



District School Board of Niagara

191 Carlton Street St. Catharines ON L2R 7P4

<http://www.dsbni.org/Purchasing>

Contract 19113

SALE OF PROPERTY

Pelham Centre Public School

1165 Centre Street

Fenwick, ON

L0S 1C0

Submission Deadline

May 10, 2019

2:00:00 p.m. Local Time

Questions should be directed to:

Glen MacMillan, Purchasing Manager

905-641-2929 Ext: 54240

glen.macmillan@dsbn.org

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APPENDED DATA

Property Information Package

GENERAL INSTRUCTIONS

The District School Board of Niagara (hereinafter called the Vendor or the Board or the DSBN) is the owner in fee simple of the lands and buildings known municipally as 1165 Centre Street, Fenwick, Ontario, L0S 1C0.

The subject property is approximately 9.77 acres. It is rectangular in shape with a panhandle of property on the northwest corner. The property has a westerly frontage of 581 feet along the east side of Centre Street, a southerly boundary of 1323 feet, a two part easterly boundary of 297 feet and 284 feet and a two part northerly boundary of 165 feet and 1,161 feet. The boundary dimensions are approximate.

Legal description:

Part Lot 9, Concession 9, Pelham

Part 1 on 59R-14924; PIN 64032-0067 (LT)

1. TENDER SUBMISSION

- 1.1 Tender submissions must be received no later than 2:00:00 p.m. local time on May 10, 2019.
- 1.2 The Tender Package (pages 1-19) shall be submitted in a sealed envelope, marked with the Contract Number and the title of the Tender, and addressed and delivered to the District School Board of Niagara, Purchasing Services, 191 Carlton Street, St. Catharines, Ontario, L2R 7P4.
- 1.3 Tender submissions sent by fax, e-mail, or other telegraphic means **will not be accepted.**
- 1.4 It is the sole responsibility of each proponent submitting a Tender (hereinafter called the Purchaser) to make sure that the Tender package is delivered and accepted at the correct address no later than the closing date and time for the Tender submission. Tenders shall be deemed to have been submitted only when actually marked as received at the Board offices. Tenders received after the specified closing date and time will not be opened.
- 1.5 The opening of Tenders will be conducted at the Board's offices, 191 Carlton Street, St. Catharines, Ontario solely in the presence of representatives of the Board on May 10, 2019, at approximately 2:05 p.m., and information concerning all of the offers received will not be published by the Board.

2. TENDER SUBMISSION REQUIREMENTS

- 2.1 Every Tender submission must indicate the Purchase Offer Price for the entire Property, and be submitted on the enclosed Form of Tender, and shall be completed without interlineations, alteration or erasure of or with respect to any pre-printed text provided by the Board. The Board reserves the right to reject any Tender where the pre-printed text has been altered.

- 2.2 Potential purchasers are advised that a lawyer should be retained prior to the submission of the Tender in order to ensure that his/her interests are protected.
- 2.3 The Form of Tender shall bear the original signature of the prospective Purchaser (or, in the case of an offer submitted by a corporation, an authorized signing officer of the corporation), inscribed in the space provided.
- 2.4 Tender submissions shall include a deposit (the Deposit) of Fifty Thousand Dollars (\$50,000.00) in the form of a certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board.
- 2.5 It is to be noted that no interest will be paid by the Board on Deposits.
- 2.6 After evaluation of all Tenders, the Board will retain the Deposit of the three (3) highest Tenders deemed compliant and all other Deposits will be returned, without interest. If the Board of Trustees accepts a Tender, the Deposit of the unsuccessful Purchasers will be returned, without interest. The Deposit of the successful Purchaser will be retained by the Board and credited as part of the purchase price on the date of closing. The Purchaser shall pay the balance of the purchase price by certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board.

3. CONFIDENTIALITY

- 3.1 The Board shall make every effort to safeguard the confidentiality or other information included in each tender submission, and shall only provide such information to its employees, Board of Trustees, legal counsel or agents. All submissions are subject to the provisions of the Municipal Freedom of Information and Privacy Act and the Personal Information Protection and Electronic Documents Act. The Board may, at its discretion, disclose the successful purchaser and price of the property following acceptance of the Offer.

4. CONFLICT OF INTEREST

- 4.1 An employee of the Board or a Trustee of the Board shall not have a direct or an indirect interest in a company or own a company bidding on the purchase of property from the Board.

5. WITHDRAWAL OF BIDS BY PURCHASER

- 5.1 A Purchaser may withdraw their Tender at any time prior to the closing date and time for the Tender, but no such request received after that closing date and time shall be effective. A withdrawal request will be accepted only where made in writing and where its authenticity appears genuine in the absolute discretion of the Purchasing Manager. A Purchaser who withdraws a Tender prior to the closing time and date for the submission of tenders may submit a revised Tender at any time prior to that closing date and time.

- 5.2 No amendment may be made to a Tender after it has been submitted, and in particular no amendment may be made to a Tender orally, or by fax, e-mail, or otherwise than by a sealed document.
- 5.3 If a Purchaser has submitted more than one Tender prior to the official closing date and time, the last submission received shall supersede and invalidate all those previously submitted by that Purchaser.

6. INTERPRETATION, CLARIFICATION AND ADDENDA

- 6.1 The Board reserves the right at any time prior to the closing time,
- to withdraw or cancel the Sale by Tender;
 - to extend the time for the submission of Tenders; or
 - to modify these Instructions, the Form of Tender or other documents by the publication of an Addendum or other notice, and the Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Purchaser (or any other person) as a result of its so doing.
- 6.2 All addenda will be posted on the DSBN Purchasing and Property websites at www.dsbn.org/purchasing and www.dsbn.org/property as well as on the Biddingo website at www.biddingo.com. It is the responsibility of the Purchaser to check the web site often for Addenda.
- 6.3 All addenda issued shall become part of the Tender package and subsequent Agreement of Purchase and should be considered by the Purchaser in determining the offered price.
- 6.4 Where a Tender has been received by the Board prior to the publication of an Addendum or notice, the Board shall notify the Purchaser and allow the Purchaser concerned to submit a revised Tender prior to the closing date and time or to send a written acknowledgement (which may be faxed) that the original Tender shall stand.
- 6.5 It is the responsibility of the Purchaser to seek clarification of any matter that they consider unclear before submitting a Tender. All communication between a Purchaser and the Board shall be in writing and be directed to the Purchasing Manager listed on Page 1 (including requests for information, instructions or clarification). Written answers or clarifications shall be shared with all Purchasers and issued in the form of an addendum. The Board shall not be bound by any oral instruction, amendment, clarification, information, advice or suggestion from any member of the Board's staff or Consultant to the Board.

7. GUIDELINES REGARDING IRREGULARITIES

- 7.1 Late Tender submissions will not be accepted.
- 7.2 Tenders that are not accompanied by the required offer deposit as specified in Section 2.4 will be rejected.
- 7.3 Tenders where the Form of Tender is not completed in full, or are not typewritten, printed or in legible writing (in ink) may be rejected.
- 7.4 Tenders that appear to adversely affect the best interests of the Board, may be rejected at the sole discretion of the Board.
- 7.5 The Board reserves the right to reject qualified or conditional Tenders, i.e. Tenders that are submitted subject to a caveat added to the Form of Tender or under a covering letter or alterations to the Form of Tender.
- 7.6 Unsigned Tenders will be rejected.
- 7.7 Tenders not completed on the proper form or received on a document other than the original document supplied by the Board may be rejected by the Board at its discretion.
- 7.8 The Board may at its discretion reject any Tender where the Form of Tender or related document contains any erasure, change, over-writing, white-out, cross-out or strike out, where the same has not been initialed by the Purchaser, or where (in the absolute discretion of Board staff) the effect of that amendment is ambiguous or otherwise unclear.
- 7.9 Where an Addendum is not acknowledged on the Form of Tender, the Board may reject the Tender where the Addendum has financial implications, unless it is clearly evident, in the absolute discretion of Board staff, that the Addendum has been factored into the price offered.

8. PROPOSAL EVALUATION

- 8.1 Tenders are not subject to a reserve minimum bid and the highest or any bid may not necessarily be accepted.
- 8.2 The Purchaser acknowledges and agrees that nothing contained herein, in the proposal documents or elsewhere, no act done or expense incurred by it in the preparation and submission of this proposal, no trade or industry custom or practice, and no representation or assurance that may have been made or given to it by or on behalf of the Board, shall in any manner legally bind the Board, in any circumstances, to accept any tender or the highest bid, or only a tender submitted in compliance with the requirements of the proposal documents, or any tender at all. The Purchaser further acknowledges and agrees that the Board shall have complete and unrestricted liberty in this regard and may reject any or all tenders or may accept any tender whatever manner, at whatever proposed price, on whatever terms and for whatever reasons as the Board, in its absolute discretion, considers to be in its own best interests, all without liability or obligation of any kind to the Purchaser.

- 8.3 Where the Board for any reason in its sole discretion decides that an insufficient number of Tenders have been received or that all Tenders received were unsatisfactory, then the Board reserves the absolute right, as it sees fit:
- (a) to withdraw or cancel the Sale of Property by Tender;
 - (b) re-issue the Sale of Property by Tender (on the same or revised terms from the original tender call), and the Board shall not be liable for any expense, cost, loss or damage incurred or suffered by any Purchaser (or any other person) as a result of its so doing.
- 8.4 In the event that two or more similar tenders are received, the Board will proceed to obtain “best and final offers” from those Purchasers involved in order to determine a final “best price”.

9. ACCEPTANCE AND AWARD

- 9.1 If the Board accepts a Tender, then such acceptance shall be communicated to the successful Purchaser as soon as possible following the approval of the Tender by the Board of Trustees. The successful Purchaser will be notified in writing by the Board, with such notice sent to the Purchaser at the address set forth in the Form of Tender, such notice to be given by prepaid registered mail/courier or personal delivery.
- 9.2 The successful Purchaser shall close the Agreement of Purchase and Sale arising out of acceptance of the Tender and pay the balance of the purchase price by certified cheque or bank draft drawn on a financial institution in Canada satisfactory to the Board on the Closing Date.
- 9.3 The Board may at its discretion, waive any or all of the conditions contained herein.

10. TERMINATION OF AGREEMENT

- 10.1 This Agreement of Purchase and Sale created by the acceptance of the Tender may be terminated at any time at the sole option of the Board in any of the following events:
- (a) if the Board has not received the approval of the Minister of Education to dispose of the Property and Building on or before the Closing Date;
 - (b) if the Board is restrained or enjoined on either an interim or permanent basis from completing the transaction contemplated hereby by a Court of competent jurisdiction, or if proceedings in that regard have commenced, or if any legal action is anticipated or expected by the Board to be brought against it in respect of its sale of the Property, or if the Board is unable to complete the transaction because of the filing or registration of any documents.

- (c) In the event the Board does terminate the Agreement of Purchase and Sale, same shall be deemed null and void and the deposit shall be returned to the Purchaser without interest or deduction. In no event shall the Board be responsible for any costs, expenses, loss or damages incurred or suffered by the Purchaser and in any way related to this agreement.

10.2 If any Purchaser, or its assigns, does not comply with the conditions as aforesaid, or any of them, or fails to execute the closing upon the agreed upon Closing Date, the Purchaser's deposit will be forfeited, as liquidated damages, in addition to any other right or remedy to which the Board may be entitled, including all losses, damages, claims and charges attending the same or occasioned by the defaulting Purchaser. Such liquidated damages to be paid by the defaulting Purchaser to the Board forthwith upon demand.

11. CONDITIONS OF SALE

11.1 RECITALS

The District School Board of Niagara (hereinafter called the Vendor or the Board or the DSBN) is the owner in fee simple of the lands and buildings with a **municipal address** of 1165 Centre Street, Fenwick, Ontario, L0S 1C0 and more particularly described with a **legal description** of Part Lot 9, Concession 9, Pelham; Part 1 on 59R-14924; PIN 64032-0067 (LT), (hereinafter referred to as the "Lands") and known as Pelham Centre Public School.

The subject property is approximately 9.77 acres. It is rectangular in shape with a panhandle of property on the northwest corner. The property has a westerly frontage of 581 feet along the east side of Centre Street, a southerly boundary of 1323 feet, a two part easterly boundary of 297 feet and 284 feet and a two part northerly boundary of 165 feet and 1,161 feet. The boundary dimensions are approximate.

The party submitting the Form of Tender (hereafter called the Purchaser) has offered to purchase the Lands from the Vendor on the terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

11.2 DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- (a) "Agreement" means the advertisement, the For Sale by Tender document, the Form of Tender, and acceptance thereof by the Board, together with these Conditions of Sale and every properly executed instrument which by its terms amends, modifies or supplements this agreement, shall constitute the Agreement of Purchase and Sale.
- (b) "Authority" means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Lands, or the use thereof.

- (c) "Building" means the existing building consisting of a vacant two level brick facility located on the Lands, including all heating, ventilation, plumbing, electrical and mechanical systems and related components and equipment comprising a part thereof and any other improvements owned by the Vendor presently erected in or upon the Lands.
- (d) "Business Day" means any day other than a Saturday, Sunday or statutory holiday;
- (e) "Date of Closing" or "Closing" means a date within 30 days of acceptance of the Purchaser's offer by the Board or on a date to be mutually agreed upon in writing by the parties or their respective solicitors.
- (f) "Deposit" means the money payable by the Purchaser to the Vendor and submitted with the Form of Proposal in accordance with Clause 12.1(a) of this Tender.
- (g) "Irrevocable" means this offer is irrevocable by the Purchaser for a period of sixty (60) calendar days commencing from the closing date of the Tender call.
- (h) "Lands" means the property described in the recitals hereto.

The description of the Lands is believed by the Vendor to be correct but if any statement, error or omission shall be found in the particulars thereof, the same shall not annul the sale nor entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to either the Vendor or the Purchaser in respect thereof.

- (i) "Party" means either the Vendor or Purchaser.
- (j) "Purchase Price" means the Purchase Offer as set out in the Purchaser's Form of Tender and arising out of acceptance of the submitted Form of Tender in lawful money of Canada, plus HST if applicable, subject to adjustments as set out in Clause 12 hereof.
- (k) "Transfer" means the transfer to the Purchaser of the Lands.

11.3 RECITALS

The Recitals set out at the beginning of this Agreement shall be deemed incorporated into this Agreement and shall form a part of its terms.

11.4 EXTENDED MEANINGS

Grammatical variations of any terms defined herein have similar meanings to such defined terms; words imparting number include the singular and the plural; words imparting gender include the feminine, neuter and masculine genders.

11.5 HEADINGS

The division of this Agreement into separate Articles, Sections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretations of this Agreement.

11.6 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and, except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations, warranties and agreements of the respective parties with respect to the subject matter hereof. There are no verbal representations, undertakings or agreements of any kind between the parties.

11.7 CURRENCY

All references to currency herein are references to lawful money of Canada.

11.8 SEVERABILITY

If any covenant, obligation or agreement of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

11.9 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

12. PAYMENT OF PURCHASE PRICE

12.1 Under this Agreement the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Lands for the Purchase Price payable by the Purchaser as set out below, subject to the adjustment as provided in Clause 12.1(e):

- (a) the sum of **fifty thousand dollars (\$50,000.00)**, by certified cheque or bank draft (in Canadian Funds), as a deposit upon submission of this Form of Tender payable to the District School Board of Niagara, and to be credited to the Purchase Price on the Date of Closing, and
- (b) an amount equal to the Purchase Price minus Deposit, subject to the adjustments as set out in Clause 12.1(e) of this Agreement, by certified cheque or bank draft (in Canadian Funds), on the Date of Closing payable to the Vendor or as directed by the Vendor.

- (c) The Purchase Price of the Lands does not include Harmonized Sales Tax (the "HST"). The Purchaser shall, on the Closing Date, as a condition of Closing this transaction, remit to the Vendor confirmation that the purchaser is a registrant under the *Excise Tax Act*, including the Purchaser's registration number, together with an undertaking in favour of the Vendor, stating that the Purchaser shall remit any tax required to be paid under the *Excise Tax Act* pursuant to the purchase contemplated herein. Purchaser hereby indemnifies the Vendor with respect to any HST payable and shall not be required to remit to the Vendor any amount in respect of HST on the Closing Date.
- (d) The Board shall not supply nor be required to supply any Warranty, Statutory Declaration or Certificate with respect to the subject Lands' status or as to whether this transaction is an exempt supply in accordance with the provisions of the *Excise Tax Act* (Canada).
- (e) The Vendor and the Purchaser shall adjust as of midnight on the last day preceding the Closing Date the following items:
- (i) Taxes and local improvement rates and charges;
 - (ii) Utilities and fuel accounts;
 - (iii) Any proceeds of insurance received by the Vendor, on account of damage to the Lands occurring on or after the date of this Tender's acceptance and not applied as of the Closing Date on account of the cost of repair; and,
 - (iv) All other items reasonably capable and subject to the provisions of this Tender, properly the subject of, adjustment in connection with the ownership, operation and management of the Lands of whatsoever nature;
- (collectively, the "Adjustments").
- (f) It is agreed by and between the parties that if the final cost or amount of any item which is to be adjusted under Clause 12.1(e) hereof cannot be determined at Closing, or is determined to be incorrect, then the initial adjustment for such item made at the Closing shall be estimated by the Vendor on the basis of the best evidence available at the Closing as to what the final cost or amount of the said item will be. In each case when such cost or amount is determined, the vendor or Purchaser, as the case may be, shall, within ten (10) days of determination, provide a complete statement thereof to the other and within ten (10) days thereafter the parties hereto shall make a final adjustment as of the last day of the preceding the Closing Date for the item in question. In the absence of agreement by the parties hereto, the final cost or amount of an item shall be determined by an auditor, mutually agreed to by the Parties, with the cost of such auditors shared equally between the parties hereto.
- (g) The Purchaser and the Vendor agree that all of the existing buildings and fixtures present on the Lands as of the date of this Tender are included in the Purchase Price.

- (h) The Purchaser and the Vendor agree that no chattels or equipment are included in the Purchase Price.

13. REPRESENTATIONS AND WARRANTIES

13.1 REPRESENTATIONS OF THE PURCHASER. The Purchaser hereby represents and warrants to and in favour of the Vendor that, as of the date hereof:

- (a) **Residency.** The Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada).
- (b) **Good Standing or Age of Majority.** That where the Purchaser is a corporation, the Purchaser is a corporation duly incorporated and existing under the laws of Ontario and has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated hereby, all of which have been duly and validly authorized by all requisite corporate proceedings or where the Purchaser is an individual, the Purchaser is at least 18 years old and has all necessary authority and mental capacity to enter into this Agreement.
- (c) **Bankruptcy.** To the best of his knowledge, after due inquiry, no bankruptcy, insolvency or receivership proceedings have been instituted or are pending or threatened against the Purchaser and the Purchaser's personal property is not subject to any executions, judgments or other claims of creditors.
- (d) **No Breach.** Neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any other agreement to which the Purchaser is a party or by which it is bound, which breach could materially affect the ability of the Purchaser to perform its obligations hereunder.

13.2 REPRESENTATIONS OF THE VENDOR. The Vendor hereby represents and warrants to and in favour of the Purchaser that, as of the date hereof:

- (a) **Residency.** The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (b) **Leases.** The Vendor has not entered into any leases, licenses, agreement to lease or other tenant agreements with respect to the Lands except as may be described herein;
- (c) **Good Standing.** the Vendor has the power and authority and right to sell the Lands in accordance with the terms of this Agreement.
- (d) **No Breach.** Neither the execution nor delivery of this Agreement nor the fulfillment or compliance with any of the terms hereof will conflict with, or result in any breach of the terms, conditions or provisions of, or constitute a default under any agreement or instrument to which the Vendor is subject which will have an adverse effect on the Lands;

(e) **Insurance**. The Vendor maintains such insurance on the Lands as is reasonably required to protect the value of the Buildings, fixtures and equipment. The Vendor covenants to maintain insurance for the full replacement value of the Building(s) on the real property and for any chattels and fixtures included in the Purchase Price. In the event of damage to the Building or any fixtures or chattels which are to be transferred pursuant to this Agreement of Purchase and Sale, the Purchaser may, at its option:

(i) close the transaction at the full purchase price with an assignment from the Vendor of all proceeds of insurance pursuant to the insurance policy set out above; or

(ii) close the transaction with an abatement of the purchase price equivalent to the damage suffered by the building(s), chattels or fixtures as reasonably estimated by a qualified insurance adjuster, in which event, all insurance proceeds would remain payable to the Vendor.

13.3 **Survival of Warranties**. Save and except for the representations and warranties contained in Clauses 13.1 and 13.2 hereof and those representations and warranties contained in documentation delivered on Closing hereunder, the Vendor and the Purchaser acknowledge and agree that the Lands is being sold to the Purchaser on an "as is" basis as at the Closing Date and without any representation and warranty whatsoever and that the representations and warranties contained in Clauses 13.1 and 13.2 shall have effect to the Closing Date and shall survive the Closing Date and shall continue in full force and effect for the benefit of the Vendor and the Purchaser, as the case may be, for the period of two years immediately following the Closing Date and any claim for any breach of any representation or warranty must be made in writing within two years immediately following the Closing Date.

13.4 **Effect of Warranties**. Subject to Clause 13.2, each of the Purchaser and the Vendor hereby agrees to protect, indemnify and save the other harmless from and against any and all losses, costs, expenses, damages, liabilities, claims and demands whatsoever arising or suffered by the other as a result of any misrepresentation or breach of the warranties and representations set forth in Clauses 13.1 and 13.2 respectively.

14. INSPECTION AND CONDITION OF PROPERTY

14.1 **Site Visits**. Site visits to visually inspect the Lands will be held on April 17, 2019, and May 1, 2019, between 1:00 and 3:00 p.m.

14.2 **Inspections**. The Purchaser acknowledges that it has been provided an opportunity to inspect the Lands and every part thereof prior to executing and submitting this Tender to the Vendor and that no warranty or condition is expressed or can be implied as to title, description, use or proposed zoning, fitness or purpose, quantity or quality thereof. Without limiting the generality of the foregoing, the Vendor shall not be liable for any incorrect description, default, defect or condition of the Lands or any part thereof or any errors in any surveys, engineering or other drawings, or other documents that may have been voluntarily provided for inspection by the Purchaser. The Vendor shall not be required to remedy or comply with any deficiency notice, work order or other order or notice affecting the Lands and the use thereof.

- 14.3 **Conditions of Buildings**. The Vendor makes no representations or warranties with respect to the workmanship, state of repair, location of structures, walls, retaining walls, or fences (free standing or otherwise). The Vendor shall have no responsibility whatsoever to remedy any defect, comply with any work orders, or complete any unfinished work. The Purchaser acknowledges that it has relied entirely upon its own inspections and investigations with respect to the quantity, quality, and value of the Lands and Building.
- 14.4 **Conditions of Lands**. The Purchaser agrees to purchase the Lands in an “**as is, where is**” condition and further agrees that the Vendor shall not be obligated to perform any work in respect of the Lands in order to bring the Lands, or any part thereof, into compliance with any applicable standards of any relevant Authority. The Purchaser also agrees not to make any claim against the Vendor in respect of any of such work that may be required in order to bring the Lands or any part thereof into such compliance.
- 14.5 **Environmental**.
- (a) The Purchaser acknowledges and agrees that the Vendor makes no representations or warranties whatsoever, either expressed or implied, as to the existence or non-existence of any asbestos, PCBs, radioactive substances or any other substances, liquids or materials or contaminants which may be hazardous or toxic or require removal and disposal pursuant to the provisions of any applicable legislation (all of the foregoing being hereinafter called “Environmental Matters”) and that the Purchaser takes the Lands “as is” and relies upon his own investigations, if any, in this regard. From and after the closing date of this transaction, the Lands shall be the sole risk of the Purchaser, and the Vendor, its successors and assigns, will have no further liability in respect of any Environmental Matters and the Purchaser covenants and agrees, such covenant to survive closing and not to merge on closing of this transaction, to indemnify and save harmless the Vendor in respect of any claims, demands, losses, damages, in any way related directly or indirectly to any Environmental Matters and in respect of orders or claims, charges or requirements whatsoever of any Municipal, Provincial, Federal or other governmental body, board, commission, authority, department or Ministry, or employees, officials or representatives thereof.
- (b) As of and from the date of Closing, the Purchaser shall release the Vendor and its successors and assigns from and against all losses, damages, claims, fines liabilities, actions, suits, in any way arising, directly or indirectly by reason of the presence on the Lands of any containment, pollutant, dangerous substance wastes (liquid or solid) or toxic substance or the escape thereof in the air or onto adjacent properties or lands including rivers, streams, and ground waters, (collectively the “Substances”), whether produced, created or generated before or after Closing and such indemnity shall include any order, decree, judgment or demand under law, regulation or order applicable thereto; and,

- (c) The Purchaser, its successors and assigns, hereby agree to indemnify and hold harmless the Vendor, its affiliates, their successors and assigns from any and all costs, claims demands, liabilities and damages arising out or in any way connected with any state, quality or condition in, or of, the Lands, including, but not limited to, the existence of any substances existing as of, or prior to the date of Closing and thereafter, whether environmental or otherwise, whether imposed by law, equity or any federal, provincial or municipal law, rules or regulations or by any regulatory authority. The provisions of this Clause 14.6 shall survive Closing and any subsequent sale or transfer of the Purchaser's interest in the Lands.

15. CONDITION

15.1 **Vendor's Conditions.** The Vendor's obligation to complete the transaction of purchase and sale as contemplated herein is subject to fulfillment of each of the following conditions on or by the date specified therefore (which shall be the Closing Date unless otherwise specified), unless waived by the Vendor, which conditions are inserted for the benefit of the Vendor:

- (a) **Representations and Warranties.** The representation and warranty set forth in Clause 13.1 shall be true and accurate on, with the same effect as if made on and as of, the Closing Date and the Purchaser shall have delivered to the Vendor a certificate of the Purchaser, dated the Closing Date, to this effect
- (b) **No Condition Precedent.** The Vendor's Condition set out in this section is not a condition precedent to the existence or enforceability of this Agreement.
- (c) **Board of Trustees Approval.** The Agreement is subject to and conditional upon the Vendor obtaining the Board of Trustees approval within sixty (60) calendar days of acceptance of the Form of Tender, failing which this Agreement shall become null and void and the Purchaser's deposit shall be returned in full, without deduction or interest. The Vendor shall have the right, at its sole and absolute discretion to extend the date allowed for fulfillment of the condition set out in this Clause, from time to time, provided such extension does not exceed a total of ninety (90) days from the original date set for fulfillment.
- (d) **Conditions Not Fulfilled.** If the condition is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's solicitor that such Vendor's Condition has been waived within the applicable time period allowed, if any, this Agreement shall be null and void, notwithstanding any intermediate act or negotiations, and, neither the Vendor or the Purchaser shall be liable to the other for any loss, costs or damages, and the Deposit shall be returned to the Purchaser without interest or deduction.
- (e) **Delivery of Documents.** All documents required to be executed and/or delivered to the Vendor hereunder shall have been executed and/or delivered.

- (f) **Performance of Terms, Covenants and Conditions.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or prior to the Closing Date, shall have been complied with or performed by the Purchaser on or before the date fixed for such compliance or performance.

16. INVESTIGATION OF LANDS AND TITLE

- 16.1 **Search of Title.** The Purchaser shall examine title at the Purchaser's own expense and shall, within **twenty-one (21) calendar days** after notification of acceptance of the Form of Tender has been forwarded by registered mail to the Purchaser, deliver to the Vendor all objections to title in writing to the in-house counsel for the Vendor, Jennifer Feren, District School Board of Niagara, 191 Carlton Street, St. Catharines, Ontario, L2R 7P4. Should no objection in writing be made within that time to the said in-house counsel, title shall be deemed to have been accepted.
- 16.2 **Objections.** Should any sufficient objection in writing be made within that time, the Vendor shall have reasonable time to rectify and comply with same, or if the Vendor is unable to or unwilling to waive the same, the Vendor shall be at liberty to rescind the sale (notwithstanding any intermediate negotiations with respect to such objection, or any attempt to remove or comply with same) by notice in writing served upon or mailed by registered mail, postage prepaid, addressed to the Purchaser at his/her/its address as designated in his/her/its Form of Tender, or addressed to his/her/its solicitor at his or her usual place of business, in which case such Purchaser shall be entitled to only a return of the Deposit, without interest, costs or compensation.
- 16.3 **Possession.** The Vendor shall remain in possession of the Property until the closing and completion of the Agreement of Purchase and Sale, and title to the Property shall not pass to the Purchaser thereof, nor shall the Purchaser be entitled to possession of the same until the purchase price and all other payments to be made by the Purchaser pursuant to this Tender and Agreement of Purchase and Sale have been made.
- 16.4 **Title.** The Purchaser acknowledges that it has satisfied itself and shall accept title to the Lands subject to:
- (a) all registered and unregistered restrictions or covenants, including without limitation, municipal requirements including building and zoning by-laws, municipal services to the Lands or any part thereof, and any easements that run with the land existing at the date of acceptance of this Proposal;
 - (b) all Land Use Regulations;
 - (c) other agreements and restrictions on title to the extent that they have been complied with;
 - (d) any order affecting the Lands regarding its conditional use, including deficiency or other notices, work or other orders;

(e) any encroachment or location of existing fencing, including but not limited to the acceptance of the location of fences as noted on Reference Plan 59R-14924; and

(f) any existing environmental conditions or contamination to the site.

16.5 **Documents.** The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Lands. Should any other documents pertaining to the Lands be required in order to provide a description acceptable to the Land Registrar, such documentation shall be obtained on or before closing by the Purchaser and at the Purchaser's expense.

17. CLOSING ARRANGEMENTS

17.1 **Closing Arrangements.** The Closing of the Purchase and Sale which is contemplated herein shall be completed prior to 5:00 P.M. on the Closing Date.

17.2 (a) **Documents of the Vendor.** On the Closing Date (or before as aforesaid or otherwise where practicable but at the Vendor's option), the Vendor shall deliver to the Purchaser the following:

(i) **Vacant Possession.** The Purchaser shall have vacant possession of the Property on Closing;

(ii) **Transfer.** The Transfer duly executed by the Vendor, in registrable form;

(iii) **Statement of Adjustments.** A statement of adjustments;

(iv) **Undertaking.** An undertaking to re-adjust the Statement of Adjustments in accordance with Clause 12.1(e), if necessary, upon written demand;

(v) **Keys.** Master keys and duplicate keys to all locks in the Vendor's possession; and

(vi) **Direction.** A Direction regarding payment of funds.

(b) **Documents of the Purchaser.** On or before the Closing Date, the Purchaser shall deliver to the Vendor the following:

(i) **Balance of the Purchase Price.** A certified cheque or bank draft payable to the Vendor (or as the Vendor in writing may direct) in the amount of the adjusted cash balance of the Purchase Price in accordance with Clause 12.1(b) hereof;

(ii) **Undertaking.** An undertaking to re-adjust the Statement of Adjustments in accordance with Clause 12.1(e), if necessary, upon written demand;

- (iii) **Certificate**. The certificate referred to in Section 15.1(a);
- (iv) **Direction**. A Direction as to Title, if necessary; and
- (v) **Other**. Such further documentation relative to the completion of this transaction as the Vendor or its solicitors may reasonably require.

17.3 **Electronic Registration**. Where each of the Vendor and the Purchaser retain a lawyer to complete the Agreement of Purchase and Sale of the Lands, and where the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, Chapter L4 and the *Electronic Registration Act*, S.O. 1991, Chapter 44, and any amendments thereto, the Vendor and the Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Vendor and the Purchaser will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Vendor and the Purchaser irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

17.4 **Taxes and Fees**. The Purchaser shall be responsible for all registration fees and land transfer taxes payable in connection with the registration of the Transfer and the transfer of the Lands. Each party shall pay its own legal fees with respect to this transaction.

18. MISCELLANEOUS

18.1 **Assignment**. The Purchaser covenants and agrees that the Purchaser will in no way directly or indirectly assign, rent, lease, convey, list or in any way advertise for sale, sell, or otherwise transfer the Purchaser's rights under this Agreement prior to completion of this Purchase to any other person or entity without the express written consent of the Vendor. Such consent may be arbitrarily or unreasonably withheld at the Vendor's sole option.

18.2 **Registration**. The Purchaser shall not register this Agreement or any assignment of this Agreement or any part thereof or register a caution in relation thereto.

18.3 **Time**. Time shall be of the essence of this Agreement and the transactions contemplated herein, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement, in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard.

- 18.4 **Tender.** Any tender of documents or money may be made upon the party being tendered or upon its solicitors as designated by the party being tendered to the party making the tender, and money may be tendered by certified cheque or banker's draft.
- 18.5 **Relationship of the Parties.** Nothing herein shall be construed so as to make the Purchaser a partner of the Vendor and nothing herein shall be construed so as to make the Purchaser an owner of the Lands for any purpose, until the Closing Date. The Purchaser shall not cause or permit this Agreement or notice thereof or a short form thereof to be registered against title to the Lands.
- 18.6 **Further Assurances.** Each of the parties hereto shall execute and deliver all such further documents and do such other things as the other party may reasonably request in order to give full effect to this Agreement.
- 18.7 **Non-Merger.** The terms and provisions of this Agreement shall survive the Closing Date and shall not merge on completion of the purchase and sale contemplated herein and the transfer to the Purchaser of the Lands.
- 18.8 **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Notwithstanding any assignment of this Agreement by the Purchaser, the Purchaser shall remain liable to the Vendor for the performance of all of the obligations of the Purchaser contained herein.
- 18.9 **Damage or Destruction.** The Lands shall remain at the risk of the Vendor until the Closing.
- 18.10 **Real Estate Commission.** The Vendor shall be under no obligation for the payment of any commission. Realtors submitting Agreements of Purchase and Sale for their client should make arrangements for their compensation directly with the Purchaser.
- 18.11 **Quebec Resident Purchaser.** The submission of a Tender by a resident of the Province of Quebec will be deemed to constitute the declaration and acknowledgment by the tenderer that he/she/it has requested the foregoing Conditions of Sale, the Tender and all the documentation relating to his/her/its Form of Tender and the acceptance thereof to be drawn in the English language.
- 18.12 **Seal.** Signature of the Form of Tender by the Purchaser and submission thereof to the Vendor constitutes an offer under seal. This Form of Tender when accepted constitutes a binding contract of Purchase and Sale.
- 18.13 **School Name.** The Purchaser agrees that, upon completion of this transaction, it shall not use the name "PELHAM CENTRE" or "PELHAM CENTRE PUBLIC SCHOOL" or "District School Board of Niagara" or "DSBN" to identify, advertise or represent the subject property, and any signage or reference to this name shall be removed from the subject property by the Purchaser immediately following the date of the closing of this transaction.



District School Board of Niagara
 191 Carlton Street St. Catharines ON L2R 7P4
<http://www.dsbni.org/Purchasing/>

FORM OF TENDER 19113
Sale of Property Pelham Centre Public School

By signing below, I/we acknowledge that I/we have read and accept the terms and conditions of this document and further that I/We have the authority to bind the organization.

I/We acknowledge that I/we have received addenda numbered _____ to _____ and the Purchase Offer quoted incorporates such addenda.

I/We herewith agree to purchase the Property known as **Pelham Centre Public School, 1165 Centre Street, Fenwick, Ontario, L0S 1C0** at the following price:

PURCHASE OFFER _____ **\$** _____

AMOUNT IN WORDS _____

PLUS HST, IF APPLICABLE

In the event the Vendor accepts the Purchaser's offer, then the Purchaser understands this entire Agreement as submitted forms the Agreement of Purchase and Sale (see *Clause 26.10*).

Signature _____

Printed Name _____

Witness Signature _____

Printed Name _____

Company Name
(if applicable) _____

NOTE: This document must be completed in full including an authorized signature.

FORM OF TENDER – Sale of Property

Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or facsimile, to the Purchaser at:

Address _____

City _____ **Postal Code** _____

Telephone _____ **Facsimile** _____

email for Contact Purposes: _____

In anticipation of potentially being the successful bidder in this tender, it is important to complete your Solicitor's contact information below:

Solicitor's Name _____

Address _____

City _____ **Postal Code** _____

Telephone _____ **Facsimile** _____

email _____

and to the Vendor at:

District School Board of Niagara
191 Carlton Street
St. Catharines, Ontario L2R 7P4
Attention: Jennifer Feren, Board Lawyer
Telephone: (905) 641-1550, Ext. 54150
Facsimile: (905) 641-5060
email: Jennifer.Feren@dsbn.org

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, 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.

I, the undersigned Vendor, agree to the herein Purchase and Sale Agreement offered by the Purchaser.

DISTRICT SCHOOL BOARD OF NIAGARA

Per:

Warren Hoshizaki
Director of Education & Secretary

Date

NOTE: This document must be completed in full including an authorized signature.

PROPERTY INFORMATION

PELHAM CENTRE PUBLIC SCHOOL



**1165 Centre Street
Fenwick, Ontario
L0S 1C0**



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1. PELHAM CENTRE PUBLIC SCHOOL OVERVIEW

Pelham Centre Public School is owned by the District School Board of Niagara and has served as an elementary school.

This facility is a two level brick building with a gymnasium and stage, a library, nine classrooms, staff room and office space. The original building was constructed in 1875 with additions in 1956 and 1967. The total floor area is 20,357 square feet.

The facility is situated on a relatively flat 9.77 acre site with a pan handle of property at the northwest corner. The asphalt parking lot contains 19 parking spaces.

2. STATISTICAL DATA

Official Address	1165 Centre Street Fenwick, Ontario L0S 1C0
Current Registered Owner	District School Board of Niagara
Legal Description	Part Lot 9, Concession 9, Pelham Part 1 on 59R-14924; PIN 64032-0067 (LT)
Zoning	Institutional with Special Provision I74 Allowing for School Use
Official Plan Designation	Specialty Agricultural/Greenbelt Natural Heritage Overlay
Site Dimensions	The subject property is approximately 9.77 acres. It is rectangular in shape with a panhandle of property on the northwest corner. The property has a westerly frontage of 581 feet along the east side of Centre Street, a southerly boundary of 1323 feet, a two part easterly boundary of 297 feet and 284 feet and a two part northerly boundary of 165 feet and 1,161 feet. The boundary dimensions are approximate.
Site Area	9.77 Acres
Building Area	20,357 square feet
Date of Construction	1875 with additions in 1956 and 1967
Utilities	Septic System Cistern Hydro Natural Gas
Security System	Presently monitored by PasWord Security

3. **OPERATIONAL COSTS**

	<u>2016-17</u>	<u>2015-16</u>
	\$	\$
Maintenance Repairs	26,571	25,928
Property Services	11,079	8,131
Utilities:		
Electricity	44,246	31,023
Natural Gas	2,511	2,834
Water	3,408	2,418
TOTAL	<u>87,815</u>	<u>70,334</u>

4. **CAPITAL COSTS AND IMPROVEMENTS**

<u>YEAR</u>	<u>PROJECT</u>	<u>AMOUNT</u>
		\$
2006-2008	Roof replacement	108,160
2006-07	Lighting upgrade	34,980
2008-09	Window replacement	42,300
2011	Paving	27,070
2012	Intrusion alarm	11,660
2016	Paving	18,360
	TOTAL	<u>242,530</u>

5. **AUDITS AND REPORTS**

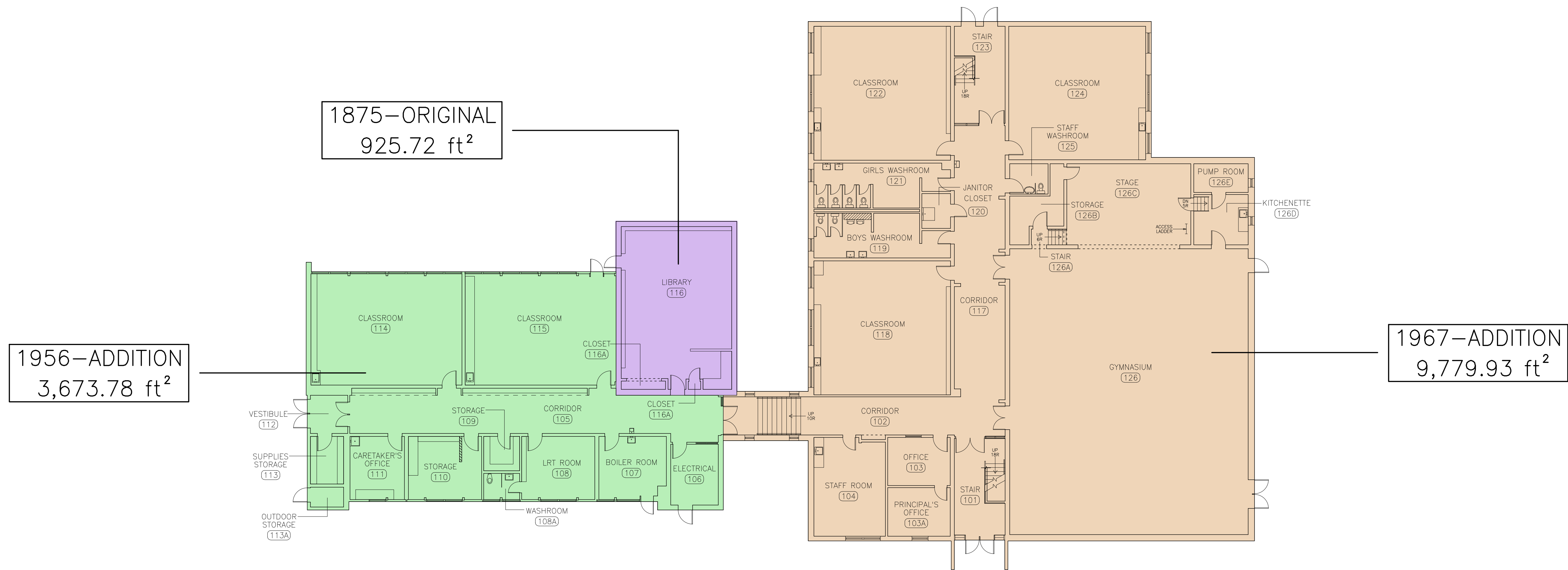
In 2017, the District School Board of Niagara's consultant conducted a re-assessment to determine the condition of asbestos containing materials in the school.

The result of their report indicated that the asbestos containing materials are in good condition, and no remedial activities were required.

6. **APPENDICES**

- A. Floor Plans
 - i. First Floor
 - ii. Second Floor

- B. Site Plan

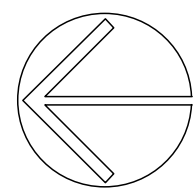


1875-ORIGINAL
925.72 ft²

1956-ADDITION
3,673.78 ft²

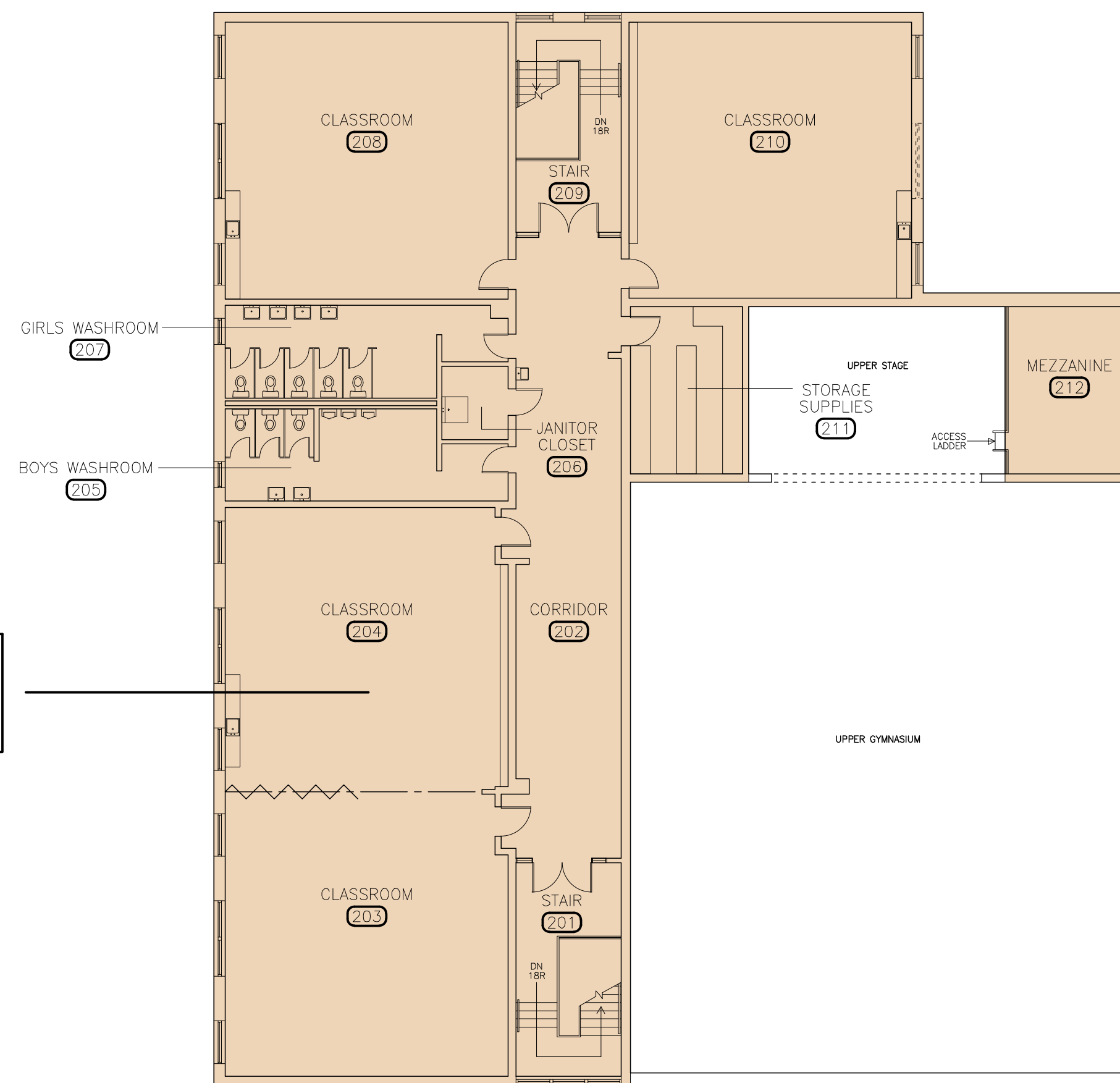
1967-ADDITION
9,779.93 ft²

GROSS FLOOR AREA	
FIRST FLOOR	14,379.43 ft ²
SECOND FLOOR	5,977.50 ft ²
TOTAL	20,356.93 ft ²



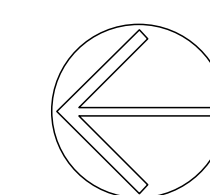
PELHAM CENTRE SCHOOL
1165 Centre St., R.R. #5 Fenwick, ON.
FIRST FLOOR PLAN

Date: January 05, 2015
TOTAL FOOTPRINT = 14,379.44 SQ.FT.



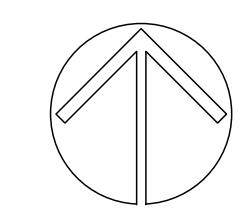
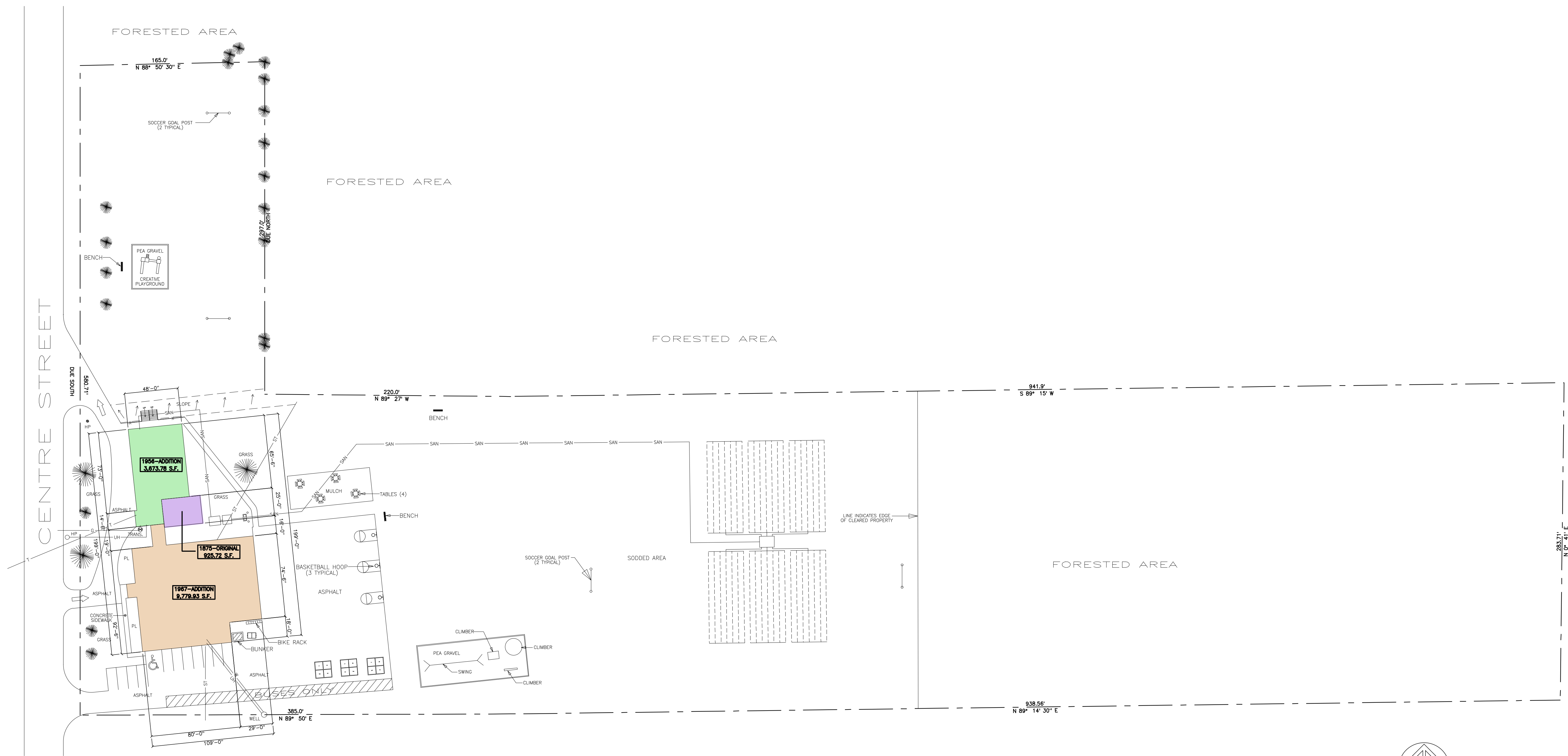
1967-ADDITION
5,977.50 ft²

GROSS FLOOR AREA	
FIRST FLOOR	14,379.43 ft ²
SECOND FLOOR	5,977.50 ft ²
TOTAL	20,356.93 ft ²



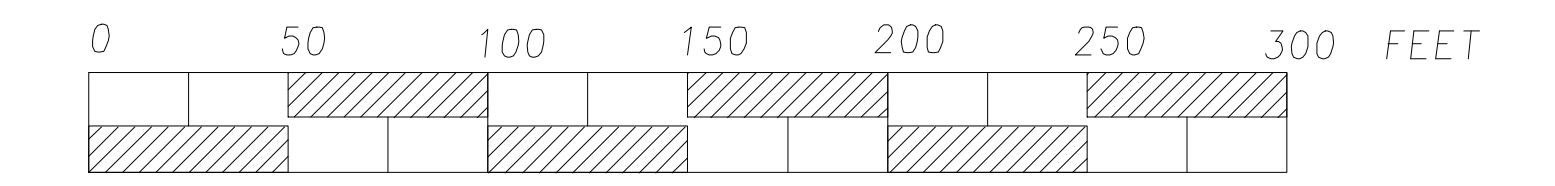
PELHAM CENTRE SCHOOL
1165 Centre St., R.R. #5 Fenwick, ON.
SECOND FLOOR PLAN

Date: January 05, 2015
TOTAL FOOTPRINT = 5,977.50 SQ.FT.



PELHAM CENTRE SCHOOL
 1165 Centre St., Fenwick, ON.
SITE PLAN

Date: January 5, 2015



SITE AREA	
ACRES	9.77
HECTARES	3.95