ca)

and to the Purchaser's Solicitors at:

Torys LLP  
79 Wellington Street West

Suite 3000  
Box 270, TD Centre  
Toronto  
Ontario, M5K 1N2

Attention: Dan Ford / Andy Gibbons  
Telephone: (416) 865-7372 / (416) 865-8226  
Email: [dford@torys.com](mailto:dford@torys.com) / [agibbons@torys.com](mailto:agibbons@torys.com)

and to the Vendor at:

c/o Ontario Infrastructure and Lands Corporation  
Sales and Acquisitions  
1 Dundas Street West  
Suite 2000  
Toronto, ON M5G 2L6  
Attention: Vice President, Sales and Acquisitions  
Facsimile: 416-327-3942

And:

Attention: Director, Legal Services (Real Estate and Leasing)  
777 Bay Street,  
Suite 900  
Toronto, ON M5G 2C8  
Facsimile: 416-326-2854

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or email, or, if mailed, three (3) Business Days after the same is mailed. Any party may, at any time by notice given in writing to the other party, change the address for service of notice on it.

## SECTION 23 CONFIDENTIALITY

- 23.01 The Vendor and Purchaser agree to take all necessary precautions to maintain the confidentiality of the terms and conditions contained herein. The parties acknowledge that this Agreement and any information or documents that are provided hereunder may be released pursuant to the applicable provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended and Open Data may be released pursuant to the Open Data

Directive. This acknowledgment shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents.

- 23.02** The Purchaser agrees to ensure that the Purchaser, its officers, employees, agents and sub-contractors shall, subject to Section 23.01, maintain the confidentiality and security of all materials and information which is the property of the Vendor and in the possession or under the control of the Purchaser pursuant to this Agreement. The Purchaser agrees to ensure that the Purchaser, its officers, employees, agents and sub-contractors shall not directly or indirectly disclose or use, either during or following the term of this Agreement, except where required by law, any material or information belonging to the Vendor pursuant to this Agreement, without first obtaining the prior written consent of the Vendor for such disclosure or use and in the event of termination of this Agreement, the Purchaser will be responsible for returning all such documentation and information to the Vendor without making copies.

#### **SECTION 24 GENERAL**

- 24.01** Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard. If anything in this Agreement is to be done on a day which is not a Business Day, the same shall be done on the next succeeding Business Day.
- 24.02** This Agreement shall be binding upon, and enure to the benefit of, the Vendor and the Purchaser and their respective successors and permitted assigns. The Vendor and the Purchaser acknowledge and agree that the representations, covenants, agreements, rights and obligations of the Vendor and the Purchaser under this Agreement shall not merge on the completion of this Transaction, but shall survive completion and remain in full force and effect and be binding upon the parties, save and except as may be otherwise expressly provided for in this Agreement.
- 24.03** Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.
- 24.04** This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property, except as specifically set forth in this Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.
- 24.05** This Agreement and the rights and obligations of the Vendor and the Purchaser shall be determined in accordance with the laws of the Province of Ontario.

- 24.06 Wherever this Agreement makes reference to a requirement for the consent or approval of the Vendor, such consent must be prior written consent and may be arbitrarily and unreasonably withheld in the sole and absolute discretion of the Vendor.
- 24.07 No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.
- 24.08 If any provision of this Agreement or part thereof or the application thereof to any person or circumstance, to any extent, shall be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions or part thereof to any person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- 24.09 Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other and in such form as may be satisfactory to both parties hereunder, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

#### **SECTION 25 IRREVOCABLE PERIOD**

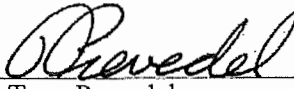
- 25.01 Signature of this Agreement by the Purchaser and the submission thereof to the Vendor constitutes an offer under seal, which is irrevocable for twenty-five (25) days from the date it is submitted to the Vendor and open for acceptance by the Vendor during said twenty-five (25) day period. This offer, once accepted on the Execution Date, constitutes a binding contract of purchase and sale. This offer may be made and accepted by electronic transmission, including electronic signature provided that the original hard copy, with original signatures is received by both parties within five (5) days of the electronic acceptance. The Purchaser, in submitting this offer, acknowledges that there has been no promise or representation or assurance given to the Purchaser that any of the terms and conditions in this offer are or will be acceptable to the Vendor.

[no further text on this page]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

OFFERED BY the Purchaser this 10<sup>th</sup> day of May, 2018.

THE CORPORATION OF THE CITY OF PICKERING

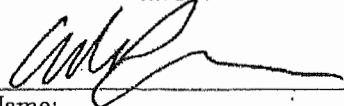
By:   
Name: Tony Prevedel  
Title: Chief Administrative Officer


By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

ACCEPTED BY the Vendor this 31<sup>st</sup> day of May, 2018.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by THE MINISTER OF INFRASTRUCTURE as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

By:   
Name: Adam Carr  
Title: Vice President  
Sales, Easements & Acquisitions

By:   
Name: Ash Kathiyal  
Title: Director, Seabrook Lands

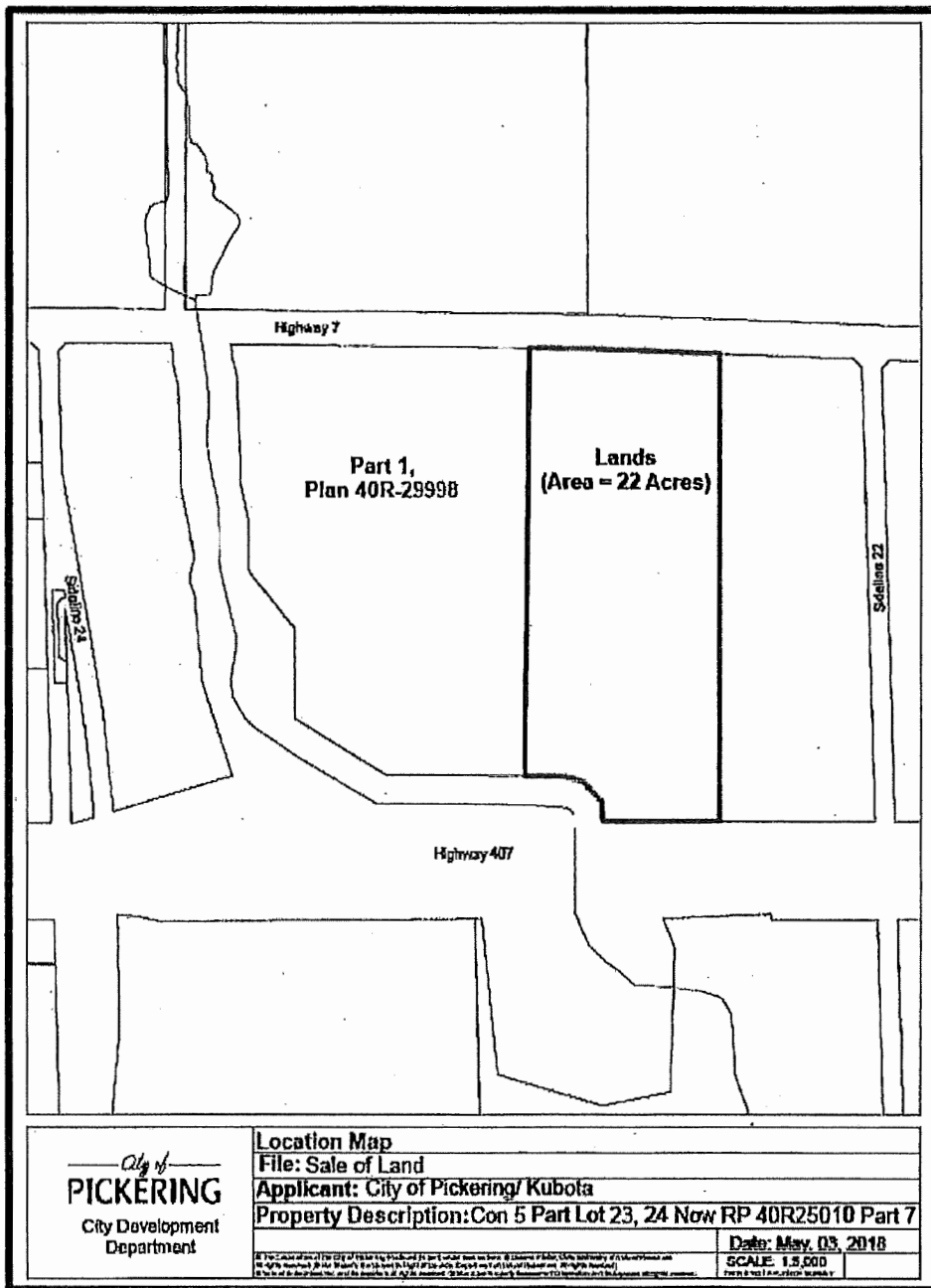
Authorizing Signing Officer

**SCHEDULE A-1**  
**DESCRIPTION OF LANDS**

Part of Lot 23, Concession 5 Pickering (to be completed upon completion of the Reference Plan, and in accordance with the mapping at Schedule A-2)

SCHEDULE A-2

LANDS



*City of*  
**PICKERING**  
City Development  
Department

**Location Map**

**File: Sale of Land**

**Applicant: City of Pickering/ Kubota**

**Property Description: Con 5 Part Lot 23, 24 Now RP 40R25010 Part 7**

**Date: May 03, 2018**

**SCALE: 1:5,000**

Drawn to scale and plotted to plan

All the parcels shown on this map are the property of the City of Pickering. The City of Pickering is not responsible for any errors or omissions on this map. The City of Pickering is not responsible for any errors or omissions on this map. The City of Pickering is not responsible for any errors or omissions on this map.

**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

(a) General Encumbrances:

- (i) the Lease and any notices of such lease registered on title to the Lands, including all easements, rights of way, restrictions, restrictive covenants, servitudes and other similar rights in land contained in the Lease, which exist as of the Closing Date and any leasehold mortgages or security interests relating to tenants or the tenants' interest in respect thereof and which do not encumber the interest of the landlord thereunder;
- (ii) liens for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property or for construction in connection with the Property for amounts the payment of which is not yet due or delinquent;
- (iii) any easements, rights of way, restrictions, building schemes, licences, restrictive covenants and servitudes, rights of access or use, airport zoning regulations and other similar rights in land (including, without limitation, rights of way and servitudes for sewers, drains, gas and water mains, electrical power, telephone and cable conduits, poles, wires or cables) granted to, reserved or taken by any person which do not, in the aggregate, materially and adversely impair the use or marketability of any of the Property for the purposes for which it is presently held, and any rights reserved or vested in any Authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit, subdivision, development, servicing, encroachment, site plan, parking or other similar agreement with any Authority or public or private utility;
- (iv) title defects or irregularities which do not, in the aggregate, materially and adversely impair the use of the Property for the purpose for which it is presently held;
- (v) any cost sharing, common use, reciprocal or other similar agreements relating to the use and/or operation of the Property and/or adjoining properties provided the same are complied with in all material respects and all security given by the parties thereto to each other to secure their respective obligations thereunder;
- (vi) any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant of the Property from the Crown;
- (vii) any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;



- (viii) the provisions of all applicable laws including by-laws, regulations, ordinances, land use contracts, development agreements and similar instruments relating (without limitation) to development, use and zoning;
- (ix) encroachments by any improvements on the Property over adjoining lands and easements or rights of way and/or any improvements on adjoining lands encroaching on the Property which do not materially and adversely affect the present use of the Property;
- (x) all registered and unregistered agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the Lands; and
- (xi) any encroachments that are shown on existing surveys or as may be revealed by an up-to-date survey.

(b) Specific Encumbrances:

All instruments registered on title to the Property as of the Closing Date, including but not limited to:

1. Notice of the Phase 1 RFEA;
2. Notice of the Pickering FIA;
3. Notice of the Seaton CSA;
4. Notice of the Seaton-Durham CSA.

**SCHEDULE C  
PROPERTY DOCUMENTS**

**[Note: Vendor to provide within five (5) days of Execution Date in accordance with Section 5.05.]**

**SCHEDULE D  
STATUTORY DECLARATION**

Canada	)	IN THE MATTER OF THE TITLE TO ◊
	)	
Province of Ontario	)	
	)	
	)	AND IN THE MATTER OF A SALE THEREOF from HER
	)	MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
	)	REPRESENTED BY THE MINISTER OF
	)	INFRASTRUCTURE (the "Vendor") to THE
	)	CORPORATION OF THE CITY OF PICKERING (the
	)	"Purchaser")
TO WIT:	)	
	)	
	)	
	)	

I, \_\_\_\_\_, of the \_\_\_\_\_, in the Province of Ontario,

DO SOLEMNLY DECLARE, that:

1. I am the \_\_\_\_\_ {title} of the Purchaser and as such have knowledge of the matters hereinafter declared.
  
2. The Purchaser and Ontario Infrastructure and Lands Corporation ("OILC") are arm's length parties and the Purchaser has received no special knowledge nor special consideration in entering into the above Agreement of Purchase and Sale, which would lead to the presumption that the parties are not arm's length parties.
  
3. The Purchaser and the Vendor are arm's length parties and the Purchaser has received no special knowledge nor special consideration in entering into the above Agreement of Purchase and Sale, which would lead to the presumption that the parties are not arm's length parties.
  
4. Except as expressly set out in Schedule A to this Declaration:
  - (a) to the best of the knowledge and belief of the undersigned, there are no outstanding legal disputes or actions between the Vendor and Purchaser;
  - (b) the Purchaser is not in conflict with OILC with respect to the above transaction; and
  - (c) the Purchaser is not in conflict with the Vendor with respect to the above transaction.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED by the above-named )  
Declarant, before me at the \_\_\_\_\_ of )  
\_\_\_\_\_, this )  
day of \_\_\_\_\_, 201\_\_\_\_. ) \_\_\_\_\_  
)  
)  
)  
A Commissioner, etc. )

**SCHEDULE E  
DOCUMENT REGISTRATION AGREEMENT**

**DOCUMENT REGISTRATION AGREEMENT**

**BETWEEN:**

◇

(hereinafter referred to as the "Vendor's Solicitor")

**AND:**

◇

(hereinafter referred to as the "Purchaser's Solicitor")

**RE:** Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure (the "Vendor") sale to ◇ (the "Purchaser") of the property legally described as ◇, City of ◇, being the whole of PIN ◇(LT) (the "Property" pursuant to an Agreement of Purchase and Sale between the Purchaser, as purchaser, and the Vendor, as vendor, dated ◇ and accepted ◇ (the "Purchase Agreement"), Scheduled to be completed on ◇ (the "Closing Date")

---

**FOR GOOD AND VALUABLE CONSIDERATION** (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby undertake and agree as follows:

Holding Deliveries  
In Escrow

1. The Vendor's Solicitor and the Purchaser's Solicitor shall hold all funds, keys and closing documentation exchanged between them (the "Requisite Deliveries") in escrow, and *shall* not release or otherwise deal with same except in accordance with the terms of this Agreement. Both the Vendor's Solicitor and the Purchaser's Solicitor have been authorized by their respective clients to enter into this Agreement. Once the Requisite Deliveries can be released in accordance with the terms of this Agreement, any monies representing payout funds for mortgages to be discharged shall be forwarded promptly to the appropriate mortgage lender.<sup>1</sup>

Advising of  
Concerns with  
Deliveries

2. Each of the parties hereto shall notify the other as soon as reasonably possible following their respective receipt of the Requisite Deliveries (as applicable) of any defect(s) with respect to same.

---

<sup>1</sup>Solicitors should continue to refer to the Law Society of Upper Canada practice guidelines relating to recommended procedures to follow for the discharge of mortgages.

Selecting Solicitor  
Responsible for  
Registration

3. The Purchaser's Solicitor shall be responsible for the registration of the Electronic Documents (as hereinafter defined) unless the box set out below indicating that the Vendor's Solicitor will be responsible for such registration has been checked. For the purposes of this Agreement, the solicitor responsible for such registration shall be referred to as the "Registering Solicitor" and the other solicitor shall be referred to as the "Non-Registering Solicitor":

Vendor's Solicitor will be registering the Electronic Documents

Responsibility of  
Non-Registering  
Solicitor

4. The Non-Registering Solicitor shall, upon his/her receipt and approval of the Requisite Deliveries (as applicable), electronically release for registration the Electronic Documents and shall thereafter be entitled to release the Requisite Deliveries from escrow forthwith following the earlier of:

- a) the registration of the Electronic Documents;
- b) the closing time specified in the Purchase Agreement unless a specific time has been inserted as follows [\_\_\_\_\_ a.m./p.m. on the Closing Date] (the "Release Deadline"), and provided that notice under paragraph 7 below has not been received; or
- c) receipt of notification from the Registering Solicitor of the registration of the Electronic Documents.

If the Purchase Agreement does not specify a closing time and a Release Deadline has not been specifically inserted the Release Deadline shall be 6.00 p.m. on the Closing Date.

Responsibility of  
Registering  
Solicitor

5. The Registering Solicitor shall, subject to paragraph 7 below, on the Closing Date, following his/her receipt and approval of the Requisite Deliveries (as applicable), register the documents listed in Schedule A annexed hereto (referred to in this agreement as the "Electronic Documents") in the stated order of priority therein set out, as soon as reasonably possible once same have been released for registration by the Non-Registering Solicitor, and immediately thereafter notify the Non-Registering Solicitor of the registration particulars thereof by telephone or telefax (or other method as agreed between the parties).

Release of Requisite  
Deliveries by Non-  
Registering Solicitor

6. Upon registration of the Electronic Documents and notification of the Non-Registering solicitor in accordance with paragraph 5 above, the Non-Registering Solicitor shall be entitled to forthwith release the Requisite Deliveries from escrow.

Returning  
Deliveries where  
Non-registration

7. Any of the parties hereto may notify the other party that he/she does not wish to proceed with the registration<sup>2</sup> of the Electronic Documents, and provided that such notice is received by the other party before the release of the Requisite Deliveries pursuant to this Agreement and before the registration of the Electronic Documents, then each of the parties hereto shall forthwith return to the other party their respective Requisite Deliveries.

<sup>2</sup> For the purpose of this Agreement, the term "registration" shall mean the issuance of registration number(s) in respect of the Electronic Documents by the appropriate Land Registry Office.

Counterparts  
& Gender

8. This agreement may be signed in counterparts, and shall be read with all changes of gender and/or number as may be required by the context.

Purchase  
Agreement  
Prevails If  
Conflict or  
Inconsistency

9. Nothing contained in this agreement shall be read or construed as altering the respective rights and obligations of the Purchaser and the Vendor as more particularly set out in the Purchase Agreement, and in the event of any conflict or inconsistency between the provisions of this agreement and the Purchase Agreement, then the latter shall prevail.

Telefaxing  
Deliveries  
& Providing  
Originals If  
Requested

10. This agreement (or any counterpart hereof), and any of the closing documents hereinbefore contemplated, may be exchanged by telefax or similar system reproducing the original, provided that all such documents have been properly executed by the appropriate parties. The party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 business days after the Closing Date, unless the recipient has indicated that he/she does not require such original copies.

Dated this \_\_\_\_\_ day of ◊, 201 .

Dated this \_\_\_\_\_ day of ◊, 201

Name/Firm Name of Vendor's Solicitor

Name/Firm Name of Purchaser's Solicitor

◊

◊

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

*Note: This version of the Document Registration Agreement was adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 and posted to the web site on April 8, 2004.*

#### Schedule "A"

1. Transfer from ◊ to ◊.

## SCHEDULE F

### CLOSING AGREEMENT

**TO:** Her Majesty the Queen in right of Ontario as represented by the Minister Infrastructure (the “Vendor”)

**AND TO:** Ontario Infrastructure and Land Corporation (the “Vendor’s Agent”)

**RE:** The Corporation of the City of Pickering (the “Purchaser”) purchase from the Vendor of the property legally described as Part of Lots 23 and 24, Concession 5, Geographic Township of Pickering, designated as Part XXX on Plan 40R-XXX, City of Pickering, Regional Municipality of Durham (the “Property”) pursuant to an Agreement of Purchase and Sale between the Purchaser and the Vendor dated XXX, as amended from time to time (the “Purchase Agreement”)

In consideration of and notwithstanding the Closing of the Transaction and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged):

1. The Purchaser agrees to accept, assume and take title the Property and any improvements thereon in an “As Is Where Is” condition in accordance with Section 5.01 of the Purchase Agreement.
2. The Purchaser confirms that all provisions of the Purchase Agreement that by their express terms are to survive and not merge on Closing shall survive and not merge on Closing.
3. The Purchaser confirms that all representations and warranties made by the purchaser in the Purchase Agreement remain true and correct as if repeated here.
4. The Purchaser reaffirms all indemnities made by it in the Purchase Agreement.
5. The Purchaser reaffirms the release and covenant not to sue provided for in Section 5.08 and 5.10 of the Purchase Agreement.
6. This Agreement shall not merge on Closing but shall survive Closing.
7. Unless otherwise defined herein, all capitalized terms used herein have the meaning ascribed to them in



the Purchase Agreement.

8. The Vendor and Vendor's Agent may rely on a signed electronically transmitted copy of this Agreement which shall constitute and be treated for all purposes as signed original of this Agreement.
9. This Agreement shall be binding upon the successors and permitted assigns of the Purchaser and shall enure to the benefit of the Vendor and its successors and assigns.

DATED as of the XX day of XXX, 2018.

**THE CORPORATION OF THE CITY OF  
PICKERING**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

**SCHEDULE G  
PARTICIPATION AGREEMENT**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE  
MINISTER OF INFRASTRUCTURE**

-and-

**THE CORPORATION OF THE CITY OF PICKERING**

**RECITALS:**

- A. Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure (the “**Owner**”) is the owner in fee simple of the land described at in Schedule “A”0 to this Agreement (the “**Property**”).
- B. The Owner and Ontario Infrastructure and Lands Corporation (“**OILC**”) confirm that OILC is the designated agent of the Owner and has the authority to exercise all rights of the Minister of Infrastructure pursuant to sections 7 and 9 of the *Ministry of Infrastructure Act*, S.O. 2011, c. 9, Sched 27, and the express written delegation from the Owner, dated June 6, 2011, and that both the Owner and OILC are and shall be bound by all the Vendor’s covenants, representations and warranties as provided herein.
- C. The Corporation of the City of Pickering (the “**City**”) is the proposed transferee of the Property:

**NOW THEREFORE** in consideration of the mutual covenants hereinafter set forth, the transfer of the Property from OILC to the City and other good and valuable consideration, the parties hereto agree as follows:

**Definitions:**

**"Base Amount"** means [NTD -- insert Purchase Price to be paid by the City].

**"Profit"** means the amount by which the Sale Price exceeds the Base Amount.

**"Sale Price"** means the value, in lawful money of Canada, of all consideration and benefit paid or agreed to be paid for the Property by a *bona fide* purchaser dealing at arm's length with the City, including the value of any encumbrances or mortgages assumed by the purchaser or taken back as part of the consideration for such sale transaction, less the aggregate of the following:

- (a) the cumulative total of any and all capital improvements to the Property (as determined in accordance with generally accepted accounting principles) made to the Property from and after the Date of Closing;
- (b) any real estate commission payable by the City in disposing of the Property to such a bona fide purchaser in an amount not to exceed the then current industry practice; and
- (c) reasonable transaction expenses, including, but not limited to, all marketing expenses, all taxes paid by the City with respect to the Property which have not been recovered in full by the City prior to the subsequent sale (including, but not limited to, land transfer tax paid by the City), legal and accounting fees payable by the City in disposing of the Property.

**"Term"** means the period commencing on the Closing Date and expiring on the earlier of (i) the date which is five (5) years following the Closing Date; and (ii) the date on which title to the Property is transferred to a *bona fide* purchaser dealing at arm's length with the City.

- (1) It is the express intention of OILC and the City that that there shall be no speculation with respect to all or any portion of the Property during the Term. In the event of a bona fide arm's length sale of all or any portion of the Property by the City at any time during the

Term then 100% of any Profit (as defined below) shall be paid to OILC and the amount of such Profit shall be a charge on the Property in favour of OILC until paid. Should the City enter into an agreement to sell the Property during the Term it shall give OILC written notice of same as soon as reasonably possible after such agreement is entered into.

- (2) Within 30 days following the Closing Date, the City will register in the appropriate land registry office, a Notice of this Participation Agreement on title to the Lands.
- (3) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary mail or prepaid courier or electronic facsimile machine to the addresses as follows:

Address of the City:

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

Attention: Paul Bigioni, Director, Corporate Services and City Solicitor  
Telephone: (905) 420-4660 ext. 2048  
Email: pbigioni@pickering.ca

and to the Purchaser's Solicitors at:

Torys LLP  
79 Wellington Street West  
Suite 3000  
Box 270, TD Centre  
Toronto  
Ontario, M5K 1N2

Attention: Dan Ford / Andy Gibbons  
Telephone: (416) 865-7372 / (416) 865-8226  
Email: dford@torys.com / agibbons@torys.com

and to OILC at:

c/o Ontario Infrastructure and Lands Corporation  
Sales & Acquisitions  
1 Dundas Street West, Suite 2000  
Toronto, Ontario M5G 1L5  
Attention: Vice President, Sales and Acquisitions  
Facsimile: (416) 327-3942

and to OILC's Legal Counsel at:

Attention: General Counsel and Corporate Secretary  
Facsimile: (416) 327-2760

or at such other addresses as OILC or the City may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) Business Days after the same is mailed. Any party may, at any time by notice given in writing to the other party, change the address for service of notice on it.

- (4) The City acknowledges that the provisions of this Agreement run with title to the Property, and the City covenants not to sell, transfer or otherwise alienate the Property or any part thereof to any affiliated entity unless such transferee agrees to be bound by the terms of this Agreement.
- (5) OILC agrees that if the City sells the Property to a bona fide purchaser for value during the Term (a "Sale"); then OILC will discharge the notice of this Agreement from title to the Property within seven (7) days of either (i) receipt by OILC of any Profit pursuant to Section (1) hereof; or (ii) the date of Sale in the event that no Profit is owing to OILC.
- (6) This Agreement may be executed and delivered in counterparts and any such counterpart may be delivered in its original form or by facsimile or other electronic transmission and each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same Agreement.
- (7) This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.
- (8) This Agreement shall be binding upon, and endure to the benefit of, OILC and the City and their respective successors and permitted assigns.

DATED this            day of            , 2018.

**THE CORPORATION OF THE CITY OF PICKERING**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the Corporation

DATED this            day of            , 2018.

**ONTARIO INFRASTRUCTURE AND LANDS  
CORPORATION acting as agent on behalf of  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF INFRASTRUCTURE**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the Corporation

**Schedule "A"**

ATTACHMENT# 2 TO REPORT# CAO 09-18  
1 .of. 70 Execution Version

**THE CORPORATION OF THE CITY OF PICKERING**

as "Vendor"

and

**KUBOTA CANADA LTD.**

as "Purchaser"

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**AGREEMENT OF PURCHASE AND SALE**

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**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PICKERING**  
(hereinafter called the "Vendor")

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**

(hereinafter called the "Purchaser")

OF THE SECOND PART

**RECITALS:**

- A. The Vendor has entered into an agreement of purchase and sale with Her Majesty The Queen in Right of Ontario, as represented by, The Minister of Infrastructure ("HMQ") for the purpose of acquiring the fee simple to the property defined as the "Lands" in Section 1.01(oo) of this Agreement (the "HMQ Purchase Agreement"), in order to immediately thereafter, sell such fee simple interest in the Lands to the Purchaser.
- B. HMQ is the owner in fee simple of the Lands as of the date hereof.
- C. The Lands are subject to the Development Agreements, and the Purchaser has agreed to assume the Development Agreements as they relate to the Lands.
- D. The Lands are subject to the Leases, and the Purchaser has agreed to assume the Leases as they relate to the Lands on the terms and conditions as described in this Agreement.
- E. The Purchaser has offered to purchase the Property from the Vendor on the terms and conditions hereinafter set forth.

**NOW THEREFORE** in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1 DEFINITIONS

### 1.01 Definitions

Unless the context expressly or by necessary implication indicates a contrary meaning, the terms defined in this Section 1.01 for all purposes of this Agreement, shall have the meanings set out below:

- (a) **"Adjustments"** means the adjustments to the Purchase Price provided for and determined pursuant to this Agreement.
- (b) **"Affiliate"** has the meaning set out in the *Business Corporations Act*, R.S.O. 1990, c. B. 16.
- (c) **"Agreement"** means collectively, this agreement of purchase and sale, all Schedules attached hereto and every properly executed instrument which by its terms amends, modifies or supplements this Agreement.
- (d) **"Ancillary Parcel"** means that portion of the Lands described in Schedule A-1 and cross hatched in red on the sketch plan attached hereto as Schedule A-2.
- (e) **"Applicable Laws"** means, collectively, all statutes, laws, by-laws, regulations, ordinances and orders of any governmental Authority, including without limitation all Land Use Regulations.
- (f) **"As Is Where Is"** has the meaning ascribed to it in Section 5.01.
- (g) **"Assignee"** has the meaning ascribed to it in Section 15.02.
- (h) **"Assumption Agreement"** means an agreement by which the Purchaser becomes a party to a Development Agreement, Lease or Permitted Encumbrance and assumes the responsibility of the Vendor with regard to the Property pursuant to such Development Agreement, Lease or Permitted Encumbrance.
- (i) **"Attribution Development Charges"** means the Regional Attribution Water Supply DC and the Regional Attribution Sanitary Sewerage DC (as such terms are defined in the Phase 1 RFEA) from time to time.
- (j) **"Attribution Prepayment"** means the sum of the "Regional Attribution Water Supply DC Prepayment" and the "Regional Attribution Sanitary Sewerage DC Prepayment" (as such terms are defined in the Phase 1 RFEA) from time to time.
- (k) **"Authority"** means any governmental or quasi-governmental authority, regulatory authority, government department, agency, commission, board, tribunal, body or department, or any court, whether federal, provincial or municipal, having jurisdiction over the Property, or the use thereof, and includes the City and the Region.
- (l) **"Buildings"** means, individually or collectively, as the context requires, all buildings, structures and fixed improvements located on, upon or under the Lands, and all

improvements and fixtures of the Vendor contained in, upon or on such buildings and structures which are used in the operation of same, and "**Building**" means any one of the Buildings.

- (m) "**Business Day**" means any day on which the Government of Ontario normally conducts business.
- (n) "**City**" means the City of Pickering.
- (o) "**Closing**" means the closing of the Transaction, including without limitation, the payment of the Purchase Price and the delivery of the closing documents in accordance with the provisions of this Agreement.
- (p) "**Closing Date**" means the 30<sup>th</sup> Business Day following the expiry of the Inspection Period.
- (q) "**Community Use Land**" has the meaning ascribed to it in the Seaton CSA.
- (r) "**Contaminant**" has, for the purposes of this Agreement, the same meaning as that contained in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and shall include the requirements of any and all guidelines and/or policies issued by the Ontario Ministry of the Environment and Climate Change and/or the Ministry of Labour.
- (s) "**Cost Shared Service**" has the meaning ascribed to it in the Seaton CSA.
- (t) "**DC Credit Recovery Payment**" has the meaning ascribed to it in Section 16.03.
- (u) "**Deposit**" has the meaning ascribed to it in Section 3.01.
- (v) "**Developable Area Share**" has the meaning ascribed to it in the Seaton CSA.
- (w) "**Development Agreements**" means, collectively, the Phase 1 RFEA, the Seaton CSA, the Pickering FIA, the Seaton-Durham CSA and the Master Parks Agreement, and "**Development Agreement**" means any one of such agreements.
- (x) "**Development Agreement Payment**" means any payment required to be made, or security to be provided, to an Authority, to the Vendor, or to a trustee named under a Development Agreement, by the Purchaser at Closing hereunder and whether required by an Assumption Agreement or otherwise, and includes, but is not limited to, the DC Credit Recovery Payment, Attribution Prepayment, Development Agreement Security, Development Charge Payments, and Private Land Landowner Equivalency Payment.
- (y) "**Development Agreement Security**" means any security required to be delivered by a Private Landowner pursuant to a Development Agreement, whether by letter of credit or otherwise.
- (z) "**Development Charge Credits**" means the development charge credits earned pursuant to the Phase 1 RFEA.

- (aa) **“Development Charge Prepayments”** means the prepayments on account of the Regional Attributions Development Charges required to be paid to the Region pursuant to the Phase 1 RFEA upon the development of Employment Lands.
- (bb) **“Drainage Area Share”** has the meaning ascribed to such term in the Seaton CSA.
- (cc) **“Durham Owners”** has the meaning ascribed to it in the Seaton-Durham CSA.
- (dd) **“Employment Lands”** means those lands designated as “Prestige Employment Lands” in the ‘Central Pickering Development Plan’.
- (ee) **“Environmental Law”** means, collectively, all Applicable Laws and agreements with governmental Authorities and all other applicable federal and provincial statutes, municipal and local laws, common law and deed restrictions, all by-laws, regulations, codes, licences, permits, orders, directives, guidelines, decisions rendered by any governmental Authority relating to the protection of the environment, natural resources, public health, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance, and all authorizations issued pursuant to such Applicable Laws, agreements or statutory requirements.
- (ff) **“Environmental Objection”** has the meaning ascribed to it in Section 5.02.
- (gg) **“Environmental Reports”** means the reports relating to the environmental condition of the Lands as identified in Schedule C.
- (hh) **“Execution Date”** means the date on which this Agreement has been executed and delivered by all parties hereto.
- (ii) **“Hazardous Substance”** includes, but is not limited to any hazardous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, asbestos, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of, which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Law.
- (jj) **“HMQ”** has the meaning ascribed to it in the recitals above.
- (kk) **“HMQ Acquisition Costs”** has the meaning ascribed to it in Section 17.02.
- (ll) **“HMQ Purchase Agreement”** has the meaning ascribed to it in the recitals above.
- (mm) **“HST”** has the meaning ascribed to it in Section 4.01.
- (nn) **“Inspection Period”** means that period of time which is Sixty (60) Business Days following the Execution Date.

- (oo) **"Lands"** means the land(s) described in Schedule A-1 and outlined in red and cross hatched in red on the sketch plan attached hereto as Schedule A-2 and is comprised of the Main Parcel and the Ancillary Parcel.
- (pp) **"Land Use Regulations"** means collectively, any land use policies, regulations, by-laws, or plans of any Authority that apply to the use of the Property, including the existing Official Plans, zoning by-laws and zoning orders.
- (qq) **"Land Transfer Tax Affidavit"** has the meaning ascribed to it in Section 17.01.
- (rr) **"Leases"** means all leases or licences of any portion of the Lands in force at Closing.
- (ss) **"Main Parcel"** described in Schedule A-1 and outlined in red on the sketch plan attached hereto as Schedule A-2.
- (tt) **"Master Parks Agreement"** means the Master Parks Agreement dated \_\_\_\_\_ entered into by the City, and the owners of other development land in the Seaton Community for the purpose of establishing arrangements pertaining to the satisfaction of the park dedication requirements for the Seaton Community.
- (uu) **"Municipality"** means the municipality (or municipalities) where the Property is located.
- (vv) **"Offer Date"** means the date the offer herein is submitted to the Vendor by the Purchaser.
- (ww) **"OILC"** means Ontario Infrastructure and Lands Corporation.
- (xx) **"Open Data"** means data that is required to be released to the public pursuant to the Open Data Directive.
- (yy) **"Open Data Directive"** means the Management Board of Cabinet's Open Data Directive, updated on April 29, 2016, as same may be amended from time to time.
- (zz) **"Permitted Encumbrances"** means, collectively, the encumbrances listed in Schedule B and any encumbrances created under the terms of this Agreement.
- (aaa) **"Phase 1 RFEA"** has the meaning ascribed to such term in the Seaton CSA.
- (bbb) **"Phase 1 RFEA Lands"** has the meaning ascribed to such term in the Phase 1 RFEA.
- (ccc) **"Pickering FIA"** means the Financial Impacts Agreement dated November 26, 2015 entered into by the City, and the owners of other development land in the Seaton Community for the purpose of confirming arrangements pertaining to the financing and construction of certain infrastructure and other related matters affecting the development of lands in Seaton.
- (ddd) **"Private Landowner"** has the meaning ascribed to such term in the Seaton CSA.
- (eee) **"Private Landowner Equivalency Payment"** has the meaning ascribed to it in Section 16.06.

- (fff) **“Property”** means, collectively, all of the right, title and interest of the Vendor in and to the Lands and the Buildings.
- (ggg) **“Property Documents”** means the documents in the Vendor’s current possession and related to the Property, as set out in Schedule C, and shall include, but shall not be limited to:
- (A) executed copies of any assignable service contracts, operating agreements and management agreements;
  - (B) copies of assignable guarantees and warranties of materials, workmanship, labour and materials relating to the Property that are still in effect;
  - (C) copies of the Environmental Reports, heritage reports, archaeological reports or any other report relating to the physical, geotechnical or environmental condition of the Property;
  - (D) copies of all Leases;
  - (E) copies of all Permitted Encumbrances which are not registered against title to the Property; and
  - (F) any plan of survey of the boundaries of the Property.
- (hhh) **“Provincial Successor”** has the meaning ascribed to such term in the Seaton CSA.
- (iii) **“Purchase Price”** means the total amount determined by Section 2.02 that shall be paid by the Purchaser to the Vendor for the Property, exclusive of HST and subject to the Adjustments.
- (jjj) **“Purchaser’s Reports”** has the meaning ascribed to it in Section 5.06.
- (kkk) **“Region”** means the Regional Municipality of Durham.
- (lll) **“Regional Infrastructure”** has the meaning ascribed to it in the Seaton CSA.
- (mmm) **“Requisition Date”** has the meaning ascribed to it in Section 14.01.
- (nnn) **“Reliance Letter”** has the meaning ascribed to it in Section 5.11.
- (ooo) **“ROFR Agreement”** means the ROFR Agreement attached hereto as Schedule G and to be entered into between the Vendor and the Purchaser at Closing.
- (ppp) **“SCS”** means SCS Consulting Group Ltd., being the professional land development engineering consultants acting on behalf of the trustees under the Development Agreements.
- (qqq) **“Seaton Community”** means the developable land as determined by the Central Pickering Development Plan, as may be further refined, and as determined by the Seaton CSA.

- (rrr) **"Seaton CSA"** means the Amended and Restated Cost Sharing Agreement dated November 26, 2015 between the Vendor and other owners of development land in the Seaton Community to provide for the sharing of the costs of development in the Seaton Community.
- (sss) **"Seaton-Durham CSA"** means an agreement dated November 26, 2015 between the Vendor, the Private Landowners and the Durham Owners to provide for the recovery of certain costs of construction of Regional Infrastructure to be incurred by the Vendor and the Private Landowners pursuant to the Phase 1 RFEA from the Durham Owners.
- (ttt) **"Seaton Trustee"** means the trustee as provided for in the Seaton CSA, as it is from time to time. As of the Execution Date, the Seaton Trustee is North Pickering Community Management Inc.
- (uuu) **"Servicing Costs"** has the meaning ascribed to it in Section 16.07.
- (vvv) **"Subsequent Phase"** means development of land in the Seaton Community, the development of which is not covered by the Phase 1 RFEA, and for which no allocation of sewer or water capacity has currently be granted by any Authority.
- (www) **"Transaction"** means, collectively, the purchase and sale of the Property provided for in this Agreement and all other matters contemplated in this Agreement.
- (xxx) **"Vendor Parties"** has the meaning ascribed to in Section 5.08.

## SECTION 2 AGREEMENT OF PURCHASE AND SALE

- 2.01 Subject to the closing of the HMQ Purchase Agreement and transfer of fee simple to the Lands to the Vendor, the Vendor agrees to sell, transfer and assign to the Purchaser all of the right, title and interest of the Vendor in the Property and the Purchaser agrees to purchase, acquire and assume the Property from the Vendor for the Purchase Price which shall be paid by the Purchaser to the Vendor for the Property, exclusive of HST and subject to the Adjustments on the Closing Date.
- 2.02 The Purchase Price shall be calculated by multiplying the area of the Lands in acres by a per acre price of (i) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per acre for the Main Parcel; and (ii) NINETY-THREE THOUSAND ONE HUNDRED AND EIGHTY-ONE DOLLARS AND EIGHTY-TWO CENTS (\$93,181.82) per acre for the Ancillary Parcel. The area of the Main Parcel is twenty-eight (28.0) acres, and the estimated area of the Ancillary Parcel is twenty-two (22.0) acres more or less, which would result in a Purchase Price of approximately FOUR MILLION EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$4,850,000.00). Prior to Closing the area of the Ancillary Parcel shall be conclusively determined by a reference plan to be delivered by the Vendor, in consultation with the Purchaser, not less than five (5) days prior to the Closing Date.



**SECTION 3  
DEPOSIT / PAYMENT OF PURCHASE PRICE**

- 3.01** The Purchaser will pay to Vendor's solicitor in trust, by certified cheque or wire transfer:
- (a) Upon the submission of this offer to purchase, a sum equal to five percent (5%) of the Purchase Price, as estimated at Section 2.02 hereof, as a deposit to be credited towards the Purchase Price on the Closing Date;
  - (b) Within forty-eight (48) hours of the Execution Date a further sum equal to five percent (5%) of the Purchase Price, as estimated at Section 2.02 hereof, as a further deposit to be credited towards the Purchase Price on the Closing Date; and
  - (c) Within forty-eight (48) hours of the waiver of the Purchaser's conditions in Section 6.04 a further sum equal to ten percent (10%) of the Purchase Price, as estimated at Section 2.02 hereof, as a further deposit to be credited towards the Purchase Price on the Closing Date (collectively, the "Deposit").
- 3.02** The parties authorize the Vendor to invest the Deposit with a Canadian bank as identified in *Schedule I* of the *Bank Act*, R.S., 1991, c. B.46 (Canada). Any and all interest earned thereon shall accrue to the benefit of and, subject to Sections 3.03 and 5.03, be paid to the Purchaser forthwith following the Closing Date or earlier termination of this Agreement.
- 3.03** In the event that this Agreement is terminated solely due to a specific default by the Purchaser, then the Deposit, together with all interest accrued thereon, shall be forfeited to the Vendor as liquidated damages.
- 3.04** If the Transaction is completed, the Deposit shall be credited against the Purchase Price due on Closing and all interest accrued thereon shall be paid to the Purchaser or as it may direct forthwith following Closing.
- 3.05** On Closing the Purchase Price shall be paid and satisfied as follows:
- (a) by release of the Deposit to the Vendor; and
  - (b) the balance of the Purchase Price, as adjusted pursuant to this Agreement shall be paid on the Closing Date by the Purchaser to, at the election of the Vendor, either (i) the Vendor in trust; or (ii) HMQ by way of a written direction from the Vendor, which direction shall be provided not less than five (5) Business Days prior to Closing. The balance of the Purchase Price shall be payable by way of wire transfer, such payment being deemed to have been made when the recipient's financial institution confirms receipt of such wire transfer.
- 3.06** The Purchaser acknowledges that at Closing it will be required to provide, or cause to be provided, Development Agreement Security to the appropriate Authority pursuant to one or more of the Development Agreements.
- 3.07** The Transaction shall be completed on the Closing Date at the offices of the Vendor's solicitors.

**SECTION 4  
HARMONIZED SALES TAX**

- 4.01 The Purchase Price does not include the Harmonized Sales Tax ("HST") payable by the Purchaser in respect of the purchase of the Property pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E.15 (Canada) (the "Act"). Subject to Section 4.02, the Purchaser agrees to pay to the Vendor, on the Closing Date, as a condition of completion of this Transaction by wire transfer, certified cheque or bank draft, all HST payable as a result of this Transaction in accordance with the Act.
- 4.02 Notwithstanding Section 4.01 above, the Vendor shall not collect HST from the Purchaser in this Transaction if, on Closing, the Purchaser is registered under the Act and in that event, the Purchaser shall:
- (a) file returns and remit such HST to the Receiver General for Canada when and to the extent required by the Act; and
  - (b) provide to the Vendor, on the Closing Date, a certificate confirming that the Purchaser is registered under the Act for the purposes of collecting and remitting HST, and confirming its HST registration number under the Act, together with an indemnity in favour of the Vendor for any and all HST, fines, penalties, actions, costs, losses, claims, damages or expenses and/or interest which may become payable by, or assessed against, the Vendor as a result of the Vendor's failure to collect HST from the Purchaser on the Closing Date, such certificate and indemnity to be in a form satisfactory to the Vendor's solicitor, acting reasonably,
- failing which the Purchaser shall pay to the Vendor on Closing the HST payable by the Purchaser with respect to this Transaction and the Vendor shall remit such HST to the appropriate Authority in accordance with the Act.
- 4.03 The Purchaser's obligations under this Section 4 shall survive and not merge on Closing.

**SECTION 5  
"AS IS WHERE IS",  
PURCHASER'S INSPECTION PERIOD, AND ENVIRONMENTAL INDEMNITY**

- 5.01 The Purchaser acknowledges and agrees that:
- (a) in entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Property, including, without limitation, the physical and environmental condition of the Property and a review of any documentation respecting the Property, and the Purchaser acknowledges it is not relying on any information furnished by the Vendor or any other person on behalf of, or at the direction of, the Vendor in connection therewith;
  - (b) the Purchaser is purchasing and shall accept, assume and take title to the Property and any improvements thereon in an "As Is, Where Is" condition. The term "As Is, Where Is" means in its condition or state on the Offer Date, without any agreement, representation or warranty of any kind whatsoever, either express or implied on the part of the Vendor, as to the condition of the soil, the subsoil, the ground and surface water or any other

environmental matters, the condition of the Lands, suitability for development, physical characteristics, profitability, the condition of the Buildings, or any other matter respecting the Property whatsoever, including without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant, the use to which the Property may be put and its zoning, the development potential of the Property or the ability of the Purchaser to obtain approvals with respect to the Purchaser's intended development of the Property, or as to the accuracy, currency or completeness of any information or documentation supplied to the Purchaser in connection with the Property; and

- (c) the Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Property or the condition thereof. The provisions of this Section 5.01 shall survive and not merge on Closing.

Without limiting the foregoing, the Purchaser accepts, assumes and takes title to the Property subject to the land uses currently permitted on the Property by the applicable Land Use Regulations and the Purchaser shall not make and is not authorized by the Vendor to make, prior to completion of this Transaction, any applications to the Municipality or any governmental Authority for changes or variances to the uses currently permitted on the Property, including without limitation changes or variances to official plans and/or zoning by-laws applicable to the Property.

- 5.02 During the period of time commencing on the Execution Date and expiring on the expiration of the Inspection Period, the Purchaser may carry out whatever investigations it considers necessary to satisfy itself with respect to the condition of the soil, the subsoil, the ground and surface water or any other environmental matter relating to the Property, including, without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant.

If as a result of such investigations the Purchaser has or acquires evidence within the Inspection Period that there exists a condition of non-compliance with Environmental Law or the presence of a Hazardous Substance or Contaminant on, in, at, under, emanating from or onto the Property that would be in excess of the guidelines for any of the permitted uses under the current zoning by-law affecting the Property, the risk or presence of which the Purchaser is not prepared to assume, then the Purchaser shall, by written notice, provide such evidence to the Vendor within the Inspection Period by way of a report of a recognized and qualified environmental consultant who shall specify in detail the nature of the non-compliance, Hazardous Substance or Contaminant and quantify the remediation cost (collectively, an "Environmental Objection"). Upon receipt of an Environmental Objection, the Vendor may, at its option and in its sole discretion:

- (a) undertake, as the Purchaser's sole and exclusive remedy, to take such actions, complete such work and/or implement such measures, in the Vendor's sole discretion as to means and methods, as may be necessary to correct the matter of non-compliance prior to the Closing Date or as soon as reasonably possible after the Closing Date if compliance prior to Closing is not, in the Vendor's opinion, reasonably possible, to the satisfaction of the Purchaser, acting reasonably;
- (b) credit the Purchaser, as the Purchaser's sole and exclusive remedy, the quantified cost of correcting the matter of non-compliance as an adjustment to the Purchase Price in an amount to be acceptable to the Purchaser, acting reasonably, in which event the Purchaser shall, on Closing, expressly assume the obligation and

undertake to correct the matter of non-compliance as soon as possible after the Closing Date and shall indemnify and save harmless the Vendor from and against any and all claims, demands, costs, damages, expenses and liabilities whatsoever arising from the Purchaser's failure to remediate the Hazardous Substance, Contaminant and/or matter of non-compliance;

- (c) terminate this Agreement in which event the Deposit shall, subject to Section 5.03, be returned to the Purchaser with accrued interest, and without further liability to the Vendor; or
- (d) refuse to do either (a), (b), or (c) above in which event the Purchaser shall have the option of either: (i) completing the Transaction without adjustment to the Purchase Price; or (ii) terminating this Agreement in which event the Deposit shall, subject to Section 5.03, be returned to the Purchaser with accrued interest, and without further liability to the Vendor.

The Vendor shall have seven (7) Business Days from receipt of the Environmental Objection to make its election under (a), (b), (c) or (d) above by notice in writing to the Purchaser and in the event the Vendor fails to make an election within said seven (7) Business Day period, the Vendor will be deemed to have elected option (d) above. The Purchaser shall have seven (7) days from the date of the Vendor's election or deemed election under (d) above to elect, by notice in writing to the Vendor, to terminate or complete as per paragraph (d) above and in the event the Purchaser fails to make an election within said seven (7) day period the Purchaser shall be deemed to have elected to complete the Transaction without adjustment to the Purchase Price.

**5.03** During the Inspection Period, the Vendor will permit the Purchaser together with its employees, agents or consultants access to the Property, at reasonable times and upon a minimum of three (3) Business Days' prior written notice to the Vendor, to carry out, at the Purchaser's sole expense and risk, such investigations, tests and inspections as the Purchaser deems necessary, provided that the Purchaser takes all reasonable care in the conduct of such investigations, tests and inspections. All tests, investigations and inspections conducted by the Purchaser or its representatives shall be commenced and completed prior to the expiration of the Inspection Period and shall be carried out as expeditiously as possible and at times and in such manner so as to not interfere with any tenants, occupants or licensees on the Property or the operation and maintenance of the Property. The Purchaser covenants and agrees to promptly repair or pay the cost of repair of any damage occasioned during or resulting from such investigations, tests and inspections of the Property conducted by the Purchaser or its representatives and to return the Property to substantially the same condition it was in prior to such investigations, tests and inspections. The Vendor assumes no responsibility for and the Purchaser shall indemnify and save harmless the Vendor from and against any and all claims, demands, costs, damages, expenses and liabilities whatsoever arising from the Purchaser's and/or its agents' or consultants' presence on the Property or the Purchaser's and/or its agents' or consultants' activities on or in connection with the Property. The Vendor shall be entitled to deduct from the Deposit paid by the Purchaser hereunder the amount of any losses, costs, claims, third party actions, damages and expenses which the Vendor may suffer as a result of a breach of this Section 5.03. The obligations in this Section 5.03 shall survive termination of this Agreement for a period of two (2) years and shall not merge on Closing.

**5.04** Intentionally Deleted.

- 5.05 The Vendor agrees to provide to the Purchaser, the Property Documents listed in Schedule C and the Development Agreements within five (5) days of the date of receipt by the Vendor of the same from HMQ. The Purchaser acknowledges and agrees that: (i) the Property Documents are being provided to the Purchaser for informational purposes only and the Vendor makes no representations or warranties whatsoever with respect to the content, completeness or accuracy of the Property Documents, or the environmental or any other condition of the Property; (ii) the Vendor shall not be liable to the Purchaser, its agents, employees or lending institution in any way for any error, omission or inaccuracy contained in any Property Document; and (iii) as of the Closing Date, the Purchaser shall become solely liable for all conditions and Hazardous Substances and/or Contaminants existing at the Property, whether known or unknown by the Purchaser, and whether or not such conditions or Hazardous Substances and/or Contaminants are disclosed in the Property Documents or have been discovered by Purchaser in the course of its due diligence or other investigations or inspections of the Property. The Purchaser shall be entitled to review the Property Documents and the Development Agreements during the Inspection Period and the Vendor agrees to use commercially reasonable efforts to cause SCS to deliver to the Purchaser any financial statements, projections and budgets with respect to the Development Agreements, as well as any other information relevant to the Purchaser, acting reasonably, and, in the event that the Purchaser is not satisfied with the information contained in the Property Documents or the Development Agreements, the Purchaser shall be entitled to terminate this Agreement. This condition is for the benefit of the Purchaser and if by 5:00 p.m. on expiry of the Inspection Period, the Purchaser has not given notice to the Vendor that the condition contained in this Section has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be null and void and of no further force or effect whatsoever and each party shall be released from all of its liabilities and obligations under this Agreement, and the Deposit shall be returned to the Purchaser without deduction.
- 5.06 The Purchaser covenants and agrees that the Property Documents provided by the Vendor and any and all third party reports, findings, recommendations, opinions and information resulting from the Purchaser's due diligence ("**Purchaser's Reports**") and the information contained therein shall be held in accordance with the confidentiality provisions set out in section 23. If this Agreement is terminated for any reason, the Purchaser will promptly return to the Vendor all Purchaser's Reports and Property Documents without keeping copies. The Purchaser shall deliver to the Vendor forthwith following receipt, copies of any and all Purchaser's Reports the Purchaser commissions or obtains during the course of its investigations.
- 5.07 In the absence of the Purchaser delivering: (i) an Environmental Objection; and (ii) a notice to terminate the Agreement under Section 5.02(d), the Purchaser shall be conclusively deemed to accept the Property in its As Is, Where Is condition, having waived all requisitions concerning any matters relating to the Property, save for any valid requisition on title made prior to the expiry of the Requisition Date, and the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply, at its sole cost, with all orders relating to the condition of the Property issued by any competent government Authority, court or administrative tribunal, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Law or relating to the existence of any Hazardous Substance or Contaminant.
- 5.08 As an inducement to, and as further consideration for, the Vendor agreeing to sell the Property to the Purchaser upon the terms and conditions set forth in this Agreement, the Purchaser covenants and agrees that, effective as of the Closing Date, the Purchaser shall forever release and covenant

not to sue the Vendor and its affiliates, subsidiaries, related legal entities, employees, directors, officers, appointees and agents (each individually, a "**Vendor Party**" and collectively, the "**Vendor Parties**") with respect to anything arising out of the environmental or any other condition of the Property as of the Closing Date or the presence of Hazardous Substances or Contaminants in, on, under, or emanating from or onto the Property as of the Closing Date, regardless of whether such environmental conditions or the presence of Hazardous Substances or Contaminants is known or unknown by the Purchaser and regardless of whether such condition is set forth in the Property Documents, the Purchaser's Reports or any other report, document or information discovered during the course of the Purchaser's due diligence or otherwise. The foregoing release and covenant not to sue shall apply to all claims at law or in equity, including, but not limited to, claims or causes of action for personal injury or death, property damage, statutory claims under Environmental Laws and claims for contribution. Nothing herein shall prevent the Purchaser from suing any third party who is not a Vendor Party, for any such condition.

- 5.09 From and after the Closing Date, the Purchaser shall be responsible for, and hereby agrees to indemnify and save harmless the Vendor Parties from, any and all costs (including legal, consultant and witness costs and fees), claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgments, awards (including awards of costs) and liabilities (including sums paid in settlement of claims), that may arise as a result of the condition of the Property, the presence of Hazardous Substances or Contaminants in, on or under the Lands, the Buildings or any structure or paved surface, or in any environmental medium (including, but not limited to, the soil, groundwater, or soil vapour on or under, or emanating from the Property), any order issued by any Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Law or the existence of any Hazardous Substance or Contaminant. Without limiting the generality of the foregoing, this indemnification shall specifically cover costs incurred, from and after the Closing Date, in connection with any claim for personal injury and/or death, property damage, investigation of site conditions and/or any clean-up, remedial, removal, monitoring or restoration work required by any federal, provincial, or local government agency or political subdivision because of the presence of Hazardous Substances, in, on or under the Lands, the Buildings or any environmental medium, structure or paved surface or emanating therefrom. On Closing the Purchaser agrees to deliver a Purchaser's Environmental Indemnity and Covenant Not to Sue, in the form attached hereto as Schedule H.
- 5.10 The parties agree to execute and exchange at the time of Closing such further documentation as either party reasonably requests, including, but not limited to, an agreement whereby the Purchaser shall reaffirm the release, covenant not to sue and indemnifications regarding the condition of the Property and environmental matters set forth in this section 5 in the form attached hereto as Schedule "I". Notwithstanding the foregoing, the release, covenant not to sue and indemnifications set forth in this section 5 shall become effective and enforceable automatically upon the registration of the Transfer/Deed of Land in respect of the Property in favour of the Purchaser, and Purchaser shall be bound by them, regardless of whether or not Purchaser executes any separate instrument at the time of Closing.
- 5.11 If requested by the Purchaser, the Vendor shall use commercially reasonable efforts (without the expenditure of funds) to secure a reliance letter (the "**Reliance Letter**") in favour of the Purchaser from GHD Limited (being the author of the Phase One Environmental Site Assessment dated November 2017), which Reliance Letter will permit the Purchaser to rely on such report as if it

were an original addressee thereof, subject to the qualifications, assumptions and limitations provided for in such report. Prior to requesting the Reliance Letter, the Vendor shall advise the Purchaser of the cost and expense of the Reliance Letter and shall only request such Reliance Letter following written instruction from the Purchaser.

- 5.12** Unless otherwise expressly set out herein, this Section 5 shall not merge but shall survive the Closing Date and shall be a continuing obligation of the Purchaser.

## **SECTION 6 CLOSING CONDITIONS**

- 6.01** The obligation of the Vendor to complete the Transaction is conditional upon fulfillment of each of the following conditions on or before the Closing Date or any earlier date or time specified in this Agreement:

- (a) each of HMQ and the Vendor, shall have waived all of the conditions set out in the HMQ Purchase Agreement, as applicable therein;
- (b) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated in this Agreement;
- (c) the representations and warranties of the Purchaser set forth in this Agreement shall be true and accurate in all material respects as if made as of the Closing;
- (d) the Purchaser shall have executed all documents required to assume the obligations of the Vendor pursuant to the Development Agreements, including all required assumption Agreements; and
- (e) all documents and deliveries required to be executed and/or delivered by the Purchaser shall have been executed and delivered to the Vendor in accordance to this Agreement.

- 6.02** The conditions set forth in Section 6.01 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor, or by its solicitors on its behalf, in the sole and absolute discretion of the Vendor by written notice to the Purchaser. The conditions are conditions precedent to the obligation of the Vendor to complete the herein Transaction on the Closing Date.

- 6.03** If a condition set forth in Section 6.01 is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's solicitors that such condition has been waived or the time period for compliance has been extended within the applicable time period allowed, if any (save and except for any condition which is to be satisfied on the Closing in connection with which it is hereby agreed that upon successful completion of the Transaction, such condition shall be deemed to have been satisfied), at the Vendor's sole option, this Agreement shall be null and void, notwithstanding any intermediate act or negotiations, and (i) in the event the Agreement is terminated as a result of the non-fulfilment of the condition set forth in Section 6.01(a), neither the Vendor nor the Purchaser shall, subject to Section 5.03, be liable to the other for any loss, costs or damages, and the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction, and (ii) in the event the Agreement is terminated as a result of the non-fulfilment of any of the conditions set forth in Section 6.01(b), 6.01(c) or 6.01(d),

the Deposit shall be forfeited to the Vendor as liquidated damages and without derogating from any claims or causes of action the Vendor may have pursuant to this Agreement and at law against the Purchaser arising from the Purchaser's default therein.

6.04 The obligation of the Purchaser to complete the Transaction is conditional upon fulfillment of the following conditions on or before the expiration of the Inspection Period, namely the Purchaser shall have satisfied itself in its sole and unfettered discretion:

- (a) with the terms of this Agreement, the physical condition of the Lands, the environmental condition of the Lands, the zoning of the Lands, the Development Agreements, the Property Documents and all of its other due diligence tests, evaluations, inspections and investigations;
- (b) that all Leases can be terminated by the Vendor or the Purchaser; and
- (c) with:
  - (i) the timing and contingencies for delivery of municipal services to the Property; and
  - (ii) the location and construction of any proposed access road.

6.05 The condition set forth in Section 6.04 is for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser, or by its solicitors on its behalf, in the sole and absolute discretion of the Purchaser by written notice to the Vendor. The condition is a condition precedent to the obligation of the Purchaser to complete the herein Transaction on the Closing Date.

6.06 If the condition set forth in Section 6.04 is not fulfilled within the applicable time period and/or the Purchaser fails to notify the Vendor or the Vendor's solicitors that such condition has been waived, this Agreement shall be null and void, and the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction.

**SECTION 7  
INTENTIONALLY DELETED**

**SECTION 8  
INTENTIONALLY DELETED**

**SECTION 9  
RISK**

9.01 Until completion of this Agreement on the Closing Date, the Property shall be and remain at the risk of the Vendor, except as otherwise provided in Section 5. The Purchaser acknowledges that the Vendor, in respect of damage to the Property, is self-insured. In the event of damage to the Property on or before the Closing Date (other than damage occasioned during or resulting from the Purchaser's and/or its agents, consultants or representatives entries and/or activities on or to the Property, in which event Section 5.03 shall govern) (the "**Pre-Closing Damage**"), the Vendor may elect (i) to forthwith repair the Property to the same state and condition as it was in at the Offer Date in which event the Purchaser will complete the Transaction without an abatement in the



Purchase Price; or (ii) to reduce the Purchase Price by an amount equal to the cost required to complete the repair as estimated by an independent qualified architect or engineer jointly retained by the Vendor and the Purchaser, acting reasonably and at arm's length in which event the Purchaser will complete the Transaction and accept a price reduction equal to such cost, or (iii) unless the Purchaser agrees to accept title to the Property notwithstanding the election of the Vendor not to remediate or compensate to terminate this Agreement in which case the Deposit shall, subject to Section 5.03, be immediately returned to the Purchaser, with interest and without deduction, and neither party shall, subject to Section 5.03, have any further rights or obligations hereunder.

- 9.02 From and including the Closing Date, the Property shall be entirely at the risk of the Purchaser and the Purchaser shall accept and assume any and all responsibilities and liabilities arising out of or in any way connected with the Property whether they arose before, on or after the Closing Date and, without being limited by the foregoing, any state, nature, quality or condition in, on, under or near the Property existing as of the Closing Date, whenever and however arising, whether known or unknown and whether environmental or otherwise, and whether such responsibilities and liabilities are imposed by law, equity or any governing Authority.

#### SECTION 10 VENDOR'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- 10.01 The Vendor represents and warrants to the Purchaser that the Vendor is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.).
- 10.02 The Vendor represents and warrants that there are no agreements, options, contracts or commitments to sell, transfer or otherwise dispose of the Property or which would restrict the ability of the Vendor to transfer the Property to the Purchaser.
- 10.03 The Vendor represents and warrants that, to the best of its knowledge and belief, no part of the Property is subject to any proceeding by any government authority with respect to the expropriation thereof.
- 10.04 Any information provided by the Vendor or its agents, including the Property Documents, and any comments made by any Vendor Party are for the assistance of the Purchaser in allowing it to make its own inquiries. The Vendor makes no representations or warranties as to, and takes no responsibility for, the accuracy or completeness of the Property Documents or any other information it has provided to the Purchaser.

#### SECTION 11 PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- 11.01 The Purchaser represents and warrants to the Vendor that the Purchaser does not have a conflict of interest with any Vendor Party.
- 11.02 The Purchaser represents and warrants to the Vendor that the execution, delivery and performance by the Purchaser of this Agreement, and each agreement to be executed and delivered pursuant hereto at Closing, to which the Purchaser is a party are within the Purchaser's legal power and jurisdiction and have been duly authorized and approved by all necessary action on the part of the Purchaser.

- 11.03 The Purchaser represents and warrants to the Vendor that this Agreement has been, and each agreement to be executed and delivered by the Purchaser pursuant to this Agreement, will be duly and validly executed and delivered by the Purchaser, and this Agreement constitutes, and each agreement to be executed and delivered pursuant hereto at Closing, when so executed and delivered will constitute, the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.
- 11.04 The Vendor shall deliver and the Purchaser shall accept possession of the Property on the Closing Date in an As Is Where Is condition, subject to: (i) the Leases; (ii) the Development Agreements; and (iii) the Permitted Encumbrances.
- 11.05 As of the Closing Date, the Purchaser shall assume and be responsible as owner for the management and administration of the Property and the Vendor shall have no further responsibility whatsoever therefor.
- 11.06 Without limiting the generality of the foregoing, the Purchaser shall comply with the terms of the Permitted Encumbrances, any agreement entered into by the Vendor with any Authority relating to the Property, all other agreements relating to public utilities and municipal services, the Land Use Regulations, all relevant municipal by-laws and all registered restrictions. The Purchaser further agrees and acknowledges that it shall be bound by any contractual obligations which the Vendor may have entered into concerning the Property prior to the Closing Date.
- 11.07 On the Closing Date, the Purchaser will execute and deliver an Assignment, Assumption and Indemnity in the Vendor's standard form accepting, assuming and indemnifying the Vendor with respect to all such matters referred to in this Section 11.

**SECTION 12  
INTENTIONALLY DELETED**

**SECTION 13  
INTENTIONALLY DELETED**

**SECTION 14  
TITLE**

- 14.01 The Purchaser shall have until the day which is twenty-five (25) Business Days before the Closing Date (the "**Requisition Date**") to investigate title to the Property at the Purchaser's expense. The Purchaser agrees not to call for the production of any title deed, abstract, survey or other evidence of title to the Lands except such as are in the possession of the Vendor.
- 14.02 On the Closing Date, the Purchaser shall accept title to the Property in an As Is Where Is condition subject to the following:
- (a) the Land Use Regulations;
  - (b) the Development Agreements and notices thereof;
  - (c) the Leases;

- (d) all Community Use Land obligation pursuant to the Seaton CSA; and
- (e) the Permitted Encumbrances.

The Purchaser agrees to satisfy itself with respect to compliance with all such agreements, easements, restrictions or covenants, encumbrances and regulations referred to herein and agrees that the Vendor shall not be required to provide any evidence of compliance with same.

- 14.03 If, prior to the expiry of the Requisition Date, the Purchaser furnishes the Vendor in writing with a valid objection to title which the Vendor is unwilling or unable to remove, remedy and satisfy and which the Purchaser will not waive, this Agreement shall be terminated notwithstanding any intermediate acts or negotiations with respect to such objection, the Deposit shall, subject to Section 5.03, be returned to the Purchaser with interest and without deduction and the Vendor shall not be liable for any costs or damages suffered by the Purchaser arising out of such termination or otherwise out of this Agreement and parties shall have no further obligations or liabilities hereunder.
- 14.04 The Vendor hereby consents to the relevant Municipality releasing to the Purchaser any information in its records in connection with the Property and the Vendor agrees to execute and deliver such necessary authorizations as the Purchaser may reasonably require in this regard but any such authorization shall specifically prohibit the right of or a request for an inspection of the Property by the Municipality or any other Authority.

#### SECTION 15 NO ASSIGNMENT ETC.

- 15.01 The Purchaser shall not assign or register this Agreement, or any assignment of this Agreement, or any part of either, or register a caution in relation thereto, or direct title to the Property, without, in each instance, obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld. Notwithstanding the foregoing, the Purchaser may, upon prior written notice to the Vendor, assign this Agreement to an Affiliate of the Purchaser but the Purchaser shall not be relieved of any of its liabilities or obligations hereunder in the event of any such assignment to an Affiliate.
- 15.02 If the Vendor consents to an assignment of this Agreement to a third party (the "Assignee"), the Purchaser shall cause the Assignee and the Purchaser, to covenant in writing in favour of the Vendor to be jointly and severally bound by and to jointly and severally perform their respective obligations of this Agreement. The Purchaser shall not be released from its liabilities and obligations hereunder in the event of an assignment to an Assignee.
- 15.03 In the event of any assignment of this Agreement to an Assignee, such Assignee shall provide a similar representation, warranty and Statutory Declaration as required of the Purchaser in Section 11.01.

#### SECTION 16 DEVELOPMENT AGREEMENTS

- 16.01 The Purchaser agrees that at Closing it shall, as part of its acquisition of the Property, assume the obligations of the Vendor regarding the Property pursuant to the Development Agreements, and it

covenants to make all payments required by such Development Agreements and provide any Development Agreement Security required pursuant to any such Development Agreement, whether such security is to be lodged with an Authority or otherwise, upon the execution of any applicable Assumption Agreement with the intent that the Purchaser shall be treated equally with the other Private Landowners, except as explicitly provided in the Development Agreements.

- 16.02 The Purchaser acknowledges that the Development Agreements may have been registered against title to the Property and further acknowledges that the development of the Property is subject to the Development Agreements.
- 16.03 The Purchaser acknowledges and agrees that the Vendor has made payments and incurred expenses which are subject to recovery by the Vendor through the issuance of Development Charge Credits pursuant to the terms and conditions of the Phase 1 RFEA. The Purchaser agrees that at Closing, and as a condition of Closing, that it shall reimburse the Vendor for all costs that the Vendor has incurred which would be recoverable by the Vendor in the form of Development Charge Credits to be issued pursuant to the Phase 1 RFEA in respect of the Lands. The Purchaser acknowledges and agrees that the Seaton Trustee shall determine the amount Development Charge Credits entitlement earned and attributable to the Lands based on the Developable Area Share of the Lands in the Seaton Community, whether or not the Lands are within the Phase 1 Lands, and shall take into account indexing as provided for in the Phase 1 RFEA. The payment from the Purchaser to the Vendor pursuant to this section shall be referred to herein as the **"DC Credit Recovery Payment"**.
- 16.04 The Purchaser acknowledges that the Pickering FIA creates obligations with regard to the funding of certain infrastructure in Seaton under the jurisdiction of the City. The Purchaser covenants and agrees that it will abide by the terms and conditions of the Pickering FIA, and will execute any Assumption Agreement as reasonably required by the Vendor or the City. Furthermore, the Purchaser acknowledges that the infrastructure projects to be funded pursuant to the Pickering FIA are Cost Shared Services under the Seaton CSA, and the costs of which are to be cost shared pursuant to the terms of the Seaton CSA.
- 16.05 The Purchaser acknowledges that the Lands include Phase 1 RFEA Lands and, therefore, prior to the issuance of a building permit with respect to the development of such lands, unless otherwise provided for in a front ending agreement relating to Subsequent Phase development, the Purchaser will have to pay, in addition to any Attribution Development Charges payable with respect to the development of the Lands, the Attribution Prepayment applicable to the Property. The Phase 1 RFEA provides that Development Charge Credits earned by virtue of the payment of the Attribution Prepayment are not able to be utilized to satisfy the Attributions Development Charges payable upon the issuance of building permits for lands that are Phase 1 RFEA Lands, and further such Development Charge Credits will be administered by the Seaton Trustee.
- 16.06 The Purchaser acknowledges that on Closing the Purchaser will be a Provincial Successor (as such term is defined in the Seaton CSA). Furthermore, by virtue of being a Provincial Successor the Purchaser acknowledges and agrees that at Closing it will have to make a payment to the Seaton Trustee in an amount to be determined by the Seaton Trustee pursuant to the terms of the Seaton CSA, which will bring the Purchaser into a position in which the Purchaser will have funded the costs of Regional Infrastructure pursuant to the Phase 1 RFEA on the same basis as the other Private Landowners within the Seaton Community, this payment to be referred to herein as the **"Private Landowner Equivalency Payment"**.

- 16.07 The Purchaser acknowledges and agrees that at Closing, it will make a payment to the Vendor in an amount equal to the portion of the costs incurred by the Vendor for Cost Shared Services applicable to the Lands up to the Closing Date as confirmed by the Seaton Trustee, unless otherwise provided for herein, whether on a Developable Area Share or Drainage Area share or otherwise as applicable (referred to herein as "**Servicing Costs**").
- 16.08 The Purchaser acknowledges that the Lands include Community Use Lands and that such Community Use Lands are to be transferred to an Authority or the Seaton Trustee pursuant to the terms of the Seaton CSA. The Purchaser acknowledges and agrees that it will abide by the terms of the Seaton CSA with regard to such Community Use Lands which requires that they be conveyed to an Authority or the Seaton Trustee, and further that the Assumption Agreement with regard to the Seaton CSA will specifically provide for such transfer of the Community Use Lands.
- 16.09 The Seaton-Durham CSA provides for the recovery of certain costs of the construction of Regional Infrastructure that relate to the over-sizing of such services for which Development Charge Credits are not available. The Purchaser acknowledges that the Vendor has not made and is not making any representations or warranties that any such construction costs will be recovered from the Durham Owners.

#### SECTION 17

#### PREPARATION OF TRANSFER/DEED DOCUMENTS AND FEES/COSTS

- 17.01 The Transfer/Deed of the Lands will be prepared by the Vendor, except for the Affidavit of Residence and Value of the Consideration ("**Land Transfer Tax Affidavit**"), which will be prepared by the Purchaser.
- 17.02 The Purchaser shall pay its own legal costs and registration costs. The Purchaser shall be responsible for the payment of any applicable Land Transfer Tax and registration fees and any other taxes and fees which may be payable in connection with the registration of the transfer/deed of the Property. Furthermore the Purchaser agrees that it shall pay to the Vendor on Closing, an amount equal to the amount of Land Transfer Tax, registration fees and any other taxes and fees which are not recoverable by the Vendor from the appropriate taxing authority together with all marketing costs for which the Vendor is responsible or for which the Vendor has been required to pay in order to acquire the Lands pursuant to the terms of the HMQ Purchase Agreement (the "**HMQ Acquisition Costs**"). The HMQ Acquisition Costs shall be set out in the statement of Adjustments.

#### SECTION 18

#### TENDER

- 18.01 Any tender of money or documents pursuant to this Agreement may be made on the Vendor or the Purchaser or their respective solicitors. Unless expressly set out to the contrary herein, money must be tendered in Canadian funds by electronic wire. The Vendor and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation

of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the Transfer/Deed of Land and any other closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitors to same, but without the necessity for the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

## SECTION 19 ADJUSTMENTS

- 19.01 Adjustments between the Vendor and the Purchaser shall be made on the Closing Date for taxes, local improvement rates, utility costs, rents, legal costs, HMQ Acquisition Costs and other matters or items which are ordinarily the subject of adjustment for the purchase and sale of a property similar to the Property in the Province of Ontario. Such Adjustments shall be made on the basis that, except as may be otherwise expressly provided for in this Agreement:
- (a) the Vendor shall be responsible for all expenses and liabilities and entitled to all income from the Property up to the Closing Date; and
  - (b) the Purchaser shall be responsible for all expenses and liabilities and entitled to all income from the Property from and including the Closing Date.
- 19.02 Adjustments that cannot be determined on the Closing Date shall be determined by the parties as soon after the Closing Date as is reasonably possible. Any amounts payable by one party to the other, as determined by the parties, acting reasonably, shall be paid within thirty (30) days of the request for such payment. On the Closing Date, the Vendor and the Purchaser shall exchange undertakings to re-adjust the foregoing items, if necessary.
- 19.03 All Adjustments to be made under Section 19.01 shall be completed on or before the date which is no later than six (6) months from the Closing Date and no re-adjustment may be made by either party thereafter.

## SECTION 20 ELECTRONIC REGISTRATION

- 20.01 Where the Property is in an area where electronic registration is mandatory and the Transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, and the *Electronic Registration Act*, S.O. 1991, c.44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other closing deliverables provided for herein and the release thereof to the Vendor and Purchaser will:
- (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this Transaction); and
  - (b) be subject to conditions whereby the lawyer(s) receiving any of the closing deliverables will be required to hold same in escrow and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada (the "**Document Registration Agreement**").

**SECTION 21  
CLOSING DELIVERABLES**

- 21.01** Subject to the provisions of this Agreement, the Vendor covenants that it shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser or the Purchaser's solicitors on or before the Closing Date, each of the following:
- (a) possession of the Property in an As Is Where Is condition, subject to the Leases, and subject to the rights of others as set out in the Permitted Encumbrances;
  - (b) an assignment of the Leases, whether complete or partial, the Development Agreements and Permitted Encumbrances, as applicable;
  - (c) notice to the tenant(s) or licensee(s) pursuant to the Leases informing them of the sale of the Lands and directing them to make future rent payments to the Purchaser and notices of termination of the Leases, if requested by the Purchaser;
  - (d) an executed Transfer/Deed of Land in registrable form duly executed by the Vendor in favour of the Purchaser (save for any Land Transfer Tax Affidavit);
  - (e) an undertaking to re-adjust the statement of Adjustments, if necessary, upon written demand;
  - (f) a direction regarding the payment of funds;
  - (g) statement of Adjustments;
  - (h) Document Registration Agreement as set out in Schedule E;
  - (i) the ROFR Agreement in form attached hereto as Schedule G;
  - (j) the Reliance Letter, if available and if requested by the Purchaser; and
  - (k) such other deeds, conveyances and other documents as the Purchaser or its solicitors may reasonably require in order to implement the intent of this Agreement.
- 21.02** Subject to the provisions of this Agreement, the Purchaser covenants that it shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor or the Vendor's Solicitors on or before the Closing Date:
- (a) confirmation of wire transfer for the balance of the Purchase Price and Adjustments due on the Closing Date;
  - (b) a certified cheque, bank draft or confirmation of wire transfer for any Development Agreement Payment payable to the Vendor, including the DC Credit Recovery Payment, the Private Landowner Equivalency Payment, and Servicing Costs;

- (c) a certified cheque, bank draft or confirmation of wire transfer for any Development Agreement Payment payable to the applicable trustee under a Development Agreement;
- (d) confirmation of delivery of Development Agreement Security to any applicable authority or trustee under a Development Agreement;
- (e) an undertaking to re-adjust the statement of Adjustments, if necessary, upon written demand;
- (f) HST Declaration and Indemnity, as contemplated in Section 4, if applicable;
- (g) intentionally deleted;
- (h) the ROFR Agreement in form attached hereto as Schedule G;
- (i) Document Registration Agreement in the form attached as Schedule E;
- (j) an Assumption Agreement for the Leases;
- (k) an Assumption Agreement for each of the Development Agreements;
- (l) an Assumption Agreement for the Permitted Encumbrances, as applicable;
- (m) a Purchaser's Indemnity and Covenant Not to Sue in the form attached hereto as Schedule H; and
- (n) such other deeds, conveyances, resolutions and other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

## SECTION 22 NOTICE

**22.01** Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine (including e-mail) addressed to the Purchaser at:

Kubota Canada Ltd.  
5900 Fourteenth Ave.  
Markham, Ontario  
L3S 4K4

Attention: Costa Nicolaidis  
Email: cnicolaidis@kubota.ca

and to the Purchaser's Solicitors at:



McMillan LLP  
181 Bay Street  
Suite 4400  
Toronto Ontario M5J 2T3

Attention: J. Scott Martyn  
Telephone: (416) 945-8022  
Email: [scott.martyn@McMillan.ca](mailto:scott.martyn@McMillan.ca)

and to the Vendor at:

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

Attention: Paul Bigioni, Director, Corporate Services and City Solicitor  
Telephone: (905) 420-4660 ext. 2048  
Email: [pbigioni@pickering.ca](mailto:pbigioni@pickering.ca)

And:

Torys LLP  
79 Wellington Street West  
Suite 3000  
Box 270, TD Centre  
Toronto  
Ontario, M5K 1N2

Attention: Dan Ford / Andy Gibbons  
Telephone: (416) 865-7372 / (416) 865-8226

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or email, or, if mailed, three (3) Business Days after the same is mailed. Any party may, at any time by notice given in writing to the other party, change the address for service of notice on it.

## SECTION 23 CONFIDENTIALITY

- 23.01** The Vendor and Purchaser agree to take all necessary precautions to maintain the confidentiality of the terms and conditions contained herein. The parties acknowledge that this Agreement and any information or documents that are provided hereunder may be released pursuant to the applicable provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as

amended and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended and Open Data may be released pursuant to the Open Data Directive. This acknowledgment shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents.

- 23.02** The Purchaser agrees to ensure that the Purchaser, its officers, employees, agents and sub-contractors shall, subject to Section 23.01, maintain the confidentiality and security of all materials and information which is the property of the Vendor and in the possession or under the control of the Purchaser pursuant to this Agreement. The Purchaser agrees to ensure that the Purchaser, its officers, employees, agents and sub-contractors shall not directly or indirectly disclose or use, either during or following the term of this Agreement, except where required by law, any material or information belonging to the Vendor pursuant to this Agreement, without first obtaining the prior written consent of the Vendor for such disclosure or use and in the event of termination of this Agreement, the Purchaser will be responsible for returning all such documentation and information to the Vendor without making copies.

#### SECTION 24 GENERAL

- 24.01** From and after the Execution Date, the Purchaser shall indemnify and save harmless the Vendor Parties from, any and all costs (including legal, consultant and witness costs and fees), claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgments, awards (including awards of costs) and liabilities (including sums paid in settlement of claims), including, but not limited to, any such costs, claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgements, awards and liabilities that may result from a breach by the Vendor under the HMQ Purchase Agreement, that may arise as a result of any acts or omission on the part of the Purchaser or any breach by the Purchaser of the terms of this Agreement. For greater certainty, the Purchaser acknowledges and agrees that the Vendor has agreed to enter into the HMQ Purchase Agreement, solely for the purposes of enabling the sale of the Lands to the Purchaser as set out in this Agreement.
- 24.02** Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard. If anything in this Agreement is to be done on a day which is not a Business Day, the same shall be done on the next succeeding Business Day.
- 24.03** This Agreement shall be binding upon, and enure to the benefit of, the Vendor and the Purchaser and their respective successors and permitted assigns. The Vendor and the Purchaser acknowledge and agree that the representations, covenants, agreements, rights and obligations of the Vendor and the Purchaser under this Agreement shall not merge on the completion of this Transaction, but shall survive completion and remain in full force and effect and be binding upon the parties, save and except as may be otherwise expressly provided for in this Agreement.

- 24.04 Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.
- 24.05 This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property, except as specifically set forth in this Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.
- 24.06 This Agreement and the rights and obligations of the Vendor and the Purchaser shall be determined in accordance with the laws of the Province of Ontario.
- 24.07 Wherever this Agreement makes reference to a requirement for the consent or approval of the Vendor, such consent must be prior written consent and may be arbitrarily and unreasonably withheld in the sole and absolute discretion of the Vendor.
- 24.08 No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.
- 24.09 If any provision of this Agreement or part thereof or the application thereof to any person or circumstance, to any extent, shall be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions or part thereof to any person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- 24.10 Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other and in such form as may be satisfactory to both parties hereunder, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

**SECTION 25**  
**IRREVOCABLE PERIOD**

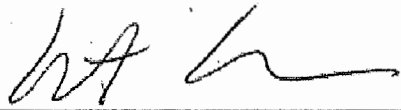
- 25.01 Signature of this Agreement by the Purchaser and the submission thereof to the Vendor constitutes an offer under seal, which is irrevocable for thirty (30) days from the date it is submitted to the Vendor and open for acceptance by the Vendor during said thirty (30) day period. This offer, once accepted on the Execution Date, constitutes a binding contract of purchase and sale. This offer may be made and accepted by electronic transmission, including electronic signature provided that the original hard copy, with original signatures is received by both parties within five (5) days of the electronic acceptance. The Purchaser, in submitting this offer, acknowledges that there has been no promise or representation or assurance given to the Purchaser that any of the terms and conditions in this offer are or will be acceptable to the Vendor.

[no further text on this page]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

OFFERED BY the Purchaser this 19<sup>th</sup> day of MARCH, 2018.

**KUBOTA CANADA LTD.**

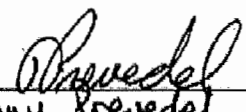
By:   
Name: ROBERT HICKEY  
Title: PRESIDENT

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

ACCEPTED BY the Vendor this 1st day of June, 2018.

**THE CORPORATION OF THE CITY OF PICKERING**

By:   
Name: Tony Prevedel  
Title: Chief Administrative Officer

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

**SCHEDULE A-1**  
**LEGAL DESCRIPTION OF LANDS**

PART OF LOTS 23 AND 24 CONCESSION 5; CITY OF PICKERING  
BEING PART OF PIN 26402-0077 (LT)

**SCHEDULE A-2**

**LANDS**

**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

- (a) General Encumbrances:
- (i) the Leases, if any, (for greater certainty including expired leases registered against title to the Lands) and any notices of such leases registered on title to the Lands, including all easements, rights of way, restrictions, restrictive covenants, servitudes and other similar rights in land contained in the Leases, which exist as of the Closing Date and any leasehold mortgages or security interests relating to tenants or the tenants' interest in respect thereof and which do not encumber the interest of the landlord thereunder;
  - (ii) liens for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property or for construction in connection with the Property for amounts the payment of which is not yet due or delinquent;
  - (iii) any easements, rights of way, restrictions, building schemes, licences, restrictive covenants and servitudes, rights of access or use, airport zoning regulations and other similar rights in land (including, without limitation, rights of way and servitudes for sewers, drains, gas and water mains, electrical power, telephone and cable conduits, poles, wires or cables) granted to, reserved or taken by any person which do not, in the aggregate, materially and adversely impair the use or marketability of any of the Property for the purposes for which it is presently held, and any rights reserved or vested in any Authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit, subdivision, development, servicing, encroachment, site plan, parking or other similar agreement with any Authority or public or private utility;
  - (iv) title defects or irregularities which do not, in the aggregate, materially and adversely impair the use of the Property for the purpose for which it is presently held and for the proposed redevelopment of the Property by the Purchaser;
  - (v) any cost sharing, common use, reciprocal or other similar agreements relating to the use and/or operation of the Property and/or adjoining properties provided the same are complied with in all material respects and all security given by the parties thereto to each other to secure their respective obligations thereunder;
  - (vi) any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant of the Property from the Crown;
  - (vii) any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
  - (viii) the provisions of all applicable laws including by-laws, regulations, ordinances, land use contracts, development agreements and similar instruments relating (without limitation) to development, use and zoning;

- (ix) encroachments by any improvements on the Property over adjoining lands and easements or rights of way and/or any improvements on adjoining lands encroaching on the Property which do not materially and adversely affect the present use of the Property;
- (x) all registered and unregistered agreements, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners, or that otherwise run with the Lands; and
- (xi) any encroachments that are shown on existing surveys or as may be revealed by an up-to-date survey.

(b) Specific Encumbrances:

All instruments registered on title to the Property as of the Closing Date provided that the Vendor is not in material breach thereof and, where applicable, consent to transfer to Purchaser, if required, has been obtained, including but not limited to:

1. Lease dated January 22, 2016 made between Her Majesty The Queen In Right Of Ontario As Represented By The Minister Of Economic Development, Employment And Infrastructure, as landlord and 1018105 Ontario Inc., as tenant;
2. Notice of the Phase 1 RFEA;
3. Notice of the Pickering FIA;
4. Notice of the Seaton CSA; and
5. Notice of the Seaton-Durham CSA.



**SCHEDULE C  
PROPERTY DOCUMENTS**

**[Note: Vendor to provide in accordance with Section 5.05.]**

**SCHEDULE D**  
**INTENTIONALLY DELETED**

**SCHEDULE E  
DOCUMENT REGISTRATION AGREEMENT**

**DOCUMENT REGISTRATION AGREEMENT**

**BETWEEN:**

<>

(hereinafter referred to as the "Vendor's Solicitor")

**AND:**

<>

(hereinafter referred to as the "Purchaser's Solicitor")

**RE:** The Corporation of the City of Pickering (the "Vendor") sale to <> (the "Purchaser") of the property legally described as <>, City of <>, being the whole of PIN <>(LT) (the "Property" pursuant to an Agreement of Purchase and Sale between the Purchaser, as purchaser, and the Vendor, as vendor, dated <> and accepted <> (the "Purchase Agreement"), Scheduled to be completed on <> (the "Closing Date")

---

**FOR GOOD AND VALUABLE CONSIDERATION** (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby undertake and agree as follows:

Holding  
Deliveries  
In Escrow

1. The Vendor's Solicitor and the Purchaser's Solicitor shall hold all funds, keys and closing documentation exchanged between them (the "Requisite Deliveries") in escrow, and *shall* not release or otherwise deal with same except in accordance with the terms of this Agreement. Both the Vendor's Solicitor and the Purchaser's Solicitor have been authorized by their respective clients to enter into this Agreement. Once the Requisite Deliveries can be released in accordance with the terms of this Agreement, any monies representing payout funds for mortgages to be discharged shall be forwarded promptly to the appropriate mortgage lender.<sup>1</sup>

Advising of  
Concerns with  
Deliveries

2. Each of the parties hereto shall notify the other as soon as reasonably possible following their respective receipt of the Requisite Deliveries (as applicable) of any defect(s) with respect to same.

---

<sup>1</sup>Solicitors should continue to refer to the Law Society of Upper Canada practice guidelines relating to recommended procedures to follow for the discharge of mortgages.

Selecting  
Solicitor  
Responsible for  
Registration

3. The Purchaser's Solicitor shall be responsible for the registration of the Electronic Documents (as hereinafter defined) unless the box set out below indicating that the Vendor's Solicitor will be responsible for such registration has been checked. For the purposes of this Agreement, the solicitor responsible for such registration shall be referred to as the "Registering Solicitor" and the other solicitor shall be referred to as the "Non-Registering Solicitor":

Vendor's Solicitor will be registering the Electronic  Documents

Responsibility of  
Non-Registering  
Solicitor:

4. The Non-Registering Solicitor shall, upon his/her receipt and approval of the Requisite Deliveries (as applicable), electronically release for registration the Electronic Documents and shall thereafter be entitled to release the Requisite Deliveries from escrow forthwith following the earlier of:

- a) the registration of the Electronic Documents;
- b) the closing time specified in the Purchase Agreement unless a specific time has been inserted as follows [\_\_\_\_\_ a.m./p.m. on the Closing Date] (the "Release Deadline"), and provided that notice under paragraph 7 below has not been received; or
- c) receipt of notification from the Registering Solicitor of the registration of the Electronic Documents.

If the Purchase Agreement does not specify a closing time and a Release Deadline has not been specifically inserted the Release Deadline shall be 6.00 p.m. on the Closing Date.

Responsibility of  
Registering  
Solicitor

5. The Registering Solicitor shall, subject to paragraph 7 below, on the Closing Date, following his/her receipt and approval of the Requisite Deliveries (as applicable), register the documents listed in Schedule A annexed hereto (referred to in this agreement as the "Electronic Documents") in the stated order of priority therein set out, as soon as reasonably possible once same have been released for registration by the Non-Registering Solicitor, and immediately thereafter notify the Non-Registering Solicitor of the registration particulars thereof by telephone or telefax (or other method as agreed between the parties).

Release of  
Requisite  
Deliveries by  
Non-Registering  
Solicitor

6. Upon registration of the Electronic Documents and notification of the Non-Registering solicitor in accordance with paragraph 5 above, the Non-Registering Solicitor shall be entitled to forthwith release the Requisite Deliveries from escrow.

Returning Deliveries where Non-registration

7. Any of the parties hereto may notify the other party that he/she does not wish to proceed with the registration<sup>2</sup> of the Electronic Documents, and provided that such notice is received by the other party before the release of the Requisite Deliveries pursuant to this Agreement and before the registration of the Electronic Documents, then each of the parties hereto shall forthwith return to the other party their respective Requisite Deliveries.

Counterparts & Gender

8. This agreement may be signed in counterparts, and shall be read with all changes of gender and/or number as may be required by the context.

Purchase Agreement Prevails if Conflict or Inconsistency

9. Nothing contained in this agreement shall be read or construed as altering the respective rights and obligations of the Purchaser and the Vendor as more particularly set out in the Purchase Agreement, and in the event of any conflict or inconsistency between the provisions of this agreement and the Purchase Agreement, then the latter shall prevail.

Telefaxing Deliveries & Providing Originals if Requested

10. This agreement (or any counterpart hereof), and any of the closing documents hereinbefore contemplated, may be exchanged by telefax or similar system reproducing the original, provided that all such documents have been properly executed by the appropriate parties. The party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 business days after the Closing Date, unless the recipient has indicated that he/she does not require such original copies.

Dated this \_\_\_\_ day of ◊, 201 .

Dated this \_\_\_\_ day of ◊, 201

Name/Firm Name of Vendor's Solicitor

Name/Firm Name of Purchaser's Solicitor

◊

◊

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

<sup>2</sup> For the purpose of this Agreement, the term "registration" shall mean the issuance of registration number(s) in respect of the Electronic Documents by the appropriate Land Registry Office.

*Note: This version of the Document Registration Agreement was adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 and posted to the web site on April 8, 2004.*

**Schedule "A"**

1. Transfer from ◊ to ◊.



**SCHEDULE G  
ROFR AGREEMENT**

BETWEEN:

**XXXX**

(the "Grantor")

-and-

**THE CORPORATION OF THE CITY OF PICKERING**

(the "Grantee")

**WHEREAS** the Grantor is the registered owner of the lands and premises described in Schedule "A" hereto (the "Property");

**AND WHEREAS** the Grantor has agreed to grant to the Grantee certain rights with respect to the Property on the terms and subject to the conditions of this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1**            **Definitions**

In this Agreement, all capitalized terms shall have the respective meanings assigned thereto below:

"**Acceptance Notice**" has the meaning ascribed thereto in Section 2.1(b)(i).

"**Affiliate**" has the meaning set out in the *Business Corporations Act*, R.S.O. 1990, c. B. 16.

"**Agreement**" means this agreement, as further amended from time to time, and "**Article**", "**Section**", "**Sub-Section**" and "**Schedule**" mean the specified article, section or schedule, as the case may be, of this Agreement.

"**Business Day**" means any day other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario.

"**Closing**" has the meaning ascribed thereto in Section 2.1(c).



“**Closing Date**” has the meaning ascribed thereto in Section 2.1(c).

“**Development Agreements**” has the meaning ascribed to such term in the Original Purchase Agreement.

“**HST**” means the goods and services tax or harmonized sales tax payable pursuant to Part IX of the *Excise Tax Act* (Canada), as such statute may be amended, modified or replaced from time to time, including any successor statute.

“**Offer Period**” has the meaning ascribed thereto in Section 2.1(b).

“**Offeror**” has the meaning ascribed thereto in Section 2.1(a).

“**OREA**” means the Ontario Real Estate Association, together with its successors and assigns.

“**Original Purchase Agreement**” means the agreement of purchase and sale with respect to the Property dated ■ made between the Grantee, as vendor and the Grantor, as purchaser.

“**Original Purchase Price**” means the purchase price for the Property paid by the Grantor to the Grantee pursuant to the terms of the Original Purchase Agreement.

“**Property**” has the meaning ascribed thereto in the recitals, and including all buildings, structures, improvements located thereon and appurtenances thereto.

“**Rejection Notice**” has the meaning ascribed thereto in Section 2.1(b)(ii).

“**ROFR Notice**” has the meaning ascribed thereto in Section 2.1(a).

“**Sale Interest**” has the meaning ascribed thereto in Section 2.1(a).

“**Sale Price**” has the meaning ascribed thereto in Section 2.1(a)(ii).

“**Third Party Offer**” has the meaning ascribed thereto in Section 2.1(a).

## **1.2**            Schedule

The following Schedule is attached to and forms part of this Agreement:

Schedule A    -        Legal Description of the Property

## **1.3**            Interpretation

(a)    Headings and Table of Contents. The division of this Agreement into Articles, Sections and Sub-Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

(b)    Number and Gender. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

- (c) Severability. If any provision contained in this Agreement or its application to any party or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and each provision of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.
- (d) Time. Time will be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement will exclude the first day and include the last day of such period. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties hereto. If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action will be made or taken on the next Business Day.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## ARTICLE 2 RIGHT OF FIRST REFUSAL AND BUY BACK

### 2.1 Right of First Refusal

- (a) If at any time, and from time to time, on or prior to the fifth (5<sup>th</sup>) anniversary of the date of this Agreement, the Grantor receives a *bona fide* written offer (a "Third Party Offer") from any third party (the "Offeror") to purchase all or part of the Property (the "Sale Interest"), which the Grantor is willing to accept, the Grantor shall, before accepting such Third Party Offer, deliver written notice thereof to the Grantee (the "ROFR Notice") within three (3) Business Days following the date on which the Third Party Offer was received by the Grantor, which notice shall:
  - (i) confirm that the Grantor has received a Third Party Offer which the Grantor is willing to accept;
  - (ii) contain an offer to sell the Sale Interest to the Grantee on the same terms and conditions as those contained in the Third Party Offer save and except that the purchase price payable by the Grantee for the Sale Interest shall be:
    - (A) the Original Purchase Price; plus
    - (B) any amounts paid by the Grantor pursuant to the terms of the Development Agreements, less any amounts which the Grantor may have received by way of development credits or otherwise, during the period of the Grantor's ownership of the Property.

The purchase price at which the Sale Interest is offered for sale to the Grantee as determined in accordance with this Section is referred to as the "Sale Price";

- (iii) contain a true and complete copy of the Third Party Offer signed by the Offeror; and
  - (iv) be accompanied by a certificate of the Grantor stating that: (A) the copies of the Third Party Offer contained in such notice are true and complete copies thereof; (B) such Third Party Offer has not been amended, restated and/or supplemented; and (C) such offer constitutes a Third Party Offer in accordance with the terms hereof.
- (b) The Grantee shall have the right, exercisable by notice in writing given to the Grantor within fifteen (15) Business Days following receipt of a ROFR Notice (the "**Offer Period**") to elect to:
- (i) purchase the Sale Interest (the "**Acceptance Notice**") at the Sale Price and on the same terms and conditions contained in the Third Party Offer (except as set forth in Section 2.1(c)); or
  - (ii) not to purchase the Sale Interest and to consent to the sale of the Sale Interest by the Grantor to the Offeror at the purchase price and on the same terms and conditions contained in the Third Party Offer (the "**Rejection Notice**").
- (c) If within the Offer Period, the Grantee delivers an Acceptance Notice to the Grantor, there shall be created at such time, automatically and without any further action or documentation, a binding agreement of purchase and sale between the Grantor and the Grantee pursuant to which the Grantor agrees to sell to the Grantee, and the Grantee agrees to purchase from the Grantor, the Sale Interest at the Sale Price and on the same terms and conditions as those contained in the Third Party Offer, provided that, subject to the satisfaction of the conditions contained in the Third Party Offer, closing of the transaction of purchase and sale (the "**Closing**") will occur on the date which is sixty (60) days after the Grantee delivers the Acceptance Notice (the "**Closing Date**").
- (d) If no notice is delivered by the Grantee pursuant to Section 2.1(b), the Grantee shall be deemed to have delivered the Rejection Notice.
- (e) If the Grantee has delivered, or has been deemed to deliver, the Rejection Notice, the Grantor may sell the Sale Interest to the Offeror, at the purchase price and on the terms and conditions contained in the Third Party Offer; provided that if such sale of the Sale Interest to the Offeror does not occur on such terms within one hundred and twenty (120) days following the expiry of the Offer Period, the Grantor must again comply with this Section 2.1 in respect of any future proposed sale of all or part of the Property.
- (f) If a sale of part of the Property only is completed by the Grantor pursuant to this Section 2.1, the Grantee's right of first refusal shall continue in full force and effect with respect to the remainder of the Property.
- (g) The Grantor and the Grantee agree and acknowledge that the Grantor shall be entitled to transfer the Property to an Affiliate without triggering this right of first offer and without consent of the Grantee, provided the Grantor provides the Grantee with fifteen (15) days prior written notice of such transfer.

**2.2**            **Right to Buy Back**

- (a)    If the Grantor has failed to:
- (i)    obtain and deliver copies to the Grantee, of all development approvals, building permits and other third permits or consents required to construct on the Property a building of not less than 350,000 square feet (the “**New Building**”); and
  - (ii)   commence construction of the New Building,

provided that any such delays are not as a result of the City of Pickering or other appropriate Authority refusing to issue the necessary permits and approvals or taking unreasonable delays in issuing such permits and approvals, following receipt of a complete application by the Grantor for the same,

on or before the fifth (5th) anniversary of the date of this Agreement, then at any time, and from time to time, on or after the fifth (5th) anniversary of the date of this Agreement, the Grantee shall have the right, but not the obligation, upon written notice to the Grantor, to repurchase the Property, for a purchase price equal to:

- (A)    the Original Purchase Price; plus
  - (B)    any amounts paid by the Grantor pursuant to the terms of the Development Agreements, less any amounts which the Grantor may have received by way of development credits or otherwise, during the period of the Grantor’s ownership of the Property.
- (b)    If the Grantee delivers written notice of its intention to repurchase the Property in accordance with Section 2.2(a), there shall be created at such time, automatically and without any further action or documentation, a binding agreement of purchase and sale between the Grantor and the Grantee pursuant to which the Grantor agrees to sell to the Grantee, and the Grantee agrees to purchase from the Grantor, the Property at the price calculated in accordance with Section 2.2(a) and on the terms and conditions set out in the OREA form of agreement of purchase and sale (commercial) current (as at the date of execution of this Agreement), provided that, Closing will occur on the date which is sixty (60) days after the Grantee delivers the written notice in accordance with Section 2.2(a).

**2.3**            **Closing**

The following provisions shall pertain to the Closing pursuant to Section 2.1 or 2.2 hereof, as applicable:

- (a)    Closing shall occur at 12:00 p.m. on the Closing Date, or such earlier or later date as may be mutually agreed upon, in writing, by the parties to the transaction; and
- (b)    on or before Closing:
  - (i)    the Grantor shall cause to be executed and delivered to the Grantee an electronic transfer(s)/deed(s) of land/registerable deeds of sale/transfers of land transferring

the Sale Interest to the Grantee or as it may direct, and containing the statements of the Grantor and its solicitors pursuant to Section 50(22) of the *Planning Act* (Ontario);

- (ii) the Grantor shall certify that it is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada); and
- (iii) the Grantor shall execute and deliver or cause to be executed and delivered such other closing documents which are required to effectively transfer and convey the Sale Interest or the Property, as applicable, to the Grantee and which the Grantee or its solicitors have reasonably requested on or before the Closing Date.

### **ARTICLE 3 GENERAL**

#### **3.1           Registration**

The Grantee may prepare and register on title to the Property, at the Grantee's cost, a notice in respect of this Agreement (the "Notice"). Upon expiry of this Agreement, the Grantee shall arrange for the discharge from title to the Property of such Notice at the Grantee's cost.

#### **3.2           Planning Act**

This Agreement and the completion of any transaction of purchase and sale contemplated by this Agreement are subject to compliance with Section 50 of the *Planning Act* (Ontario).

#### **3.3           Further Assurances**

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other parties to this Agreement may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within their power to implement to their full extent the provisions of this Agreement.

#### **3.4           Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound by it. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **3.5           Successors and Assigns**

All of the covenants and agreements contained in this Agreement will be binding upon and will enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns. This Agreement is intended to run with title to the Property and will be binding on the Grantor's successors in interest as owner of the Property or any part thereof or interest therein.

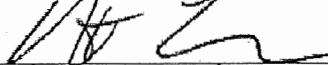


**3.8**            **Counterparts**

This Agreement may be executed in counterparts, each of which shall be an original and all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile transmission or by electronic delivery in portable document format (".pdf") shall be equally effective as delivery of a manually executed counterpart thereof.

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the date first written above.

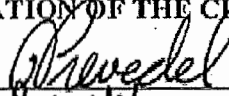
**KUBOTA CANADA LTD.**

Per:   
Name: ROBERT HICKEY  
Title: PRESIDENT

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the Corporation

**THE CORPORATION OF THE CITY OF PICKERING**

Per:   
Name: TONY PREVETE  
Title: CHIEF EXECUTIVE OFFICER

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/ We have the authority to bind the Corporation



**SCHEDULE H  
PURCHASER'S ENVIRONMENTAL INDEMNITY AND COVENANT NOT TO SUE**

TO: The Corporation of the City of Pickering (the "Vendor")

AND TO: <<Purchaser's Solicitor Name and/or Law Firm Name>>, its solicitors

RE: <<Purchaser(s) Name>> (the "Purchaser") purchase from the Vendor of the property legally described as <<Legal Description>>, being <<the whole OR part>> of PIN <<Enter PIN>> (LT) (the "Property") pursuant to an Agreement of Purchase and Sale between the Purchaser, as purchaser, and the Vendor, as vendor, accepted <<Date Offer Accepted>>, as may be amended from time to time (the "Purchase Agreement")

In consideration the closing of the Transaction and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged:

1. The Purchaser agrees to accept, assume and take title the Property and any improvement thereon in an "As Is Where Is" condition in accordance with Section 5 of the Purchase Agreement.
2. The Purchaser acknowledges and hereby agrees to indemnify and save harmless the Vendor and its employees, directors, officers, appointees and agents from, any and all costs (including legal, consultant and witness costs and fees), claims, demands, actions, prosecutions, administrative hearings, fines, losses, damages, penalties, judgments, awards (including awards of costs) and liabilities (including sums paid in settlement of claims), that may arise as a result of the condition of the Property, the presence of Hazardous Substances or Contaminants in, on or under the Lands, the Buildings or any structure or paved surface, or in any environmental medium (including, but not limited to, the soil, groundwater, or soil vapour on or under, or emanating from the Property), any order issued by any Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Law or the existence of any Hazardous Substance or Contaminant. Without limiting the generality of the foregoing, this indemnification shall specifically cover costs incurred, from and after the Closing Date, in connection with any claim for personal injury and/or death, property damage, investigation of site conditions and/or any clean-up, remedial, removal, monitoring or restoration work required by any federal, provincial, or local government agency or political subdivision because of the presence of Hazardous Substances, in, on or under the Lands, the Buildings or any environmental medium, structure or paved surface or emanating therefrom.

3. The Purchaser covenants and agrees that, effective as of the Closing Date, the Purchaser forever releases and covenants not to sue the Vendor and its employees, directors, officers, appointees and agents with respect to anything arising out of the environmental or any other condition of the Property or the presence of Hazardous Substances or Contaminants in, on, under, or emanating from or onto the Property, regardless of whether such environmental conditions or the presence of Hazardous Substances or Contaminants is known or unknown by the Purchaser and regardless of whether such condition is set forth in the Property Documents, the Purchaser's Reports or any other report, document or information discovered during the course of the Purchaser's due diligence or otherwise. The foregoing release and covenant not to sue shall apply to all claims at law or in equity, including, but not limited to, claims or causes of action for personal injury or death, property damage, statutory claims under Environmental Laws and claims for contribution.
4. This Indemnity shall not merge but shall survive the Date of Closing and shall be continuing obligation of the Purchaser.
5. Unless otherwise defined herein, all capitalized terms used herein have the meaning ascribed to them in the Purchase Agreement.
6. The provisions of this Purchaser's Environmental Indemnity and Covenant Not to Sue shall enure to the benefit of the Vendor and its successors and assigns and shall be binding upon the Purchaser and its successors and permitted assigns.

DATED as of the \_\_\_\_\_ day of <<Month>>, <<Year>>.

<<PURCHASER(S) NAME>>

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

Name: <<Individual Signing Documents for  
Corporation>>

Title: <<Title>>

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

Name: <<Individual Signing Documents for  
Corporation, if there is a second person>>

Title: <<Title>>

I/We have the authority to bind the Corporation.

**AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amending Agreement") made as of the 17<sup>th</sup> day of April, 2018.

BETWEEN:

**THE CORPORATION OF THE CITY OF PICKERING**  
(the "Vendor")

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**  
(the "Purchaser")

OF THE SECOND PART

**WHEREAS** the Purchaser has delivered to the Vendor an executed agreement of purchase and sale dated March 19, 2018 (the "Purchase Agreement"), pursuant to which the Purchaser has offered to purchase the Property on the terms and conditions set out therein.

**AND WHEREAS** in this Amending Agreement all capitalized terms which have been defined in the Purchase Agreement and are not otherwise defined in this Amending Agreement shall have the meanings given to them in the Purchase Agreement.

**AND WHEREAS** the Vendor and the Purchaser have mutually agreed to amend certain terms in the Purchase Agreement, as set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Amending Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. **Interpretation**

All references to Sections and Schedules, unless otherwise provided herein, are references to Sections and Schedules of the Purchase Agreement. In the event of any conflict or inconsistency between the Purchase Agreement and this Amending Agreement, the provisions of this Amending Agreement shall prevail. It is agreed that, as of the date hereof, the Purchase Agreement is amended by the provisions of this Amending Agreement. After giving effect to this Amending Agreement, all references to the “**Agreement**” in the Purchase Agreement and all other relevant documents shall refer to the Purchase Agreement, as amended by this Amending Agreement.

2. **Amendment**

- (a) Section 25.01 of the Purchase Agreement shall be deleted in its entirety and replaced with:

*“25.01 Signature of this Agreement by the Purchaser and the submission thereof to the Vendor constitutes an offer under seal, which is irrevocable for a period expiring on June 18, 2018 and open for acceptance by the Vendor at any time on or before 11:59 p.m. on June 18, 2018. This offer, once accepted on the Execution Date, constitutes a binding contract of purchase and sale. This offer may be made and accepted by electronic transmission, including electronic signature. The Purchaser, in submitting this offer, acknowledges that there has been no promise or representation or assurance given to the Purchaser that any of the terms and conditions in this offer are or will be acceptable to the Vendor.”*

3. **Confirmation of Purchase Agreement**

The Purchase Agreement, as amended by this Amending Agreement, is hereby confirmed in all respects, including, without limitation, that time shall continue to be of the essence.

4. **Counterparts**

This Amending Agreement may be executed by the parties in separate counterparts and delivered by facsimile or electronic transmission each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same instrument.

5. **Governing Law**

This Amending Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

6. **Successors and Assigns**

This Amending Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns subject to and in accordance with the terms and conditions of the Purchase Agreement.

**[Signature page to follow]**

**SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amending Agreement") made as of the 7<sup>th</sup> day of May, 2018.

BETWEEN:

**THE CORPORATION OF THE CITY OF PICKERING**  
(the "Vendor")

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**  
(the "Purchaser")

OF THE SECOND PART

**WHEREAS** the Purchaser has delivered to the Vendor an executed agreement of purchase and sale dated March 19, 2018, as amended by amendment to agreement of purchase and sale dated April 17, 2018 (collectively and as may be further amended from time to time, the "Purchase Agreement"), pursuant to which the Purchaser has offered to purchase the Property on the terms and conditions set out therein.

**AND WHEREAS** in this Amending Agreement all capitalized terms which have been defined in the Purchase Agreement and are not otherwise defined in this Amending Agreement shall have the meanings given to them in the Purchase Agreement.

**AND WHEREAS** the Vendor and the Purchaser have mutually agreed to amend certain terms in the Purchase Agreement, as set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Amending Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. Interpretation

All references to Sections and Schedules, unless otherwise provided herein, are references to Sections and Schedules of the Purchase Agreement. In the event of any conflict or inconsistency between the Purchase Agreement and this Amending Agreement, the provisions of this Amending Agreement shall prevail. It is agreed that, as of the date hereof, the Purchase Agreement is amended by the provisions of this Amending Agreement. After giving effect to this Amending Agreement, all references to the "Agreement" in the Purchase Agreement and all other relevant documents shall refer to the Purchase Agreement, as amended by this Amending Agreement.

2. Amendment

- (a) Section 2.02 of the Purchase Agreement shall be deleted in its entirety and replaced with:

"2.02

*(a) The Purchase Price shall be calculated by multiplying the total area of the Lands in acres by a per acre price of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per acre, subject to the SWM Price Reduction. It is estimated that the area of the Lands is 50.0 acres more or less, which would result in a Purchase Price of FIVE MILLION DOLLARS (\$5,000,000.00) subject to the SWM Price Reduction. Prior to Closing the area of the Ancillary Parcel shall be conclusively determined by a reference plan to be delivered by the Vendor, in consultation with the Purchaser, not less than five (5) days prior to the Closing Date.*

*(b) The parties acknowledge that the Ancillary Parcel includes lands that show on Seaton Neighbourhood Plan 21 – Phase 1 to be required for a storm water management facility with an area of 2.94 acres (the "SWM Facility"). The Purchaser and the Vendor agree to reduce the Purchase Price of the Property by an amount equal to the area of the SWM Facility multiplied by \$50,000/acre for a product of \$147,000 (the "SWM Price Reduction")."*

- (b) The final paragraph of Section 5.02 of the Purchase Agreement shall be deleted in its entirety and replaced with:

*"The Vendor shall have thirteen (13) Business Days from receipt of the Environmental Objection to make its election under (a), (b), (c) or (d) above by notice in writing to the Purchaser and in the event the Vendor fails to make an election within said thirteen (13) Business Day period, the Vendor will be deemed to have elected option (d) above. The Purchaser shall have seven (7) days from the date of the Vendor's election or deemed election under (d) above to elect, by notice in writing to the Vendor, to terminate or complete as per paragraph (d) above and in the event the Purchaser fails to make an election within said seven (7) day period*

*the Purchaser shall be deemed to have elected to complete the Transaction without adjustment to the Purchase Price.”*

3. **Confirmation of Purchase Agreement**

The Purchase Agreement, as amended by this Amending Agreement, is hereby confirmed in all respects, including, without limitation, that time shall continue to be of the essence.

4. **Counterparts**

This Amending Agreement may be executed by the parties in separate counterparts and delivered by facsimile or electronic transmission each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same instrument.

5. **Governing Law**

This Amending Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

6. **Successors and Assigns**


This Amending Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns subject to and in accordance with the terms and conditions of the Purchase Agreement.

**[Signature page to follow]**



IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

**THE CORPORATION OF THE CITY OF PICKERING**

By:   
Name Tony Prevedel  
Title Chief Administrative Officer

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation

**KUBOTA CANADA INC.**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation

**THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amending Agreement") made as of the 27<sup>th</sup> day of August, 2018.

BETWEEN:

**THE CORPORATION OF THE CITY OF PICKERING**  
(the "Vendor")

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**  
(the "Purchaser")

OF THE SECOND PART

**WHEREAS** the Purchaser has delivered to the Vendor an executed agreement of purchase and sale dated March 19, 2018, as amended by amendments to agreement of purchase and sale dated April 17, 2018 and May 7, 2018 (collectively and as may be further amended from time to time, the "Purchase Agreement"), pursuant to which the Purchaser has offered to purchase the Property on the terms and conditions set out therein.

**AND WHEREAS** in this Amending Agreement all capitalized terms which have been defined in the Purchase Agreement and are not otherwise defined in this Amending Agreement shall have the meanings given to them in the Purchase Agreement.

**AND WHEREAS** the Vendor and the Purchaser have mutually agreed to amend certain terms in the Purchase Agreement, as set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Amending Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. **Interpretation**

All references to Sections and Schedules, unless otherwise provided herein, are references to Sections and Schedules of the Purchase Agreement. In the event of any conflict or inconsistency between the Purchase Agreement and this Amending Agreement, the provisions of this Amending Agreement shall prevail. It is agreed that, as of the date hereof, the Purchase Agreement is amended by the provisions of this Amending Agreement. After giving effect to this Amending Agreement, all references to the “**Agreement**” in the Purchase Agreement and all other relevant documents shall refer to the Purchase Agreement, as amended by this Amending Agreement.

2. **Amendment**

- (a) Section 1.01(nn) of the Purchase Agreement shall be deleted in its entirety and replaced with:

“ ***Inspection Period***” means that period of time beginning on the Execution Date and expiring at 5:00 p.m. (Toronto time) on August 31, 2018.”

3. **Confirmation of Purchase Agreement**

The Purchase Agreement, as amended by this Amending Agreement, is hereby confirmed in all respects, including, without limitation, that time shall continue to be of the essence.

4. **Counterparts**

This Amending Agreement may be executed by the parties in separate counterparts and delivered by facsimile or electronic transmission each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same instrument.

5. **Governing Law**

This Amending Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

6. **Successors and Assigns**

This Amending Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns subject to and in accordance with the terms and conditions of the Purchase Agreement.

[Signature page to follow]

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

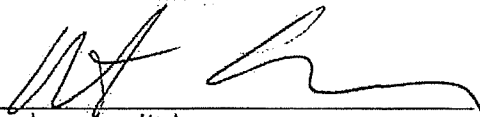
**THE CORPORATION OF THE CITY OF PICKERING**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation

**KUBOTA CANADA LTD INC.**


By:  \_\_\_\_\_  
Name Robert Hickey  
Title President

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

**THE CORPORATION OF THE CITY OF PICKERING**

By:   
Name Tony Peredel  
Title Chief Administrative Officer

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation

**KUBOTA CANADA INC.**

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation

**FOURTH AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS FOURTH AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amending Agreement") made as of the 31<sup>st</sup> day of August, 2018.

BETWEEN:

**THE CORPORATION OF THE CITY OF PICKERING**  
(the "Vendor")

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**  
(the "Purchaser")

OF THE SECOND PART

**WHEREAS** the Purchaser has delivered to the Vendor an executed agreement of purchase and sale dated March 19, 2018, as amended by amendments to agreement of purchase and sale dated April 17, 2018, May 7, 2018 and August 27, 2018 (collectively and as may be further amended from time to time, the "**Purchase Agreement**"), pursuant to which the Purchaser has offered to purchase the Property on the terms and conditions set out therein.

**AND WHEREAS** in this Amending Agreement all capitalized terms which have been defined in the Purchase Agreement and are not otherwise defined in this Amending Agreement shall have the meanings given to them in the Purchase Agreement.

**AND WHEREAS** the Vendor and the Purchaser have mutually agreed to amend certain terms in the Purchase Agreement, as set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Amending Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. **Interpretation**

All references to Sections and Schedules, unless otherwise provided herein, are references to Sections and Schedules of the Purchase Agreement. In the event of any conflict or inconsistency between the Purchase Agreement and this Amending Agreement, the provisions of this Amending Agreement shall prevail. It is agreed that, as of the date hereof, the Purchase Agreement is amended by the provisions of this Amending Agreement. After giving effect to this Amending Agreement, all references to the “**Agreement**” in the Purchase Agreement and all other relevant documents shall refer to the Purchase Agreement, as amended by this Amending Agreement.

2. **Amendment**

- (a) Section 1.01(nn) of the Purchase Agreement shall be deleted in its entirety and replaced with:

“ *“**Inspection Period**” means that period of time beginning on the Execution Date and expiring at 5:00 p.m. (Toronto time) on September 28, 2018.*”

3. **Confirmation of Purchase Agreement**

The Purchase Agreement, as amended by this Amending Agreement, is hereby confirmed in all respects, including, without limitation, that time shall continue to be of the essence.

4. **Counterparts**

This Amending Agreement may be executed by the parties in separate counterparts and delivered by facsimile or electronic transmission each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same instrument.

5. **Governing Law**

This Amending Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

6. **Successors and Assigns**

This Amending Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns subject to and in accordance with the terms and conditions of the Purchase Agreement.

[Signature page to follow]

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

**THE CORPORATION OF THE CITY OF PICKERING**

By:   
Name Tony Prevedel  
Title Chief Administrative Officer

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation

**KUBOTA CANADA INC.**

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation



**FIFTH AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS FIFTH AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this “**Amending Agreement**”) made as of the 4<sup>st</sup> day of September, 2018.

BETWEEN:

**THE CORPORATION OF THE CITY OF PICKERING**  
(the “**Vendor**”)

OF THE FIRST PART

- and -

**KUBOTA CANADA LTD.**  
(the “**Purchaser**”)

OF THE SECOND PART

**WHEREAS** the Purchaser has delivered to the Vendor an executed agreement of purchase and sale dated March 19, 2018, as amended by amendments to agreement of purchase and sale dated April 17, 2018, May 7, 2018 and August 27, 2018 and amendment by email between counsel dated August 31, 2018 (collectively and as may be further amended from time to time, the “**Purchase Agreement**”), pursuant to which the Purchaser has offered to purchase the Property on the terms and conditions set out therein.

**AND WHEREAS** in this Amending Agreement all capitalized terms which have been defined in the Purchase Agreement and are not otherwise defined in this Amending Agreement shall have the meanings given to them in the Purchase Agreement.

**AND WHEREAS** the Vendor and the Purchaser have mutually agreed to amend certain terms in the Purchase Agreement, as set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Amending Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by each of the parties to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby covenant and agree as follows:

1. **Interpretation**

All references to Sections and Schedules, unless otherwise provided herein, are references to Sections and Schedules of the Purchase Agreement. In the event of any conflict or inconsistency between the Purchase Agreement and this Amending Agreement, the provisions of this Amending Agreement shall prevail. It is agreed that, as of the date hereof, the Purchase Agreement is amended by the provisions of this Amending Agreement. After giving effect to this Amending Agreement, all references to the “**Agreement**” in the Purchase Agreement and all other relevant documents shall refer to the Purchase Agreement, as amended by this Amending Agreement.

2. **Amendment**

- (a) Section 1.01(nn) of the Purchase Agreement shall be deleted in its entirety and replaced with:

“ ***“Inspection Period” means that period of time beginning on the Execution Date and expiring at 5:00 p.m. (Toronto time) on September 28, 2018.*** ”

3. **Confirmation of Purchase Agreement**

The Purchase Agreement, as amended by this Amending Agreement, is hereby confirmed in all respects, including, without limitation, that time shall continue to be of the essence.

4. **Counterparts**

This Amending Agreement may be executed by the parties in separate counterparts and delivered by facsimile or electronic transmission each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same instrument.

5. **Governing Law**

This Amending Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

6. **Successors and Assigns**

This Amending Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns subject to and in accordance with the terms and conditions of the Purchase Agreement.

[Signature page to follow]

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

**THE CORPORATION OF THE CITY OF PICKERING**

By:   
Name Tony Prevedel  
Title Chief Administrative Officer

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation

**KUBOTA CANADA INC.**

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

I/We have authority to bind the Corporation

IN WITNESS WHEREOF the parties have executed this Amending Agreement as of the date first above written

**THE CORPORATION OF THE CITY OF PICKERING**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation

**KUBOTA CANADA LTD.**

By: Naoki Shuzenji  
Name Naoki Shuzenji  
Title VP & Treasurer

By: \_\_\_\_\_  
Name  
Title

I/We have authority to bind the Corporation