THIS AGREEMENT made this ____ day of _____ 2024

BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX

("**Ajax**")

and

THE CORPORATION OF THE TOWN OF WHITBY

("**Whitby**")

WHEREAS Ajax and Whitby (the "**Parties**") are neighbouring municipalities sharing a common boundary;

AND WHEREAS part of the common boundary is located along a road known as "Old Lake Ridge Road", which is more or less shown in thick black outline on Plan 40R-30216 attached hereto as **Schedule "A"** to this Agreement, and which lands are legally described as:

> FIRSTLY: PART OF LOT 1, CONCESSION 1 PICKERING, AND PART OF ROAD ALLOWANCE BETWEEN TOWNSHIP OF WHITBY AND TOWNSHIP OF PICKERING, DESIGNATED AS PART 4, PLAN 40R-30216; TOWN OF AJAX/WHITBY (being part of PIN 26494-0728 (LT)); and
>
> SECONDLY: PART LOT 1 CONCESSION 1 PICKERING & PART ROAD ALLOWANCE BETWEEN PICKERING & WHITBY PART 3 40R-29191 EXCEPT PARTS 3 & 4 40R-30216; TOWN OF AJAX (being all of PIN 26494-0745(LT))
>
> and as more or less depicted on the sketch attached hereto as **Schedule "B**" (collectively the "**Road**");

AND WHEREAS, pursuant to Order in Council 410/2019 approved and ordered on March 21, 2019, the Ministry of Transportation transferred jurisdiction and control of the Road to the Regional Municipality of Durham (the "**Region**");

AND WHEREAS, pursuant to subsection 52(4) of the *Municipal Act, 2001* (the "**Act**"), the Region intends to remove the Road from its highway system;

AND WHEREAS, pursuant to subsections 29(1) and 52(6) of the Act, upon the Region removing the Road from its highway system (the "**Removal Date**"), Ajax and Whitby will have joint jurisdiction over the Road as the Road is located on the boundary line between the two municipalities;

AND WHEREAS, the Region declared the Road as surplus land on February 1, 2023 for the purposes of transferring the Road to Whitby;

AND WHEREAS, the Region presented an Offer to Sell the Road to Whitby on or about February 3, 2023;

AND WHEREAS Section 29.1 of the *Municipal Act, 2001*, SO 2001, c.25 permits municipalities that share a boundary road to enter into an agreement for the responsibility, maintenance, and jurisdiction of the roadway;

AND WHEREAS Section 29.1 of the *Municipal Act, 2001,* SO 2001, c. 25 permits an agreement for the responsibility, maintenance, and jurisdiction of the roadway to be registered in the land registry office for the area in which the roadway is located;

AND WHEREAS Ajax and Whitby desire to enter into this Agreement setting forth their respective rights and obligations with respect to the maintenance and repair of the Road;

AND WHEREAS Ajax passed By-Law XXXX-23 on (DATE) authorizing Ajax to enter into this Agreement;

AND WHEREAS Whitby passed By-Law XXXX-23 on (DATE) authorizing Whitby to enter into this Agreement;

AND WHEREAS these recitals form part of this Agreement, are accurate, and may be relied on in interpreting this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. This Agreement will only be in effect on the occurrence of all of the following:
    a. upon Whitby and Ajax both passing a By-law and/or receiving Council approval authorizing it to enter into this Agreement;
    b. the execution of this Agreement by all parties;
    c. the transfer of the Road from the Region to Whitby; and
    d. the registration of this Agreement on title to the Road.

2. Whitby will be responsible for registering this Agreement on title to the Road in the Land Registry Office for Durham (No. 40) immediately following the registration of the transfer of the Road from Durham to Whitby. In the event that this Agreement expires or is terminated, Whitby shall be responsible for deleting same from title. Ajax irrevocably nominates, constitutes and appoints Whitby as its agent and attorney in fact and in law to cause the registration and/or removal of this Agreement from title to the Road.

3. As of the Effective Date, Whitby will assume control of and be solely responsible for maintaining, at its sole expense, the Road. For greater certainty, this means that, among other things:

    a. Ajax may only perform work or repairs on the Road if it has Whitby's prior consent to do so;

    b. Whitby may undertake any work or repairs on the Road at its sole discretion and without Ajax's consent;

    c. Whitby may undertake such routine work as catch basin cleaning, drainage maintenance, sweeping and flushing, asphalt patching, debris and litter pickup, grass cutting, snow plowing, sanding, salting, snow fencing and other normal maintenance and repair operations for the Road at its expense and without notice to Ajax; and

    d. Whitby may undertake and authorize any sidewalk installations or street lighting improvements, such as the installation of new facilities or the changing of the type of lighting system, or any other public utilities infrastructure work, on the Road without notice to or consent from Ajax.

4. At Whitby's request, Ajax will, at its own expense, cooperate, take such steps, and provide such assistance or enforcement efforts within the legal boundary of Ajax as may be reasonably required to help maintain the Road.

5. This Agreement shall commence on the Effective Date and continue for a twenty-five (25) year term (the "**Term**"), unless terminated earlier by either Party in accordance with this Agreement. The Parties have the option to extend this Agreement for two further terms of twenty-five (25) years each, upon mutual written consent of at least ninety (90) days prior to the expiry of the Term (the "**Extension Terms**"). The Extension Terms shall be on the same terms and conditions contained herein save and except that there shall be no further right of extension, unless mutually agreed to, in writing, by the parties.

6. Whitby will defend, indemnify and save harmless Ajax from any loss or damage arising from or in any way related to its obligations pursuant to this Agreement, provided such loss or damage is not caused by the negligent acts or omissions of Ajax, or failure of Ajax to fulfill its obligations in this Agreement.

7. Each Party shall continuously maintain throughout the Term of this Agreement and pay for Commercial General Liability insurance including personal injury, broad form contractual liability, owners and contractors protective, completed operations, and non-owned automotive liability in an amount of not less than five million dollars ($5,000,000.00) applying to all contracts for claims arising out of one occurrence naming the other Party as an additional insured. Each Party shall provide a certificate of insurance to the other Party evidencing the insurance coverage set out in this clause 7.

8. This Agreement may be terminated prior to the end of the Term or Extension Term as follows:

   a. by mutual written consent of both Parties; or

   b. upon the Region or the Province of Ontario taking ownership of or assuming jurisdiction or control over the Road, or if Whitby and/or Ajax should otherwise lose joint jurisdiction of the Road for any reason.

9. Any notice under this Agreement to any parties 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 such parties at the following respective addresses:

   For Ajax:

   The Corporation of the Town of Ajax
   65 Harwood Avenue South
   Attention:
   Telephone:
   Email:

   For Whitby:
   The Corporation of the Town of Whitby
   575 Rossland Road East, Whitby, ON L1N 2M8
   Attention: Town Clerk and Town Solicitor
   Telephone: 905-430-4315 and 905-430-4342
   Email: clerk@whitby.ca and legal@whitby.ca

   or at such other addresses as the parties 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.

10. The rights, obligations and liabilities of each Party shall ensure to the benefit of and be binding upon the Parties and their respective successors and approved assigns.

11. The Agreement contains the entire agreement between the Parties. There is no covenant, promise, agreement, condition precedent or subsequent, warranty, representation or understanding, whether written or oral, other than as set forth in this Agreement.

12. No amendment of this Agreement shall be valid and binding unless such amendment is executed in writing by the Parties.

13. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada which are applicable therein.

14. If any article, section, subsection, paragraph, clause or subclause, or any of the words or terms contained in this Agreement shall be held to be wholly or partially invalid by a court of competent jurisdiction, the Parties agree that the remainder of this Agreement shall not be affected by such ruling and shall remain in full force and effect.

15. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If the signature is delivered by fax transmission or by email delivery of a scanned data file (Adobe PDF or otherwise), such signature shall create a valid and binding obligation on the party executing the Agreement with the same force and effect as if the fax or scanned data file (Adobe PDF or otherwise) were an original thereof.

The Corporation of the Town of Ajax hereby executes this Agreement on the _____ day of _____, 2023.

The Corporation of the Town of Ajax
Per:

_____
Name:
Title

_____
Name:
Title

I/We have authority to bind the Corporation

The Corporation of the Town of Whitby hereby executes this Agreement on the_____ day of _____, 2023.

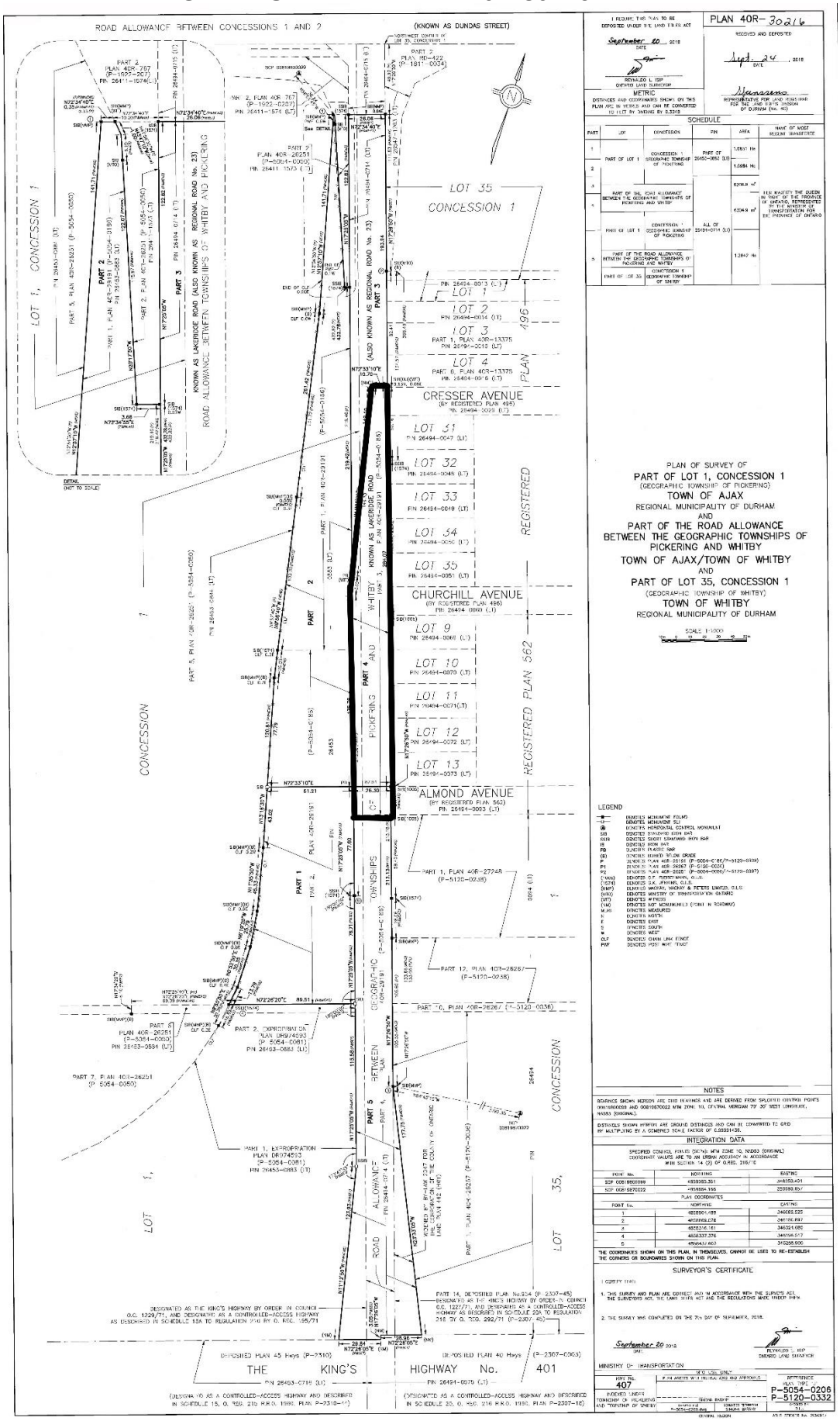
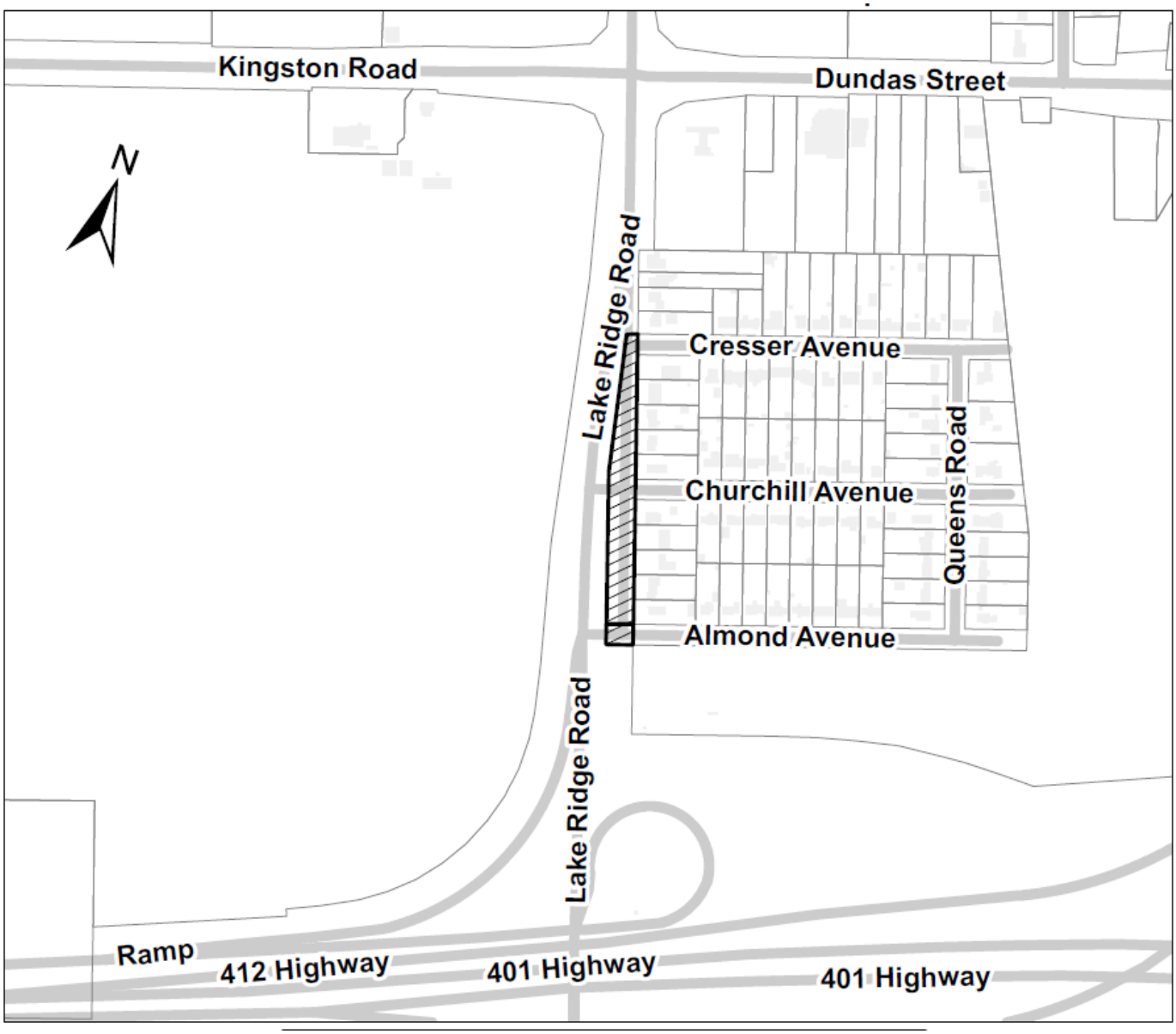
The Corporation of the Town of Whitby
Per:

_____
Name:
Title

_____
Name:
Title:

I/We have authority to bind the Corporation

SCHEDULE "A" – PLAN 40R-30216



SCHEDULE “B” - SKETCH