

LEASE AGREEMENT

THIS AGREEMENT made as of this day of , 2023.

BETWEEN:

THE CORPORATION OF THE TOWN OF WHITBY

(the "**Landlord**" or the "**Town**")

- and -

THE REGIONAL MUNICIPALITY OF DURHAM

(the "**Tenant**")

WHEREAS the Landlord is the registered legal owner of the land and buildings legally described as Lots 21, 22, 23 and 24, 1st Double Range, Plan H-50032, Town of Whitby being part of PIN 26502-0012 (LT) (the "**Property**"), more particularly shown on **Schedule "A"** attached hereto;

AND WHEREAS the Property includes two buildings, known municipally as 117 King Street and 312 Colborne Street West, and a public parking lot with approximately ninety-one (91) delineated spaces, including two (2) accessible spaces;

AND WHEREAS the Tenant is desirous of leasing the building known as 117 King Street, being approximately 1,731 (the "**Leased Space**"), as outlined in red on **Schedule "A"** attached hereto, plus two (2) parking spaces, on the Property;

AND WHEREAS the Tenant is desirous of leasing the Leased Space for the purpose of operating a warming centre for homeless residents (the "**Warming Centre**"), and the Landlord is agreeable to allow the Tenant to use the Leased Space as a Warming Centre, subject to terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the rents, covenants and agreements herein contained and hereby assumed, the parties for themselves and their respective successors and assigns do hereby covenant and agree with one another as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 In this Lease Agreement, the following words shall have the following meanings:

- (a) "**By-law**" means the By-law to designate the Property as being of cultural heritage value and interest registered on title to the Property as Instrument No. DR1356610 on April 27, 2015;
- (b) "**Council**" means the Town Council consisting of the Mayor and Council Members elected by the constituents of the Town of Whitby;
- (c) "**Dollars**" means Canadian Dollars;

- (d) **“Emergency”** means an unforeseen situation where immediate action must be taken to preserve public health or safety, or to re-establish services where such services are considered by the Town to be essential services;
- (e) **“Fixtures and Improvements”** means all furnishing, fixtures, equipment, improvements, installations, alterations and additions made from time to time, erected or installed by or on behalf of the Landlord on the Property;
- (f) **“Lease”** or **“Lease Agreement”** means this agreement and the terms and conditions set out herein as amended from time to time;
- (g) **“Leasehold Improvements”** means all fixtures, improvements, installations, alterations and additions made from time to time, erected or installed by or on behalf of the Tenant, at the Tenant’s sole expense, in the Leased Space; and,
- (h) **“Utilities”** means all electricity, water, natural gas, and sewer services.

2. LANDS AND PROPERTY

- 2.01 The Town represents and warrants that it is the registered owner in fee simple of the Property and has the authority to enter into this Lease.
- 2.02 The parties acknowledge that the Property is designated as being of cultural heritage value and interest as set out in the By-law.

3. OWNERSHIP OF THE PROPERTY

- 3.01 The Tenant acknowledges and agrees that:
 - (a) The Property and Leased Space, and any and all improvements thereon, existing on the Property at the commencement of the Lease, are the exclusive property of the Town;
 - (b) All right, title, interest, estate, trust and property of the Landlord shall be owned by and vest with the Landlord and be the property of the Landlord; and,
 - (c) Upon termination, cancellation or expiry of this Lease, or any agreement made in furtherance of this Lease, the parties agree that the Landlord shall not be obligated to pay any undepreciated capital and investment or improvement costs of the Property or its appurtenant works that the Tenant may have contributed to the construction or improvement of the Property.

4. USE OF THE PROPERTY

- 4.01 The Tenant shall use and occupy the Leased Space for the purposes of a Warming Centre for homeless residents (the **“Occupants”**) as set out herein.
- 4.02 The Tenant shall not do or permit to be done on the Property or in the Leased Space anything what may:

- (a) constitute a nuisance;
- (b) cause damage to the Leased Space and/or the Property;
- (c) cause injury or annoyance to the occupants of neighbouring properties;
- (d) make void or voidable any insurance upon the Property and the Leased Space; and/ or,
- (e) constitute a breach of any by-law, statute, order or regulation of any municipal, provincial or other competent authority relating to the Leased Space.

4.03 The Tenant shall equip and meet the criteria necessary to operate a Warming Centre in the Leased Space in compliance with any applicable provincial, municipal legislation, by-laws, regulations, guidelines and standards, and in compliance with the relevant authorities.

5. TERM

5.01 The term of this Lease shall be for five (5) years commencing on the 1st day of March 1, 2023 and ending on February 29, 2028.

6. OPTION TO EXTEND

6.01 Provided the Tenant is not in default of any of the terms of this Lease at the expiry of the Term, the Tenant shall have two (2) further options to renew for five (5) years each upon the same terms and conditions as contained in this Lease. In order to exercise such option, the Tenant shall give notice, in writing to the Landlord no later than ninety (90) days prior to the date of expiry of the then current Term. If no such notice is given all subsequent options to extend shall be null and void and the Lease shall terminate and be at the end of the last day of the Term or then current renewal term.

6.02 If the Tenant overholds the Property beyond the terms of this Lease or renewal, the tenancy shall continue on a month-to-month basis upon the terms and conditions further agreed upon by the Landlord and the Tenant.

7. RENT AND EXPENSES

7.01 The Tenant shall pay rent, inclusive of Utilities, to the Landlord during the Term of the Lease as follows:

- (a) For the period commencing March 1, 2023 and ending February 29, 2024, the Tenants shall pay the Landlord annual rent in the amount of Twenty-Five Thousand Dollars (\$25,000.00), payable in advance; and,
- (b) For each successive year of the Term, the Tenant shall pay to the Landlord annual rent in the amount of the immediately preceding rental period, increased by the percentage increase in the All Item Consumer Price Index published by Statistics Canada, for the Province of Ontario, based on the latest figure available on the anniversary date, compared to the immediately preceding rental period, payable in advance; and,

- (c) all sums required by the Lease, and agrees that all amounts payable by the Tenant to the Landlord or to any other party pursuant to the provisions of this Lease shall be deemed to be rent ("**Rent**" or "**Additional Rent**") whether or not specifically designated as such in this Lease.
- 7.02 The Tenant covenants and agrees to pay the following expenses related to leasing the Leased Space:
- (a) business taxes and licenses;
 - (b) property taxes, if applicable;
 - (c) all maintenance and repairs to the Leased Space, except as provided for in Section 9 herein;
 - (d) all costs associated with emergency calls and repairs made as a result of the negligence or misconduct of the Tenant or the Occupants of the Leased Space;
 - (e) insurance premiums related to insurance as specified in this Lease; and,
 - (f) harmonized sales tax, and/or any like taxes imposed by any governing authority.
- 7.03 The Tenant hereby agrees to indemnify, defend and save the Landlord harmless in respect of any liability to the Landlord in respect of the expenses payable by the Tenant as provided for herein.
- 7.04 The Landlord shall not be liable for any loss of business by the Tenant or for any injury to the Tenant, its servants, agents, employees, customers, invitees or the Occupants or for any injury or damage to the Leased Space or to any property of the Tenant or Occupants caused by any interruption or failure in the supply of utilities to the Leased Space.
- 7.05 If the Tenant fails to make any of the payments required by this Lease or perform any of its obligations pursuant to this Lease, then the Landlord may, but is not obligated to, make such payments or perform such obligations and charge the Tenant as Additional Rent. If such payments or charges comprising Additional Rent are not paid by the Tenant on demand the Landlord shall be entitled to the same remedies and may take the same steps for recovery of the unpaid payments and charges comprising Additional Rent as Rent in arrears.
- 7.06 All payments to be made by the Tenant pursuant to this Lease shall be delivered to the Landlord at the Landlord's address for service set out in Section 36 or to such other place as the Landlord may from time to time direct in writing.
- 7.07 All Rent and/or Additional Rent in arrears and all sums paid by the Landlord for expenses incurred which should have been paid by the Tenant shall bear interest from the date payment was due, or made, or expense incurred at a rate per annum equal to the prime commercial lending rate of the Landlord's bank plus two per cent (2%).

7.08 The Tenant acknowledges and agrees that the payments of Rent and Additional Rent provided for in this Lease shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of this Lease or agreed to by the Landlord in writing; and no partial payment by the Tenant which is accepted by the Landlord shall be considered as other than a partial payment on account of Rent and/or Additional Rent owing and shall be without prejudice to the Landlord's right to recover any Rent and/or Additional Rent owing.

8. LANDLORD'S EXPENSES

8.01 The Landlord covenants and agrees to pay the following expenses related to operating the Property:

- (a) Utilities;
- (b) electrical and sprinkler testing; and,
- (c) maintenance of the Property, as determined by the Landlord at its discretion.

9. MAINTENANCE AND REPAIR OF THE PROPERTY

9.01 The Landlord covenants with the Tenant that the Landlord shall be responsible for the following, either through the Landlord's own forces or through contracted services:

- (a) making any and all improvements, repairs, renovations and alterations to the exterior of the Leased Space and the Property, and all systems servicing the Leased Space (eg. HVAC), and bearing the full costs thereof unless specifically otherwise stated under the provisions of this Lease or caused as a result of the Tenant's or Occupant's negligence or misconduct;
- (b) Subject to Section 25 of this Lease, maintaining a level of security for the Property as is, in the opinion of the Landlord, reasonable in the circumstances; however, this does not constitute or represent in any way a warranty by the Landlord that the Property, the Leased Space, the Tenant's or Occupant's property will not suffer damages or loss; the Landlord shall not be responsible or liable in any way for any damages, howsoever caused or occasioned, to the Property or the chattels of any users of the Property, including the Tenant and the Occupants. The parties agree that the Landlord will not have any liability for any loss or damage suffered by the Tenant or an Occupant as a result of a security breach, including theft of its chattels, or the theft of chattels belonging to any other party that are being stored in the Leased Space or at the Property;
- (c) providing and bearing the full costs of all Utilities supplied to the Leased Space;
- (d) maintaining the lands forming the walkways and parking lot at the Property;

- (e) providing both preventative maintenance and response-generated repairs to the Property and Leased Space; and,
 - (f) providing the Tenant with a list of 24-hour emergency contact personnel who will respond when contacted in the event of an Emergency.
- 9.02 If the Tenant observes, or becomes aware of, any apparent structural defect or material damage to the Leased Space or Property by any cause, it shall immediately notify the Landlord. If any structural defect or material damage becomes known to the Tenant or reasonably should have been observed by the Tenant and the Tenant fails to notify the Landlord, the Tenant shall be liable for any costs incurred by the Landlord in repairing the defect or damage which can be shown to be directly attributable to the actions of the Tenant or the Occupants and those for whom in law the Tenant or Occupants are responsible (including failure to give the required notice) after such defect or damage became known to the Tenant or reasonably should have been observed by the Tenant.
- 9.03 If the Leased Space or Property or any of the plumbing, electrical mechanical or other services serving the Property, get out of repair or become damaged or destroyed through the negligence, carelessness or misuse of the Tenant, the Occupants, the Tenant's servants, agents or employees, or anyone permitted by the Tenant to be in the Leased Space or on the Property, the expense of the necessary repairs, replacements or alterations, including the Landlord's administration fee of fifteen percent (15%) of the expense, shall be paid by the Tenant to the Landlord as additional rent on demand.
- 9.04 The Landlord shall provide at the Leased Space a preventative maintenance and a response program, as set out in **Schedule "B"** of this Lease.
- 9.05 The Landlord shall have the right to use, install, maintain and repair pipes, wires, ducts and other installations in, under or through the walls, ceilings and floors of the Leased Space for or in connection with the supply of any services or Utilities to the Property or to any part of the Leased Space and the right to do such work in the Leased Space as the Landlord may deem necessary to preserve or protect the Property or the Leased Space provided that the Landlord shall effect such work as expeditiously as reasonably possible and so as to cause as little disruption to the Tenant's business as reasonably possible in the circumstances. The Landlord shall be entitled to enter or authorize any other person to enter the Leased Space or Property for these purposes, on giving reasonable notice to the Tenant except in the case of an Emergency, then the Landlord may, without notice, enter the Leased Space for the purpose of performing the work.
- 9.06 The Tenant shall be responsible for the maintenance and repair of all Leasehold Improvements and the interior of the Leased Space.

10. COVENANTS OF THE TENANT

10.01 The Tenant covenants with the Landlord:

- (a) to observe and perform all the covenants and obligations of the Tenant under this Lease;

- (b) to negotiate in good faith with the Landlord for timely relocation of its chattels and furnishings where such relocation is necessary for the purpose of safeguarding its chattels and furnishings due to any maintenance work to be carried out by the Landlord. It shall be the sole responsibility of the Tenant to make arrangements to move its chattels and furnishings and the Landlord will have no responsibility or liability for any loss, damage or destruction to any chattels or furnishings stored in or on the Property that may be suffered by the Tenant or any other party if the Tenant fails to relocate its chattels and furnishings in accordance with this Section;
- (c) to ensure all waste is removed from the Leased Space and Property in a timely manner;
- (d) to not interfere with the works of any external maintenance staff provided by the Landlord;
- (e) to maintain and repair its own Leasehold Improvements and chattels;
- (f) to refrain from making any changes in surfacing or grade or landscaping or hardscaping at or on the Property without the written consent of the Landlord;
- (g) to keep the Leased Space and Property in a clean and well-ordered condition, and not to permit any rubbish, refuse, debris or other objectionable material to be stored, or to accumulate in the Leased Space or on the Property, all to the satisfaction of the Landlord;
- (h) not to erect, paint, display or affix any signs, buildings or other structure on the Property without the written consent of the Landlord and other applicable approvals as set out in this Lease, which consent may be withheld;
- (i) not to store flammable or explosive substances in the Leased Space or on the Property;
- (j) not to fasten any fixtures or equipment permanently to the walls or floors of the Property without the approval of the Landlord;
- (k) to provide the Landlord with a list of 24-hour emergency contact personnel who will respond when contacted in the event of an Emergency;
- (l) to accept the Leased Space in the condition existing at the effective date of this Lease on an as-is basis; and,
- (m) to leave the Property in good repair at the end of the Term or earlier termination of this Lease.

11. COVENANTS OF THE LANDLORD

11.01 The Landlord warrants and covenants with the Tenant as follows:

- (a) subject to the Landlord's rights under this Lease and provided that the Tenant pays all rent, additional rent and/or expenses under this Lease and performs all of the Tenant's covenants contained in this Lease, the Tenant shall have quiet enjoyment of the Property during the term of this Lease without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord;
- (b) to observe and perform all the covenants and obligations of the Landlord under this Lease; and
- (c) to at all times to permit free, uninterrupted and unobstructed rights of ingress to and egress from the Property to be enjoyed by the Tenant, its servants, workers, Invitees, employees, and the Occupants subject to the provisions contained herein.

12. CONFIDENTIAL INFORMATION

12.01 The parties acknowledges that, during the Term of this Lease, each party may disclose to the other party, or the other party may otherwise obtain as a result of this Lease, confidential information, including without limitation, information of or relating to a party's finances, business, purchasing information, mailing lists, tenant identification and related information, employees or other information regarding or relating to the Landlord or the Tenant and their undertakings (collectively, "**Confidential Information**"). The parties agree to keep confidential and not to disclose or communicate directly or indirectly to any third party during the Term of this Lease or thereafter, any such Confidential Information and to cause its affiliates, employees, agents and subcontractors to comply in all respects with this provision. Each party shall indemnify, defend, and hold harmless the other party from and against any and all claims, proceedings, actions, damages, costs, expenses, losses, obligations and liabilities whatsoever arising out of or relating to a breach of this provision by themselves, their affiliates, employees, agents or subcontractors.

12.02 Each party agrees not to disclose or use any Confidential Information that the other party cannot or may not wish to disclose or use under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended ("**MFIPPA**") or successor thereto. Each party understands and agrees that this Lease, and any materials or information provided to each other through the performance of this Lease may be subject to disclosure by either party pursuant to MFIPPA, or otherwise.

12.03 This Section 12 shall survive the termination of this Lease.

13. ASSIGNMENT AND SUB-LEASING

- 13.01 The Tenant shall not assign, set over, transfer, sub-let or sub-lease, hypothecate, encumber or in any way deal with all or part of the Leased Space or Property to anyone for or during the whole or any part of the Term without the written consent first being obtained from the Landlord and such consent may be unreasonably withheld, notwithstanding any statutory or other provision to the contrary. The Tenant will pay the Landlord's reasonable costs for reviewing any request for consent hereunder.
- 13.02 A change in the corporate structure of the Tenant that results in a change in control of the Tenant or change of the Tenant from a non-share capital corporation to a share capital corporation shall be deemed to be an assignment of this Lease and all of the Landlord's remedies in the event of a default of this Lease shall apply. The Tenant shall give the Landlord access to its pertinent corporate records, from time to time, on three (3) days' notice, in order to determine whether a change in control or corporate structure has taken place.

14. PARKING

- 14.01 The Tenant shall have use of two (2) parking spaces in the public parking lot adjacent to the Leased Space for the Term of the Lease.
- 14.02 The Tenant has the option to lease up to five (5) additional spaces at an additional cost of \$100.00 per month, per parking space.

15. HST

- 15.01 Unless otherwise confirmed, all amounts set out in this Lease are subject to Harmonized Sales Tax ("**HST**"). The Tenant will submit to the Landlord, at the same time as the amount to which HST applies are payable, the full amount of all HST, with the intent that the Landlord be fully indemnified in respect of all HST payable or collectible by the Landlord. Despite anything else in this Lease, HST will not be considered to be consideration for the rental of space or the provision of any service by the Landlord under this Lease but will be considered to be rent and the Landlord will have all of the same remedies for and rights of recovery with respect to such amounts as it has for non- payment of rent under this Lease or at law.

16. DATA AND TELECOMMUNICATIONS

- 16.01 The Tenant shall be responsible for and shall cover all costs associated with internet, data and telecommunications services in the Leased Space to support its activities. This includes all hardware, software and contracted service provision, including, but not limited to: telecommunication services; internet services; wifi; personal computers; servers; switching equipment; receivers and transmission equipment; multi-media and display equipment; network or internet traffic encryption; and all security and threat protection services such as antivirus, antimalware, antispam, and firewalls.

16.02 The Landlord owns and is solely responsible for the costs and expenses of the existing telecommunications and data network cabling presently installed in the Leased Space on the Property and the Tenant shall not adjust, modify or remove this equipment without approval by the Landlord.

16.03 The Tenant agrees that any proposed new installations or changes of data or telecommunications cabling equipment is subject to the written approval of the Town at its sole and absolute discretion.

16.04 The Tenant agrees that all cabling and hardware installation work for the data and telecommunications services must be performed by qualified and licensed personnel, approved in writing in advance of such installation work by the Landlord.

17. SIGNAGE

17.01 The Tenant shall not paint, affix, display or cause to be painted, affixed or displayed, any sign, picture, advertisement, notice, lettering or direction on any part of the exterior of the Leased Space or on the Property without first obtaining the written approval of the Landlord, which approval shall not be unreasonably withheld. Such signage is subject to compliance with the Landlord's Permanent and Temporary Sign By-laws (the "**Sign By-laws**"), sign permit requirements and the heritage designation applicable to the Property. The Landlord's signage, to be placed on the exterior of the Property, will be the responsibility of the Landlord to erect, and done at the sole cost of the Landlord. If the Tenant affixes signs without the Landlord's consent and the Landlord objects to any such item being so painted, affixed or displayed, the Tenant shall immediately remove such item at the Tenant's expense, failing which the Tenant agrees that the Landlord may, without liability on the Landlord's part and without notice to the Tenant, enter onto the Property and remove such item at the Tenant's expense.

18. WASTE

18.01 The Tenant shall not do or suffer any waste or damage, disfiguration or injury to the Leased Space and Property or the fixtures and equipment in or serving the Property. The Tenant will not bring into the Leased Space anything that might cause damage to or overload the floors, except with the express written consent of the Landlord and at its own expense make whatever changes are necessary to comply with the reasonable and lawful requirements of the Landlord's insurance underwriters and governmental authorities having jurisdiction. No part of the Leased Space or Property shall be used for any dangerous, noxious or offensive trade or business. The Tenant shall not do anything or permit anything to be brought into the Leased Space or onto the Property which the Landlord may reasonably deem to be a nuisance. The Tenant shall take every reasonable precaution to protect the Leased Space and Property from danger of fire, water damage or the elements. The Tenant shall not allow any ashes, refuse, garbage or other loose, objectionable material to accumulate in, on or about the Leased Space or Property and will at all times keep them in a clean and wholesome condition. The Tenant shall not carry on any business or operation or permit anything to be done in the Leased Space or on the Property which contravenes

any provision of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (“**EPA**”) its amending or successor legislation, and shall not discharge any pollutant or contaminant into the natural environment, as those terms are defined in the EPA.

- 18.02 The Tenant shall be responsible for the removal and disposal of any and all waste from the Leased Space and Property.
- 18.03 The Tenant shall not generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the Leased Space and Property any Hazardous Substances. As used herein, the term “**Hazardous Substances**” shall mean any flammable, explosive, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any materials containing asbestos, or any other hazardous or toxic substance or material as defined by any environmental law, rule or regulation. It is understood and agreed that the provisions contained in this Section shall be applicable notwithstanding the fact that any substance shall not be deemed to be a Hazardous Substance at the time of its use by the Tenant but shall thereafter be deemed to be a Hazardous Substance.
- 18.04 The Tenant shall indemnify and hold harmless the Landlord from and against any and all liabilities (including sums paid in settlement of claims), damages, claims, losses, judgments, causes of action, costs and expenses (including the reasonable fees and expenses of counsel and the fees of consultants and experts selected by the Landlord) which may be incurred by the Landlord or threatened against the Landlord relating to or arising out of any breach by the Tenant of the obligations imposed upon it under this Section. Without limiting the generality of the foregoing, the indemnification provided for in this Section shall specifically cover costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any governmental agency because of the presence or suspected presence of Hazardous Substances in the Leased Space, the soil under the Leased Space or the ground water or soil vapour on or under the land upon which the Leased Space is erected.

19. **INSURANCE**

- 19.01 **Tenant’s Insurance:** The Tenant will maintain the insurance described below throughout the term of this lease, and any renewal thereof, with insurers licensed and approved to operate in the province of Ontario:
- (a) "all risks, including earthquake and flood, property insurance in an amount equal to full replacement cost, insuring (a) all property owned by the Tenant or for which it is responsible, and located within the leased Premises, including but not limited to, fittings, fixtures, additions, alterations, partitions, and all other Landlord's and Tenant's improvements, and (b) the Tenant's furniture, inventory, trade fixtures and equipment; and,
 - (b) Public liability insurance in a "commercial general insurance" format to include coverage against bodily injury, including death, and property

damage. Such insurance is to name the tenant as insured and the landlord as additional insured;

- (i) include extensions of coverage such as personal injury, contractual liability, premises liability, contingent employers liability, owners' and contractors' protective liability, products and completed operations, property damage, cross liability and severability of interests clause, liquor liability, breach of condition and non-owned automobile insurance; and,
 - (ii) cover the Tenant's use of the Premises and Common Areas, if any, including all of the Tenant's and their client's activities and operations within all areas of the facility and any other Person performing work on behalf of the Tenant, and those for whom the Tenant is responsible; and,
 - (iii) be written on an "occurrence" form with inclusive limits of liability no less than \$5,000,000 per occurrence; and,
- (c) Include "broad form, tenants legal liability" insurance with limits of liability not less than \$250,000 per occurrence; and,
 - (d) Include any other form of insurance that the Landlord, requires from time to time, in form, in sums and for perils or risks insured against which a prudent Tenant would insure and shall name the Landlord as an additional insured.

19.02 All insurance carried by the Tenant shall contain a waiver of any right of subrogation which the Tenant's insurers might have against the Landlord and against those for whom the Landlord is in law responsible whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom the Landlord is in law responsible.

19.03 All policies will:

- (a) be placed with Insurers acceptable to the Landlord, in a form acceptable to the Landlord as set out in **Schedule "C"** attached hereto; and
- (b) be the Primary insurance and not excess or contributing with any other insurance available to the Landlord; and
- (c) will not be invalidated in respect of the interest of the Landlord, by reason of any breach or violation of warranty, representations, declarations or conditions contained in the policies; and
- (d) will contain a condition by Insurers to notify the Landlord in writing not less than 60 days before any cancellation or material change in policy conditions is effected.

19.04 Tenant will deliver Certificates of Insurance to the Landlord duly executed by the Tenant's Insurers or their duly authorized representatives evidencing that all of the insurance described above is in full force and effect. Such certificates must

authenticate fully the limits and special conditions of such insurance as required by this Section. If required by the Landlord, the Tenant will deliver Certified copies of all policies as soon as possible. No review or approval of any insurance certificate or policy by the Landlord derogates from or diminishes the Landlord's rights under this Agreement.

19.05 Landlord's Insurance: The Landlord shall carry insurance throughout the term of this Lease with such deductibles and in such amounts as the Landlord shall deem reasonable, expedient and beneficial, including but not limited to the following:

- (a) "all risk" including flood and earthquake property insurance covering all property owned by the Landlord including the building, the common facilities, the Property and including all Landlord's improvements and betterment's, in an amount not less than the replacement cost thereof;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits equal to the replacement value, covering against mechanical breakdown, explosion, rupture or failure of boilers, pressure vessels, heating, ventilating and air conditioning equipment owned by the Landlord;
- (c) commercial general liability insurance with respect to the Landlord's ownership and operation of the building, covering third party liability and property damage; and,
- (d) insurance against any other type of loss that the Landlord may require or deem advisable.

19.06 Subsection 19.05 does not relieve the Tenant from liability arising from or contributing to by its negligence or its misconduct nor is any insurable interest conferred upon the Tenant under any insurance policy carried by the Landlord, and the Tenant has no right to receive proceeds from any of those policies.

19.07 If the Tenant desires to receive indemnity by way of insurance for any property of the Tenant or for leasehold improvements, the Tenant shall insure the same for his own account and cannot look to the Landlord for reimbursement or recovery in the event of loss or damage from any cause.

19.08 Premium Increases and Cancellation - The Tenant shall promptly comply with all requirements of the Landlord's insurance underwriters regarding use and occupancy of the Property, and the Tenant shall not do or omit to do, or permit to be done or omitted anything that shall cause any insurance premium with respect to the Building or any part thereof to be so increased or cause any policy of insurance to be cancelled. If any insurance premium shall be so increased for such a cause the Tenant shall pay to the Landlord forthwith upon demand the amount of such increase. If any insurer threatens to cancel, cancels or refuses to renew any insurance policy carried by the Landlord by reason of the use or occupancy of the Property by the Tenant for reasons not permitted by this Lease, the Tenant shall forthwith rectify or remedy such situation within the time limit required by the insurer upon being requested to do so in writing by the Landlord,

and if the Tenant shall fail to do so the Landlord may at its option, without prejudice to any other rights it may have, terminate this Lease by notice to the Tenant.

19.09 Limitations of Landlord Use - The Landlord shall not be liable for death or injury of any nature whatsoever that may be sustained by the Tenant or any employee, agent or customer of the Tenant or any other person arising from any occurrence in, upon, at or relating to the Property or elsewhere. Without limiting the generality of the foregoing, the Landlord shall not be liable for any damage or damages of any nature whatsoever to persons or property on the Property, caused by explosion, fire, theft, strike, breakage, sprinkler, drainage, or snow, rain, or ice removal, by the interruption of any public utility or service, by steam, gas, water, rain, snow, or other substances leaking, issuing or flowing into any part of the Property, or by anything done or omitted to be done by any Tenant, occupant or person in the building.

19.10 In addition, the Landlord shall not be liable for any loss or damage for which the Tenant is required to insure pursuant to Subsection 19.01 hereof, nor for any loss or damage resulting from construction, alteration or repair or use of the Leased Space by the Occupants; provided always that the Landlord shall not knowingly or persistently be in default of any of its obligations under this Lease.

20. INDEMNIFICATION

20.01 The Tenant shall indemnify, defend and save harmless the Landlord, its elected and appointed officials, employees and agents, from and against all losses, claims, damages, actions, causes of action, costs or expenses (including but not limited to legal fees, disbursements and taxes on a solicitor client basis) that the Landlord may sustain, incur, suffer by reason of or arising from or out of this Lease, or any occurrence in, upon or at the Property, or the occupancy or use by the Tenant or any of its invitees of the Leased Space, or any part thereof, including any breach, violation or non-performance by the Tenant, or the Occupants, of any covenant, term or provisions of this Lease, or by reason of any injury or death resulting from, occasioned to or suffered by any person or persons or any property by reason of any act, neglect or default on the part of the Tenant or any of its agents, employees, invitees or the Occupants.

20.02 Notwithstanding the foregoing, the Landlord expressly acknowledges that the Tenant's indemnity shall not apply, and the Landlord shall be responsible for, any damage to the Property and/or any injury to any person or persons (including death resulting from the injury) caused by the act, neglect or default on the part of the Landlord or anyone for whom the Landlord is responsible at law or arising out of the Landlord's breach or non-performance with a covenant, term or provisions of this Lease (and the Landlord covenants to indemnify and save harmless the Tenant from all claims, actions, costs and loss of every nature arising with respect thereto, including all reasonable costs, reasonable legal fees, expenses and liabilities which the Tenant may incur with respect to any claim made against it).

20.03 Notwithstanding any other provisions of this Lease, this indemnification shall survive termination of the Lease, with respect to any matter referred to in this Section which occurs during the Term.

21. DAMAGE TO THE PROPERTY

21.01 If, during the Term, the Leased Space is partially or totally destroyed by fire or such other perils as may from time to time be included in the all-risk property insurance, then this Lease shall cease from the date of such damage or destruction and the Tenant shall immediately surrender the Leased Space and all of its interest therein to the Landlord. Determination of whether the Leased Space is partially or totally destroyed shall be at the sole discretion of the Landlord.

22. LIENS AND ENCUMBRANCES

22.01 The Tenant shall indemnify and hold the Landlord harmless from and against any liability, claim, damages or expenses (including legal expenses) arising from any claim made against the Property or the Tenant for construction liens related to work done by or on behalf of the Tenant and all work which the Tenant is obliged to do and any such liability, claims, damages or expenses incurred by the Landlord shall be paid by the Tenant to the Landlord on demand. The Tenant shall cause all registrations of claims for construction liens and/or certificates of action under the *Construction Act*, R.S.O. 1990, c.C.30, as amended, for any work done by or on behalf of the Tenant, and all work which the Tenant is obliged to do, to be discharged or vacated, as the case may be, within fifteen (15) days of such registration or within five (5) days after notice from the Landlord, failing which the Landlord, in addition to any other rights or remedies it may have, may, but shall not be obligated to, discharge such liens and/or certificates by payment to the claimant, make payment into court, or otherwise; and, any such payments and the Landlord's legal costs (on a substantial indemnity basis) and other costs of obtaining and registering such discharges shall be repaid by the Tenant to the Landlord on demand.

23. SMOKE-FREE ENVIRONMENT

23.01 The Tenant acknowledges that the Leased Space is designated as a smoke-free, vape-free facility in accordance with local and regional by-laws, and agrees that its members, agents, employees, guests, invitees and Occupants shall adhere to all provisions regarding no smoking in and at Leased Space, failing which the Landlord may take any and all actions it deems necessary to ensure compliance with such no-smoking provisions.

24. FIRE SAFETY

24.01 The Landlord will maintain a complete, current and approved fire safety plan for the Property, and will provide a hard copy and digital copy of the plan to the Tenant for implementation and compliance. The Tenant agrees to comply with the fire safety plan and all applicable laws now or hereafter in force concerning fire safety.

24.02 The Landlord may conduct one (1) fire drill per year which shall be coordinated with the Tenant.

25. SECURITY

25.01 The Landlord shall be fully responsible for any and all costs associated with the provision of the monitored motion detection security system, including any installation, repair, ongoing operation and maintenance of the said security system.

25.02 The Tenant shall maintain a listing of key holders and will provide the Landlord with a currently listing on a regular basis while this Lease is in force and within twenty-four (24) hours of the occurrence of any changes to this list.

26. COMPLIANCE WITH APPLICABLE LAW

26.01 The Tenant agrees to comply at its own expense with all applicable laws now or hereafter in force of any governmental or quasi-governmental body (including federal, provincial and municipal bodies) or regulations, requirements, by-laws or orders pertaining to the management, operation and use of the Leased Space, the condition of the Leasehold Improvements, fixtures, furniture and equipment installed therein, and the making by the Town of any repairs, changes or improvements therein on the Tenant's behalf.

26.02 The Tenant agrees to ensure that all of the Tenant's staff comply with any and all applicable laws, statutes, regulations, notices and orders, whether federal, provincial, municipal or otherwise, including but not limited to Regional Health Department clearances, and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time, the Workplace Hazardous Material Information System requirements, and Health Department permits at any time in effect during the currency of this Lease. Any costs incurred or required to meet compliance with any and all of the said applicable laws, statutes, regulations, notices and orders, shall be at the sole expense of the Tenant.

26.03 The Tenant and Occupants shall use and occupy the Leased Space in a safe, careful and prudent manner so as not to contravene any law.

26.04 If, due to the Tenant's use of the Leased Space, Leasehold Improvements are necessary to comply with any applicable law or the requirement of any insurance carrier, the Landlord will at its sole discretion determine if such use or uses should continue, and consent to the exercise of such discretion may be unreasonably withheld. If the Landlord consents to such Leasehold Improvements to allow the use or uses to continue, the Leasehold Improvements shall be requisitioned and completed at the sole discretion of the Landlord and at the sole cost of the Tenant.

27. DAMAGE OR DESTRUCTION

27.01 In the event of damage to or destruction of the Leased Space, the Tenant shall notify the Landlord immediately of such damage or destruction occurring, and to the extent that the Leased Space or Property or any substantial part thereof is

rendered not reasonably capable of use by the Tenant for the purposes described in Section 4 of this Lease, then either the Tenant or the Landlord may terminate this Lease on written notice given to the other within thirty (30) days after the occurrence of such damage or destruction. In the event that the parties choose to continue with the Lease, the certificate of the Landlord's professional, licensed architect or engineer as to the length of time required while using reasonable diligence to rebuild or restore the Leased Space shall be conclusive and binding upon the Landlord and the Tenant.

27.02 The Tenant shall be responsible for any damage, destruction or injury caused to the Leased Space or Property as a result of the activities of the Tenant, its officers, servants, employees, agents, guests, invitees or the Occupants and shall pay all costs and expenses necessary to bring the Leased Space and/or Property back to the condition the Leased Space and/or Property was in before the damage, destruction or injury took place.

27.03 The Tenant shall immediately make payment to the Landlord for the cost of any repairs or replacement items required for the safe operation of the Leased Space or Property resulting from any damage, destruction or injury caused by the Tenant's use, including by its officers, servants, employees, agents, guests, invitees or the Occupants.

27.04 The Landlord shall invoice the Tenant for the costs of any repairs or replacement items required to bring the Leased Space or Property back to the condition the Leased Space or Property was in before the damage, destruction or injury. In default of payment thereof for more than thirty (30) days from the date of the invoice, the Tenant shall be charged interest at a rate prescribed in the Town's Fees By-law, as periodically amended, and such fees shall be due and payable forthwith.

27.05 If the Tenant fails to make payment to the Landlord for the repairs or replacement items as set out herein, the Landlord reserves the right to terminate this Lease immediately and without notice and may commence action to collect the unpaid account from the Tenant.

28. LEASEHOLD IMPROVEMENTS

28.01 The Tenant agrees to accept the Leased Space in an "as-is" condition.

28.02 The Tenant, at its own cost and expense, shall complete or cause the completion of all Leasehold Improvements required to convert the Leased Space from a commercial use space to a space suitable for use as a Warming Centre.

28.03 The Tenant will not make, install or erect in or to the Leased Space any Leasehold Improvements without first submitting the drawings and specifications to the Landlord and obtaining the Landlord's prior written consent in each instance, which consent may be unreasonably withheld. Furthermore, the Tenant must obtain the Landlord's prior written consent to any change or changes in such drawings or specifications, and shall pay, on demand, the cost to the Landlord of having its consultants approve such changes prior to proceeding with any work based on such drawings or specification.

28.04 Such work may be performed by contractors engaged by the Tenant for the initial installation of Leasehold Improvements, but in each case under written contract, approved in writing by the Landlord and subject to all reasonable conditions which the Landlord may impose.

28.05 All work at any time performed by the Tenant, or its contractors, with respect to the Leasehold Improvements shall:

- (a) be done as expeditiously as possible, in a good and workmanlike manner and with first- class new materials;
- (b) be done in compliance with such reasonable rules and regulations as the Landlord or its agents or contractors may make;
- (c) conform to all building and heritage by-laws and shall conform to all federal, provincial and municipal rules and regulations, if any, then in force affecting the Leased Space and the Property;
- (d) be done in such manner as will not interfere unreasonably with work being done by the Landlord upon any other portion of the Property;
- (e) be subject to the reasonable supervision of the Landlord or its agents or contractors;
- (f) be done only by persons whose labour union affiliations are acceptable to the unions of which the employees of the Landlord, its contractors or subcontractors are members;
- (g) be done at the risk of the Tenant;
- (h) be done in accordance with the applicable requirements of all regulatory authorities having jurisdiction with respect thereto; and,
- (i) be done only by contractors approved by the Landlord.

28.06 The Tenant shall not install or use any electrical or other equipment or electrical arrangement which may overload the electrical, mechanical, plumbing or other service facilities without the prior written consent of the Landlord. The Tenant will pay for any costs or expenses in respect of the Leased Space resulting from use of equipment necessitating dedicated circuitry or specialized power equipment. In this regard, the Tenant at its own expense will make any changes to the electrical and other service facilities necessary to comply with the reasonable and lawful requirements of the Landlord's insurance underwriters and governmental authorities having jurisdiction. The Tenant shall make no changes to the electrical, mechanical, plumbing and other service facilities without the Landlord's prior written approval of the plans and specifications for the changes, which may be unreasonably withheld.

28.07 Notwithstanding anything in this Lease, the Landlord shall be under no obligation to repair or maintain the Tenant's Leasehold Improvements.

28.08 Upon termination or expiration of this Lease, the Tenant shall, at its own expense and risk, remove all Leasehold Improvements and restore the Leased Space as nearly as possible to the condition and use existing prior to the execution of this Lease, except for normal wear and tear, to the satisfaction of the Landlord.

28.09 If the Tenant fails to remove the Leasehold Improvements within ninety (90) days of the termination or expiration of this Lease, the Landlord may restore the Leased Space at the risk of the Tenant and all costs and expenses of such removal or restoration shall be paid by the Tenant upon demand of the Landlord.

29. ACTS OF DEFAULT AND LANDLORD'S REMEDIES

29.01 An "Act of Default" has occurred when:

- (a) the Tenant has failed to pay Rent for a period of fifteen (15) consecutive days;
- (b) the Tenant has breached its covenants or failed to perform any of its obligations under this lease; or
 - (i) the Landlord has given notice specifying the nature of the default and the steps required to correct it; and,
 - (ii) the Tenant has failed to correct the default as required by the notice within a reasonable time or the time indicated on the notice, taking into account the nature and effect of the Act of Default;
- (c) the Tenant has:
 - (i) become bankrupt or insolvent or made an assignment for the benefit of Creditors; or,
 - (ii) had its property seized or attached in satisfaction of a judgment; or,
 - (iii) had a receiver appointed; or,
 - (iv) subject to the provisions of Section 22 committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Landlord's property; or,
 - (v) taken action if the Tenant is a corporation, with a view to winding up, dissolution or liquidation; or,
 - (vi) failed to conduct its business in a professional and businesslike manner so as to have a demonstrably negative impact on the Landlord's municipal corporate image;
- (d) any insurance policy is cancelled or not renewed by reason of the use or occupation of the Leased Space, or by reason of non-payment of premiums;
- (e) the Leased Space:

- (i) become vacant or remain unoccupied for a period of thirty (30) consecutive days; or,
- (ii) are used by any other person or persons except the Tenant, their employees, agents, contractors, and the Occupants;
- (iii) are used for any other purpose than as provided for in this Lease without the written consent of Landlord.

29.02 When an Act of Default on the part of the Tenant has occurred:

- (a) the current month's Rent together with the Rent for the remaining months of the Term will become due and payable immediately; and,
- (b) the Landlord shall have the right to terminate this lease and to re-enter the Leased Space and deal with it as it may choose.

29.03 If, when an Act of Default has occurred, the Landlord chooses not to terminate the lease and re-enter the Leased Space, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenant and to charge the costs of such rectification to the Tenant and to recover the costs as Rent.

29.04 If, when an Act of Default has occurred, the Landlord chooses to waive its right to exercise the remedies available to it under this lease or a law, the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent its exercising its remedies with respect to a subsequent Act of Default. No covenant, term, or condition of this lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

30. CONTROL OF THE PROPERTY BY THE LANDLORD

30.01 The Leased Space and Property are at all times subject to the exclusive control and management of the Landlord. The Landlord shall operate and maintain the Property in such manner as the Landlord determines from time to time, and in a good and reputable manner as would a prudent landlord of a similar development having regard to size, age and location.

- (a) Without limiting the generality of the foregoing, the Landlord may, through its control, management and operation of the Leased Space and Property:
 - (i) construct, maintain and operate lighting facilities and heating, ventilating and air-conditioning systems;
 - (ii) close all or any portion of the Property to such extent as may be necessary to prevent a dedication of, or the accrual of any rights in, the Property to any person or the public;
 - (iii) grant, modify and terminate easements and other agreements pertaining to the use and maintenance of all or any part of the Property;

- (iv) obstruct or close off all or any part of the Property for the purpose of maintenance, repair or construction;
- (v) designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out;
- (vi) designate and specify the kinds of containers to be used for garbage and refuse and the manner and the times and places at which they are to be placed for collection and the manner in which recyclable and non-recyclable waste is to be sorted, stored and disposed of. If the Landlord, for the more efficient and proper operation of the Property, provides or designates a commercial service for the pickup, storage and disposal of refuse, garbage and waste (whether recyclable or non-recyclable) instead of or in addition to the service provided by the municipality, the Tenant shall use same;
- (vii) from time to time, change the area, level, location, arrangement or use of the Property or any part thereof;
- (viii) construct other structures or improvements in the Property and make alterations, additions, subtractions or re-arrangements of or to any of them, build additional storeys on the Lands, and construct additional buildings or facilities adjoining or near the building on the Property; and
- (ix) do and perform such other acts in and to the Property as, in the use of good business judgment, the Landlord determines to be advisable for the more efficient and proper operation of the building on the Property.

30.02 The Landlord covenants to be responsible for the following:

- (a) all major building components of the Property, including but not limited to routine maintenance, repairs and/or replacement therefore including repairs to all heating systems and the air conditioning system and the testing and repair of the sprinkler systems.
- (b) structural repairs to the Leased Property or injury to the Leased Property caused by or resulting from structural defects or structural weakness, but this exception does not excuse the Tenant from liability for repair of structural defects or structural weakness caused by or resulting from the act or omission, whether negligent or otherwise, of the Tenant, its officers, agents, servants, employees, contractors, Occupants or those for whom the Tenant is in law responsible;
- (c) damage or injury caused by or resulting from any act, default or negligence of the Landlord, its officers, agents, servants, employees or contractors or those for whom the Landlord is in law responsible; and

- (d) reasonable wear and tear, damage by fire, lightning and tempest or any peril or hazard against which the Landlord is or ought to have been insured, or due to Landlord's negligence, or due to repair to inherent structural defects in the Leased Property not caused or contributed to by Tenant.

31. SUBORDINATION AND POSTPONEMENT

- 31.01 This Lease and all the rights of the Tenant under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements of which the Property form part, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing of refinancing, including extensions or renewals, of the Landlord's interest in the Property.
- 31.02 Upon the request of the Landlord the Tenant will execute any form required to subordinate this Lease and the Tenant's rights to any such charge, and will, if required, attorn to the holder of the charge. If the Tenant, within thirty (30) days after request, fails to execute and deliver the instruments to give effect to the foregoing, the Tenant irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver any such instruments in the name of the Tenant.
- 31.03 No subordination by the Tenant shall have the effect of permitting the holder of any charge to disturb the occupation and possession of the Property by the Tenant as long as the Tenant performs his obligations under this Lease.

32. REMEDIES CUMULATIVE

- 32.01 The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by a provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

33. WAIVER

- 33.01 The extent to which the Landlord overlooks or excuses a default by the Tenant of any obligation hereunder shall not operate as a waiver of such obligation in respect of any continuing or subsequent default, and no waiver shall be effective unless expressed in writing. The acceptance of any amounts payable to the Landlord from the Tenant or any other entity will not be considered to be a waiver of a breach by the Tenant of its obligations hereunder regardless of the knowledge of the Landlord of the breach at the time of acceptance of any amounts payable.

34. ENTRY BY THE LANDLORD

34.01 Notwithstanding any other provisions of this Lease, the Landlord may enter the Property without notice to the Tenant at all reasonable times during agreed-upon regular operating hours for the purpose of inspecting and maintaining the Property and for any such other purpose as the Landlord may consider necessary for the protection and maintenance of its interest under this Lease and to perform any such duties detailed in the Lease, but always provided that the Landlord shall not unreasonably interfere with the normal business activities and operations of the Warming Centre. The parties agree that in the event of an Emergency, the Landlord may enter the Property without notice to the Tenant at any time. If the Tenant or its representatives are not present to open the Property at any time when, due to Emergency, entry is necessary, the Landlord or its agent may forcibly enter the Property, without rendering the Landlord or its agent liable, and without affecting the Tenant's obligations under this Lease.

35. TERMINATION

35.01 This Lease may be terminated by:

- (a) the Landlord or the Tenant for any reason whatsoever, without cause and without any liability, cost or penalty, upon six (6) months written notice to the other party; or,
- (b) the Landlord, upon sixty (60) days written notice where the Tenant is in breach of any of the Terms of this Lease, and fails to rectify such breach within thirty (30) days of being notified of such breach.

35.02 Upon termination of this Lease, the Tenant at its own risk and sole expense, covenants and agrees to remove from the Property within ten (10) calendar days, any chattels belonging to it, with all damage, if any, caused by such removal made good by the Tenant, and to leave the Property in a neat and clean condition and free of all waste material, debris and rubbish, all to the Landlord's satisfaction.

35.03 Any goods, chattels, fixtures, inventory, equipment and other property of the Tenant not removed from the Property within ten (10) days from the date of expiry of the Term or other termination of this Lease, shall be deemed to have been abandoned by the Tenant and the Landlord may remove and dispose of them (by private or public sale), destroy them, retain them or convey them to a new tenant or otherwise deal with them in any manner whatsoever without compensation to the Tenant, and the Landlord may invoice the Tenant for all costs associated with same.

36. NOTICE

36.01 Any notice required or permitted to be given by one party to the other pursuant to the terms of this Lease may be given

To the Landlord at:

575 Rossland Road East
Whitby, Ontario L1N 2M8
Attention: Town Clerk
Facsimile: 905-686-7005
Email: clerk@whitby.ca

To the Tenant at:

605 Rossland Road East
Whitby, Ontario L1N 6A3
Attention: Regional Clerk
Facsimile: 905-668-9963
Email: clerks@durham.ca

36.02 The above addresses may be changed at any time by giving ten (10) days written notice.

36.03 Any notice given by one party to the other in accordance with the provision of this Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or seventy-two (72) hours after mailing if the notice is mailed or on the date of sending of a facsimile or email.

37. DISPUTE RESOLUTION

37.01 In the event of a dispute between the parties as to any matter arising from this Lease, the parties may meet to discuss and attempt to resolve the dispute. In the event that the parties are unable to resolve the dispute at such a meeting, the parties may mutually agree to engage and share the cost of the services of an independent third party facilitator to assist in resolving the dispute. Should such independent third party assistance fail to resolve the dispute, the Landlord shall put the matter before Council to make a decision. Any decision made by Council shall be a final decision on the matter, and the Tenant covenants and agrees to waive any claim it may have against the Landlord or Council in the event that Council does not decide the dispute in favour of the Tenant.

38. NO PARTNERSHIP

38.01 The Landlord does not in any way or for any purpose become a partner of the Tenant, in the conduct of its business or otherwise, or a joint venture or a member of a joint enterprise with the Tenant, nor is the relationship of principal and agent created by this Lease or any dealings between the Landlord and the Tenant.

39. LIEN OF TRADE FIXTURES

39.01 If, at any time during the period of time the Tenant is in possession of the Leased Space, the Tenant is in default under any covenant or obligation contained in this Lease, the Landlord has a lien on all stock-in-trade, inventory and fixtures, trade fixtures, equipment and facilities of the Tenant as security against loss or

damage resulting from any such default and the stock-in-trade, inventory, fixtures, trade fixtures, equipment or facilities shall not be removed from the Leased Space by the Tenant until the default is cured, unless otherwise permitted in writing by the Landlord. The Landlord shall have the right to enter the Leased Space to enforce its lien and shall have all of the rights and remedies of a secured creditor in possession under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended or successor thereto.

40. MISCELLANEOUS

- 40.01 The Tenant must not post any bond or place or permit any encumbrance against the Property or any property of the Landlord in exchange for security or credit or otherwise.
- 40.02 The Landlord will not accept responsibility for lost revenues and incurred expenses due to changes or building closures for whatever reason.
- 40.03 This Lease shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and the permitted successors and assigns of the Tenant, where the written consent of the Landlord has been so provided.

41. REGISTRATION

- 41.01 The Tenant shall not at any time register notice of or a copy of this Lease on title to the Property.

42. ACCORD AND SATISFACTION

- 42.01 No payment by the Tenant or receipt by the Landlord of a lesser amount than the amount of any amount herein stipulated will be considered to be other than on account of the earliest stipulated amount payable, nor will an endorsement or statement on a cheque or in a letter accompanying a cheque or payment as an amount payable be considered to be an accord or satisfaction, and the Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of any amount payable and/or pursue any other remedy.

43. UNAVOIDABLE DELAYS/FORCE MAJEURE

- 43.01 If and to the extent that either the Landlord or the Tenant shall *bona fide* be prevented, delayed or restricted in the fulfillment of any obligation hereunder, other than with regard to any moneys due, as a consequence of any cause beyond the control of the party affected thereby that prevents the performance by such party of any obligation hereunder and not caused by its default and not avoidable by the exercise of reasonable effort including, without limitation, strikes, labour disturbances, civil disturbance, acts, orders, legislation, regulations or directives of any government or public authority, acts of a public enemy, war, riot, sabotage, earthquake, fire, storm, hurricane, flood, explosion or act of God, it shall be deemed not to be a default in the performance of such obligation and any period for the performance of such obligation shall be extended accordingly and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby

occasioned. The provisions of this Section, however, shall not operate to excuse any party from the prompt payment of amounts owing hereunder.

44. AMENDMENT TO BE IN WRITING

44.01 No alteration, amendment, change or addition to this Lease will bind the Landlord or the Tenant unless in writing and signed by their authorized representatives, or unless otherwise provided for in this Lease.

45. INTREPRETATION

45.01 The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

45.02 The headings used in this lease are included for convenience only and shall not affect the interpretation hereof.

45.03 Unless the context otherwise requires, the word Landlord and the word Tenant wherever used herein shall be construed to include the executors, administrators, successors and assigns of the Landlord and Tenant, respectively.

46. OBLIGATIONS AS COVENANTS

46.01 Each obligation of the Landlord of the Tenant expressed in this Lease, event though not expressed as a covenant, is considered to be a covenant for all purposes.

47. JOINT AND SEVERAL LIABILITY

47.01 If two or more individuals, corporations, partnership or other business associations (or a combination of two or more) are the Tenant, the liability of each individual, corporation, partnership, or other business association to perform all obligations hereunder shall be joint and several. If the Tenant is a partnership or other business association the members of which are by virtue of statute or general law subject to personal liability, the liability of each ember shall be joint and several.

48. RECITALS

48.01 The parties hereby represent and warrant to each other that the recitals expressed above are true in substance and in fact. The Landlord and Tenant hereby confirm, adopt and incorporate the recitals in this Lease.

49. CORPORATE TENANT

49.01 The Tenant warrants that it has the corporate power and capacity to enter into this Lease and to affect the matters contemplated and that this Lease has been duly authorized, executed and delivered to the Landlord and constitutes a valid and binding obligation of the Tenant.

50. SCHEDULES

50.01 The parties agree that the Schedules attached to this Lease, being Schedules “A” through “C” inclusive, are integral to and form part of this Lease as follows:

- (a) Schedule “A” – Map of Property
- (b) Schedule “B” – Building Preventative Maintenance, Response, Repair, and Maintenance and Cleaning
- (c) Schedule “C” – Certificate of Insurance

51. TIME OF THE ESSENCE

51.01 Time is of the essence of this Lease.

52. SEVERABILITY

52.01 If any provision of this Lease is illegal, unenforceable or invalid, it shall be considered separate and severable and all the remainder of this Lease shall remain in full force and effect as though such provision had not been included in this Lease but such provision shall nonetheless continue to be enforceable to the extent permitted by law.

53. GOVERNING LAW

53.01 This Lease shall be interpreted under and is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

54. ENTIRE AGREEMENT

54.01 This Lease constitute the entire agreement between the parties pertaining to the Lease of the Property and supersedes all prior agreements, understanding, negotiations and discussions, whether or written, of the parties. This Lease may not be modified or amended except pursuant to an agreement in writing executed by the Landlord and the Tenant. It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of the parties hereof and the permitted successors and assigns of the Tenant, where the written consent of the Landlord has been so provided. The terms of this Lease shall survive the termination of this Lease as may be necessary to give full and proper effect to the obligations contacted herein.

55. COUNTERPARTS

55.01 This Lease may be executed by the parties hereto in counterparts and any copy thereof executed by a party shall be enforceable against such party by the other party executing any other counterpart of this Lease.

IN WITNESS WHEREOF, and in consideration of the foregoing covenants, the Landlord and the Tenant have executed this Lease as of the date first written above.

THE CORPORATION OF THE TOWN OF WHITBY

Per: _____
Elizabeth Roy, Mayor

Per: _____
Christopher Harris, Town Clerk

We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF DURHAM

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A" – MAP OF PROPERTY



SCHEDULE “B”

Building Preventative Maintenance, Response, Repair, and Maintenance and Cleaning

Building Maintenance

The Landlord agrees to provide the following services for all preventable maintenance, response repairs and maintenance removals, installations, changes, adjustments and alterations to the following:

- Building structure including foundation walls, masonry, doors and windows, door and window framing, door openers, door and window hardware, exterior architectural and structural fixtures.
- Roofing system
- Exterior grounds, including grass, landscaping, hardscaping, retaining walls, curbing and walkways and exterior furniture.
- Plumbing supply and draining lines.
- Electrical distribution panels.
- Heating and ventilation and air-conditioning (HVAC) equipment and building environmental systems.
- Fire suppression extinguishers.

SCHEDULE “C” – CERTIFICATE OF INSURANCE



Certificate of Insurance

**Proof of liability insurance will be accepted on this form only (no amendments)
 This form must be completed and signed by your insurer or insurance broker
 Insurance company must be licensed to operate in Canada**

This is to certify that the Named Insured, hereon is insured as described below

Named Insured	Address of the Named Insured
Operations of the insured for which this certificate is issued:	

Automobile Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Primary			
	Excess			

The above policy(ies) must cover all vehicles owned in whole or in part and licensed in the name of the insured including all vehicles leased on a long term basis for which the insured is required by contract to provide bodily injury and property damage insurance.

Commercial General Liability Insurance (minimum limit to be evidenced - \$2,000,000 unless otherwise required)

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	CGL	Per Claim/Annual Aggregate		
	Excess Liability (if applicable)	Deductible, if any Per Claim/Annual Aggregate		

Provisions of Amendments or Endorsements of Listed Policy(ies)

Professional Liability – Claims Made Basis - Yes No

Insuring Company	Policy Numbers	Amount of Coverage	Effective Date DD/M/YR	Expiry Date DD/M/YR
	Professional Liability	Per Claim/Annual Aggregate		
	Excess Professional Liability (if applicable)	Per Claim/Annual Aggregate		

- Is the limit inclusive of indemnity and claims expenses – Yes No
- If the policy is on a claims made basis have there been any claims notices given for this policy term Yes No

Commercial General Liability Insurance is written on an occurrence basis and is extended to include Premises Liability, Products/Completed Operations, Cross Liability and Severability of Interests Clause, Personal Injury Liability, Contractual Liability, Property Damage, Non-Owned Automobile Liability, Owner’s and Contractor’s Protective Coverage, and Contingent Employers Liability.

With respect to the Commercial General Liability Insurance excluding non owned auto coverage, The Corporation of the Town of Whitby, is added as Additional Insured but only with respect to liability arising out of the operations of the Named Insured.

Other Additional Insureds as per contractual conditions are as follows: (Note if Applicable)
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The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Corporation of the Town of Whitby.

These policies shall not be cancelled or changed so as to reduce the coverage as outlined on this certificate without thirty (30) days, prior written notice by registered mail by the Insurer(s) to the Corporation of the Town of Whitby, Corporate Services Department, Purchasing Section, 575 Rossland Road East, Whitby, Ontario L1N 2M8.

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date: DD/M/YR	Broker/Insurer’s Name, Address, Telephone, Fax and E-Mail:	Signature and Stamp of Certifying Official:
		Print Name