

Attachment #1

Land Exchange Agreement

THIS AGREEMENT made as of the 3rd day of October, 2018

BETWEEN the Canadian Imperial Bank of Commerce ("CIBC") and the Corporation of the Township of Southgate (the "Township").

WHEREAS:

1. CIBC is the owner of certain lands which are more particularly described in Schedule "A" to this agreement (referred to as "CIBC's Lands");
2. The Township is the owner of certain lands which are more particularly described in Schedule "A" to this agreement (referred to as the "Township's Lands");
3. The Township wishes to acquire title to a portion of CIBC's Lands shown as Part 3 on the sketch attached as Schedule "B" to this agreement (referred to as "CIBC's Parcel") and CIBC wishes to acquire title to a portion of the Township's Lands shown as Part 2 on Schedule "B" (referred to as the "Township's Parcel");
4. In furtherance of the Agreement to exchange lands, the Township and CIBC have agreed to enter into this agreement;

IN CONSIDERATION of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby covenant and agree as follows:

1. Interpretation

1.1 Definitions. In this agreement:

- (a) "As Is" means, with respect to the Parcel, that the Vendor does not make any representation or warranty as to the state of the Parcel, including, without limitation, suitability for development, the existence of any defect or the presence of any substances or the past or present carrying on of any activities which in any manner have not or presently do not or, on or after the Closing Date, will not meet the requirements of applicable environmental laws;
- (b) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (c) "Closing Date" means ten (10) Business Days after the registration of the Reference Plan;
- (d) "CIBC's Transfer Deed" means a transfer or transfers in registerable form of CIBC's Parcel, executed by CIBC conveying CIBC's Parcel to the Township;

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- (e) "Parcels" means the Township Parcel and CIBC's Parcel, and "Parcel" means any individual Parcels;
- (f) "Purchaser" means:
 - (i) CIBC as it relates to the transfer of the Township Parcel to CIBC, and
 - (ii) the Township as it relates to the transfer of CIBC's Parcel to the Township;
- (g) "Reference Plan" has the meaning given in section 2.5;
- (h) "Township's Transfer Deed" means a transfer or transfers in registerable form of the Township Parcel, executed by the Township conveying the Township Parcel to CIBC;
- (i) "Vendor" means:
 - (i) CIBC as it relates to the transfer of CIBC's Parcel to the Township, and
 - (ii) the Township as it relates to the transfer of the Township Parcel to CIBC;

1.2 General. Headings contained in this Agreement are inserted for convenience of reference only and are not to be considered for the purposes of interpretation. If anything is to be done on a day which is not a Business Day, the same shall be done either on the next succeeding Business Day or as otherwise expressly provided in this agreement. Words importing the singular shall include the plural and vice versa.

1.3 Governing Law. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.'

2. Transfer of Parcels

2.1 **Transfer of CIBC's Parcel to the Township.** Subject to the terms and conditions of this Agreement, CIBC hereby agrees to transfer CIBC's Parcel to the Township on the Closing Date.

2.2 Value and Payment

- (1) For the purposes of calculating Land Transfer Tax, the value of CIBC's Parcel has been agreed to be \$8,000.00.
- (2) In addition to the acquisition of CIBC's Parcel, the Township agrees to pay up to \$2000.00 of CIBC's legal fees and expenses relating to the within transactions, which shall be paid on Closing.

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- 2.3 **Transfer of Township Parcel to CIBC.** Subject to the terms and conditions of this Agreement, the Township hereby agrees to transfer the Township Parcel to CIBC on the Closing Date.
- 2.4 **Value.** For the purposes of calculating Land Transfer Tax, the value of the Township's Parcel has been agreed to be \$8,000.00.
- 2.5 **Reference Plan.** Upon the signing of this Agreement, the Township shall retain a surveyor to prepare a reference plan to legally describe CIBC's Parcel and the Township's Parcel (the "Reference Plan"). The Reference Plan shall be subject to review and approval by CIBC prior to its registration in the appropriate Land Registry Office. All cost for the preparation and registration of the Reference Plan shall be paid by the Township.

3. Investigation and Operation of the Parcels.

- 3.1 **Risk and Damage.** Subject to the terms of this Agreement, the Township's Parcel shall remain at the risk of the Township until the Closing Date, and CIBC's Parcel shall remain at CIBC's risk until the Closing Date.

3.2 Representations and Warranties

- (1) Each Vendor represents, and covenants that as at the Closing Date, with respect to the Parcel it is transferring under this Agreement, that:
- (a) it has authority to enter into and to perform its obligations under this Agreement;
 - (b) it has no knowledge of any act, proceeding or investigation pending or threatened which either affects or may affect in either case in a materially adverse way its title to the Parcels being transferred; and
 - (c) it is not a non-resident of Canada and it will not be a non-resident of Canada on the Closing Date within the meaning of s. 116 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

3.3 Title Investigation

- (1) Each Purchaser shall be allowed until 6:00 p.m. on the 10th day prior to the Closing Date (the "Requisition Date") to examine the title to the Parcel at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Parcel, and that its intended use will be lawful. The Vendor hereby consents to the municipality or other governmental agencies releasing to Purchaser details of all outstanding work orders and deficiency notices affecting the Parcel, and Vendor agrees to execute and deliver such further authorizations in this regard as Purchaser may reasonably require.

Provided that the title to the Parcel is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that

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run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property (all of which are "Permitted Encumbrances"). If within the specified times referred to in this paragraph 3.3 any valid objection to title or to any outstanding work order or deficiency notice is made in writing to Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy or obtain insurance (Title Insurance) in favour of the Purchaser and any mortgagee, (with all related costs at the expense of the Vendor), and which Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Purchaser shall be conclusively deemed to have accepted Vendor's title to the property.

- 3.4 **Title Evidence.** Save as expressly set forth in this Agreement, the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to a Parcel except such as are in the possession or control of the Vendor of such Parcel.

4. Conditions

- 4.1 **Conditions Precedent.** CIBC and the Township acknowledge and agree that the Township has passed all by-laws and done all other things necessary to stop up and close and convey to CIBC the Township Parcel in compliance with all provisions of the *Municipal Act, 2001* and, without restricting the generality of the foregoing, any by-law enacted by the municipality which governs the acquisition and disposition of land.

4.2 Vacant Possession

- (1) On the Closing Date, the Township will deliver to CIBC vacant possession of the Township's Parcel. In addition, the Township agrees to grant an easement to CIBC over CIBC's Parcel for vehicular and pedestrian passage on terms satisfactory to CIBC acting reasonably.
- (2) On the Closing Date, CIBC will deliver to the Township vacant possession of CIBC's Parcel.

5. State of Parcels

5.1 **Parcels As Is.** The parties acknowledge and agree that the Parcels are being transferred on an As Is basis, and each releases the other, and their successors and assigns from any and all costs, claims, damage and liability arising or resulting, directly or indirectly, from the acquisition of the Parcel.

6. Closing

6.1 **CIBC's Closing Deliveries.** On the Closing Date, CIBC will execute and deliver the following documents to the Township (unless otherwise provided, all in form reasonably satisfactory to the Township Solicitor);

- (a) CIBC's Transfer Deed;
- (b) a statutory declaration of an authorized officer of CIBC, given in his or her capacity as an officer of CIBC, confirming that CIBC is not a non-resident of Canada and will not be a non-resident of Canada on the Closing Date within the meaning of s. 116 of the *Income Tax Act*;
- (c) evidence in the form of a statutory declaration of a senior officer of CIBC, given in his or her capacity as an officer of CIBC, of its registration under the *Excise Tax Act*, R.S.C. 1985, c. E-15 as amended, relating to the harmonized sales tax;
- (d) an undertaking from CIBC to re-adjust all items on the statement of adjustments, if necessary;
- (e) a draft invoices evidencing CIBC's legal fees and expenses relating to this transaction; and
- (f) a Declaration of Possession in relation to CIBC's Parcel.

6.2 **Township Closing Deliveries.** On the Closing Date, the Township will execute and deliver the following documents (unless otherwise provided, all in form reasonably satisfactory to CIBC and its solicitors);

- (a) the Township Transfer Deed;
- (b) evidence from the Township in the form of a statutory declaration of its registration under the *Excise Tax Act* relating to the harmonized sales tax;
- (c) an undertaking from the Township to re-adjust all items on the statement of adjustments, if necessary;
- (d) a cheque payable to CIBC for it's legal fees and expenses up to \$2,000 inclusive, subject to any necessary adjustments; and

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- (e) a Declaration of Possession in relation to the Township's Parcel.

6.3 Adjustments. The parties will adjust for local improvement rates and all other items normally adjusted between a vendor and a purchaser in respect of the sale of property similar to the Parcels as of the Closing Date (the Closing Date itself to be apportioned to the Purchaser), as well as the adjustment provided for in this Agreement, however the parties agree that no adjustment shall be made for realty taxes.

7. Miscellaneous

7.1 Survival of Representations, Warranties, Covenants and Agreements. The representations, warranties, covenants and agreements of each of the parties under this Agreement shall not merge, but shall survive the conveyance of each Parcel. CIBC and the Township covenant and agree to indemnify and save harmless the other from all costs, claims, damage and liability arising or resulting, directly or indirectly, from any misrepresentation by the indemnifying party in this Agreement, or by the failure on the part of the indemnifying party to perform any of its covenants in this Agreement, which indemnity shall also not merge but shall survive the conveyance of each Parcel.

7.2 Tender. Any tender of documents, cheques or moneys may be made upon the solicitors for the respective parties to this Agreement.

7.3 Time. Time shall be of the essence of this Agreement provided that the time for doing or completing any matter may be extended or abridged by an agreement in writing between the parties or their respective solicitors.

7.4 Planning Act Compliance. The creation of any interest in lands pursuant to this Agreement is expressly subject to the condition of compliance with the provisions of the *Planning Act*.

7.5 Notices. Any notice to be given in connection with this Agreement shall be in writing, shall state the clause of this Agreement pursuant to which it is given, and shall be given by delivery addressed to the recipient as follows:

- (a) CIBC at: 55 Yonge Street
4th Floor
Toronto, ON
M5E 1J4
Attn: Eddy Trantau, Transaction Management
- (b) the Township at: 185667 Grey Cty Rd 9
RR 1
Dundalk On
N0C 1B0
Attn: CAO

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- 7.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and the subject-matter hereof and supersedes any prior written understanding or agreement, whether or not expressed to be binding, between them.
- 7.7 **Severability.** If any provision of this Agreement or portion of a provision or its application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision or portion to any other person or circumstance shall not be affected, and the parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein.
- 7.8 **Amendment.** This Agreement and all of its provisions shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written amendment of the parties to this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute waiver of any other provisions (whether or not similar), nor shall any such waiver constitute a continuing waiver unless expressly otherwise provided in writing.
- 7.9 **Force Majeure.** Whenever and to the extent that any party to this Agreement is unable to perform or is delayed or restricted in the performance of any obligation arising under this Agreement or any other agreement entered into by the parties pursuant to this Agreement by reason of any cause relating directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, riots, crime, disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, unusual delay by common carriers, unavoidable casualties, strikes, labour disputes, lock-outs, shortages of suitable parts, materials, labour or transportation, disruption of utility service for causes other than non-payment thereof or anything beyond the control of any party whether or not a like or similar nature, the party having the obligation shall be relieved from the performance of this Agreement for so long as such cause exists, and the other party to this Agreement shall not be entitled to compensation for any loss, damages, inconvenience, nuisance or discomfort thereby occasioned.
- 7.10 **Successors and Assigns.** This Agreement shall bind and benefit the parties to this Agreement and their respective successor and assigns.
- 7.11 **Schedules.** The following schedules are attached to and form part of this Agreement:
Schedule "A", Legal description of Lands
Schedule "B", Sketch of Parcels
- 7.12 **Counterparts and Delivery.** This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument. The parties hereto agree that this Agreement may be transmitted by facsimile, email or such similar device and that the reproduction of signatures by facsimile, email or such similar device will be treated as binding as if

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original and each party undertakes to provide to the other party hereto a copy of the Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the parties have affixed their Corporate seals attested by the hands of their respective officers in that behalf, as of the day and year first above written.

Canadian Imperial Bank of Commerce

Per: _____

Name:
Title:

Per: _____

Name:
Title:

I/We have authority to bind the corporation.

The Corporation of the Township of Southgate

Per: _____

Name: Anna-Marie Fosbrooke
Title: Mayor

Per: _____

Name: Joanne Hyde
Title: Clerk

We have authority to bind the corporation.

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SCHEDULE "A"

Lands

CIBC's Lands

Part Lots 22-23, Blk E, Plan 480, Dundalk as in GS28241; Southgate

Township's Lands

Part Lots 23-24, Blk E, Plan 480, Dundalk as in GS101020; Southgate

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SCHEDULE "B"

Parcels

See attached sketch.

SCHEDULE				
PART	LOT	PLAN	PIN	AREA m ²
1	PART OF 23	BLOCK 3, REGISTERED PLAN 480	PART OF 37315-0193 (LT)	234.07
2			PART OF 37315-0194 (LT)	74.53
3	PART OF 22		PART OF 37315-0193 (LT)	74.59

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

DATE: SEPTEMBER 22, 2017

RON M. MAK, O.L.S.

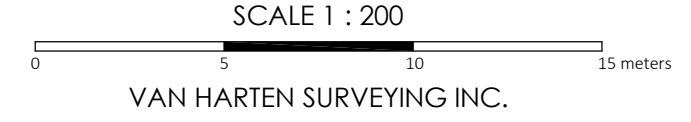
PLAN 16R-
RECEIVED AND DEPOSITED

DATE: _____

REPRESENTATIVE FOR
LAND REGISTRAR FOR THE LAND TITLES
DIVISION OF GREY No. 16

PARTS 1, AND 3 COMPRISE PART OF PIN 37315-0193 (LT)
PART 2 COMPRISES PART OF PIN 37315-0194 (LT)

PLAN OF SURVEY OF
PART OF LOTS 22 AND 23
BLOCK 3, REGISTERED PLAN 480
FORMERLY IN THE VILLAGE OF DUNDALK
TOWNSHIP OF SOUTHGATE
COUNTY OF GREY



- LEGEND:**
- DENOTES SURVEY MONUMENT SET
 - DENOTES SURVEY MONUMENT FOUND
 - SIB DENOTES .025 x .025 x 1.20 STANDARD IRON BAR
 - IB DENOTES .015 x .015 x 0.60 IRON BAR
 - SSIB DENOTES .025 x .025 x 0.60 SHORT STANDARD IRON BAR
 - RP DENOTES .015 DIA. X 0.07 ROUND IRON BAR WITH STAMPED WASHER
 - PB DENOTES .025 x .025 x 0.30 PLASTIC BAR
 - CC DENOTES CUT CROSS
 - WIT DENOTES WITNESS
 - OU DENOTES ORIGIN UNKNOWN
 - VH DENOTES VAN HARTEN SURVEYING INC., O.L.S.'s
 - 769 DENOTES LLOYD THOMSON, O.L.S.
 - 888 DENOTES J.C. MILNE, O.L.S.
 - 1211 DENOTES P.J. WILLIAMS, O.L.S.
 - 1331 DENOTES ALEX R. WILSON O.L.S.
 - 1703 DENOTES PAUL COYNE, O.L.S.
 - P1 DENOTES SURVEY BY (888) DATED: SEPTEMBER 12, 1980
 - P2 DENOTES SURVEY BY (1703) PROJECT No. 7774-2006-001 DATED: MAY 15, 2006
 - P3 DENOTES SURVEY BY (1331) PROJECT No. 12-8343 DATED: OCTOBER 31, 2012
 - P4 DENOTES NOTES & RECORDS BY (1211) PROJECT No. 6506
 - P5 DENOTES DEPOSITED PLAN 16R-5414
 - P6 DENOTES REGISTERED PLAN 480
 - D1 DENOTES INSTRUMENT No. G5101020

- BEARING AND COORDINATE NOTE:**
- BEARINGS ARE GRID BEARINGS AND ARE DERIVED FROM GPS OBSERVATIONS AND ARE REFERRED TO THE UTM PROJECTION, ZONE 17, NAD 83 (CSRS-2010) ADJUSTMENT.
 - DISTANCES SHOWN ON THIS PLAN ARE ADJUSTED GROUND DISTANCES AND CAN BE CONVERTED TO GRID DISTANCES BY MULTIPLYING BY AN AVERAGED COMBINED SCALE FACTOR OF 0.999553
 - COORDINATES ON THIS PLAN ARE UTM, ZONE 17, NAD83 (CSRS-2010) ADJUSTMENT AND ARE BASED ON GPS OBSERVATIONS FROM A NETWORK OF PERMANENT GPS REFERENCE STATIONS.

UTM COORDINATES (METRES)		
POINT ID	NORTHING	EASTING
A	4,890,824.57	548,437.71
B	4,890,836.42	548,539.73
C	4,890,784.55	548,532.11

THESE COORDINATE VALUES COMPLY WITH SECTION 14(2) O. REG 216/10. THESE COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH THE CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

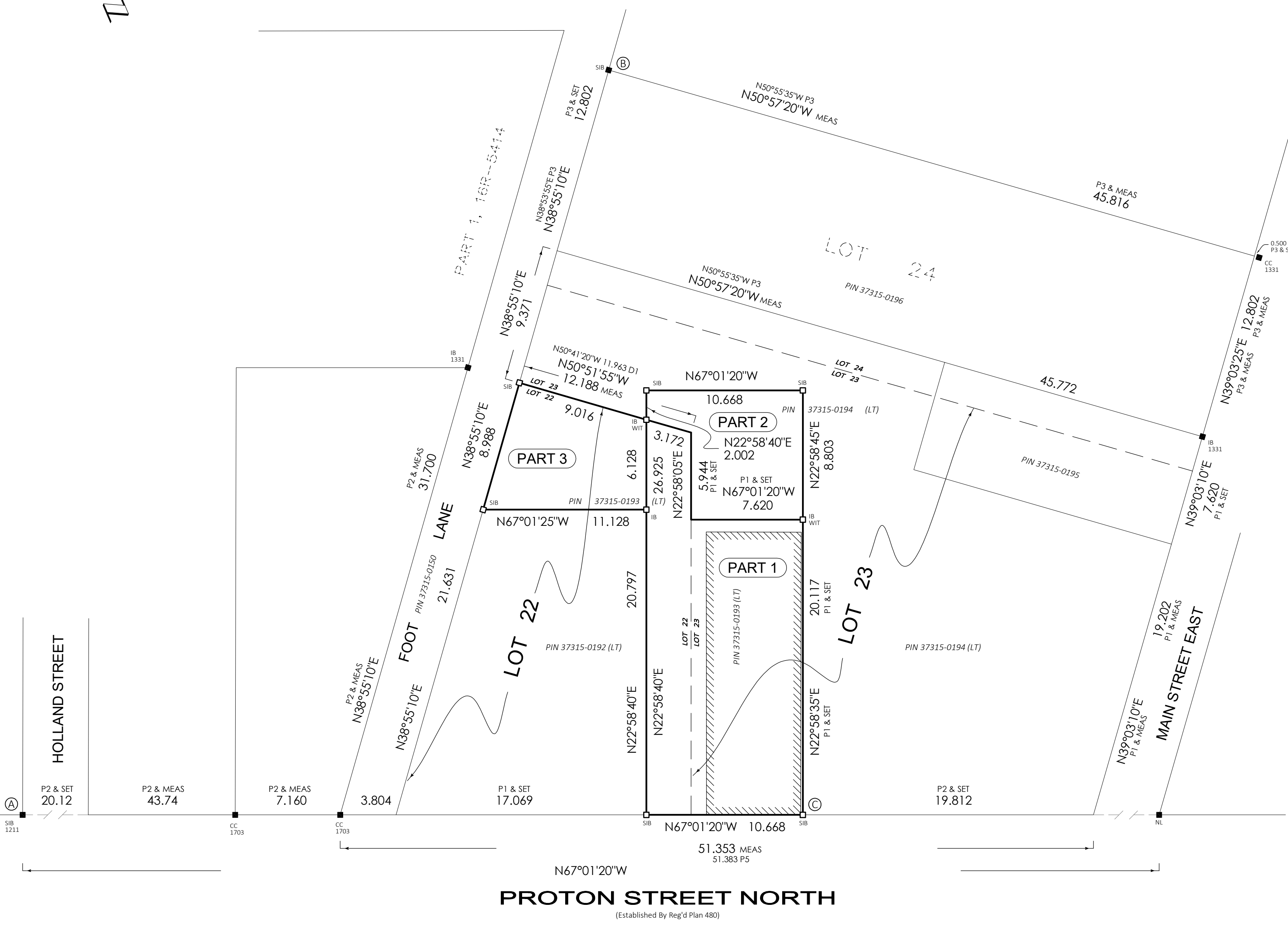
BEARING COMPARISONS:

FOR THE PURPOSES OF BEARING COMPARISONS, PREVIOUS SURVEYS HAVE BEEN ROTATED TO UTM BEARINGS BY THE ANGLES SHOWN BELOW.

PLAN	ROTATION FOR NORTHEAST BEARINGS
P1	-0°26'50"
P2	-0°17'20"
P3	-0°18'35"
D1	-0°11'20"

METRIC:

DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.



SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT, THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
- THIS SURVEY WAS COMPLETED ON THE (DATE)

DATE: SEPTEMBER 22, 2017

RON M. MAK
ONTARIO LAND SURVEYOR

Van Harten
SURVEYING INC.
LAND SURVEYORS and ENGINEERS

Elmira Ph: 519-669-5070	Guelph Ph: 519-821-2763	Orangeville Ph: 519-940-4110
www.vanharten.com		info@vanharten.com
DRAWN BY: JAM	CHECKED BY: RMM	PROJECT No. 25047-17

Sep 22, 2017 12:12pm
C:\Users\John.McNiffe\RON\DUNDALK\ACAD\R PT22 (BLOCK 3) UTM 2010.dwg