

From: Marisa Carpino
Interim Chief Administrative Officer

Subject: Minister's Zoning Order Request for Durham Live Lands
- Minister's Zoning Order Development Agreement
- File: D-1000-004

Recommendation:

1. That Council approve the Minister's Zoning Order Development Agreement, substantially in the form set out in Attachment No. 1 to this report, subject to minor revisions acceptable to the Interim Chief Administrative Officer and the Director, Corporate Services & City Solicitor;
 2. That the Mayor and City Clerk be authorized to execute the said agreement on behalf of the City and forward a copy to the Ministry of Municipal Affairs and Housing; and
 3. That the appropriate City of Pickering officials be authorized to take the actions necessary to give effect to this report.
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Executive Summary: City staff, in collaboration with staff from the Ministry of Municipal Affairs and Housing (MMAH), the Regional Municipality of Durham (the Region), and representatives from Triple Properties (Durham Live), have been working diligently over the last four months to satisfy the Minister with the appropriateness of enacting a Minister's Zoning Order ("MZO") on the majority of the Durham Live lands. The lands subject of the proposed MZO are bounded by Highway 401 to the north, Church Street to the east, Bayly Street to the south, and the CN rail spur on the west, excluding the lands occupied by the existing Casino Resort.

The MZO would establish zoning permissions for a number of new uses including a major distribution and production centre on the lands west of Squires Beach Road, and on the lands east of Squires Beach Road, warehousing/and logistics, residential apartments, retail uses and expanded Major Tourist Destination uses on all the developable lands.

The Region had a concern with the MZO being enacted without a mechanism to address their concerns regarding servicing capacity, transportation, and affordable housing. The use of a development agreement between the affected parties was identified as an appropriate means to require the transportation and water and sewer studies to be undertaken, the resulting required works to be constructed, and affordable housing to be required as part of Triple Properties' residential permission.

As such, a "Minister's Zoning Order Development Agreement" (the "Agreement") has been prepared. A copy of the draft Minister's Zoning Order Development Agreement for the Durham Live lands is included as Attachment No. 1 to this report. It is a three-party agreement between the Regional Municipality of Durham, The Corporation of the City of Pickering, and Triple

Properties' landholding companies, Pickering Developments (401) Inc., Pickering Developments (Bayly) Inc., and Pickering Developments (Squires) Inc. (referred to as the "Owner" in the Agreement).

The Agreement:

- requires the Owner, at their own expense, to prepare a Transportation Study and a Water and Sewer Study to identify infrastructure needed to accommodate the development;
- requires the Owner to undertake those works from which only the Owner benefits (exclusive works) at their sole expense;
- indicates non-exclusive works will be cost-shared with other benefitting landowners;
- requires the Owner to post securities for both the completion of the required studies and for the required exclusive works;
- requires 150 of the 1,650 residential apartments to be affordable housing, with one-third to be delivered in the first phase of residential development, and the remainder in the second phase of residential development;
- requires the Owner to pay applicable Regional and City Development Charges (DCs) and to be eligible to apply for DC credits, if available;
- requires the Owner to pay applicable Regional and City Engineering Review fees; and
- establishes arbitration as a dispute resolution mechanism.

It is City staff's understanding that the Region will be considering the Agreement at their Regional Council meeting on October 28, 2020.

At this time, it is recommended that City Council approve the Agreement.

Financial Implications: The development that could be achieved with the enactment of the MZO would result in increased property tax assessment and increased job opportunities. The Agreement obligates Triple Properties to pay for the works that exclusively benefit its lands. The Agreement provides for further negotiations to address the cost of works that would benefit other property owners in the area, on the basis that benefitting landowners should pay their proportionate share of such works.

Discussion: On May 25, 2020, Deputy Mayor Ashe, at the direction of City Council (Resolution #293/20), wrote to the Minister of Municipal Affairs and Housing requesting that the Minister enact a Minister's Zoning Order ("MZO"), pursuant to section 47 of the *Planning Act*, on the Durham Live lands (excluding the area of the casino/hotel/multi-purpose arena).

A MZO is like a Provincial zoning by-law, establishing permissible uses, and standards and provisions for those uses. It supersedes the City's zoning by-laws in the event of a conflict between the two. The MZO would establish these land use rights in an expedited process relative to the normal time it takes to amend a municipal zoning by-law.

The purpose of the MZO is to allow a major distribution centre and production facility on land west of Squires Beach Road ranging in size between approximately 79,000 square metres to 113,000 square metres. For the lands east of Squires Beach Road, the MZO would establish a Natural Heritage System zone that includes a 30-metre buffer (instead of the current 120-metre buffer), extend all of the uses currently permitted by the MTD zoning under By-law 7405/15 over the remaining developable lands, add permissions for 1,650 residential apartments of which a minimum 150 shall be affordable housing units, and allow for up to 32,500 square metres of retail commercial uses.

The benefit of an MZO is that it can be enacted quickly. There is no right of appeal from an MZO. Through a typical zoning by-law amendment application, supporting studies would be required to be prepared by the applicant addressing such matters as the impact of the proposed development on infrastructure, and identifying required works to address the impact. The City (or Region) would require the works to be completed as a condition of approval by placing an (H) – holding symbol on the zoning. An (H) – holding symbol cannot be used with a MZO.

There is a public interest to ensure that the development contemplated by the MZO will occur in an orderly and controlled manner. The Region expressed concern about the capacity of existing water and sewer services available to this area, and about the impact of the development on the road network. Additionally, with the MZO proposing permission for residential uses, the Region and the City will benefit from the inclusion of 150 affordable housing units.

Thus, a three-party “Minister’s Zoning Order Development Agreement” has been prepared between the Region, the City and Triple Properties. The Agreement addresses the responsibilities for funding, undertaking, and implementing required works to address transportation, and water and sewer capacity issues. The Agreement also addresses the requirement for, and timing of, the delivery of the affordable housing units.

It is recommended that Council approve the draft Minister’s Zoning Order Development Agreement, subject to any minor changes acceptable to the Interim Chief Administrative Officer and the Director, Corporate Services & City Solicitor, and that the said Agreement be executed by the City and a copy be provided to the Ministry of Municipal Housing and Affairs.

Attachment

1. Draft Minister’s Zoning Order Development Agreement
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Prepared By:



Catherine Rose, MCIP, RPP
Chief Planner

Approved/Endorsed By:



Paul Bigioni
Director, Corporate Services & City Solicitor

CR:ld

Recommended for the consideration
of Pickering City Council



Marisa Carpino, M.A.
Interim Chief Administrative Officer

MINISTER'S ZONING ORDER DEVELOPMENT AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2020.

B E T W E E N:

PICKERING DEVELOPMENTS (401) INC.
PICKERING DEVELOPMENTS (BAYLY) INC.
PICKERING DEVELOPMENTS (SQUIRES) INC.
(the "Owner")

- and -

THE REGIONAL MUNICIPALITY OF DURHAM
(the "Region")

- and -

THE CORPORATION OF THE CITY OF PICKERING
(the "City")

- and -

TBA
(the "Encumbrancer")

RECITALS

WHEREAS:

- (a) The Owner is the registered owner of the Lands;
- (b) The Owner proposes to further develop the Lands pursuant to a Ministerial Zoning Order;
- (c) The Region requires as a condition of the granting of the Ministerial Zoning Order under the provisions of the *Planning Act*, R.S.O. c.P13 that this agreement be entered into between the Owner, the Region and the City.
- (d) The development of the Lands will necessitate the construction of the Exclusive Works and Non-Exclusive Works.

NOW THEREFORE the Owner, the Region, the City and the Encumbrancer agree as follows:

INTERPRETATION

Definitions

1. In this Agreement and in the recitals above,
 - (a) **“Agreement”** means this Minister’s Zoning Order Development Agreement and all referenced Schedules including the drawings referenced in the definition of “Exclusive Works” and “Non-Exclusive Works” which shall all inclusively be considered the complete and entire Agreement;
 - (b) **“City”** means the Corporation of the City of Pickering acting as a body corporate and, where the context requires, includes all of its employees, officers, servants and agents;
 - (c) **“Completion Acceptance Letter”** means the letter described in Section 11;
 - (d) **“Exclusive Works”** means those Works, if any, identified in the Required Studies that are for the exclusive benefit of the Lands but only as they apply to such uses (or the extent of such uses) which were not already permitted by City of Pickering By-law 7404-15, as amended, including the prior lifting of H-1 and H-2.
 - (e) **“Final Acceptance Letter”** means the letter described in Section 16;
 - (f) **“Lands”** means the lands legally described as:

FIRSTLY: PICKERING CON.1-17-1 SEC TOWNSHIP OF PICKERING; PT LT 17 CON 1 IN THE TOWNSHIP OF PICKERING, IN THE COUNTY OF ONTARIO PTS 1, 2 & 3, 40R8440 EXCEPT PT 2, 40R10082 ; S/T LT89157 (TRANSFERRED BY DR98641); CITY OF PICKERING

SECONDLY: CON. 1-15-2 SEC PICKERING; PT LTS 15 & 16 CON 1, OF THE ORIGINAL TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, PTS 2, 3 & 4, 40R5623 EXCEPT PTS 1 & 2, 40R8447 & PTS 1, 2, 3 & 4, 40R8469 ;; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, PLAN 40R-30556 AS IN DR1814588; CITY OF PICKERING

THIRDLY: CON. 1-15-2 SEC PICKERING; PT LTS 15 & 16 CON 1, TOWNSHIP OF PICKERING, COUNTY OF ONTARIO, PT 1, 40R5623 ;; CITY OF PICKERING
 - (g) **“Letter of Credit”** means a letter of credit described in Section 25;
 - (h) **“Minister’s Zoning Order”** means a Minister’s Zoning Order issued by the Minister of Municipal Affairs under section 47 of the *Planning Act* which

order permits, among other things, the following uses or permissions on the Lands:

- i) 1650 residential apartment units (which includes 150 units of affordable rental housing) (the “Residential Permission”);
 - ii) 32,500 m² of retail uses (the “Retail Uses”); and
 - iii) reducing the environmental area in the “Urban Reserve Zone” from 120 m to approximately 30 m (the “Urban Reserve Permission”);
 - iv) permitting a distribution center on Lands encumbered by a provincially significant wetland (“Project Lonestar”)
- (i) **“Non-Exclusive Works”** means those Works, if any, identified in the Required Studies that non-exclusively benefit the Lands, but only as they apply to such uses (or the extent of such uses) which were not already permitted by City of Pickering By-law 7404-15, as amended, including the prior lifting of H-1 and H-2.
 - (j) **“Region”** means The Regional Municipality of Durham acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of Durham;
 - (k) **“Required Studies”** means those studies identified on Schedule “C” to this Agreement.
 - (l) **“Works”** means all of the Exclusive Works and Non-Exclusive Works to be installed.

Schedules

2. The following Schedules are attached to and form part of this Agreement:

Schedule A Solicitor's Certificate

Schedule B Lands and Interests to be Conveyed to the Region.

Schedule C Required Studies

References

3. References in this Agreement to Sections and Schedules are to Sections and Schedules in this Agreement.

Extended Meanings

4. This Agreement shall be read with all changes in gender or number as the context may require.

Owner's Expense

5. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.

EXCLUSIVE AND NON-EXCLUSIVE SERVICES

Commencement, Design and Installation

6. (1) In this Section, "plans" means the plans, profiles, contours, surveys and other engineering reports, materials, drawings, data and investigations required to complete the Required Studies and the design and installation of the Exclusive Works.

(2) The Owner shall be responsible for the preparation of all plans, the preparation of all Required Studies and the installation of all Exclusive Works as determined by the Required Studies. The plans shall be prepared, and the installation of the Exclusive Works shall be undertaken in accordance with all applicable federal, provincial and municipal laws, by-laws, rules, regulations, standards and other governmental requirements and the Design and Construction Specifications for Regional Services. Where no materials are specified in the Region's design guidelines, the materials shall be approved by the Region prior to the installation of the Exclusive Works.

(3) This Agreement shall only come into force and effect and shall only be binding on the Parties upon the issuance of a Minister's Zoning Order which applies to all of the vacant Lands ("MZO").

(4) At the request of the Region or the City, the Owner shall make any and all necessary changes or deletions to the plans to ensure that the Exclusive Works to be assumed by the Region or the City meet the Region's or the City's technical standards, as the case may be, and the Exclusive Works shall be adjusted accordingly. For greater clarity, the scope of the Exclusive Works, as identified in the Required Studies, will not be expanded or revised except as is required to meet the Region's and the City's technical standards for assumption. The intent of this clause is not to require the Owner to write a 'blank cheque'. In the case of a disagreement between the Owner, the City or the Region as to what is required, the Owner, the City and the Region, as the case may be, will work diligently and co-operatively to settle their dispute, including arbitration as provided for in this Agreement, if necessary.

Authorization to Commence Work

7. The Owner shall not commence the installation of the Exclusive Works without written permission from the Region or the City as the case may be. Such permission shall not be given until,
 - (a) the Owner has completed and submitted to the Region and/or the City, as required, the Required Studies for the approval of the Region or the City, as the case may be, the sufficiency and completion of which shall be determined at the sole discretion of the Region or the City, all acting reasonably;
 - (b) all monies, securities and insurance policies required by this Agreement have been delivered to the Region or the City, as the case may be;
 - (c) the required Fees, in accordance with this Agreement, have been paid for the Required Studies and the Exclusive Works;
 - (d) A Construction Management Plan to the satisfaction of the Region or the City, as the case may be, for the Exclusive Works has been submitted addressing, among other things,
 - i. the parking of vehicles and the storage of construction and building materials during servicing and house construction, and ensuring that such locations will not impede the flow of traffic or emergency vehicles on either existing public streets or any proposed public street,
 - ii. the provision of mud and dust control on all roads within and adjacent to the site,
 - iii. the type and timing of construction fencing,
 - iv. the location of construction trailers, and
 - v. details of any temporary construction access;
 - (e) the lands and easements as determined by the Required Studies have been conveyed to the Region or the City, at the appropriate time and as the case may be; and
 - (f) the Owner has obtained all necessary approvals for the installation of the Exclusive Works.

Additional Work

8. If at any time prior to completing the installation of the Exclusive Works the Region or the City, acting reasonably, is of the opinion that changes are necessary to ensure that the Exclusive Works to be assumed by the Region or the City meet the Region's and the City's technical standards, the Owner shall make such changes. For greater clarity, the changes contemplated herein are not intended to be

inconsistent or materially different from the Exclusive Works identified in the Required Studies but are limited to those matters which require change to meet the Region's and the City's technical standards for assumption. The intent of this clause is not to require to Owner to write a 'blank cheque'.

Completion of the Works

9. The completion dates for the installation of the Exclusive Works shall be determined by the Required Studies.
10. The Owner shall ensure that the Exclusive Works are completed in compliance with the Required Studies and in a good and workmanlike manner, comparable to similar services and work normally performed by efficient, experienced and competent engineering and construction professionals.
11. In the event that the Exclusive Works are in the jurisdiction of the Region, then after the Exclusive Works have been installed to the satisfaction of the Region and in accordance with section 10, and any payments or arrangements for payment, to the satisfaction of the Region, have been made for the Non-Exclusive Works, the Region shall issue a letter (the "**Completion Acceptance Letter**") confirming completion of the Works and the commencement date for the maintenance period.
12. In the event that the Exclusive Works are in the jurisdiction of the City, then after the Exclusive Works have been installed to the satisfaction of the City and in accordance with section 10, and any payments or arrangements for payment, to the satisfaction of the City, have been made for the Non-Exclusive Works, the City shall issue a letter (the "**Completion Acceptance Letter**") confirming completion of the Works and the commencement date for the maintenance period.
13. The Owner acknowledges and agrees that it shall not request and the Region, and/or the City shall not issue, the Completion Acceptance Letter to the Owner until the Owner has completed the Exclusive Works to the satisfaction of the Region or the City, as the case may be, and in accordance with section 10.

Occupational Health and Safety

14. In the performance of the Exclusive Works, Owner shall
 - (1) Ensure that the Exclusive Works are installed safely and in accordance with the *Occupational Health and Safety Act*, as amended from time to time ("**Act**");
 - (2) Ensure that its employees, contractors, subcontractors and their employees act safely and comply with the Act;
 - (3) Rectify any unsafe act or practice and any non-compliance with the Act immediately upon being notified by any person of the existence of such act, practice or non-compliance; and,

- (4) Permit representatives of the Region or the City, as the case may be, to enter onto the Lands at any time or times for the purpose of inspection to determine compliance with this section.

Approvals and Permits

15. The Owner acknowledges that connection to the Region's Sewer System and Water Supply System is regulated by the Region's Sewer System and Water Supply System By-law. The Owner further acknowledges, being advised by the Region, that the Region may refuse to issue a permit under that By-law for any use on the Lands until such time as the Region has issued a Completion Acceptance Letter to the Owner for the relevant service.

Maintenance of the Works

16. The Owner shall maintain the Exclusive Works for a minimum period of two (2) years following the issuance of the Completion Acceptance Letter, (the "**Maintenance Period**"). At the conclusion of the Maintenance Period, the Region or the City, as the case may be, shall re-inspect the Exclusive Works, and if acceptable to the Region or the City, the Region or the City, as the case may be, shall issue a letter (the "**Final Acceptance Letter**") confirming such acceptance and the termination of the Maintenance Period. Upon the issuance of the Final Acceptance Letter, the Region or the City as applicable, shall assume ownership of, and all operation and maintenance responsibilities for, the Exclusive Works.

"As Recorded" Drawings

17. Prior to the issuance of the Final Acceptance Letter, the Owner shall submit to the Region or the City, complete in accordance with Regional standards, "as recorded" drawings for the Exclusive Works.

Emergency Repairs

18. The Region and the City may enter upon the Lands at any time for the purpose of making emergency repairs to any of the Exclusive Works. In such situation the Region and the City shall not be deemed to have accepted any of the Exclusive Works or assumed any liability in connection with the Exclusive Works.

Restoration of Roads

19. The Owner shall be responsible for the clean-up and repair of all Regional and local roads, including boulevards, which become dirty or damaged as a result of the installation of the Exclusive Works. Within 48 hours of verbal notification to the Owner by the Region or the City, as the case may be, the Owner shall undertake such works as are necessary to clean-up or repair the roads.

FINANCIAL MATTERS

Cost of the Works

20. The Owner shall be responsible for the full cost of the Exclusive Works and shall front-end the full cost of the Required Studies, subject to cost-recovery as provided for in the section entitled Non-Exclusive Works. The estimated cost of the Exclusive Works shall be determined by the Required Studies.

Development Charges

21. The Owner shall pay Regional and City development charges for all uses at the rate in effect at the time payment is made in accordance with the Region's and the City's development charge by-laws. Regional and City development charges shall be payable in accordance with the Region's and City's development charge by-laws with respect to each dwelling unit.
22. All development charges owing shall be payable in accordance with the applicable development charge by-laws with respect to the commercial, industrial and institutional use.
23. To the extent that any of the Exclusive Works or the Non-Exclusive Works are eligible for development charge credits, then the Owner shall be entitled to apply for such credits and the Region or the City, as the case may be, shall process such applications in good faith.

Fees

24. (1) In this Section,
 - i. "Engineering Fee" means all costs and expenses incurred by the Region and the City, as the case may be, in reviewing, examining and inspecting the design and installation of the Required Studies and the Exclusive Works;
- (2) The Region's Engineering Fee is calculated by applying the applicable formula in the following chart to the total cost of the Works:

Total Cost of the Works	Engineering Fee
Less than \$100,000	3% (minimum \$250.00)
\$100,001 to \$200,000	\$3,000 on first \$100,000 and 2.5% on next \$100,000
\$200,001 to \$500,000	\$5,500 on first \$200,000 and 2.25% on next \$300,000
\$500,001 to \$1,000,000	\$12,250 on first \$500,000 and 2.0% on next \$500,000
\$1,000,001 to \$2,000,000	\$22,250 on first \$1,000,000 and 1.50% on next \$1,000,000
\$2,000,001 to \$4,000,000	\$37,250 on first \$2,000,000 and 1.20% on next \$2,000,000

(3) The City's Engineering Fee means those fees charged by the City pursuant to its General Municipal Fees By-law, as amended from time to time.

(4) The Engineering Fee only includes periodic inspection. If the Region or the City is required to provide full-time on-site inspection services for the installation of the Works, then the Owner shall reimburse the Region or the City, as the case may be, and shall reimburse the Region or the City for all costs and expenses incurred by the Region or City, as the case may be, for such services. All such costs and expenses shall be in addition to the Engineering Fee.

Security

25. The owner shall file with the Region or the City, as the case may be, Letters of Credit as follows:

(1) Forthwith upon execution of this Agreement a Letter of Credit in the amount of \$200,000, being one hundred percent (100%) of the estimated cost of the Required Studies; and,

(2) Prior to the commencement of any work in relation to the Exclusive Works a Letter of Credit in an amount determined by the Required Studies being one hundred percent (100%) of the estimated cost of the Exclusive Works,

in order to guarantee the due performance of all of the Owner's obligations under this Agreement with respect to the Required Studies and the installation of the Exclusive Works. The Letters of Credit shall be in a form satisfactory to the Region's or City's Treasurer, as the case may be.

26. The Letter of Credit for the Required Studies shall be released upon successful completion of the Required Studies to the Region's or the City's sole satisfaction, as the case may be.

27. The Letter of Credit for the Exclusive Works shall be reduced to 25% of its original amount provided the Completion Acceptance Letter has been issued and the Owner has filed with the Region or the City, as the case may be, a statutory declaration stating that,
- i. all services and materials with respect to the installation of the Works have been supplied and no amounts are owing to any person in relation to such materials or services;
 - ii. no person has given notice of a claim for lien under the *Construction Lien Act*, R.S.O. 1990, c.30 against the Lands or any part thereof, and no person is entitled to make such a claim;
 - iii. there are no judgments or executions filed against the Owner;
 - iv. nothing is owing by the Owner or claimed against it for unemployment insurance deductions, income tax deductions or premiums under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997. c. 16, Sch. A;
 - v. the Owner has not made any assignment for the benefit of creditors, no receiving order has been made against it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and no petition for such an order been served upon the Owner; and
 - vi. forty-five (45) days have passed since the completion of the installation of the Works.
28. The Region or the City, as the case may be, shall release the Letter of Credit for the Exclusive Works following the issuance of the Final Acceptance Letter.

Non-Exclusive Works

29. In the event that the Required Studies identify Non-Exclusive Works, the Owner the Region and the City agree that how such Non-Exclusive Works are funded, designed, and expeditiously constructed will, at the request of any one of the Region, the City and the Owner, as the case may be, be the subject of future, good faith negotiations, between the Owner, the City and the Region. The Owner, City and Region acknowledge that such further negotiations may require the involvement of other persons or parties. The Owner, the Region and the City agree that such further agreement will be based on a principle that those who benefit from the Non-Exclusive Works shall pay their fair share of such works. The Owner, the Region and the City will consider any legal mechanisms available to implement such cost sharing including but not limited to Front-Ending Agreements under the *Development Charges Act 1997*, S.O. 1997, c. 27 and the imposition of conditions for *Planning Act* approvals.

Affordable Housing

30. The Owner acknowledges and agrees that it shall, as part of the residential development of 1,650 units on the Lands, provide a minimum of 150 affordable housing units, which units shall, for a period of not less than twenty (20) years, have a market rent at or below 80% of the Canadian Mortgage and Housing Corporation determination of average market rent for the market area, to the satisfaction of the Region and the City.
31. The Owner acknowledges and agrees that it shall provide at least one third of the minimum 150 affordable housing units described herein as part of the first phase of any residential development on the Lands, and the remaining two thirds of the required affordable housing units as part of the second phase of development on the Lands to the satisfaction of the Region and the City. The Owner agrees that it shall enter into a contribution agreement, or such equivalent commitment as the Region deems appropriate, with the Region in respect of the Affordable Housing, to give effect to the forgoing paragraph.

Insurance

32. (1) Before commencing any of the Works set out in this Agreement, the Owner shall obtain and maintain policies of insurance with the following types of coverage and associated limits:
 - i. General Liability coverage to a limit of \$5,000,000;
- (2) Any insurance obtained under this Section shall name the Region and the City, as the case may be, as an additional insured so that it is protected from claims by third parties, is protected from claims by insurers, and, in the case of insurance insuring against major perils, is able to receive the proceeds for the purposes of correcting any deficiencies arising as a result of any perils insured against which are not being rectified by the Owner.
- (3) No policy of insurance shall contain a clause for exclusion for blasting.
- (4) All insurance policies shall specify that they shall not be cancelled or changed to reduce the coverage unless the insurance company has given thirty (30) days prior written notice to the Region and the City, as the case may be.
- (5) Certificates of insurance setting out the essential terms and conditions of the insurance shall be provided to the Region and City, as the case may be, prior to the Region or City, as the case may be, executing this Agreement and shall be continued until the Final Acceptance Letter has been issued. The certificate of insurance shall be in a form satisfactory to the Region's or the City's Treasurer, as the case may be.

(6) The issuance of any policy of insurance shall not be construed as relieving the Owner from responsibility from other or larger claims, if any, for which the Owner may be held responsible.

Indemnification

33. Until the Final Acceptance Letter has been issued, the corporations that constitute the Owner shall jointly and severally indemnify and save harmless the Region and the City from all losses, damages, costs, expenses, claims, demands and actions of every nature and kind whatsoever including death or injury (collectively referred to as “losses”) arising directly or indirectly from the design, installation, maintenance or operation of the Exclusive Works, the Non-Exclusive Works, or any other obligation of the Owner under this Agreement, including any claims brought against the Region or the City, as the case may be, by any person arising out of any unsafe act or practice or any non-compliance with the *Occupational Health and Safety Act* by the Owner or any of its employees, contractors, subcontractors and their employees in the performance of the Exclusive Works, or in the performance of any other obligation pursuant to this Agreement, whether or not such losses are incurred by reason of negligence on the part of the Owner and whether such losses are sustained by the Region or the City, as the case may be, the Owner or their employees, workmen, servants, agents or councillors or any other person or corporation

DEFAULT

Events of Default

34. The Owner shall be in default under this Agreement if,
- (1) the Owner fails to complete the Required Studies or to install or maintain any part of the Exclusive Works or Non-Exclusive Works as required by this Agreement or fails to carry out any other obligation under this Agreement; or
 - (2) the Region or the City receives legal notice, or otherwise finds, that the Owner has ceased to carry on business, is bankrupt, insolvent or has made a voluntary or involuntary proposal in bankruptcy, whether such cessation of business is voluntary or involuntary.

Remedies of Default

35. If the Owner is in default and such default has continued for a period of seven (7) days (or such longer period as may be reasonably required in the circumstances to cure the default) after receipt of notice from either of the Region or the City setting out the particulars of the default, the Region or the City, as the case may be, may enter upon the Lands and do all such matters and things as are required

to remedy the default, including the repair or reconstruction of faulty work and the replacement of substandard materials. Nothing in this Section shall require the Region or the City to give notice in any situation deemed by them to be an emergency.

36. Actual costs incurred by the Region or the City in carrying out any remedial work plus twenty five (25%) percent of such costs as a charge for overhead (to be construed as a liquidated amount, not as a penalty) shall be paid by the Owner to the Region and the City as applicable.
37. The Region or the City, as the case may be, may draw upon the Letter of Credit to satisfy any costs associated with remedying any default.
38. Failure by the Region or the City to exercise any of its rights, powers or remedies under this Agreement or any delay in doing so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

DISPUTE RESOLUTION

Arbitration

39. Any dispute, disagreement, controversy, question or claim (including a claim for indemnification) arising out of, in relation to, or in connection with this Agreement (collectively, a “**Dispute**”), which cannot be amicably settled by negotiation or mediation shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17. The arbitration award shall be final and binding on the Parties, subject to applicable Laws and Regulations.

Confidentiality

40. The Parties will keep confidential and not disclose to any other person, the arbitration and all matters arising directly or indirectly from the Dispute (including all documents exchanged, the evidence and the award). A Party may, however, disclose any such information to the extent required:
 - (1) to obtain assistance from persons to conduct the arbitration;
 - (2) by Laws and Regulations; or
 - (3) by a disclosure requirement with a shareholder, lender or potential lender (including any advisor to any such recipient person), so long as such person is informed of the confidential nature of such information and such person agrees to be bound, subject to Laws and Regulations, by such confidentiality obligation.

Costs of Arbitration

41. Subject to the terms of this Contract, those parties who are participating in the arbitration will bear the costs of it in equal shares.

Governing Law

42. Any arbitrations conducted under this Section are governed by and are to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

OTHER MATTERS

Notice of Agreement

43. The Owner shall give to every purchaser of any part of the Lands actual notice of the existence and the terms of this Agreement and include such notice in any offer to purchase or other similar document dealing with the Lands.

Registration on Title

44. This Agreement shall be binding upon and shall enure to the benefit of the Parties, their heirs, executors, administrators, successors and assigns whether on title or otherwise.
45. Within 10 days of the execution of this Agreement, the Owner shall register this Agreement on title to the Lands.
46. The Owner agrees that it will not convey by way of deed, or transfer, or grant or assign or exercise a power of appointment or enter into an agreement of purchase and sale in respect of the Property, or any portion thereof, or enter into any other agreement or lease, which has or could have the effect of granting the use of or right in the Property, or any portion thereof, directly or by entitlement to renewal, unless the Owner requires the proposed purchaser, grantee, assignee, lessee, or such other person who would be entitled to the benefits of such agreements or transactions, to execute and deliver to the Region and the City an agreement with the Region and the City, satisfactory in form and content to the Regional and City Solicitor, wherein such party agrees to assume the covenants and obligations of the Owner set out in this Servicing Agreement and to be bound by the terms of this Servicing Agreement. This requirement does not apply to end users (such as tenants or purchasers of residential units, tenants of non-residential space).

Postponement

47. All rights and interests which the Encumbrancer has in the Lands are hereby postponed to this Agreement and any easement given pursuant to this Agreement

and the Encumbrancer agrees to be bound by all of the provisions of this Agreement should the Encumbrancer become a mortgagee in possession as a result of a power of sale or an Owner as a result of foreclosure, and in either event, the Encumbrancer agrees that it shall stand in the shoes of the Owner as if it is the Owner.

Conveyances

48. The Owner shall convey, or ensure that the necessary party conveys, to the Region and the City the lands and interests in land, as determined by the Required Studies. Any such conveyances shall be in a form acceptable to the Regional or City Solicitors as applicable.

Further Assurances

49. The Owner shall execute such further assurances of the rights hereby granted as deemed necessary by the Region and the City.

Notices

50. (1) Any notice to the Owner shall be in writing and shall be delivered to the following address:

Triple Properties
186 Bartley Drive
Toronto Ontario M4A 1E1x
Tel: (416) 751-4242
steve@tripleproperties.com

Attention: Mr. Steve Apostolopoulos
Fax No. (416) 750-8884

Notice shall be sufficiently given if,

- (a) delivered in person;
 - (b) sent by registered mail; or
 - (c) sent by facsimile transmission or email during normal business hours on a business day.
- (3) Each notice sent shall be deemed to have been received,
- (a) on the day it was delivered;
 - (b) on the third business day after it was mailed (excluding each business day during which there existed any general interruption of postal services due to strike, lockout or other cause); or

(c) on the same day that it was sent by facsimile transmission or by email or on the first business day thereafter if the day on which it was sent by facsimile transmission was not a business day.

(5) The Owner may change its address for notice by giving notice to the Region's Clerk in the manner provided in this Section.

Recitals

51. The Recitals contained in this agreement are true and correct and are legally binding and form a true part of this agreement.

Electronic and Counterpart Signatures

52. This Agreement and any Ancillary Agreements may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement or any Ancillary Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement for all purposes.

Interpretation

53. Notwithstanding anything else in this agreement, where this agreement requires the approval of any of the Region or the City, or where the words "as the case may be" are utilized, or where there is a requirement for the Owner to pay money, post security, indemnify anyone, provide insurance, or allow entry to the Lands, those phrases and actions shall be interpreted as applying only to the municipality having jurisdiction over the Exclusive Works, or the Non-Exclusive Works, or any part thereof.

IN WITNESS WHEREOF the parties have executed this Agreement and if required may do so with counterpart signatures.

OWNER

2020/ /

Name:
Title:

2020/ /

Name:
Title:
I/We have authority to bind the Corporations

THE REGIONAL MUNICIPALITY OF DURHAM

2020/ /

John Henry, Regional Chair and CEO

2020/ /

Ralph Walton, Regional Clerk

THE CORPORATION OF THE CITY OF PICKERING

2020/ /

2020/ /

ENCUMBRANCER

2020/ /

Name:
Title:

2020/ /

Name:
Title:

SCHEDULE A

Solicitor's Certificate

**TO: THE REGIONAL MUNICIPALITY OF DURHAM
(the "Region")**

I, _____, a Solicitor duly qualified to practice law in the Province of Ontario, do hereby certify that the Owner is the owner in fee simple of the Lands and that there are no mortgages or other encumbrances upon the Lands or any part thereof save and except the following:

x

I further certify that the Owner is the owner in fee simple of the lands to be conveyed to the Region as set out in Schedule B and that there are no mortgages or other encumbrances upon such lands or any part thereof save and except the following:

x

This Certificate is given by me to the Region for the purpose of having the Region act in reliance on it in executing the Servicing Agreement dated _____, 2020 and for certifying title to the Lands and the lands set out in Schedule B.

DATED at _____, Ontario, this _____ day of _____, 2020.

Solicitor

SCHEDULE B

Lands and Interests to be Conveyed to the Region or the City

To be determined by the Required Studies.

SCHEDULE “C”
REQUIRED STUDIES

Transportation Study:

The Owner shall complete and submit, to the Region’s and the City’s satisfaction and approval, as the case may be, a thorough assessment of the transportation impacts (“**Transportation Study**”) associated with the proposed development, and accordingly identify mitigating road infrastructure requirements, transit service enhancements and supporting Transportation Demand Management (TDM) measures. A Terms of Reference and timeline for the completion of the Transportation Study, shall be developed at the outset to the Region’s or City’s satisfaction, as the case may be, and in consultation with the Region to guide the Transportation Study. The Region’s “Traffic Impact Study Guidelines”, dated March 2010, shall be used as the initial basis for developing the Terms of Reference. Additionally, this Transportation Study shall identify mitigating measures that are required exclusively as a result of the development of the Lands and those mitigating measure that are not exclusively the result of such development, along with the estimated costs of all such measures, exclusive and non-exclusive. For any non-exclusive mitigating measures identified by the Transportation Study, the Transportation Study shall also identify the extent to which the development of the Lands is responsible for and/or benefits from the mitigating measure and the proposed apportionment of the costs. Finally, upon completion of the study, a timeline shall be established, and a construction management plan prepared for the design, construction and implementation of the Exclusive Works to the Region’s or the City’s satisfaction and approval, as the case may be.

Water and Sewer Study:

The Owner shall complete and submit, to the Region’s satisfaction and approval, a thorough assessment of the servicing (sanitary sewage servicing and water supply servicing) impacts (“**Servicing Study**”) associated with the proposed development, and accordingly identify any required servicing improvements required to the Region owned water supply system and sanitary sewage conveyance system. A Terms of Reference and timeline for the completion of the Servicing Study shall be developed at the outset, to the Region’s satisfaction and in consultation with the Region to guide the Servicing Study. At a minimum, the sanitary sewage servicing component must address:

- A review of the capacity of the downstream Jodrel Road sanitary sewage pumping station.
- A review of capacity of the forcemain downstream of the Jodrel Road sanitary sewage pumping station.

- A review of capacity at the sanitary sewers between the Durham Live lands and Jodrel Road sanitary sewage pumping station; and
- May include a review of the proposed intensification on the north side Highway 401, east of Brock Road.

Additionally, this Servicing Study shall identify mitigating measures that are required exclusively as a result of the development of the Lands and those mitigating measure that are not exclusively the result of such development, along with the estimated costs of all such measures, both exclusive and non-exclusive. For any non-exclusive mitigating measures identified by the Servicing Study, the Servicing Study shall also identify the extent to which the development of the Lands is responsible for and/or benefits from the mitigating measure and the proposed apportionment of the costs. Finally, upon completion of the Servicing Study, a timeline shall be established, and a construction management plan prepared for the design, construction and implementation of the Exclusive Works to the Region's satisfaction and approval.