
Due to COVID-19 and the Premier's Emergency Orders to limit gatherings and maintain physical distancing, the City of Pickering continues to hold electronic Council and Committee Meetings.

Members of the public may observe the open, public portion of the meeting proceedings by accessing the [livestream](#). A recording of the meeting will also be available on the [City's website](#) following the meeting.

An In Camera meeting of Council has been scheduled in accordance with the provisions of Section 239 (2) of the *Municipal Act* and Procedural By-law 7665/18, in that the matters to be discussed relate to:

- c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and,
- k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

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1. Roll Call

2. Disclosure of Interest

3. In Camera Matters

- 3.1 Director, Corporate Services & City Solicitor, Confidential Report LEG 07-20
Proposed Land Acquisition, Notion Road Fly-over Project
- 3.2 Verbal update from the Deputy Mayor and Interim Chief Administrative Officer
Re: Discussions with the Province of Ontario, Region of Durham and Town of Ajax regarding the MZO for Durham Live
- 3.3 Verbal Update from the Director, Corporate Services & City Solicitor
Re: Report LEG 06-20
Pickering City Centre Project

- Development Management Agreements

4. Delegations

- 4.1 Brian McCullagh, Director of Business Development - Business Solutions Vianet Inc.
Re: Report LEG 08-20
Broadband Service for Whitevale and Green River - ICON Grant Funding
- 4.2 Campbell Patterson
Re: Report LEG 08-20
Broadband Service for Whitevale and Green River - ICON Grant Funding

5. Matters for Consideration

- 5.1 [Memorandum from the Interim Chief Administrative Officer](#) **1**
Notion Road Overpass project
- Highway 401 Road Crossing
 - Durham Live

Recommendation:

1. That Council endorse the correspondence from Pickering Developments Inc. dated August 5, 2020, to enter into a cost sharing agreement with the City of Pickering for the total Notion Road Overpass project costs at a rate of 40 percent, subject to the enactment of the MZO for the Durham Live site; and,
2. That the appropriate City of Pickering officials be authorized to take the actions necessary to draft the Notion Road Overpass project cost sharing agreement, satisfactory to both parties, and return it to Council for approval.

- 5.2 [Director, Corporate Services & City Solicitor, Report LEG 06-20](#) **5**
Pickering City Centre Project
- Development Management Agreements

Recommendation:

1. That the following agreements with Cushman & Wakefield Asset Services ULC and twopoint0partners inc. be approved, subject to

(i) City staff approval of the invoices submitted by the said companies for services rendered to date, and subject to minor revisions acceptable to the Director, Corporate Services & City Solicitor and Interim Chief Administrative Officer:

(a) Development Management agreement between the City and twopoint0partners inc. for the proposed new Performing Arts Centre;

(b) Development Management agreement between the City and twopoint0parnters inc. for the proposed new Central Library; and,

(c) Development Management agreement between the City and Cushman & Wakefield Asset Services ULC for the proposed new Seniors & Youth Centre.

2. That invoices for services rendered by Cushman & Wakefield Asset Services ULC in the amount of \$296,459.46 (inclusive of HST) and twopoint0partners inc. for services rendered in the amount of \$668,405.36 (inclusive of HST) be approved in principle, subject to review of the said invoices by City staff for conformity to the requirements of the above-noted agreements;

3. That invoices for services rendered by exp Services Inc., in the amount of \$5,706.50 (inclusive of HST) be approved in principle, subject to review of the said invoices by City staff for conformity to the requirements of the above-noted agreements; and,

4. That appropriate City of Pickering officials be authorized to take the actions necessary to implement the recommendations in this report.

5.3 [Director, Corporate Services & City Solicitor, Report LEG 08-20](#)
Broadband Service for Whitevale and Green River - ICON Grant Funding

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Recommendation:

1. That the broadband network proposed in this report to service the areas of Whitevale and Green River be endorsed;

2. That staff be directed to continue working with Vianet Inc. to complete an application under the “Improving Connectivity for Ontario” Program for Provincial funding support for the said broadband network; and,
3. That appropriate City of Pickering officials be authorized to take the actions necessary to implement the recommendations in this report.

6. Confirmation By-law

7. Adjournment

To: Deputy Mayor Ashe
Members of Council

August 5, 2020

From: Marisa Carpino
Interim Chief Administrative Officer

Copy: Director, Corporate Services & City Solicitor
Director, Finance & Treasurer
Director, Engineering Services

Subject: Notion Road Overpass project
- Highway 401 Road Crossing
- Durham Live
File: D-1000-004

Please find attached correspondence from Pickering Developments Inc. that confirms their commitment to enter into a cost sharing agreement with the City of Pickering for the total Notion Road Overpass project costs at a rate of 40 percent, subject to the enactment of the MZO for the Durham Live site. The total Notion Road Overpass project costs include but are not limited to the Highway 401 crossing to connect Notion Road and Squires Beach Road (in the City of Pickering), land acquisition, design, construction and other ancillary costs.

The remaining balance of 60 percent will be borne by the City of Pickering which is subject to eligible DC funding. The City of Pickering may pursue other cost sharing partners who are considered to benefit from these infrastructure improvements (i.e. Region of Durham).

At the Special Meeting of Council of August 10th, staff seek Council's endorsement of the attached correspondence from Pickering Developments Inc. dated August 5, 2020 and that appropriate City of Pickering officials be authorized to take the actions necessary to draft the Notion Road Overpass project cost sharing agreement, satisfactory to both parties, and return it to Council for approval.

Background Information:

Projected costs associated with the Notion Road Overpass project are reflected in the 2020 Capital Budget and 2021-2022 Capital Forecast Budget as follows:

2020 Capital Budget

- | | |
|---|-------------|
| 1. 5321.2002 Highway 401 Road Crossing Design | \$2,000,000 |
| 2. 5321.2004 Highway 401 Road Crossing Land Acquisition | \$5,000,000 |

2021 Capital Forecast Budget

- | | |
|---|-------------|
| 1. 5321.2101 Highway 401 Road Crossing Land Acquisition | \$5,000,000 |
|---|-------------|

2022 Capital Forecast Budget

1. 5321.2208 Highway 401 Road Crossing Construction \$53,000,000

In late 2019, the City of Pickering and Pickering Developments Inc. completed a Municipal Class Environmental Assessment (EA) for a new Highway 401 crossing to connect Notion Road and Squires Beach Road, in the City of Pickering, Region of Durham. The need for a new road crossing to link Notion Road with Squires Beach Road for vehicles, pedestrians and cyclists was identified in the City of Pickering Official Plan, Edition 8 (2018), the Town of Ajax Official Plan (2016), the Region of Durham Official Plan (2017), and the Region of Durham Transportation Master Plan (2017).

The aim of the Notion Road Overpass project is to provide improved road network connectivity, capacity and active transportation to support continued growth in the City of Pickering and bring relief to the existing road infrastructure. The design is expected to be awarded in Fall 2020 with the anticipated completion by Spring 2022. Construction is expected to begin shortly thereafter and be completed by 2024.



:mc

Attachment Pickering Developments Inc. correspondence dated August 5, 2020
Subject Area diagram

Pickering Developments (Squires) Inc.

August 5, 2020

Marisa Carpino
Interim Chief Administrative Officer
City of Pickering
One The Esplanade
Pickering, ON L1V 6K7

Subject: Notion Road Overpass project

- Highway 401 Road Crossing
- Durham Live

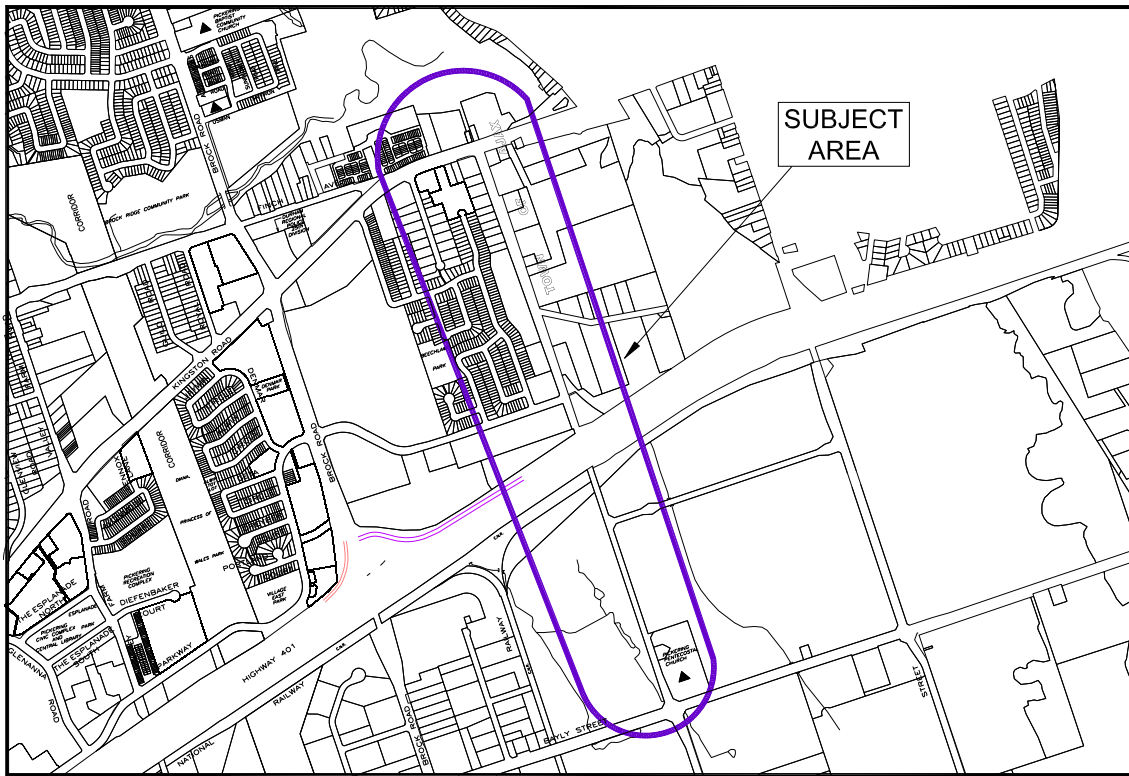
This letter is to confirm that Pickering Developments (Squires) Inc. will enter into a cost sharing agreement with the City of Pickering for the Notion Road Overpass project wherein Pickering Developments Inc. will fund 40% of the total Notion Road Overpass project costs which includes but is not limited to the Highway 401 crossing to connect Notion Road and Squires Beach Road (in the City of Pickering), land acquisition, design, construction and other ancillary costs. The cost sharing agreement is subject to the enactment of the MZO for the Durham Live site.

Pickering Developments (Squires) Inc. looks forward to working in cooperation with the City of Pickering to complete these important infrastructure improvements.

Yours truly,



Steve Apostolopoulos
Pickering Developments Inc.



Notion Road Overpass project: Subject Area diagram

From: Paul Bigioni
Director, Corporate Services & City Solicitor

Subject: Pickering City Centre Project
- Development Management Agreements
- File: D-1000-003-18

Recommendation:

1. That the following agreements with Cushman & Wakefield Asset Services ULC and twopoint0partners inc. be approved, subject to (i) City staff approval of the invoices submitted by the said companies for services rendered to date, and subject to minor revisions acceptable to the Director, Corporate Services & City Solicitor and Interim Chief Administrative Officer:
 - (a) Development Management agreement between the City and twopoint0partners inc. for the proposed new Performing Arts Centre;
 - (b) Development Management agreement between the City and twopoint0parnters inc. for the proposed new Central Library; and
 - (c) Development Management agreement between the City and Cushman & Wakefield Asset Services ULC for the proposed new Seniors & Youth Centre;
 2. That invoices for services rendered by Cushman & Wakefield Asset Services ULC in the amount of \$296,459.46 (inclusive of HST) and twopoint0partners inc. for services rendered in the amount of \$668,405.36 (inclusive of HST) be approved in principle, subject to review of the said invoices by City staff for conformity to the requirements of the above-noted agreements;
 3. That invoices for services rendered by exp Services Inc., in the amount of \$5,706.50 (inclusive of HST) be approved in principle, subject to review of the said invoices by City staff for conformity to the requirements of the above-noted agreements; and
 4. That appropriate City of Pickering officials be authorized to take the actions necessary to implement the recommendations in this report.
-

Executive Summary: On July 22, 2019, Council approved the City Centre project in principle and directed staff to negotiate binding agreements to define the project and to provide for the construction of the new City facilities included in the project.

Starting in early 2019, representatives of Cushman & Wakefield Asset Services ULC ("C&W"), twopoint0 partners inc. ("2.0") and Architects Alliance ("aA") began to work with teams of staff from

the Community Services and City Development Departments on the design of the new City facilities that will define the City Centre project.

Since August, C&W and 2.0 have acted as the City's development managers, coordinating and administering the design process on the City's behalf. The attached agreements have been drawn up to define the roles of the development managers, the scope of their services and the fees to be paid to them. City staff recommend that the attached agreements be approved, provided that the invoices submitted by the development managers for services rendered from August, 2019 to date are found by City staff to be appropriate and in conformity to the terms of the attached agreements.

Financial Implications:

Funding for the payment of invoices for development management services was provided for in the 2020 Capital Budget. City staff (principally the Finance and Community Services Departments) will review the accuracy and completeness of the submitted invoices to ensure that the supporting documentation matches and supports for the fees charged and to ensure conformity to the terms of the attached agreements.

The total gross dollar amount as reflected in recommendation 2 is \$964,864.82 (inclusive of HST), however, the City's net HST cost is approximately \$868,891.00. These costs will be allocated to the various capital budget accounts associated with the City Centre project.

Recommendation 3 is approving payment to exp Services Inc. (soils engineering firm) for work related to the Central Library and Performing Arts Centre. This firm provided geotechnical services in the scope of "shear velocity testing and bearing capacity data" to the structural engineers to design the building foundations.

Discussion: Pursuant to Report CAO 07-19 dated July 22, 2019, Council approved the City Centre project in principle and directed staff to negotiate binding agreements to define the project. The Memorandum of Understanding attached to Report CAO 07-19 provided for the construction of the new City facilities included in the project. The main features of the proposed new City Centre will be as follows:

New Central Library:

At approximately 47,000 square feet, the new Central Library will be significantly larger than the existing facility. This expansion will improve the delivery of new and existing services, and provide opportunities to better delineate key areas such as children's programming and seniors programming. The new library will include a green roof feature. The construction of the new central library will also facilitate the much-needed expansion of administrative and office space in City Hall into the old Central Library location.

New Seniors & Youth Centre:

The new Seniors & Youth Centre will be a 2-storey structure of approximately 64,000 square feet. It will feature 2 full sized gymnasiums, 3 multipurpose activity rooms, a full service kitchen, youth centre with a combined computer room, multimedia/games and general activity room, meeting room/boardroom, public change rooms, washrooms and storage rooms. A diverse array of recreation and leisure services will be offered at this community hub. Construction of the new Seniors & Youth Centre will enable the City to close its existing East Shore Community Centre, an undersized and aging building which is costly to maintain.

Performing Arts Centre:

The new Performing Arts Centre will be a 2-storey, 39,000 square foot facility. It will include a 600-seat theatre space with world class acoustics, seat comfort and sight lines to accommodate live theatre, music, dance, opera, film, speakers and special events; a multi-purpose room appropriate for a range of programs/activities including meetings, special events, rehearsals, performances and private rentals; classrooms and practice spaces to support arts education, fine arts programming and private rentals; and a 5,000 square foot lobby with concession area suited for large public gatherings, corporate events and art exhibitions.

New Public Square:

The new City facilities will be arrayed around a public square space that will act as a meeting place and a focal point for community activity. Through smart and pedestrian-focused design, the City will have the ability to close off sections of Glenanna Road in order to add to the public square and create a larger community gathering space. All of the facilities will be seamlessly connected via activated and pedestrian-friendly walkways, which will expand the public square concept to the farther reaches of the project.

New Underground Parking Structure:

To maximize the public space at ground level, a 3-storey underground parking structure will be built. It is anticipated to have 930 stalls with 350 dedicated for City uses by a long term lease/maintenance agreement. The remaining stalls will be allocated for residential use, to serve the adjacent residential development.

Above the parking structure, title to parcels of real estate (air rights) would be transferred to the City for the new Library, Seniors & Youth Centre and Performing Arts Centre. New residential development would take place on what is now the South Esplanade parking lot, which would be transferred to OPB Realty Inc. ("OPB"). A key component of the new residential development will be a 50 storey residential tower constructed over top the new Seniors & Youth Centre.

Work Done to Date:

Starting in early 2019, representatives of Cushman & Wakefield Asset Services ULC ("C&W"), twopoint0 partners inc. ("2.0") and Architects Alliance ("aA") began to work with teams of staff from the Community Services and City Development Departments on the design of the new City

facilities that will define the City Centre project. City staff have attended numerous design meetings with staff from C&W, 2.0 and aA, all of which are listed in Attachment No. 4.

Main Features of the Development Management Agreements:

Since August, C&W and 2.0 have acted as the City's development managers, coordinating and administering the design process on the City's behalf. The attached agreements have been drawn up to define the roles of the development managers, the scope of their services and the fees to be paid to them. The scope of services provided by the development managers include:

- (a) formulate, present and finalize development concepts for the project and the pro-forma budget;
- (b) apply for and supervise consultants in connection with the acquisition of, all zoning amendments, applications, licences, permits and approvals necessary for the project;
- (c) obtain approval of the City for contractors, consultants, suppliers and others for the project; and co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;
- (d) review contractor's notices and requests for contractor's contingency expenditures and to obtain the prior written approval of the City to authorize any such expenditures where the anticipated cost provided for in the contractor's contract exceeds \$25,000.00;
- (e) execute contracts with contractors in the name of and on behalf of the City, without personal liability, for work relating to the project where the anticipated cost provided for in the contract does not exceed \$25,000.00;
- (f) co-ordinate the layout, design and engineering for the project;
- (g) submit to the City monthly: (i) a cost and financial pro-forma analysis for the project and a consolidated report showing projected capital costs, costs incurred to date and projected variances to the Pro-Forma Budget, for approval or rejection by the City; (ii) reports on construction, contractual and legal matters and any significant developments affecting the project; (iii) an updated timetable for the completion of the project; and (iv) such other reports and information required by the City;
- (h) provide to the City, on an ongoing basis, access to reports on change orders and change directives, project schedules and cash allowances;
- (i) submit to the City all accounting and financial information and supporting documents for the Development as may be necessary or desirable for the purposes of preparing the City's financial statements in accordance with public sector accounting principles;
- (j) provide full accounting and bookkeeping services (but not audit services) for the project;
- (k) manage the draw requests for the project;
- (l) arrange for and coordinate regular meetings among the City, the Architect and the Development Manager;
- (m) arrange for and coordinate periodic meetings among the City, the Development Manager, and the PTC Ownership to ensure a coordinated effort with respect to construction;
- (n) provide regular monitoring of the project schedule as construction progresses;

-
- (o) co-ordinate and supervise to completion in accordance with the plans and specifications approved by the City the construction of the project;
 - (p) provide oversight in connection with required post-completion services and management of any warranty claims and rectifications up to two years after the date of substantial completion of the project; and
 - (q) carry out such other duties as are normally carried out by a development manager of similar projects.

The fee due to the development managers is 4 percent of the hard and soft costs of each of the three facilities to be designed and built. The fee is payable in monthly instalments for the duration of the project, notwithstanding that the pace of the development management work varies throughout the different phases of the design and construction process.

Provision has been included in the agreements for putting the project on hold, as may be necessary. As a result of the pandemic, the design process has been on hold since March 12, 2020. Since that time, work has stopped and the monthly development management fee has not been charged. The agreements also provide for termination by the City if the City Centre project does not proceed for any reason. In the event of such termination, the development managers will be paid for their services rendered to the date of termination.

Cushman & Wakefield currently manage the Pickering Town Centre property, and they have experience managing the development and construction of large retail and commercial properties. Bruno Bartels and George Buckles have been the lead representatives of Cushman & Wakefield throughout most of the City Centre design process. 2.0 is a company incorporated by George Buckles to manage the development of the City's new Central Library and Performing Arts Centre. Attachment No. 5 to this report contains information about other projects managed by Cushman & Wakefield.

City staff recommend that the attached agreements be approved, provided that the invoices submitted by the development managers for services rendered to date are found by City staff to be appropriate and in conformity to the terms of the attached agreements.

Attachments:

1. Development Management agreement between the City and twopoint0partners inc. for the proposed new Performing Arts Centre;
2. Development Management agreement between the City and twopoint0parnters inc. for the proposed new Central Library; and
3. Development Management agreement between the City and Cushman & Wakefield Asset Services ULC for the proposed new Seniors and Youth Centre.
4. List of design meetings attended by staff from the City, Cushman & Wakefield, 2.0 and aA.

5. Information about other projects managed by Cushman & Wakefield.

Prepared By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City Solicitor

PB:ks

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Interim Chief Administrative Officer

Execution Version

**THE CORPORATION OF THE CITY OF PICKERING
(the “Owner”)**

- and -

**twopointO partners inc.
(the “Development Manager”)**

**PICKERING CITY CENTRE
PERFORMING ARTS CENTRE**

DEVELOPMENT MANAGEMENT AGREEMENT

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THIS DEVELOPMENT MANAGEMENT AGREEMENT made as of the ____ day of August, 2020.

BETWEEN:

THE CORPORATION OF THE CITY OF PICKERING

(the “**Owner**”)

- and -

twopointO partners inc.

(the “**Development Manager**”)

RECITALS:

- A. The Owner is the Owner of the Property.
- B. The Owner and the Development Manager have agreed to enter into this Agreement to confirm the Development Manager as the development manager for the Development on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and the sum of \$10.00 paid by each party to the other party and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this Section 1.1:

“**Additional Development Management Agreement**” means the development management agreement dated as of the date hereof made between the Owner and the Development Manager with respect to the Performing Arts Centre.

“**Agreement**” means this Development Management Agreement, as amended, supplemented and restated from time to time.

“**Applicable Laws**” means all statutes, laws, by-laws, regulations, ordinances and orders of Authorities.

“**Architect**” means architectsAlliance – a partnership of corporations by its partners (including the sub-consultants and engineers retained by the Architect), or such other architect or firm of architects as may be retained by the Development Manager on behalf of the Owner in respect of the Development, from time to time.

“Authorities” means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Owner, the Development Manager, the Improvements or the Lands, including the businesses carried on therein.

“Business Day” means a day which is neither a Saturday, Sunday nor a day observed as a holiday under the laws of the Province in which the Property is located or the federal laws of Canada; and **“Business Days”** means more than one Business Day.

“Construction Cost Oversight Consultant” means Independent Project Managers together with CB Ross Partners Cost Consultants, or such other cost consultants or project manager(s) as may be retained by the Owner to provide cost oversight services in respect of the Development, from time to time.

“Consultants” means the Architect and such other architects, engineers, lawyers or other consultants (including such sub-consultants as are retained by any Consultant) as the Development Manager, subject to the approval of the Owner, may appoint from time to time on behalf of the Owner to supervise the servicing, development and construction of the Development; and **“Consultant”** means any one of the Consultants.

“Contractor” means the construction firm engaged by the Owner to act as general contractor in respect of the Development.

“Contracts” means all contracts either entered into or administered by the Development Manager in respect of the Development.

“Development” means the intended development of the Improvements including but not limited to the development and construction of a new performing arts centre containing up to 600 seats and related rectifications, reconfiguration and completion of the common areas of the Improvements in accordance with the Development Plans.

“Development Costs” means the total of all Hard Costs and Soft Costs.

“Development Fee” means the fee for the Development Manager’s services provided for in Section 2.13.

“Development Period” means the period commencing on August 1, 2019 and ending on the later of: (a) the date on which the Development is Totally Completed; and (b) the expiry of one year after the date of Substantial Completion of the Development; provided that, solely for the purposes of Section 2.6(ff), the Development Period shall continue until the date that is two years after the date of Substantial Completion of the Development.

“Development Plans” means the conceptual plans prepared by the Architect and renderings of the Development collectively attached hereto as Schedule C, as may be amended, supplemented or otherwise changed from time to time with the approval of the Owner.

“**Emergency**” means a condition or circumstance occurring in or about the Property which if not remedied immediately would result, with reasonable certainty, in: (i) material damage to the Property or material damage to other property; (ii) serious physical injury or death; or (iii) criminal or civil liability on the part of the Owner.

“**Event of Default**” means, in the case of the Development Manager:

- (a) the negligence or wilful misconduct of the Development Manager to perform its duties and discharge its obligations under this Agreement;
- (b) the persistent and/or material failure of the Development Manager, other than a failure which is as a result of either negligence or wilful misconduct of the Development Manager, to perform its duties and discharge its obligations under this Agreement; or
- (c) any fraudulent act of the Development Manager in respect of the Development or this Agreement or any material and deliberate misrepresentation by such Development Manager to the Owner.

“**Event of Insolvency**” means the occurrence of any one or more of the following events:

- (a) if the Development Manager, other than in connection with a bona fide corporate reorganization shall:
 - (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any successor legislation thereto or have its existence terminated or have any resolution passed therefor;
 - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation thereto; or
 - (iii) apply for protection or propose a compromise or arrangement under the *Companies’ Creditors Arrangement Act* (Canada) or any successor legislation thereto or shall file any petition, application or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors;
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against the Development Manager seeking any reorganization, arrangement, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally, and such order, judgment or decree remains unvacated or unstayed for an aggregate of 60 days from the date of entry thereof; or if any trustee

in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for the Development Manager or of all or any substantial part of its property with the consent or acquiescence of the Development Manager and such appointment remains unvacated or unstayed for an aggregate of 60 days; and

- (c) if a writ of execution or attachment or similar process is issued or levied against all the property or substantially all of the property of the Development Manager in connection with any judgment against the Development Manager and is not discharged or vacated within 60 days after it is so issued or levied.

“Final Budget Approval Date” means the date on which a resolution is duly passed by Pickering City Council approving the final Pro-Forma Budget for the Development following completion of the design and contracting phase of the Development.

“Hard Costs” means the total amount of all costs, fees, charges and expenses incurred for construction of the Development, excluding all furniture, fixtures and equipment purchased directly by the Owner and not included in the Pro-Forma Budget, but including, without limitation all expenses incurred in the actual construction of the Development including moneys paid for labour, materials and services in connection with such construction and all payments to and for the account of any contractors or suppliers engaged in the work with respect to the Development prior to and after the date of this Agreement.

“HST” means the tax imposed under Part IX of the *Excise Tax Act*, as amended or re-enacted from time to time, provided that in the event that any similar tax is introduced by any province that has jurisdiction, all references to **“HST”** shall apply, *mutatis mutandis*, with respect to such tax and its payment.

“Improvements” means a new performing arts centre and related facilities, any office areas and delivery facilities constructed or to be constructed on the Lands together with all connections, if any, to adjacent buildings, constructed as appurtenances to such buildings.

“Lands” means the lands and premises described in Schedule A.

“Pro-Forma Budget” means: (a) prior to the Final Budget Approval Date, the indicative pro-forma budget for the Development attached hereto as Schedule B that is consistent with the estimated cost of the Development presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020, which is subject to approval by Pickering City Council, which the parties acknowledge is preliminary in nature and shall be updated by agreement between the parties from time to time as the design and contracting phase of the Development progresses; and (b) from and after the Final Budget Approval Date, the final pro-forma budget for the Development as approved by Pickering City Council following completion of the design and contracting phase of the Development, as the same may be updated by agreement between the parties from time to time in accordance with this Agreement.

“Property” means, collectively, the Lands and the Improvements.

“PTC Lands” means the lands and premises outlined in red on Schedule D.

“PTC Ownership” means OPB Realty Inc. (the registered owner of the PTC Lands) and its asset manager, Investment Management Corporation of Ontario (IMCO).

“Reimbursable Expenses” has the meaning set forth in Section 2.18.

“Soft Costs” means any cost, disbursement or expense referable to construction of the Development which is not a Hard Cost but relates to the Development and includes without limitation:

- (i) fees and expenses incurred for architectural, engineering, land surveying, legal and other professional or consulting services in connection with the planning, development, servicing and construction of the Development;
- (ii) the cost of permits for construction of the Development and all levies, charges, taxes, assessments and levies made by any Authorities in respect of the Development and all expenses incurred otherwise relating to such construction, including those for insurance, necessary surety and other performance bonds, and other incidental expenses; and
- (iii) the cost of all agreements and materials obtained in connection with the Development.

“Substantial Completion” wherever used herein shall have the same meaning as **“substantial completion”** or **“substantial performance”** in the applicable construction lien legislation in force in the province in which the Property is situated and **“substantially completed”** wherever used herein shall have the corresponding meaning.

“Termination Fee” means an amount to be agreed upon between the Owner and the Development Manager, each acting reasonably and in good faith, which shall be calculated based on the cost of all obligations and services provided by the Development Manager pursuant to this Agreement calculated to the date of termination (recognizing that a disproportionate share of the Development Manager’s expertise and work is completed during the design and construction document phase of the Development), without duplication of any Development Fee previously paid by the Owner.

“Totally Completed” or **“Total Completion”** means total completion of the Development as certified by the Consultant, including the completion of all construction deficiencies for the Development.

“Unavoidable Delay” means any prevention, delay, stoppage or interruption in the performance of any obligation of a party hereto due to a strike, lockout, slow down, labour dispute, act of God, pandemic, inability to obtain or supply any service, equipment, utility, labour or materials, laws, statutes, ordinances, rules, regulations or orders of Authorities (including, but not limited to, federal, provincial or municipal states of emergency), inability to obtain or delay in receiving any required permit, zoning variance or other governmental or quasi-governmental approvals, enemy or hostile action, civil commotion,

war or other casualty, default by the other party or any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by the party to perform because of lack of its own funds where such funds are required to permit it to perform the obligation in question.

“**Written Order**” has the meaning set forth in Section 2.16.

ARTICLE 2 APPOINTMENT AND SERVICES

2.1 Appointment

The Owner hereby appoints and retains the Development Manager on an exclusive basis to provide all services and obligations set out in this Agreement in connection with the Development on the terms and conditions and for the remuneration provided for in this Agreement. The Development Manager shall administer and manage completion of the Development on behalf of the Owner. The Development Manager hereby accepts such appointment on the terms and conditions set out in this Agreement and agrees that it shall perform such services and carry out such obligations hereunder in a proper, competent, honest, diligent and efficient manner and in keeping with the standard of care, prudence, expertise and diligence that would be expected of an experienced development manager of comparable large commercial real estate projects and in accordance with the standard of performance set out in Section 2.3.

The Owner acknowledges and agrees that, except for Reimbursable Expenses provided for in Section 2.18 or as otherwise expressly set out in this Agreement, the Development Manager shall not, at any time, be required to use its own funds to pay any costs or expenses relating to the Development.

The parties acknowledge that, prior to the date of this Agreement, the Development Manager has submitted to the Owner, and the Owner has reviewed and approved, various invoices for reimbursement of certain Reimbursable Expenses and for a certain portion of the Development Fee payable to the Development Manager for work performed prior to the date of this Agreement, all of which will be paid by the Owner to the Development Manager promptly following the date of this Agreement. The parties further acknowledge that the Development is currently on pause until at least September 2020 by resolution of Pickering City Council and that further resolutions (the “**Restart Resolutions**”) are required in order: (i) for the Development Manager to re-commence its work hereunder; and (ii) to approve the indicative Pro-Forma Budget attached as Schedule B hereto. Consequently, the parties agree that the Development Manager shall not, unless directed to do so in writing by the Owner, carry out any further work under this Agreement until the Restart Resolution authorizing the re-commencement of the Development is duly passed by Pickering City Council.

2.2 Development Manager’s Representations and Warranties

The Development Manager hereby represents and warrants to the Owner that it has the requisite knowledge, skills and experience (including, without limitation, the knowledge and the experience to advise the Owner when Consultants need to be retained with specialized knowledge, skills and experience) to perform the services and functions provided for in this Agreement to the standards

provided for in Section 2.3, provided the Owner acknowledges that the Development Manager does not provide legal services to the Owner pursuant to this Agreement.

2.3 Standard of Performance

In carrying out its duties and obligations hereunder, the Development Manager will not be responsible for matters beyond its reasonable control (including, without limitation, delay in the completion of the Development, and/or increase in the cost to complete the Development) or for matters involving the expenditure of funds which are not made available by the Owner, and it is understood that the responsibility of the Development Manager in performing the services and functions mentioned shall be limited in each case to exercising in such performance the same degree of care, skill and supervision as would be exercised by an experienced development manager of large commercial real estate projects.

During the entire Development Period, the Development Manager shall commit and dedicate to and for the Development the members of its staff (including, without limitation, contract personnel) as required to maintain the standard of performance provided for in this Section 2.3.

In performing its obligations and services pursuant to the terms of this Agreement, the Development Manager shall comply with the terms of the Contracts as they relate to the Development. In making any interpretations, decisions or findings, the Development Manager will act in the best interests of the Owner and not show partiality to the PTC Ownership, the Contractor, the Architect or any trade contractors or other counterparties to such Contracts.

2.4 Independent Contractor

The parties acknowledge that the Development Manager shall undertake its duties hereunder as an independent contractor and not as agent or in any other way representative of the Owner except as herein expressly provided. It is further acknowledged that nothing in this Agreement nor in any acts of the parties hereto shall be deemed to create a partnership relationship among any of the Development Manager and the Owner.

2.5 Confidentiality

The information received by the Development Manager, as a result of or pursuant to this Agreement, shall not be disclosed by the Development Manager to any person other than as a necessary part of discharging its duties or enforcing its rights hereunder or used either to the detriment of the Development or for the benefit of a competitive project, except with the written consent of the Owner or unless required by law to be disclosed in connection with legal proceedings.

2.6 Obligations and Services of the Development Manager

The Development Manager shall, in a skilful and expeditious manner and in accordance with any agreements made by the Owner relating to the Development and of which the Development Manager has knowledge:

- (a) with the direction and instruction of the Owner, formulate, present and finalize development concepts for the Development and the Pro-Forma Budget;
- (b) apply on behalf of the Owner in the name of the Owner, as agent for the Owner and without personal liability, to Authorities for, and obtain, and supervise the Consultants and trade and supply contractors in connection with the acquisition of, all land use classification amendments, applications, licences, permits and approvals necessary or required for the Development (including demolition, excavation, site plan and building permits and their related agreements);
- (c) select, and propose to and obtain approval of the Owner for, contractors, Consultants, suppliers and others for the Development; and co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;
- (d) review contractor's notices and requests for contractor's contingency expenditures and to obtain the prior written approval of the Owner to authorize any such expenditures where the anticipated cost provided for in the contractor's contract exceeds \$25,000.00, whether as a credit or an expense, and to authorize, on behalf of the Owner, contingency expenditures which have been approved by the Owner or which are not required to be approved by the Owner but which, based on the experience of the Development Manager, are justifiable. For certainty, the provisions of this Section 2.6(d) shall apply to contractor's contingency payments to the Owner's general contractor in accordance with the terms and conditions of the construction contract between the Owner and such general contractor;
- (e) execute Contracts with contractors in the name of and on behalf of the Owner, without personal liability of the Development Manager under such Contracts, for work and/or services for the Owner and relating to the Development where the anticipated cost provided for in the contract does not exceed \$25,000.00;
- (f) co-ordinate the layout, design and engineering for the Development including, without limitation, the preparation of all drawings and specifications, and obtain the approval by the Owner of any material changes thereto;
- (g) co-ordinate and direct to completion in accordance with the plans and specifications approved in writing by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12 of this Agreement, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf and the Development Manager shall review and authorize on behalf of the Owner change orders with respect to the construction of the Development provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;

- (h) co-ordinate, in conjunction with the Consultants, the preparation by the general contractor and distribution to the Owner of critical path schedules for the development of the Development and obtain from contractors and distribute to the Owner critical path schedules for the construction of the Development, and periodic updates thereto as necessary to reflect any material changes to such schedules;
- (i) arrange for and monitor the conduct of all such things as are necessary to ensure compliance by the Owner with all terms and conditions of all Contracts entered into, assumed by or binding upon the Owner in connection with the Development of which the Development Manager has knowledge;
- (j) co-ordinate the planning and construction of tenant improvements, if any, in the Development;
- (k) co-ordinate and direct the moves of tenants, if any, into the Development and the opening of the Development to the public for business;
- (l) submit to the Owner monthly:
 - (i) a cost and financial pro-forma analysis for the Development, in a format acceptable to the Owner, and a consolidated report showing projected capital costs and costs incurred to date and projected variances to the Pro-Forma Budget which the Owner shall approve or reject prior to the next monthly report;
 - (ii) reports on construction, contractual and legal matters and any significant developments affecting or relating to the Development;
 - (iii) an updated timetable for the development, construction and completion of the Development; and
 - (iv) upon the request of the Owner, such other reports and information as the Owner may reasonably require;
- (m) provide to the Owner, on an ongoing basis, access to reports on:
 - (i) change orders and change directives;
 - (ii) project schedules (in accordance with subparagraph (w)); and
 - (iii) cash allowances,and ensure all such reports are maintained in an accurate, prudent and responsible manner and are provided in a format which is readily and easily accessible to the Owner;
- (n) submit to the Owner all accounting and financial information and supporting documents for the Development as may be necessary or desirable for the purposes

of preparing financial statements of the Owner in accordance with public sector accounting principles, and for such purposes, the Development Manager shall give full cooperation and promptly provide to the Owner all such information it may reasonably request from time to time;

- (o) provide full accounting and bookkeeping services (but not audit services) for the Development including, without limitation, collection of accounts receivable and payment of accounts payable which are provided for in the Pro-Forma Budget, management of cash balances and investment and reinvestment of excess funds (which accounting and bookkeeping shall be subject to audit at the Owner's expense whenever the Owner so requests in writing);
- (p) the Owner shall be responsible to prepare and file all HST returns pertaining to the Owner (as applicable in the province in which the Property is situated) relating to the Development and to remit with such returns any net tax (as determined in accordance with the *Excise Tax Act*, as amended or re-enacted from time to time) owing by the Owner on such returns. The Development Manager shall provide for the Owner such information as the Owner may reasonably require, and which is in the possession or reasonable control of the Development Manager, in order to permit the recovery of all tax rebates, where applicable, and to assist the Owner in complying with its obligations relating to income and excise taxes, including the calculation of HST;
- (q) manage the draw requests for the Development including but not limited to:
 - (i) coordinate and send copies of all draw requests to the Owner;
 - (ii) promptly respond to any queries on the draw requests from the Owner;
 - (iii) coordinate construction or builders' lien (as applicable in the province in which the Property is situated) searches and advise the Owner of any registered builders' liens prior to release of any payment of the draw requests;
 - (iv) in the event of any construction or builders' liens (as applicable in the province in which the Property is situated) registered against the Property, not to release any payment of the draw requests until such release has been approved in writing by the Owner and is in accordance with the applicable construction lien legislation in force in the province in which the Property is situated (the "**Act**");
 - (v) through consultation with Consultants where, in the reasonable opinion of the Development Manager such consultation is appropriate, ensure that all payments of draw requests are in accordance with the obligations of the Owner under the Act including, without limitation, calculating all required holdback amounts and releasing such holdback amounts in accordance with the Act; and

- (vi) review and deliver to the Owner for its approval and payment all invoices, payment and draw requests from the Contractor, the Development Manager and other contractors, suppliers and other third parties;
- (r) notify the Owner promptly after becoming aware of:
 - (i) any material changes or developments affecting the Development including if it appears that the construction cost estimate may exceed the Pro-Forma Budget, and any other material changes to the Pro-Forma Budget, and make recommendations for corrective action;
 - (ii) any material defects or deficiencies in any work that come to the attention of the Development Manager or as may be identified by the Architect, the Consultants or the Contractor, rectification of which cannot reasonably be anticipated to be completed within the Pro-Forma Budget or approved project schedule;
 - (iii) any material error, omission or deficiency in approved plans and specifications that come to the attention of the Development Manager or as may be as identified by the Architect, the Consultants or the Contractor;
 - (iv) the discovery of any toxic or hazardous substances or materials on, in or at the Property other than in accordance with Applicable Laws; and
 - (v) any lien, legal action or insurance claim initiated by a third party against the Owner or the Contractor (to the extent that it could have any impact on the Owner) with respect to the Development;
- (s) with the prior written approval of the Owner, in the name and at the expense of the Owner, institute, prosecute and defend legal actions affecting the Development (including those involving builders' liens) and to issue notices and participate in adjudications under the Act;
- (t) deliver to the Owner or its designees upon request, copies of all records, documents and materials in the possession or control of the Development Manager which relate to the Development as soon as practicable after the Development Period;
- (u) arrange for and coordinate regular meetings among the Owner, the Architect and, if necessary, the Consultants, and the Development Manager at such times and places as agreed between the Development Manager and the Owner, or as either may reasonably require, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;
- (v) arrange for and coordinate periodic meetings among the Owner, the Development Manager, the required Consultants and PTC Ownership and their development managers and consultants to ensure a coordinated effort with respect to construction by the Owner and PTC Ownership of their respective improvements on the PTC Lands, and with a view to minimizing the potential for interference and delay in the

execution of each such parties respective works, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;

- (w) direct the Contractor to prepare for the Owner's review, in consultation with the Consultants and the Owner, a preliminary overall project schedule, including the determination of the anticipated date for Substantial Completion and occupancy of the Development, and cause the same to be reviewed and updated following completion of each of the design development phase, the construction documents phase and construction procurement phase, in each case with appropriate details; such project schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated occupancy date for the Development;
- (x) provide regular monitoring of the project schedule as construction progresses; identify potential variances to planned completion dates; review the project schedule for work not started or incomplete; recommend to the Owner and, as necessary, the Contractor, adjustments in the project schedule to achieve Substantial Completion, and provide summary reports of each monitoring and document all changes in the project schedule;
- (y) make recommendations to the Owner regarding any equipment or materials which should be pre-ordered to meet the project schedule and Development objectives;
- (z) identify infrastructure needs for the Development and negotiate agreements for the provision thereof, the costs of which are to be borne by the Owner;
- (aa) provide such administration as may be necessary or as described in the relevant Contracts with trade and supply contractors including, without limitation:
 - (i) ensuring that all performance security/bonding (if applicable) is provided in accordance with the terms of the relevant Contracts and Applicable Law, and act as the Owner's representative in administering same; and
 - (ii) review, negotiate and authorize on behalf of the Owner change orders and change directives, including written descriptions of proposed changes, (in consultation with the Architect when such changes relate to the specifications and drawings), provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;
- (bb) co-ordinate and supervise to completion in accordance with the plans and specifications approved by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf;

- (cc) provide the Owner with all documentation and information necessary for the purposes of any governmental filings (other than taxes) which is in the possession or reasonable control of the Development Manager;
- (dd) review and approve (for the subsequent approval and payment by the Owner) of all Development Costs to be paid to the Contractor, Consultants and other suppliers retained in connection with the Development. The Development Manager shall forthwith deliver to the Owner, all cash, cheques and other negotiable instruments received by the Development Manager pursuant to this Agreement. The Development Manager shall deal with such cash, cheques and negotiable instruments in accordance with sound cash management practices so that the Owner is adequately protected;
- (ee) provide oversight on the Owner's behalf of the issuance by the Architect of all necessary certificates respecting Substantial Completion of the Development and distribute same or final certificates for payment as may be necessary to the Contractor;
- (ff) provide oversight and supervision in connection with any required post completion services and management of any warranty claims and rectifications up to two years after the date of Substantial Completion of the Development; and
- (gg) carry out such other duties as are normally carried out by a development manager of a development similar in size, nature, complexity and location to the Development.

2.7 Staff

The Development Manager represents and warrants to, and agrees with, the Owner that it has, and throughout the term, at its own expense, shall employ and shall provide, the personnel and expertise to perform the obligations and services to be performed by it under this Agreement. Without limiting the generality of the foregoing, the Development Manager shall provide qualified staff to perform its obligations under this Agreement (including without limitation, all financial, accounting and reporting obligations) and shall be responsible, at its own expense, for the payment of the employment and related costs of such staff, including, without limitation, staff that oversees the Contractor and the Consultants, whether or not such staff work at the site or at the offices of the Development Manager.

2.8 Ownership of Plans

The Development Manager acknowledges that, subject to the agreements between the Owner or the Development Manager (on behalf of the Owner, as agent for the Owner and without personal liability) and the Consultants, all plans and specifications and all copies thereof and all models with respect to the Development are the property of the Owner. The Development Manager shall not use the same with respect to any other work and the same shall be delivered to the Owner upon termination of this Agreement. The Owner acknowledges and confirms that the Development Manager may utilize photographs of the Development and the construction thereof for the purposes

of marketing and promotion of the services offered by the Development Manager to the public from time to time.

2.9 Inspection

The Owner and its representatives shall at all times have access at their own risk to the Development during the construction of the Development and the Development Manager shall provide facilities for such access.

2.10 Safety Measures

The Development Manager shall use commercially reasonable efforts to cause all the Contractor and all other contractors employed on the Development to be responsible for the safety of all workers and equipment on the Development in accordance with all Applicable Laws governing construction safety.

2.11 Discharge Liens

The Development Manager, throughout the Development Period, shall use commercially reasonable efforts to ensure all contractors employed in respect of the Development will cause any and all construction liens, builders' liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Owner, the Development Manager, any subcontractor or any of them or on their or its behalf in respect of the Development which may be registered against or otherwise affect the Lands to be discharged and/or vacated forthwith by all appropriate means, including payment of funds into court, if necessary. All legal expenses incurred in connection with checking title to the Property and vacating or discharging liens shall be for the Owner's account.

2.12 Insurance

The Development Manager:

- (a) shall at the request of the Owner collaborate with the Owner on (i) the establishment of insurance coverage and/or bonding requirements applicable to the general contractor and other contractors employed in respect of the Development; or (ii) the placement of such insurance policies in the name of Owner and at Owner's expense, as the Owner considers necessary or desirable to protect the Owner, the Development Manager and their property and interests from liability, damage or loss in respect of the Development, including builders' all risk insurance, commercial general liability insurance, wrap-up liability insurance, property insurance, automobile liability insurance, umbrella liability insurance and worker's compensation insurance, with such limits as reasonably determined by Owner having regard to the size, scope and cost of the Development. The Development Manager shall not be responsible for the adequacy of the insurance contracts or the coverage thereunder, settling the insurance contracts administering monitoring or renewing existing insurance coverage, provided however, the Development Manager shall be responsible (in collaboration with and subject to direction and instructions from the Owner and its insurance advisors) for responding to enquiries,

filing claims and liaising with insurance adjusters. All policies of insurance referred to in this Section 2.12(a) shall be maintained by the Owner or the general contractor until Total Completion of the Development, will be primary (vis-a-vis any insurance carried by the Development Manager), provide the Development Manager with at least thirty (30) days advance written notice of cancellation, non-renewal or reduction in coverage and shall include the Development Manager as an additional insured and/or loss payee (as applicable) and shall contain a waiver of subrogation as against the Development Manager. Upon request, the Owner shall provide the Development Manager with certificate(s) of insurance outlining evidence of the Owner's or general contractors insurance (as the case may be) and the terms thereof; and

- (b) commencing not later than the date of the execution of this Agreement, at the Development Manager's sole cost and expense, shall place and maintain during the Development Period:
 - (i) professional liability insurance for all claims arising out of errors or omissions of the Development Manager in the performance of its obligations pursuant to this Agreement with an inclusive limit of \$5,000,000.00 on an aggregate basis but not on a project specific basis; and
 - (ii) commercial general liability insurance for bodily injury (including death) and property damage with an inclusive limit of \$5,000,000.00 on an aggregate basis, but not on a project specific basis; such coverage shall add the Owner as additional insured and/or loss payee (as applicable); and
 - (iii) crime coverage insurance in an amount of \$2,000,000.00, on an aggregate basis.

Each of the policies of insurance referred to in Section 2.12(b) shall not be modified materially nor cancelled on less than thirty (30) days written notice to the Owner and shall otherwise be on terms and conditions acceptable to the Owner, acting reasonably. The Development Manager shall provide the Owner certified certificates of such insurance from time to time at the request of the Owner.

2.13 Development Fee

The Owner shall pay to the Development Manager for its services under this Agreement, the Development Fee in an amount equal to four percent (4.0%) of the Hard Costs and Soft Costs, calculated without duplication and in accordance with the provisions of Section 2.15 of this Agreement.

Notwithstanding anything contained herein to the contrary, for the purpose of calculating the Development Fee, there shall be excluded from Hard Costs and Soft Costs the following:

- (a) all land costs, including land lease payments;

- (b) all amounts, fees and expenses reimbursed to the Development Manager under the provisions of this Agreement;
- (c) all development charges;
- (d) all financing and interest costs;
- (e) all taxes, save and except for harmonized sales taxes applicable to the Development Fee;
- (f) all opening and promotion costs; and
- (g) all amounts paid or payable to the Construction Cost Oversight Consultant.

Notwithstanding the foregoing or anything else contained herein, the Development Manager and the Owner acknowledge and agree that in no event shall the total Development Fee payable to the Development Manager exceed the amount equal to four percent (4.0%) of all Hard Costs and Soft Costs which, for greater certainty, shall not exceed the estimated cost presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020.

2.14 Leasing Fees

Intentionally Deleted

2.15 Payment of Development Fee and Reimbursable Expenses

- (a) Subject the last sentence of this Section 2.15(a), the Owner shall pay to the Development Manager the Development Fee (determined in accordance with the provisions of Section 2.13 herein) in equal monthly instalments, such instalments to be due and payable on the first day of each and every month during the period commencing on the first day of the Development Period and ending on the projected date of Substantial Completion of the Development, as set out in the Pro-Forma Budget for the Development, in each case without the necessity of further documentation. If at any time the Pro-Forma Budget and/or project schedule is amended to revise the estimated Development Costs or the number of months in the project schedule, the amount of the subsequent monthly instalments after such amendment will be adjusted so that the full amount of the Development Fees, calculated based on the then current estimated Development Costs, will be paid over the then project schedule. Notwithstanding the foregoing, but subject always to Section 5.2(e), in the event the Owner, in its sole and unfettered discretion, elects to suspend or cease design and/or construction activity with respect to the Development, no instalments of the Development Fee shall be payable to the Development Manager during such period suspension or cessation of design and/or construction activity; provided that: (i) the Owner shall pay all amounts owing to the Development Manager up to the date of the suspension or cessation; and (ii) the Development Manager shall be relieved of all of its obligations under this

Agreement (other than its obligations under Section 2.6(r)) during any period in which the Development Fee is not being paid.

- (b) The Development Fee shall be finally determined at the end of Development Period and approved in writing by Owner in accordance with generally accepted accounting principles. If the Development Fee is less or more than the sum of the previous payments made by Owner to the Development Manager on account thereof during the term the amount of any deficiency or excess, as the case may be, shall be paid by the Owner to the Development Manager or by the Development Manager to the Owner, respectively, within 30 days of the final determination of the Development Fee.
- (c) The parties acknowledge that the Development Fee set out in this Section 2.15 and in Section 2.13 of this Agreement, are based on the preliminary budgeted Hard Costs and Soft Costs as set out in the Pro-Forma Budget and shall be adjusted annually during the term of this Agreement based on projected costs and upon Total Completion of the Development, the Development Fees shall be reconciled based on final Hard Costs and Soft Costs for the Development.
- (d) In addition to Development Fees, the Owner shall pay to the Development Manager, as part of the Written Order referred to in Section 2.16, Reimbursable Expenses in accordance with Section 2.18.

2.16 Payment of Development Costs

The Development Manager shall be entitled to apply to the Owner at any time for payment of Development Costs and other amounts set forth in the Pro-Forma Budget or as otherwise approved in writing by the Owner from time to time, by delivering to the Owner a written order (herein referred to as a “**Written Order**”) for payment thereof. Each Written Order shall:

- (a) state the aggregate of the amounts set forth in the Pro-Forma Budget previously paid to or as directed by the Development Manager under this Section 2.16;
- (b) state the costs paid or payable by the Development Manager on behalf of Owner at the date of the Written Order in addition to the amounts referred to in Section 2.16(a) (being the costs requested for payment in the Written Order), indicating which costs have been paid and those which are immediately payable but not yet paid;
- (c) state that all costs included in such Written Order are costs contemplated by the Pro-Forma Budget as amended from time to time, and describing the items constituting such costs in reasonable detail; and
- (d) include copies of appropriate supporting invoices and back up (in reasonable detail) for the costs included in such Written Order including, without limitation, for Reimbursable Expenses.

Each Written Order shall be delivered to Owner as aforesaid, shall be signed by an officer of the Development Manager and shall state that all costs set forth in such Written Order, payment or reimbursement of which is requested in such Written Order, are costs contemplated by the Pro-Forma Budget as amended from time to time, and incurred in connection with the development and construction of the Development in accordance with the Agreement.

Within 15 Business Days after the receipt of such Written Order together with such supporting documentation, the Owner shall pay to or as directed by the Development Manager, the amount of the costs set forth in such Written Order and in respect of which payment is requested by the Development Manager. Where the Owner directly pays any such amount under a Written Order to a Person other than the Development Manager, confirmation in writing of such payment shall be provided by the Owner to the Development Manager promptly following such payment being made.

2.17 [Intentionally Deleted]

2.18 Reimbursement of Expenses

In addition to the Development Fee, the Owner shall reimburse the Development Manager for all “**out-of-pocket**” expenses (collectively, the “**Reimbursable Expenses**”) which the Development Manager properly and reasonably incurs pursuant to this Agreement in connection with the performance of its obligations under this Agreement, provided such expenses are itemized within the Pro-Forma Budget or are otherwise submitted on an itemized basis and approved in writing by the Owner. The Reimbursable Expenses shall be in addition to the Development Fee and shall include, without limiting the generality of the foregoing, the following:

- (a) all reasonable travel expenses for those members of the staff (including, without limitation, contract personnel) of the Development Manager who have been pre-approved in writing by the Owner in connection with necessary attendances away from head office relating to the development and construction of the Development or to the site of the Development as reasonably required to perform its duties under this Agreement or as required by the Owner, long distance telephone, other telecommunication charges and fax charges and courier costs as incurred by the Development; and
- (b) professional fees payable to the arm’s length architects, engineers, accountants, lawyers and other consultants who are approved in writing by the Owner and engaged or retained in connection with the servicing, development and construction of the Development pursuant to the provisions of this Agreement.

2.19 No Other Fees

Notwithstanding any other provisions of this Agreement, the Development Manager shall not be entitled to any fees or other compensation for its services under this Agreement other than the Development Fee contemplated herein (and such recoveries specifically provided in this Agreement); without limiting the generality of the foregoing, the Development Manager shall not be entitled to any additional fees for construction management or project management services, or post completion services and management of warranty claims and rectifications.

2.20 Information

In addition to its other reporting obligations pursuant to this Agreement, the Development Manager will at all reasonable times and intervals furnish to the Owner, upon receipt of a specific written request to do so, such information relating to the Development as it requested by the Owner, provided that such information is in the possession or control of the Development Manager.

2.21 Compliance with Applicable Laws

In performing its obligations under this Agreement, the Development Manager shall at all times comply with all Applicable Laws.

2.22 Maintenance of Records

The Development Manager shall maintain complete and accurate records in connection with the Development and the provision of its services under this Agreement.

ARTICLE 3 AUTHORITY

3.1 Authority

The Owner confirms and agrees that the Development Manager has the authority to perform all actions and make all expenditures contemplated by the Pro-Forma Budget as updated from time to time, subject to the terms of this Agreement.

For clarity, the Owner confirms and agrees that the Development Manager has the authority to review contractor's notices and requests for contractor's contingency expenditures with any one contractor not in excess of \$25,000.00 and to authorize, on behalf of the Owner, such contingency expenditures if the expenditures are not in excess of \$25,000.00 or if they have been approved in writing by the Owner.

Notwithstanding any provision in this Agreement to the contrary, the Development Manager on behalf of the Owner shall take such action and incur such reasonably necessary and appropriate expenses and liabilities acting in the best interest of the Owner, without the need of first obtaining the written consent of the Owner, as may be reasonably necessary and appropriate in the reasonable opinion of the Development Manager, to deal with any Emergency arising from time to time. The Development Manager shall immediately inform the Owner of any such Emergency and the action taken.

All Contracts and commitments with third parties necessary for the Development shall be entered into directly by the Owner unless otherwise provided in this Agreement or the Owner otherwise authorizes or directs in writing the Development Manager to enter into such Contracts and commitments on behalf of the Owner, as agent for the Owner and without personal liability.

ARTICLE 4 OBLIGATIONS OF THE OWNER

4.1 Obligations of the Owner

The Owner covenants with the Development Manager that it shall, at its own expense:

- (a) to the extent necessary to permit the Development Manager to complete its obligations hereunder and subject to the rights of tenants, provide free ingress and egress to and from the Lands to and from the neighbouring streets and highways;
- (b) promptly make all decisions required under this Agreement and respond to all requests for approvals, authorizations and directions made hereunder; and
- (c) promptly execute and deliver such evidence of the Development Manager's authority as may be required by third parties, acting reasonably.

Except where the same are being disputed in good faith, the Owner covenants with the Development Manager that it shall, at its own expense, promptly make all payments and incur all expenditures required in connection with the Development in accordance with this Agreement.

ARTICLE 5 TERM

5.1 Term

This Agreement shall commence on the date first above written and, unless otherwise terminated in accordance with the provisions herein, shall continue in full force and effect until the end of the Development Period.

5.2 Termination by Owner

- (a) Default by Development Manager: If an Event of Default occurs, the Owner may give notice (a "**Notice of Complaint**") to the Development Manager specifying in reasonable detail the Event of Default and if, within 30 days of receipt of any Notice of Complaint, the Development Manager fails to cure the Event of Default in a reasonable manner, or if more than 30 days are required to cure the Event of Default, the Development Manager fails to commence and continue diligently to cure within a reasonable period of time, the Owner shall have the right to immediately terminate this Agreement by notice (a "**Notice of Termination**") to the Development Manager stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as of the date of receipt by the Development Manager of the Notice of Termination. Such termination shall be without prejudice to any rights and remedies which the Owner may have by reason of such Event of Default.
- (b) Loss of Key Individual: If at any time during the term of this Agreement, George Buckles ceases to direct, and to be actively involved in, the day-to-day performance

by the Development Manager of its obligations under this Agreement, or does not control the management of the business and operations of the Development Manager, then the Owner shall have the right, exercisable in its sole and absolute discretion, to issue a Notice of Termination. Such termination shall be effective as of the date on which such Notice of Termination is received by the Development Manager or on such later date, if any, as is stated in such Notice of Termination.

- (c) Event of Insolvency: The Owner shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by Notice of Termination upon the occurrence of an Event of Insolvency in respect of the Development Manager.
- (d) Additional Development Management Agreement: The Owner shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by Notice of Termination upon the occurrence of an 'Event of Default' or an 'Event of Insolvency' with respect to the Additional Development Management Agreement.
- (e) Abandonment: The Owner shall have the right to terminate this Agreement by Notice of Termination to the Development Manager if the Owner intends to Abandon the Development. For the purposes of this subsection "**Abandon**" shall mean that the Owner intends to cease all design and/or construction activity with respect to the Development. If such Notice of Termination by the Development Manager is received during the construction phase of the Development, the Development Manager shall coordinate and assist the Contractor in shutting down construction and securing the Development in accordance with good construction practice and will be paid the portion of the Development Fee and Reimbursable Expenses due up to the date the shut down and securing of the Development is substantially completed (the "**Development Shut Down**") plus the Termination Fee, in accordance with the terms of this Agreement.
- (f) Termination for Convenience: The Owner shall have the right to terminate this Agreement for convenience, at any time, exercisable in its sole and absolute discretion, by Notice of Termination to the Development Manager, in which case this Agreement shall terminate effective as of the date of delivery of such Notice of Termination, and the Owner shall pay to the Development Manager the portion of the Development Fee and Reimbursable Expenses due up to the date of delivery of such Notice of Termination plus the Termination Fee, which amounts shall be payable forthwith following the date of delivery of such Notice of Termination. For clarity, this Section 5.2(f) shall not apply if the Owner intends to Abandon the Development, it being agreed that Section 5.2(e) applies thereto.

5.3 Default by Owner

If, at any time, the Owner fails to make any payment which it is obliged to make under this Agreement or to give such directions, authorizations or approvals or shall have failed to take such other actions as were properly required by the Development Manager for the performance of its obligations under this Agreement, the Development Manager may deliver a Notice of Complaint

to the Owner specifying in reasonable detail the matter complained of and if, within 30 days of receipt of any Notice of Complaint, the Owner fails to cure the matter complained of in a reasonable manner, or if more than 30 days are required to cure such matter, the Owner fails to commence and continue diligently to cure within a reasonable period of time, the Development Manager may deliver a Notice of Termination to the Owner stating that this Agreement is terminated. Such termination shall be effective as of the date of receipt by the Owner of the Notice of Termination and the Development Manager shall be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after effective date of such termination. Such termination shall be without prejudice to any rights or remedies which the Development Manager may have by reason of such default by the Owner.

5.4 Indemnity by Owner

During the Development Period and after the termination or expiry of this Agreement, the Owner shall indemnify and save the Development Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity, in connection with the performance by the Development Manager of any and all of its obligations under this Agreement or pursuant to the policies, limitations, instructions and procedures of the Owner and all obligations incurred by the Development Manager in connection with the Development pursuant to this Agreement, including, without limitation, any liability in respect of hazardous substances, any damage or injury whatsoever to any employee or other person or property arising out of the use, administration or control of the Development or any other assets of the Owner relating to the Development, but the indemnity provided under this section shall not extend to:

- (a) any material breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement;
- (b) any fraud, negligence or wilful misconduct of the Development Manager or of its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid by the insurance maintained or required to be maintained by the Owner relating to the Property or the Development); or
- (c) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement.

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner in accordance with the terms of this Agreement, the Development Manager shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Owner in this Section 5.4 in favour of the Development Manager shall apply) save and except to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.5 Indemnity by Development Manager

Subject to Section 5.8 herein, during and after the termination or expiry of this Agreement, the Development Manager shall indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, arising:

- (a) by way of any breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner;
- (b) by reason of any fraud, negligence or wilful misconduct of the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner; or
- (c) by reason of any action taken by the Development Manager outside the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property).

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner, the Owner shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Development Manager in this Section 5.5 in favour of the Owner shall apply) solely to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.6 Duties Flowing from Termination

Upon the termination of this Agreement:

- (a) the Development Manager shall use all commercially reasonable efforts to terminate the Contracts, at the expense of the Owner, if required to do so by the Owner;
- (b) to the extent that Contracts have not been terminated, the Owner shall directly assume the Contracts entered into by the Development Manager on behalf of the Owner provided that such Contracts have been entered into in accordance with the terms and provisions of this Agreement and the Owner shall indemnify and save the Development Manager harmless against any liability by reason of anything done or required to be done under any such Contract after the effective date of termination of this Agreement, provided that if any Contract covers any

improvement in addition to the Development, then the Owner shall have the option to elect either to terminate any such Contract or to retain it provided that the third party to such Contract acknowledges that it relates only to the Development and any fees and expenses provided for therein are appropriately adjusted on a prorated basis; and

- (c) the Owner shall pay for and indemnify and save the Development Manager harmless against the costs of all services, materials and supplies if any, which may have been contracted for by the Development Manager in accordance with this Agreement in connection with or pursuant to its obligations under this Agreement.

5.7 Delivery of Records to Owner

If this Agreement is terminated, the Development Manager shall, notwithstanding such termination, forthwith upon termination from time to time thereafter deliver to the Owner all records and documents, including, without limitation, the following:

- (a) development plans;
- (b) project budgets;
- (c) all Contracts;
- (d) all operating records;
- (e) books of account; and
- (f) all ancillary documents maintained with respect to the Development (whether on or off-site),

which are in the possession or control of the Development Manager, provided that the Development Manager may elect to retain copies of such records, books of account and documents and notwithstanding such termination or expiry the Owner shall thereafter and from time to time for a reasonable period of time produce at their offices the originals of such items whenever the Development Manager reasonably requires them for its purposes in connection with its obligations under this Agreement or for the purpose of dealings with any Authority or any legal proceeding involving the Development Manager. The Development Manager shall keep all such information confidential unless required to disclose by law or in connection with any legal proceeding involving the Development Manager.

5.8 Limits of Liability

- (a) Notwithstanding anything in this Agreement to the contrary, Development Manager's liability for damages (whether a claim therefore is based on warranty, contract, tort (including negligence or strict liability), statute or otherwise) and claims arising in relation to any performance or non-performance of services under this Agreement (including without limitation reasonable legal fees and expenses)

shall in no event exceed an aggregate amount equal to the Development Fee, provided, however, that the foregoing limitation on Development Manager's liability shall not be applicable to any claim resulting from and to the extent of the gross negligence, fraud or willful misconduct of the Development Manager or any liability unable to be excluded by law. In no event shall the Owner make any claim against the Development Manager's partners or affiliates, or their shareholders, officers, directors or employees, on account of any act or omission of the Development Manager or any of the foregoing. The Owner may assert claims only against the Development Manager (or its assignees) and under no circumstances shall any partner or affiliate of the Development Manager or any shareholder, officer, director, employee or agent of the Development Manager, be personally liable for any of the obligations, acts or omissions of the Development Manager under this Agreement. All permitted assignees of the Development Manager's rights under this Agreement shall have the benefit of this Section 5.8(a) and this Section 5.8(a) shall survive the expiration or termination of this Agreement; and

- (b) in no event shall the Development Manager make any claim against the shareholders, officers, directors and employees of the Owner on account of any act or omission of the Owner and neither party shall be liable to the other for any consequential or indirect loss, injury or damage of any nature whatsoever including, without limitation, claims for loss of profit, revenue or capital, loss of use of utilities, equipment or facilities, down time cost, service interruption, or cost of money.

5.9 Rights on Termination

Any termination of this Agreement shall terminate all rights and obligations under this Agreement from and after the date of such termination except rights and obligations with respect to matters to be performed to such date and all legal remedies available at such date for any breach of this Agreement. In addition, Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 shall survive any termination of this Agreement and shall remain in full force and effect thereafter.

ARTICLE 6 UNAVOIDABLE DELAY

6.1 Unavoidable Delay

Whenever in this Agreement it is provided that anything is to be done or performed and the doing or performance thereof is impossible or delayed due to Unavoidable Delay, neither the Owner nor the Development Manager shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other in writing of the commencement, duration and consequences (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder and shall use all commercially reasonable efforts to minimize the effect of the same. In the event of such Unavoidable Delay or non-performance by either party, then such obligated party, so long as any such impediment exists, shall be relieved from its duties in respect thereto and the other party shall not be entitled to compensation for any

damages, inconveniences, nuisance or discomfort thereby occasioned or be entitled to terminate this Agreement as a result thereof.

ARTICLE 7 NOTICES

7.1 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request, response, delivery or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, courier or by fax which results in a written or printed notice being given, addressed or by email or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice (provided that no Notice pursuant to Sections 5.2 or 5.3 shall be delivered by email only):

- (a) in the case of the Development Manager:

twopointO partners inc.
161 Bay Street, 27th Floor
Toronto, Ontario M5J 2S1

Attention: George Buckles
Email: gbuckles@twopointo.org

- (b) in the case of the Owner:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: City Administrative Officer
Email: mcarpino@pickering.ca

With a copy to:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: Director, Corporate Services & City Solicitor
Email: pbigioni@pickering.ca

Any Notice, if delivered personally or by courier, shall be deemed to have been validly and effectively given and received on the date of delivery and if sent by telecopier or other electronic communication, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received. Any Notice given by any party under or in connection with this Agreement, if addressed to less than all of the parties to this Agreement, shall

also be concurrently copied and given to the parties to this Agreement to whom the Notice is not addressed.

Any party may at any time and from time to time, change its address for delivery for the purposes of this section by giving at least seven (7) days' Notice to the other parties.

ARTICLE 8 ASSIGNMENTS

8.1 Assignment by Development Manager

The Development Manager shall not assign this Agreement without the prior consent of the Owner, which consent may be withheld in the sole and unfettered discretion of the Owner.

8.2 Assignment by Owner

The Owner shall have the right to assign its interest in this Agreement so long as, and only if such assignment is made pursuant to a sale of the Owner's interest in the Property to the assignee, the assignee enters into an agreement with the remaining parties hereto whereby the assignee shall be bound by and entitled to the benefit of this Agreement and the assigning party shall thereupon be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after the effective date of such assignment.

ARTICLE 9 GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions, Table of Contents and Legislation

The captions and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation. Any reference in this Agreement to any act or statute or any section thereof shall be deemed to be a reference to such act or statute, or section thereof as amended or re-enacted from time to time.

9.3 Obligations as Covenants

Each obligation of a party hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the province in which the Property is situated and the laws of Canada applicable therein.

9.5 Invalidity

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

9.6 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby.

9.7 Successors and Assigns

All of the provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and the successors and assigns of any party hereto only to the extent that they are permitted successors and assigns pursuant to this Agreement.

9.8 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to in this Agreement shall be made in accordance with generally accepted accounting principles and practices applicable to the public real estate industry in Canada and applied on a consistent basis.

9.9 HST

The parties acknowledge that all fees and other amounts payable under this Agreement are taxable supplies under the *Excise Tax Act* (Canada) and shall bear HST as applicable in the province in which the Property is situated and each party to this Agreement covenants to remit to the party making the supply any HST, as applicable, owing on such supply when the consideration for such supply is paid. In particular and without limiting the foregoing, all fees payable under this Agreement shall bear HST, as applicable, and such HST, as applicable, shall be payable at the time such fees are payable.

9.10 Schedules

The Schedules attached hereto form part of this Agreement.

9.11 Time

Except as specifically provided otherwise in this Agreement, time shall be of the essence of this Agreement. When any period of time provided for herein expires on a day other than a Business Day, such period of time shall automatically be extended to the next following Business Day and, when any action or requirement provided for herein is to occur on a day other than a Business Day,

the time for such action or requirement shall automatically be extended to the next following Business Day.

9.12 Non-Waiver

No consent to or waiver of any breach or Event of Default by any party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party hereto of the same or any other obligations of such party hereto hereunder. Failure on the part of any party hereto to complain of any act or failure to act of any other party hereto or to declare any other party hereto in breach or default, irrespective of how long such failure continues, shall not constitute a waiver by such party hereto of its rights hereunder.

9.13 Rights of Parties Independent

The rights available to each party hereto under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party hereto from time to time and no such exercise shall exhaust the rights or preclude such party hereto from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

9.14 Status Reports

Each party hereto agrees, upon the reasonable request of any other party hereto, made from time to time, to furnish promptly a written statement on the status of any matter pertaining to the requesting party hereto to the best of the knowledge and belief of such other party hereto at the cost of the requesting party hereto.

9.15 No Representations

Except as specifically set forth herein, the parties agree that there are no representations and warranties by any of them with respect to this Agreement.

9.16 Further Assurances

Each of the parties hereto shall, from time to time and upon every reasonable written request of any other party hereto, give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

9.17 Rights of Examination by the Owner

Upon a written request of the Owner, the Development Manager will, at the expense of the Owner, at any and all times during normal business hours and on reasonable written notice, permit the Owner or its agents and representatives to examine all books of account, reports and other records of the Development Manager relating to the services performed for the Owner by the Development Manager under this Agreement, to make copies thereof or extracts therefrom or to have the same audited by an auditor appointed by, and at the expense of, the Owner.

9.18 Entire Agreement

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, of the parties hereto with respect thereto.

9.19 Canadian Dollars

All monetary references in this Agreement are to Canadian dollars.

9.20 Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

9.21 Language

The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.

[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement effective as of the date hereof.

**THE CORPORATION OF THE CITY
OF PICKERING**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

twopointO partners inc.

Per: _____
Name: George Buckles
Title: Principal

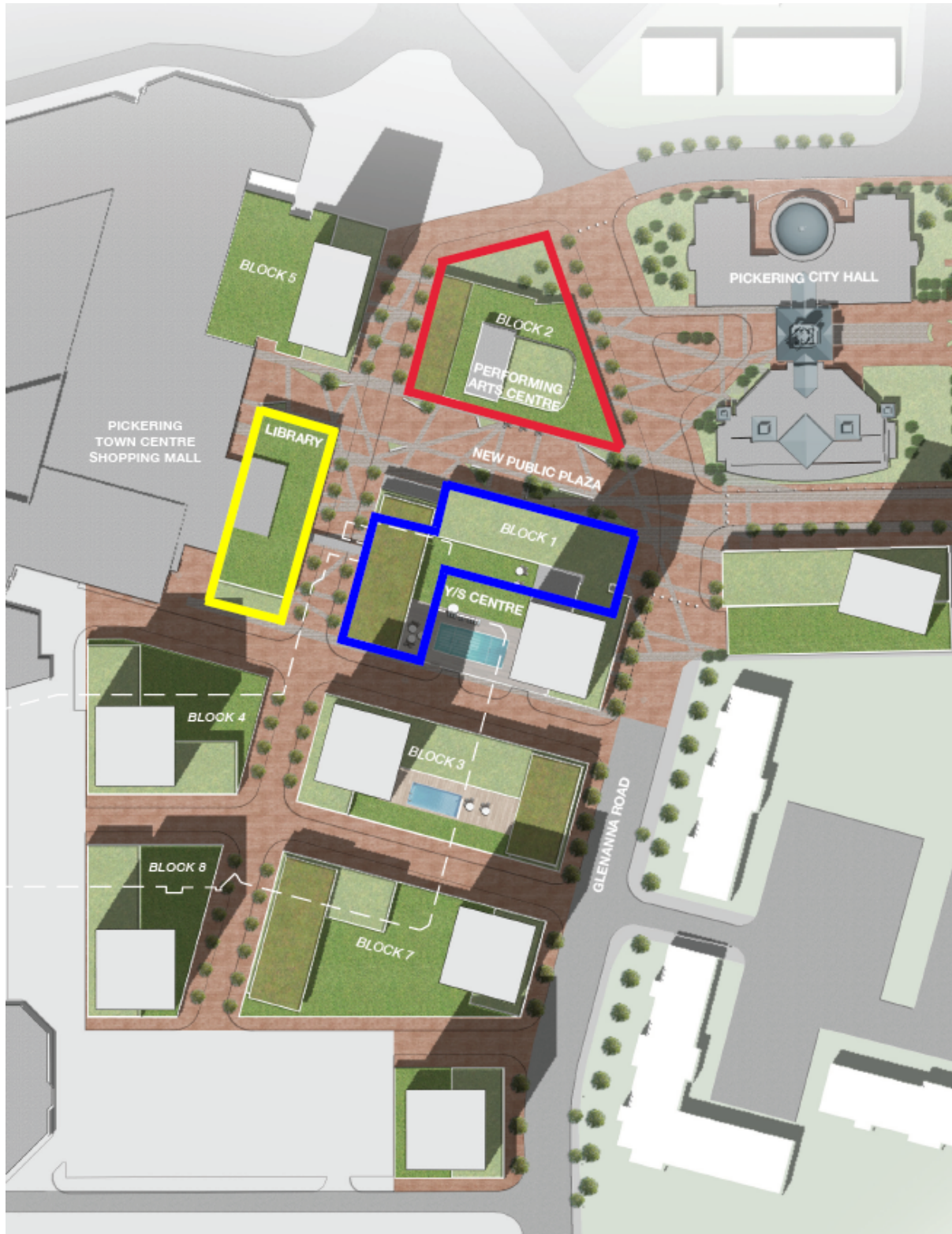
Per: _____
Name: Thelma Sakamoto
Title: Principal

We have the authority to bind the Corporation

SCHEDULE A


DESCRIPTION OF THE LANDS AND PREMISES

A new City of Pickering 600 seat Performing Arts Centre and studio theatre located on freehold property approximately outlined in red.



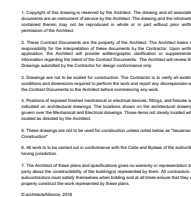
SCHEDULE B

PRO-FORMA BUDGET

Pickering City Centre Pickering, Ontario Performing Arts Centre (PAC)				
10/8/2019				
				
Performing Arts Centre				
Item	Theatre	Classrooms and Multi-Purpose Space	PAC FFE	PAC Total
CONSTRUCTION				
Loading	0	0	0	0
Building (New: Substructure - Foundation / Parking)	0	0	0	0
Building (New: Superstructure - Core / Shell) + Fitout	18,096,028	23,131,499	0	41,227,526
Onsite Improvements/Infrastructure	0	0	0	0
FFE	0	1,010,100	3,685,500	4,695,600
Construction Cost Sub Total	18,096,028	24,141,599	3,685,500	45,923,126
CONSTRUCTION - ANCILLARY				
Insurance	0	0	0	0
Bonding	0	0	0	0
Service Connections	140,175	9,825	0	150,000
Testing & Inspections - Hazmat	0	0	0	0
Testing & Inspections - Civil/Sitework	0	0	0	0
Construction Ancillary Cost Sub Total	140,175	9,825	0	150,000
CONTINGENCY				
Hard Cost Contingency	1,809,603	2,414,160	368,550	4,592,313
TOTAL HARD COSTS				
Total Hard Costs	20,045,805	26,565,584	4,054,050	50,665,439
DESIGN CONSULTANTS				
Architecture and Interior Design	1,162,007	1,539,943	235,004	2,936,954
Mechanical Engineer	55,908	74,092	0	130,000
Electrical Engineer	71,605	94,895	0	166,500
IT/Communications	4,731	6,269	0	11,000
Security	4,731	6,269	0	11,000
Audio Visual	4,516	5,984	0	10,500
Lighting	6,021	7,979	0	14,000
Structural	156,973	208,027	0	365,000
Wind/Noise/Vibration	1,419	1,881	0	3,300
Code/Fire/Life Safety	3,311	4,389	0	7,700
Theatre Design	63,807	84,560	12,904	161,271
Building Envelope	17,633	23,367	0	41,000
Acoustics	46,834	62,066	0	108,900
Landscape	0	0	0	0
Vertical Transportation	4,086	5,414	0	9,500
Library Planning	0	0	0	0
Testing and Inspection	46,355	3,645	0	50,000
Surveying	69,533	5,468	0	75,000
Specifications Writer	21,503	28,497	0	50,000
Other Consultants	28,773	38,132	0	66,905
Disbursements	87,049	108,137	12,395	207,581
Design Contingency	339,252	132,722	13,015	484,989
Design and Consultants Cost Sub Total	2,196,046	2,441,736	273,318	4,911,101
LEGAL & ADMINISTRATIVE				
Development Management Fee	1,005,509	1,305,654	194,732	2,505,894
Legal	46,725	3,275	0	50,000
Insurance	23,363	1,638	0	25,000
twopointO Disbursements	14,018	983	0	15,000
Capitalized Vacant Land Tax	0	0	0	0
Legal & Administrative Cost Sub Total	1,089,614	1,311,549	194,732	2,595,894
MARKETING & LEASING				
Marketing	32,708	2,293	0	35,000
Commissions- Manager	0	0	0	0
Commissions - Listing Brokers	0	0	0	0
Tenant Allowances (Retail/Institutional)	0	0	0	0
Marketing & Leasing Cost Sub Total	32,708	2,293	0	35,000
HOLDBACK				
Holdback (10%)	(1,809,603)	(2,414,160)	(368,550)	(4,592,313)
Holdback Release	1,809,603	2,414,160	368,550	4,592,313
GROSS PROJECT BUDGET (Before Taxes)	23,364,173	30,321,161	4,522,100	58,207,434

SCHEDULE C
DEVELOPMENT PLANS

The Development will consist of the following principal elements as generally shown on plans attached hereto.



NO.	ISSUE	PAGE
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AP2.03

CYPLAN



LEVEL 2 1:100

AP2.04



SCHEDULE D
DESCRIPTION OF THE PTC LANDS



Execution Version

**THE CORPORATION OF THE CITY OF PICKERING
(the “Owner”)**

- and -

**twopointO partners inc.
(the “Development Manager”)**

**PICKERING CITY CENTRE LIBRARY
DEVELOPMENT MANAGEMENT AGREEMENT**

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THIS DEVELOPMENT MANAGEMENT AGREEMENT made as of the ____ day of August, 2020.

BETWEEN:

THE CORPORATION OF THE CITY OF PICKERING

(the “**Owner**”)

- and -

twopointO partners inc.

(the “**Development Manager**”)

RECITALS:

- A. The Owner is the Owner of the Property.
- B. The Owner and the Development Manager have agreed to enter into this Agreement to confirm the Development Manager as the development manager for the Development on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and the sum of \$10.00 paid by each party to the other party and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this Section 1.1:

“**Additional Development Management Agreement**” means the development management agreement dated as of the date hereof made between the Owner and the Development Manager with respect to the Performing Arts Centre.

“**Agreement**” means this Development Management Agreement, as amended, supplemented and restated from time to time.

“**Applicable Laws**” means all statutes, laws, by-laws, regulations, ordinances and orders of Authorities.

“**Architect**” means architectsAlliance – a partnership of corporations by its partners (including the sub-consultants and engineers retained by the Architect), or such other architect or firm of architects as may be retained by the Development Manager on behalf of the Owner in respect of the Development, from time to time.

“Authorities” means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Owner, the Development Manager, the Improvements or the Lands, including the businesses carried on therein.

“Business Day” means a day which is neither a Saturday, Sunday nor a day observed as a holiday under the laws of the Province in which the Property is located or the federal laws of Canada; and **“Business Days”** means more than one Business Day.

“Construction Cost Oversight Consultant” means Independent Project Managers together with CB Ross Partners Cost Consultants, or such other cost consultants or project manager(s) as may be retained by the Owner to provide cost oversight services in respect of the Development, from time to time.

“Consultants” means the Architect and such other architects, engineers, lawyers or other consultants (including such sub-consultants as are retained by any Consultant) as the Development Manager, subject to the approval of the Owner, may appoint from time to time on behalf of the Owner to supervise the servicing, development and construction of the Development; and **“Consultant”** means any one of the Consultants.

“Contractor” means the construction firm engaged by the Owner to act as general contractor in respect of the Development.

“Contracts” means all contracts either entered into or administered by the Development Manager in respect of the Development.

“Development” means the intended development of the Improvements including but not limited to the development and construction of a new public library of approximately 45,000 square feet on three levels and related rectifications, reconfiguration and completion of the common areas of the Improvements in accordance with the Development Plans.

“Development Costs” means the total of all Hard Costs and Soft Costs.

“Development Fee” means the fee for the Development Manager’s services provided for in Section 2.13.

“Development Period” means the period commencing on August 1, 2019 and ending on the later of: (a) the date on which the Development is Totally Completed; and (b) the expiry of one year after the date of Substantial Completion of the Development; provided that, solely for the purposes of Section 2.6(ff), the Development Period shall continue until the date that is two years after the date of Substantial Completion of the Development.

“Development Plans” means the conceptual plans prepared by the Architect and renderings of the Development collectively attached hereto as Schedule C, as may be amended, supplemented or otherwise changed from time to time with the approval of the Owner.

“Emergency” means a condition or circumstance occurring in or about the Property which if not remedied immediately would result, with reasonable certainty, in: (i) material damage to the Property or material damage to other property; (ii) serious physical injury or death; or (iii) criminal or civil liability on the part of the Owner.

“Event of Default” means, in the case of the Development Manager:

- (a) the negligence or wilful misconduct of the Development Manager to perform its duties and discharge its obligations under this Agreement;
- (b) the persistent and/or material failure of the Development Manager, other than a failure which is as a result of either negligence or wilful misconduct of the Development Manager, to perform its duties and discharge its obligations under this Agreement; or
- (c) any fraudulent act of the Development Manager in respect of the Development or this Agreement or any material and deliberate misrepresentation by such Development Manager to the Owner.

“Event of Insolvency” means the occurrence of any one or more of the following events:

- (a) if the Development Manager, other than in connection with a bona fide corporate reorganization shall:
 - (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any successor legislation thereto or have its existence terminated or have any resolution passed therefor;
 - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation thereto; or
 - (iii) apply for protection or propose a compromise or arrangement under the *Companies’ Creditors Arrangement Act* (Canada) or any successor legislation thereto or shall file any petition, application or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors;
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against the Development Manager seeking any reorganization, arrangement, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally, and such order, judgment or decree remains unvacated or unstayed for an aggregate of 60 days from the date of entry thereof; or if any trustee

in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for the Development Manager or of all or any substantial part of its property with the consent or acquiescence of the Development Manager and such appointment remains unvacated or unstayed for an aggregate of 60 days; and

- (c) if a writ of execution or attachment or similar process is issued or levied against all the property or substantially all of the property of the Development Manager in connection with any judgment against the Development Manager and is not discharged or vacated within 60 days after it is so issued or levied.

“Final Budget Approval Date” means the date on which a resolution is duly passed by Pickering City Council approving the final Pro-Forma Budget for the Development following completion of the design and contracting phase of the Development.

“Hard Costs” means the total amount of all costs, fees, charges and expenses incurred for construction of the Development, excluding all furniture, fixtures and equipment purchased directly by the Owner and not included in the Pro-Forma Budget, but including, without limitation all expenses incurred in the actual construction of the Development including moneys paid for labour, materials and services in connection with such construction and all payments to and for the account of any contractors or suppliers engaged in the work with respect to the Development prior to and after the date of this Agreement.

“HST” means the tax imposed under Part IX of the *Excise Tax Act*, as amended or re-enacted from time to time, provided that in the event that any similar tax is introduced by any province that has jurisdiction, all references to **“HST”** shall apply, *mutatis mutandis*, with respect to such tax and its payment.

“Improvements” means a new public library and related facilities, any office areas and delivery facilities constructed or to be constructed on the Lands together with all connections, if any, to adjacent buildings, constructed as appurtenances to such buildings.

“Lands” means the lands and premises described in Schedule A.

“Pro-Forma Budget” means: (a) prior to the Final Budget Approval Date, the indicative pro-forma budget for the Development attached hereto as Schedule B that is consistent with the estimated cost of the Development presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020, which is subject to approval by Pickering City Council, which the parties acknowledge is preliminary in nature and shall be updated by agreement between the parties from time to time as the design and contracting phase of the Development progresses; and (b) from and after the Final Budget Approval Date, the final pro-forma budget for the Development as approved by Pickering City Council following completion of the design and contracting phase of the Development, as the same may be updated by agreement between the parties from time to time in accordance with this Agreement.

“Property” means, collectively, the Lands and the Improvements.

“PTC Lands” means the lands and premises outlined in red on Schedule D.

“PTC Ownership” means OPB Realty Inc. (the registered owner of the PTC Lands) and its asset manager, Investment Management Corporation of Ontario (IMCO).

“Reimbursable Expenses” has the meaning set forth in Section 2.18.

“Soft Costs” means any cost, disbursement or expense referable to construction of the Development which is not a Hard Cost but relates to the Development and includes without limitation:

- (i) fees and expenses incurred for architectural, engineering, land surveying, legal and other professional or consulting services in connection with the planning, development, servicing and construction of the Development;
- (ii) the cost of permits for construction of the Development and all levies, charges, taxes, assessments and levies made by any Authorities in respect of the Development and all expenses incurred otherwise relating to such construction, including those for insurance, necessary surety and other performance bonds, and other incidental expenses; and
- (iii) the cost of all agreements and materials obtained in connection with the Development.

“Substantial Completion” wherever used herein shall have the same meaning as **“substantial completion”** or **“substantial performance”** in the applicable construction lien legislation in force in the province in which the Property is situated and **“substantially completed”** wherever used herein shall have the corresponding meaning.

“Termination Fee” means an amount to be agreed upon between the Owner and the Development Manager, each acting reasonably and in good faith, which shall be calculated based on the cost of all obligations and services provided by the Development Manager pursuant to this Agreement calculated to the date of termination (recognizing that a disproportionate share of the Development Manager’s expertise and work is completed during the design and construction document phase of the Development), without duplication of any Development Fee previously paid by the Owner.

“Totally Completed” or **“Total Completion”** means total completion of the Development as certified by the Consultant, including the completion of all construction deficiencies for the Development.

“Unavoidable Delay” means any prevention, delay, stoppage or interruption in the performance of any obligation of a party hereto due to a strike, lockout, slow down, labour dispute, act of God, pandemic, inability to obtain or supply any service, equipment, utility, labour or materials, laws, statutes, ordinances, rules, regulations or orders of Authorities (including, but not limited to, federal, provincial or municipal states of emergency), inability to obtain or delay in receiving any required permit, zoning variance or other governmental or quasi-governmental approvals, enemy or hostile action, civil commotion,

war or other casualty, default by the other party or any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by the party to perform because of lack of its own funds where such funds are required to permit it to perform the obligation in question.

“**Written Order**” has the meaning set forth in Section 2.16.

ARTICLE 2 APPOINTMENT AND SERVICES

2.1 Appointment

The Owner hereby appoints and retains the Development Manager on an exclusive basis to provide all services and obligations set out in this Agreement in connection with the Development on the terms and conditions and for the remuneration provided for in this Agreement. The Development Manager shall administer and manage completion of the Development on behalf of the Owner. The Development Manager hereby accepts such appointment on the terms and conditions set out in this Agreement and agrees that it shall perform such services and carry out such obligations hereunder in a proper, competent, honest, diligent and efficient manner and in keeping with the standard of care, prudence, expertise and diligence that would be expected of an experienced development manager of comparable large commercial real estate projects and in accordance with the standard of performance set out in Section 2.3.

The Owner acknowledges and agrees that, except for Reimbursable Expenses provided for in Section 2.18 or as otherwise expressly set out in this Agreement, the Development Manager shall not, at any time, be required to use its own funds to pay any costs or expenses relating to the Development.

The parties acknowledge that, prior to the date of this Agreement, the Development Manager has submitted to the Owner, and the Owner has reviewed and approved, various invoices for reimbursement of certain Reimbursable Expenses and for a certain portion of the Development Fee payable to the Development Manager for work performed prior to the date of this Agreement, all of which will be paid by the Owner to the Development Manager promptly following the date of this Agreement. The parties further acknowledge that the Development is currently on pause until at least September 2020 by resolution of Pickering City Council and that further resolutions (the “**Restart Resolutions**”) are required in order: (i) for the Development Manager to re-commence its work hereunder; and (ii) to approve the indicative Pro-Forma Budget attached as Schedule B hereto. Consequently, the parties agree that the Development Manager shall not, unless directed to do so in writing by the Owner, carry out any further work under this Agreement until the Restart Resolution authorizing the re-commencement of the Development is duly passed by Pickering City Council.

2.2 Development Manager’s Representations and Warranties

The Development Manager hereby represents and warrants to the Owner that it has the requisite knowledge, skills and experience (including, without limitation, the knowledge and the experience to advise the Owner when Consultants need to be retained with specialized knowledge, skills and experience) to perform the services and functions provided for in this Agreement to the standards

provided for in Section 2.3, provided the Owner acknowledges that the Development Manager does not provide legal services to the Owner pursuant to this Agreement.

2.3 Standard of Performance

In carrying out its duties and obligations hereunder, the Development Manager will not be responsible for matters beyond its reasonable control (including, without limitation, delay in the completion of the Development, and/or increase in the cost to complete the Development) or for matters involving the expenditure of funds which are not made available by the Owner, and it is understood that the responsibility of the Development Manager in performing the services and functions mentioned shall be limited in each case to exercising in such performance the same degree of care, skill and supervision as would be exercised by an experienced development manager of large commercial real estate projects.

During the entire Development Period, the Development Manager shall commit and dedicate to and for the Development the members of its staff (including, without limitation, contract personnel) as required to maintain the standard of performance provided for in this Section 2.3.

In performing its obligations and services pursuant to the terms of this Agreement, the Development Manager shall comply with the terms of the Contracts as they relate to the Development. In making any interpretations, decisions or findings, the Development Manager will act in the best interests of the Owner and not show partiality to the PTC Ownership, the Contractor, the Architect or any trade contractors or other counterparties to such Contracts.

2.4 Independent Contractor

The parties acknowledge that the Development Manager shall undertake its duties hereunder as an independent contractor and not as agent or in any other way representative of the Owner except as herein expressly provided. It is further acknowledged that nothing in this Agreement nor in any acts of the parties hereto shall be deemed to create a partnership relationship among any of the Development Manager and the Owner.

2.5 Confidentiality

The information received by the Development Manager, as a result of or pursuant to this Agreement, shall not be disclosed by the Development Manager to any person other than as a necessary part of discharging its duties or enforcing its rights hereunder or used either to the detriment of the Development or for the benefit of a competitive project, except with the written consent of the Owner or unless required by law to be disclosed in connection with legal proceedings.

2.6 Obligations and Services of the Development Manager

The Development Manager shall, in a skilful and expeditious manner and in accordance with any agreements made by the Owner relating to the Development and of which the Development Manager has knowledge:

- (a) with the direction and instruction of the Owner, formulate, present and finalize development concepts for the Development and the Pro-Forma Budget;
- (b) apply on behalf of the Owner in the name of the Owner, as agent for the Owner and without personal liability, to Authorities for, and obtain, and supervise the Consultants and trade and supply contractors in connection with the acquisition of, all land use classification amendments, applications, licences, permits and approvals necessary or required for the Development (including demolition, excavation, site plan and building permits and their related agreements);
- (c) select, and propose to and obtain approval of the Owner for, contractors, Consultants, suppliers and others for the Development; and co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;
- (d) review contractor's notices and requests for contractor's contingency expenditures and to obtain the prior written approval of the Owner to authorize any such expenditures where the anticipated cost provided for in the contractor's contract exceeds \$25,000.00, whether as a credit or an expense, and to authorize, on behalf of the Owner, contingency expenditures which have been approved by the Owner or which are not required to be approved by the Owner but which, based on the experience of the Development Manager, are justifiable. For certainty, the provisions of this Section 2.6(d) shall apply to contractor's contingency payments to the Owner's general contractor in accordance with the terms and conditions of the construction contract between the Owner and such general contractor;
- (e) execute Contracts with contractors in the name of and on behalf of the Owner, without personal liability of the Development Manager under such Contracts, for work and/or services for the Owner and relating to the Development where the anticipated cost provided for in the contract does not exceed \$25,000.00;
- (f) co-ordinate the layout, design and engineering for the Development including, without limitation, the preparation of all drawings and specifications, and obtain the approval by the Owner of any material changes thereto;
- (g) co-ordinate and direct to completion in accordance with the plans and specifications approved in writing by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12 of this Agreement, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf and the Development Manager shall review and authorize on behalf of the Owner change orders with respect to the construction of the Development provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;

- (h) co-ordinate, in conjunction with the Consultants, the preparation by the general contractor and distribution to the Owner of critical path schedules for the development of the Development and obtain from contractors and distribute to the Owner critical path schedules for the construction of the Development, and periodic updates thereto as necessary to reflect any material changes to such schedules;
- (i) arrange for and monitor the conduct of all such things as are necessary to ensure compliance by the Owner with all terms and conditions of all Contracts entered into, assumed by or binding upon the Owner in connection with the Development of which the Development Manager has knowledge;
- (j) co-ordinate the planning and construction of tenant improvements, if any, in the Development;
- (k) co-ordinate and direct the moves of tenants, if any, into the Development and the opening of the Development to the public for business;
- (l) submit to the Owner monthly:
 - (i) a cost and financial pro-forma analysis for the Development, in a format acceptable to the Owner, and a consolidated report showing projected capital costs and costs incurred to date and projected variances to the Pro-Forma Budget which the Owner shall approve or reject prior to the next monthly report;
 - (ii) reports on construction, contractual and legal matters and any significant developments affecting or relating to the Development;
 - (iii) an updated timetable for the development, construction and completion of the Development; and
 - (iv) upon the request of the Owner, such other reports and information as the Owner may reasonably require;
- (m) provide to the Owner, on an ongoing basis, access to reports on:
 - (i) change orders and change directives;
 - (ii) project schedules (in accordance with subparagraph (w)); and
 - (iii) cash allowances,and ensure all such reports are maintained in an accurate, prudent and responsible manner and are provided in a format which is readily and easily accessible to the Owner;
- (n) submit to the Owner all accounting and financial information and supporting documents for the Development as may be necessary or desirable for the purposes

of preparing financial statements of the Owner in accordance with public sector accounting principles, and for such purposes, the Development Manager shall give full cooperation and promptly provide to the Owner all such information it may reasonably request from time to time;

- (o) provide full accounting and bookkeeping services (but not audit services) for the Development including, without limitation, collection of accounts receivable and payment of accounts payable which are provided for in the Pro-Forma Budget, management of cash balances and investment and reinvestment of excess funds (which accounting and bookkeeping shall be subject to audit at the Owner's expense whenever the Owner so requests in writing);
- (p) the Owner shall be responsible to prepare and file all HST returns pertaining to the Owner (as applicable in the province in which the Property is situated) relating to the Development and to remit with such returns any net tax (as determined in accordance with the *Excise Tax Act*, as amended or re-enacted from time to time) owing by the Owner on such returns. The Development Manager shall provide for the Owner such information as the Owner may reasonably require, and which is in the possession or reasonable control of the Development Manager, in order to permit the recovery of all tax rebates, where applicable, and to assist the Owner in complying with its obligations relating to income and excise taxes, including the calculation of HST;
- (q) manage the draw requests for the Development including but not limited to:
 - (i) coordinate and send copies of all draw requests to the Owner;
 - (ii) promptly respond to any queries on the draw requests from the Owner;
 - (iii) coordinate construction or builders' lien (as applicable in the province in which the Property is situated) searches and advise the Owner of any registered builders' liens prior to release of any payment of the draw requests;
 - (iv) in the event of any construction or builders' liens (as applicable in the province in which the Property is situated) registered against the Property, not to release any payment of the draw requests until such release has been approved in writing by the Owner and is in accordance with the applicable construction lien legislation in force in the province in which the Property is situated (the "**Act**");
 - (v) through consultation with Consultants where, in the reasonable opinion of the Development Manager such consultation is appropriate, ensure that all payments of draw requests are in accordance with the obligations of the Owner under the Act including, without limitation, calculating all required holdback amounts and releasing such holdback amounts in accordance with the Act; and

- (vi) review and deliver to the Owner for its approval and payment all invoices, payment and draw requests from the Contractor, the Development Manager and other contractors, suppliers and other third parties;
- (r) notify the Owner promptly after becoming aware of:
 - (i) any material changes or developments affecting the Development including if it appears that the construction cost estimate may exceed the Pro-Forma Budget, and any other material changes to the Pro-Forma Budget, and make recommendations for corrective action;
 - (ii) any material defects or deficiencies in any work that come to the attention of the Development Manager or as may be identified by the Architect, the Consultants or the Contractor, rectification of which cannot reasonably be anticipated to be completed within the Pro-Forma Budget or approved project schedule;
 - (iii) any material error, omission or deficiency in approved plans and specifications that come to the attention of the Development Manager or as may be as identified by the Architect, the Consultants or the Contractor;
 - (iv) the discovery of any toxic or hazardous substances or materials on, in or at the Property other than in accordance with Applicable Laws; and
 - (v) any lien, legal action or insurance claim initiated by a third party against the Owner or the Contractor (to the extent that it could have any impact on the Owner) with respect to the Development;
- (s) with the prior written approval of the Owner, in the name and at the expense of the Owner, institute, prosecute and defend legal actions affecting the Development (including those involving builders' liens) and to issue notices and participate in adjudications under the Act;
- (t) deliver to the Owner or its designees upon request, copies of all records, documents and materials in the possession or control of the Development Manager which relate to the Development as soon as practicable after the Development Period;
- (u) arrange for and coordinate regular meetings among the Owner, the Architect and, if necessary, the Consultants, and the Development Manager at such times and places as agreed between the Development Manager and the Owner, or as either may reasonably require, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;
- (v) arrange for and coordinate periodic meetings among the Owner, the Development Manager, the required Consultants and PTC Ownership and their development managers and consultants to ensure a coordinated effort with respect to construction by the Owner and PTC Ownership of their respective improvements on the PTC Lands, and with a view to minimizing the potential for interference and delay in the

execution of each such parties respective works, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;

- (w) direct the Contractor to prepare for the Owner's review, in consultation with the Consultants and the Owner, a preliminary overall project schedule, including the determination of the anticipated date for Substantial Completion and occupancy of the Development, and cause the same to be reviewed and updated following completion of each of the design development phase, the construction documents phase and construction procurement phase, in each case with appropriate details; such project schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated occupancy date for the Development;
- (x) provide regular monitoring of the project schedule as construction progresses; identify potential variances to planned completion dates; review the project schedule for work not started or incomplete; recommend to the Owner and, as necessary, the Contractor, adjustments in the project schedule to achieve Substantial Completion, and provide summary reports of each monitoring and document all changes in the project schedule;
- (y) make recommendations to the Owner regarding any equipment or materials which should be pre-ordered to meet the project schedule and Development objectives;
- (z) identify infrastructure needs for the Development and negotiate agreements for the provision thereof, the costs of which are to be borne by the Owner;
- (aa) provide such administration as may be necessary or as described in the relevant Contracts with trade and supply contractors including, without limitation:
 - (i) ensuring that all performance security/bonding (if applicable) is provided in accordance with the terms of the relevant Contracts and Applicable Law, and act as the Owner's representative in administering same; and
 - (ii) review, negotiate and authorize on behalf of the Owner change orders and change directives, including written descriptions of proposed changes, (in consultation with the Architect when such changes relate to the specifications and drawings), provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;
- (bb) co-ordinate and supervise to completion in accordance with the plans and specifications approved by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf;

- (cc) provide the Owner with all documentation and information necessary for the purposes of any governmental filings (other than taxes) which is in the possession or reasonable control of the Development Manager;
- (dd) review and approve (for the subsequent approval and payment by the Owner) of all Development Costs to be paid to the Contractor, Consultants and other suppliers retained in connection with the Development. The Development Manager shall forthwith deliver to the Owner, all cash, cheques and other negotiable instruments received by the Development Manager pursuant to this Agreement. The Development Manager shall deal with such cash, cheques and negotiable instruments in accordance with sound cash management practices so that the Owner is adequately protected;
- (ee) provide oversight on the Owner's behalf of the issuance by the Architect of all necessary certificates respecting Substantial Completion of the Development and distribute same or final certificates for payment as may be necessary to the Contractor;
- (ff) provide oversight and supervision in connection with any required post completion services and management of any warranty claims and rectifications up to two years after the date of Substantial Completion of the Development; and
- (gg) carry out such other duties as are normally carried out by a development manager of a development similar in size, nature, complexity and location to the Development.

2.7 Staff

The Development Manager represents and warrants to, and agrees with, the Owner that it has, and throughout the term, at its own expense, shall employ and shall provide, the personnel and expertise to perform the obligations and services to be performed by it under this Agreement. Without limiting the generality of the foregoing, the Development Manager shall provide qualified staff to perform its obligations under this Agreement (including without limitation, all financial, accounting and reporting obligations) and shall be responsible, at its own expense, for the payment of the employment and related costs of such staff, including, without limitation, staff that oversees the Contractor and the Consultants, whether or not such staff work at the site or at the offices of the Development Manager.

2.8 Ownership of Plans

The Development Manager acknowledges that, subject to the agreements between the Owner or the Development Manager (on behalf of the Owner, as agent for the Owner and without personal liability) and the Consultants, all plans and specifications and all copies thereof and all models with respect to the Development are the property of the Owner. The Development Manager shall not use the same with respect to any other work and the same shall be delivered to the Owner upon termination of this Agreement. The Owner acknowledges and confirms that the Development Manager may utilize photographs of the Development and the construction thereof for the purposes

of marketing and promotion of the services offered by the Development Manager to the public from time to time.

2.9 Inspection

The Owner and its representatives shall at all times have access at their own risk to the Development during the construction of the Development and the Development Manager shall provide facilities for such access.

2.10 Safety Measures

The Development Manager shall use commercially reasonable efforts to cause all the Contractor and all other contractors employed on the Development to be responsible for the safety of all workers and equipment on the Development in accordance with all Applicable Laws governing construction safety.

2.11 Discharge Liens

The Development Manager, throughout the Development Period, shall use commercially reasonable efforts to ensure all contractors employed in respect of the Development will cause any and all construction liens, builders' liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Owner, the Development Manager, any subcontractor or any of them or on their or its behalf in respect of the Development which may be registered against or otherwise affect the Lands to be discharged and/or vacated forthwith by all appropriate means, including payment of funds into court, if necessary. All legal expenses incurred in connection with checking title to the Property and vacating or discharging liens shall be for the Owner's account.

2.12 Insurance

The Development Manager:

- (a) shall at the request of the Owner collaborate with the Owner on (i) the establishment of insurance coverage and/or bonding requirements applicable to the general contractor and other contractors employed in respect of the Development; or (ii) the placement of such insurance policies in the name of Owner and at Owner's expense, as the Owner considers necessary or desirable to protect the Owner, the Development Manager and their property and interests from liability, damage or loss in respect of the Development, including builders' all risk insurance, commercial general liability insurance, wrap-up liability insurance, property insurance, automobile liability insurance, umbrella liability insurance and worker's compensation insurance, with such limits as reasonably determined by Owner having regard to the size, scope and cost of the Development. The Development Manager shall not be responsible for the adequacy of the insurance contracts or the coverage thereunder, settling the insurance contracts administering monitoring or renewing existing insurance coverage, provided however, the Development Manager shall be responsible (in collaboration with and subject to direction and instructions from the Owner and its insurance advisors) for responding to enquiries,

filing claims and liaising with insurance adjusters. All policies of insurance referred to in this Section 2.12(a) shall be maintained by the Owner or the general contractor until Total Completion of the Development, will be primary (vis-a-vis any insurance carried by the Development Manager), provide the Development Manager with at least thirty (30) days advance written notice of cancellation, non-renewal or reduction in coverage and shall include the Development Manager as an additional insured and/or loss payee (as applicable) and shall contain a waiver of subrogation as against the Development Manager. Upon request, the Owner shall provide the Development Manager with certificate(s) of insurance outlining evidence of the Owner's or general contractors insurance (as the case may be) and the terms thereof; and

- (b) commencing not later than the date of the execution of this Agreement, at the Development Manager's sole cost and expense, shall place and maintain during the Development Period:
 - (i) professional liability insurance for all claims arising out of errors or omissions of the Development Manager in the performance of its obligations pursuant to this Agreement with an inclusive limit of \$5,000,000.00 on an aggregate basis but not on a project specific basis; and
 - (ii) commercial general liability insurance for bodily injury (including death) and property damage with an inclusive limit of \$5,000,000.00 on an aggregate basis, but not on a project specific basis; such coverage shall add the Owner as additional insured and/or loss payee (as applicable); and
 - (iii) crime coverage insurance in an amount of \$2,000,000.00, on an aggregate basis.

Each of the policies of insurance referred to in Section 2.12(b) shall not be modified materially nor cancelled on less than thirty (30) days written notice to the Owner and shall otherwise be on terms and conditions acceptable to the Owner, acting reasonably. The Development Manager shall provide the Owner certified certificates of such insurance from time to time at the request of the Owner.

2.13 Development Fee

The Owner shall pay to the Development Manager for its services under this Agreement, the Development Fee in an amount equal to four percent (4.0%) of the Hard Costs and Soft Costs, calculated without duplication and in accordance with the provisions of Section 2.15 of this Agreement.

Notwithstanding anything contained herein to the contrary, for the purpose of calculating the Development Fee, there shall be excluded from Hard Costs and Soft Costs the following:

- (a) all land costs, including land lease payments;

- (b) all amounts, fees and expenses reimbursed to the Development Manager under the provisions of this Agreement;
- (c) all development charges;
- (d) all financing and interest costs;
- (e) all taxes, save and except for harmonized sales taxes applicable to the Development Fee;
- (f) all opening and promotion costs; and
- (g) all amounts paid or payable to the Construction Cost Oversight Consultant.

Notwithstanding the foregoing or anything else contained herein, the Development Manager and the Owner acknowledge and agree that in no event shall the total Development Fee payable to the Development Manager exceed the amount equal to four percent (4.0%) of all Hard Costs and Soft Costs which, for greater certainty, shall not exceed the estimated cost presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020.

2.14 Leasing Fees

Intentionally Deleted

2.15 Payment of Development Fee and Reimbursable Expenses

- (a) Subject the last sentence of this Section 2.15(a), the Owner shall pay to the Development Manager the Development Fee (determined in accordance with the provisions of Section 2.13 herein) in equal monthly instalments, such instalments to be due and payable on the first day of each and every month during the period commencing on the first day of the Development Period and ending on the projected date of Substantial Completion of the Development, as set out in the Pro-Forma Budget for the Development, in each case without the necessity of further documentation. If at any time the Pro-Forma Budget and/or project schedule is amended to revise the estimated Development Costs or the number of months in the project schedule, the amount of the subsequent monthly instalments after such amendment will be adjusted so that the full amount of the Development Fees, calculated based on the then current estimated Development Costs, will be paid over the then project schedule. Notwithstanding the foregoing, but subject always to Section 5.2(e), in the event the Owner, in its sole and unfettered discretion, elects to suspend or cease design and/or construction activity with respect to the Development, no instalments of the Development Fee shall be payable to the Development Manager during such period suspension or cessation of design and/or construction activity; provided that: (i) the Owner shall pay all amounts owing to the Development Manager up to the date of the suspension or cessation; and (ii) the Development Manager shall be relieved of all of its obligations under this

Agreement (other than its obligations under Section 2.6(r)) during any period in which the Development Fee is not being paid.

- (b) The Development Fee shall be finally determined at the end of Development Period and approved in writing by Owner in accordance with generally accepted accounting principles. If the Development Fee is less or more than the sum of the previous payments made by Owner to the Development Manager on account thereof during the term the amount of any deficiency or excess, as the case may be, shall be paid by the Owner to the Development Manager or by the Development Manager to the Owner, respectively, within 30 days of the final determination of the Development Fee.
- (c) The parties acknowledge that the Development Fee set out in this Section 2.15 and in Section 2.13 of this Agreement, are based on the preliminary budgeted Hard Costs and Soft Costs as set out in the Pro-Forma Budget and shall be adjusted annually during the term of this Agreement based on projected costs and upon Total Completion of the Development, the Development Fees shall be reconciled based on final Hard Costs and Soft Costs for the Development.
- (d) In addition to Development Fees, the Owner shall pay to the Development Manager, as part of the Written Order referred to in Section 2.16, Reimbursable Expenses in accordance with Section 2.18.

2.16 Payment of Development Costs

The Development Manager shall be entitled to apply to the Owner at any time for payment of Development Costs and other amounts set forth in the Pro-Forma Budget or as otherwise approved in writing by the Owner from time to time, by delivering to the Owner a written order (herein referred to as a “**Written Order**”) for payment thereof. Each Written Order shall:

- (a) state the aggregate of the amounts set forth in the Pro-Forma Budget previously paid to or as directed by the Development Manager under this Section 2.16;
- (b) state the costs paid or payable by the Development Manager on behalf of Owner at the date of the Written Order in addition to the amounts referred to in Section 2.16(a) (being the costs requested for payment in the Written Order), indicating which costs have been paid and those which are immediately payable but not yet paid;
- (c) state that all costs included in such Written Order are costs contemplated by the Pro-Forma Budget as amended from time to time, and describing the items constituting such costs in reasonable detail; and
- (d) include copies of appropriate supporting invoices and back up (in reasonable detail) for the costs included in such Written Order including, without limitation, for Reimbursable Expenses.

Each Written Order shall be delivered to Owner as aforesaid, shall be signed by an officer of the Development Manager and shall state that all costs set forth in such Written Order, payment or reimbursement of which is requested in such Written Order, are costs contemplated by the Pro-Forma Budget as amended from time to time, and incurred in connection with the development and construction of the Development in accordance with the Agreement.

Within 15 Business Days after the receipt of such Written Order together with such supporting documentation, the Owner shall pay to or as directed by the Development Manager, the amount of the costs set forth in such Written Order and in respect of which payment is requested by the Development Manager. Where the Owner directly pays any such amount under a Written Order to a Person other than the Development Manager, confirmation in writing of such payment shall be provided by the Owner to the Development Manager promptly following such payment being made.

2.17 [Intentionally Deleted]

2.18 Reimbursement of Expenses

In addition to the Development Fee, the Owner shall reimburse the Development Manager for all “**out-of-pocket**” expenses (collectively, the “**Reimbursable Expenses**”) which the Development Manager properly and reasonably incurs pursuant to this Agreement in connection with the performance of its obligations under this Agreement, provided such expenses are itemized within the Pro-Forma Budget or are otherwise submitted on an itemized basis and approved in writing by the Owner. The Reimbursable Expenses shall be in addition to the Development Fee and shall include, without limiting the generality of the foregoing, the following:

- (a) all reasonable travel expenses for those members of the staff (including, without limitation, contract personnel) of the Development Manager who have been pre-approved in writing by the Owner in connection with necessary attendances away from head office relating to the development and construction of the Development or to the site of the Development as reasonably required to perform its duties under this Agreement or as required by the Owner, long distance telephone, other telecommunication charges and fax charges and courier costs as incurred by the Development; and
- (b) professional fees payable to the arm’s length architects, engineers, accountants, lawyers and other consultants who are approved in writing by the Owner and engaged or retained in connection with the servicing, development and construction of the Development pursuant to the provisions of this Agreement.

2.19 No Other Fees

Notwithstanding any other provisions of this Agreement, the Development Manager shall not be entitled to any fees or other compensation for its services under this Agreement other than the Development Fee contemplated herein (and such recoveries specifically provided in this Agreement); without limiting the generality of the foregoing, the Development Manager shall not be entitled to any additional fees for construction management or project management services, or post completion services and management of warranty claims and rectifications.

2.20 Information

In addition to its other reporting obligations pursuant to this Agreement, the Development Manager will at all reasonable times and intervals furnish to the Owner, upon receipt of a specific written request to do so, such information relating to the Development as it requested by the Owner, provided that such information is in the possession or control of the Development Manager.

2.21 Compliance with Applicable Laws

In performing its obligations under this Agreement, the Development Manager shall at all times comply with all Applicable Laws.

2.22 Maintenance of Records

The Development Manager shall maintain complete and accurate records in connection with the Development and the provision of its services under this Agreement.

ARTICLE 3 AUTHORITY

3.1 Authority

The Owner confirms and agrees that the Development Manager has the authority to perform all actions and make all expenditures contemplated by the Pro-Forma Budget as updated from time to time, subject to the terms of this Agreement.

For clarity, the Owner confirms and agrees that the Development Manager has the authority to review contractor's notices and requests for contractor's contingency expenditures with any one contractor not in excess of \$25,000.00 and to authorize, on behalf of the Owner, such contingency expenditures if the expenditures are not in excess of \$25,000.00 or if they have been approved in writing by the Owner.

Notwithstanding any provision in this Agreement to the contrary, the Development Manager on behalf of the Owner shall take such action and incur such reasonably necessary and appropriate expenses and liabilities acting in the best interest of the Owner, without the need of first obtaining the written consent of the Owner, as may be reasonably necessary and appropriate in the reasonable opinion of the Development Manager, to deal with any Emergency arising from time to time. The Development Manager shall immediately inform the Owner of any such Emergency and the action taken.

All Contracts and commitments with third parties necessary for the Development shall be entered into directly by the Owner unless otherwise provided in this Agreement or the Owner otherwise authorizes or directs in writing the Development Manager to enter into such Contracts and commitments on behalf of the Owner, as agent for the Owner and without personal liability.

ARTICLE 4 OBLIGATIONS OF THE OWNER

4.1 Obligations of the Owner

The Owner covenants with the Development Manager that it shall, at its own expense:

- (a) to the extent necessary to permit the Development Manager to complete its obligations hereunder and subject to the rights of tenants, provide free ingress and egress to and from the Lands to and from the neighbouring streets and highways;
- (b) promptly make all decisions required under this Agreement and respond to all requests for approvals, authorizations and directions made hereunder; and
- (c) promptly execute and deliver such evidence of the Development Manager's authority as may be required by third parties, acting reasonably.

Except where the same are being disputed in good faith, the Owner covenants with the Development Manager that it shall, at its own expense, promptly make all payments and incur all expenditures required in connection with the Development in accordance with this Agreement.

ARTICLE 5 TERM

5.1 Term

This Agreement shall commence on the date first above written and, unless otherwise terminated in accordance with the provisions herein, shall continue in full force and effect until the end of the Development Period.

5.2 Termination by Owner

- (a) Default by Development Manager: If an Event of Default occurs, the Owner may give notice (a "**Notice of Complaint**") to the Development Manager specifying in reasonable detail the Event of Default and if, within 30 days of receipt of any Notice of Complaint, the Development Manager fails to cure the Event of Default in a reasonable manner, or if more than 30 days are required to cure the Event of Default, the Development Manager fails to commence and continue diligently to cure within a reasonable period of time, the Owner shall have the right to immediately terminate this Agreement by notice (a "**Notice of Termination**") to the Development Manager stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as of the date of receipt by the Development Manager of the Notice of Termination. Such termination shall be without prejudice to any rights and remedies which the Owner may have by reason of such Event of Default.
- (b) Loss of Key Individual: If at any time during the term of this Agreement, George Buckles ceases to direct, and to be actively involved in, the day-to-day performance

by the Development Manager of its obligations under this Agreement, or does not control the management of the business and operations of the Development Manager, then the Owner shall have the right, exercisable in its sole and absolute discretion, to issue a Notice of Termination. Such termination shall be effective as of the date on which such Notice of Termination is received by the Development Manager or on such later date, if any, as is stated in such Notice of Termination.

- (c) Event of Insolvency: The Owner shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by Notice of Termination upon the occurrence of an Event of Insolvency in respect of the Development Manager.
- (d) Additional Development Management Agreement: The Owner shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by Notice of Termination upon the occurrence of an 'Event of Default' or an 'Event of Insolvency' with respect to the Additional Development Management Agreement.
- (e) Abandonment: The Owner shall have the right to terminate this Agreement by Notice of Termination to the Development Manager if the Owner intends to Abandon the Development. For the purposes of this subsection "**Abandon**" shall mean that the Owner intends to cease all design and/or construction activity with respect to the Development. If such Notice of Termination by the Development Manager is received during the construction phase of the Development, the Development Manager shall coordinate and assist the Contractor in shutting down construction and securing the Development in accordance with good construction practice and will be paid the portion of the Development Fee and Reimbursable Expenses due up to the date the shut down and securing of the Development is substantially completed (the "**Development Shut Down**") plus the Termination Fee, in accordance with the terms of this Agreement.
- (f) Termination for Convenience: The Owner shall have the right to terminate this Agreement for convenience, at any time, exercisable in its sole and absolute discretion, by Notice of Termination to the Development Manager, in which case this Agreement shall terminate effective as of the date of delivery of such Notice of Termination, and the Owner shall pay to the Development Manager the portion of the Development Fee and Reimbursable Expenses due up to the date of delivery of such Notice of Termination plus the Termination Fee, which amounts shall be payable forthwith following the date of delivery of such Notice of Termination. For clarity, this Section 5.2(f) shall not apply if the Owner intends to Abandon the Development, it being agreed that Section 5.2(e) applies thereto.

5.3 Default by Owner

If, at any time, the Owner fails to make any payment which it is obliged to make under this Agreement or to give such directions, authorizations or approvals or shall have failed to take such other actions as were properly required by the Development Manager for the performance of its obligations under this Agreement, the Development Manager may deliver a Notice of Complaint

to the Owner specifying in reasonable detail the matter complained of and if, within 30 days of receipt of any Notice of Complaint, the Owner fails to cure the matter complained of in a reasonable manner, or if more than 30 days are required to cure such matter, the Owner fails to commence and continue diligently to cure within a reasonable period of time, the Development Manager may deliver a Notice of Termination to the Owner stating that this Agreement is terminated. Such termination shall be effective as of the date of receipt by the Owner of the Notice of Termination and the Development Manager shall be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after effective date of such termination. Such termination shall be without prejudice to any rights or remedies which the Development Manager may have by reason of such default by the Owner.

5.4 Indemnity by Owner

During the Development Period and after the termination or expiry of this Agreement, the Owner shall indemnify and save the Development Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity, in connection with the performance by the Development Manager of any and all of its obligations under this Agreement or pursuant to the policies, limitations, instructions and procedures of the Owner and all obligations incurred by the Development Manager in connection with the Development pursuant to this Agreement, including, without limitation, any liability in respect of hazardous substances, any damage or injury whatsoever to any employee or other person or property arising out of the use, administration or control of the Development or any other assets of the Owner relating to the Development, but the indemnity provided under this section shall not extend to:

- (a) any material breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement;
- (b) any fraud, negligence or wilful misconduct of the Development Manager or of its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid by the insurance maintained or required to be maintained by the Owner relating to the Property or the Development); or
- (c) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement.

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner in accordance with the terms of this Agreement, the Development Manager shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Owner in this Section 5.4 in favour of the Development Manager shall apply) save and except to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.5 Indemnity by Development Manager

Subject to Section 5.8 herein, during and after the termination or expiry of this Agreement, the Development Manager shall indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, arising:

- (a) by way of any breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner;
- (b) by reason of any fraud, negligence or wilful misconduct of the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner; or
- (c) by reason of any action taken by the Development Manager outside the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property).

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner, the Owner shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Development Manager in this Section 5.5 in favour of the Owner shall apply) solely to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.6 Duties Flowing from Termination

Upon the termination of this Agreement:

- (a) the Development Manager shall use all commercially reasonable efforts to terminate the Contracts, at the expense of the Owner, if required to do so by the Owner;
- (b) to the extent that Contracts have not been terminated, the Owner shall directly assume the Contracts entered into by the Development Manager on behalf of the Owner provided that such Contracts have been entered into in accordance with the terms and provisions of this Agreement and the Owner shall indemnify and save the Development Manager harmless against any liability by reason of anything done or required to be done under any such Contract after the effective date of termination of this Agreement, provided that if any Contract covers any

improvement in addition to the Development, then the Owner shall have the option to elect either to terminate any such Contract or to retain it provided that the third party to such Contract acknowledges that it relates only to the Development and any fees and expenses provided for therein are appropriately adjusted on a prorated basis; and

- (c) the Owner shall pay for and indemnify and save the Development Manager harmless against the costs of all services, materials and supplies if any, which may have been contracted for by the Development Manager in accordance with this Agreement in connection with or pursuant to its obligations under this Agreement.

5.7 Delivery of Records to Owner

If this Agreement is terminated, the Development Manager shall, notwithstanding such termination, forthwith upon termination from time to time thereafter deliver to the Owner all records and documents, including, without limitation, the following:

- (a) development plans;
- (b) project budgets;
- (c) all Contracts;
- (d) all operating records;
- (e) books of account; and
- (f) all ancillary documents maintained with respect to the Development (whether on or off-site),

which are in the possession or control of the Development Manager, provided that the Development Manager may elect to retain copies of such records, books of account and documents and notwithstanding such termination or expiry the Owner shall thereafter and from time to time for a reasonable period of time produce at their offices the originals of such items whenever the Development Manager reasonably requires them for its purposes in connection with its obligations under this Agreement or for the purpose of dealings with any Authority or any legal proceeding involving the Development Manager. The Development Manager shall keep all such information confidential unless required to disclose by law or in connection with any legal proceeding involving the Development Manager.

5.8 Limits of Liability

- (a) Notwithstanding anything in this Agreement to the contrary, Development Manager's liability for damages (whether a claim therefore is based on warranty, contract, tort (including negligence or strict liability), statute or otherwise) and claims arising in relation to any performance or non-performance of services under this Agreement (including without limitation reasonable legal fees and expenses)

shall in no event exceed an aggregate amount equal to the Development Fee, provided, however, that the foregoing limitation on Development Manager's liability shall not be applicable to any claim resulting from and to the extent of the gross negligence, fraud or willful misconduct of the Development Manager or any liability unable to be excluded by law. In no event shall the Owner make any claim against the Development Manager's partners or affiliates, or their shareholders, officers, directors or employees, on account of any act or omission of the Development Manager or any of the foregoing. The Owner may assert claims only against the Development Manager (or its assignees) and under no circumstances shall any partner or affiliate of the Development Manager or any shareholder, officer, director, employee or agent of the Development Manager, be personally liable for any of the obligations, acts or omissions of the Development Manager under this Agreement. All permitted assignees of the Development Manager's rights under this Agreement shall have the benefit of this Section 5.8(a) and this Section 5.8(a) shall survive the expiration or termination of this Agreement; and

- (b) in no event shall the Development Manager make any claim against the shareholders, officers, directors and employees of the Owner on account of any act or omission of the Owner and neither party shall be liable to the other for any consequential or indirect loss, injury or damage of any nature whatsoever including, without limitation, claims for loss of profit, revenue or capital, loss of use of utilities, equipment or facilities, down time cost, service interruption, or cost of money.

5.9 Rights on Termination

Any termination of this Agreement shall terminate all rights and obligations under this Agreement from and after the date of such termination except rights and obligations with respect to matters to be performed to such date and all legal remedies available at such date for any breach of this Agreement. In addition, Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 shall survive any termination of this Agreement and shall remain in full force and effect thereafter.

ARTICLE 6 UNAVOIDABLE DELAY

6.1 Unavoidable Delay

Whenever in this Agreement it is provided that anything is to be done or performed and the doing or performance thereof is impossible or delayed due to Unavoidable Delay, neither the Owner nor the Development Manager shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other in writing of the commencement, duration and consequences (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder and shall use all commercially reasonable efforts to minimize the effect of the same. In the event of such Unavoidable Delay or non-performance by either party, then such obligated party, so long as any such impediment exists, shall be relieved from its duties in respect thereto and the other party shall not be entitled to compensation for any

damages, inconveniences, nuisance or discomfort thereby occasioned or be entitled to terminate this Agreement as a result thereof.

ARTICLE 7 NOTICES

7.1 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request, response, delivery or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, courier or by fax which results in a written or printed notice being given, addressed or by email or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice (provided that no Notice pursuant to Sections 5.2 or 5.3 shall be delivered by email only):

- (a) in the case of the Development Manager:

twopointO partners inc.
161 Bay Street, 27th Floor
Toronto, Ontario M5J 2S1

Attention: George Buckles
Email: gbuckles@twopointo.org

- (b) in the case of the Owner:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: City Administrative Officer
Email: mcarpino@pickering.ca

With a copy to:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: Director, Corporate Services & City Solicitor
Email: pbigioni@pickering.ca

Any Notice, if delivered personally or by courier, shall be deemed to have been validly and effectively given and received on the date of delivery and if sent by telecopier or other electronic communication, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received. Any Notice given by any party under or in connection with this Agreement, if addressed to less than all of the parties to this Agreement, shall

also be concurrently copied and given to the parties to this Agreement to whom the Notice is not addressed.

Any party may at any time and from time to time, change its address for delivery for the purposes of this section by giving at least seven (7) days' Notice to the other parties.

ARTICLE 8 ASSIGNMENTS

8.1 Assignment by Development Manager

The Development Manager shall not assign this Agreement without the prior consent of the Owner, which consent may be withheld in the sole and unfettered discretion of the Owner.

8.2 Assignment by Owner

The Owner shall have the right to assign its interest in this Agreement so long as, and only if such assignment is made pursuant to a sale of the Owner's interest in the Property to the assignee, the assignee enters into an agreement with the remaining parties hereto whereby the assignee shall be bound by and entitled to the benefit of this Agreement and the assigning party shall thereupon be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after the effective date of such assignment.

ARTICLE 9 GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions, Table of Contents and Legislation

The captions and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation. Any reference in this Agreement to any act or statute or any section thereof shall be deemed to be a reference to such act or statute, or section thereof as amended or re-enacted from time to time.

9.3 Obligations as Covenants

Each obligation of a party hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the province in which the Property is situated and the laws of Canada applicable therein.

9.5 Invalidity

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

9.6 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby.

9.7 Successors and Assigns

All of the provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and the successors and assigns of any party hereto only to the extent that they are permitted successors and assigns pursuant to this Agreement.

9.8 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to in this Agreement shall be made in accordance with generally accepted accounting principles and practices applicable to the public real estate industry in Canada and applied on a consistent basis.

9.9 HST

The parties acknowledge that all fees and other amounts payable under this Agreement are taxable supplies under the *Excise Tax Act* (Canada) and shall bear HST as applicable in the province in which the Property is situated and each party to this Agreement covenants to remit to the party making the supply any HST, as applicable, owing on such supply when the consideration for such supply is paid. In particular and without limiting the foregoing, all fees payable under this Agreement shall bear HST, as applicable, and such HST, as applicable, shall be payable at the time such fees are payable.

9.10 Schedules

The Schedules attached hereto form part of this Agreement.

9.11 Time

Except as specifically provided otherwise in this Agreement, time shall be of the essence of this Agreement. When any period of time provided for herein expires on a day other than a Business Day, such period of time shall automatically be extended to the next following Business Day and, when any action or requirement provided for herein is to occur on a day other than a Business Day,

the time for such action or requirement shall automatically be extended to the next following Business Day.

9.12 Non-Waiver

No consent to or waiver of any breach or Event of Default by any party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party hereto of the same or any other obligations of such party hereto hereunder. Failure on the part of any party hereto to complain of any act or failure to act of any other party hereto or to declare any other party hereto in breach or default, irrespective of how long such failure continues, shall not constitute a waiver by such party hereto of its rights hereunder.

9.13 Rights of Parties Independent

The rights available to each party hereto under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party hereto from time to time and no such exercise shall exhaust the rights or preclude such party hereto from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

9.14 Status Reports

Each party hereto agrees, upon the reasonable request of any other party hereto, made from time to time, to furnish promptly a written statement on the status of any matter pertaining to the requesting party hereto to the best of the knowledge and belief of such other party hereto at the cost of the requesting party hereto.

9.15 No Representations

Except as specifically set forth herein, the parties agree that there are no representations and warranties by any of them with respect to this Agreement.

9.16 Further Assurances

Each of the parties hereto shall, from time to time and upon every reasonable written request of any other party hereto, give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

9.17 Rights of Examination by the Owner

Upon a written request of the Owner, the Development Manager will, at the expense of the Owner, at any and all times during normal business hours and on reasonable written notice, permit the Owner or its agents and representatives to examine all books of account, reports and other records of the Development Manager relating to the services performed for the Owner by the Development Manager under this Agreement, to make copies thereof or extracts therefrom or to have the same audited by an auditor appointed by, and at the expense of, the Owner.

9.18 Entire Agreement

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, of the parties hereto with respect thereto.

9.19 Canadian Dollars

All monetary references in this Agreement are to Canadian dollars.

9.20 Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

9.21 Language

The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.

[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement effective as of the date hereof.

**THE CORPORATION OF THE CITY
OF PICKERING**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

twopointO partners inc.

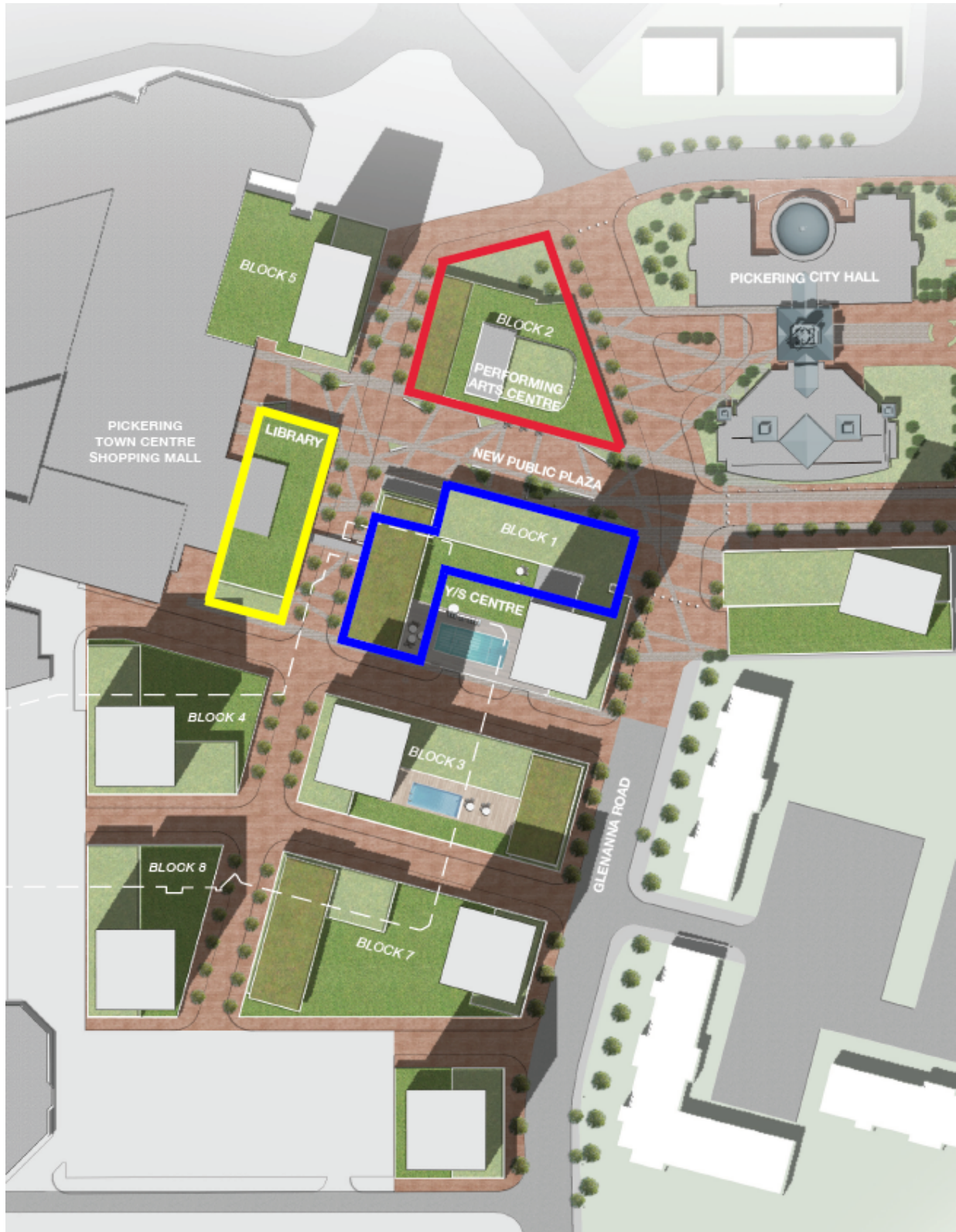
Per: _____
Name: George Buckles
Title: Principal

Per: _____
Name: Thelma Sakamoto
Title: Principal


We have the authority to bind the Corporation

SCHEDULE A
DESCRIPTION OF THE LANDS AND PREMISES

A new 3 level municipal library comprising approximately 45,000 SF located on a strata title parcel to be created in the area approximately outlined in yellow.



SCHEDULE B PRO-FORMA BUDGET

Pickering City Centre Pickering, Ontario Library 10/8/2019			
			
	Library		
Item	Library Building	Roof Patio and City Facilities	Library Total
CONSTRUCTION			
Loading	493,548	179,704	673,252
Building (New: Substructure - Foundation / Parking)	0	0	0
Building (New: Superstructure - Core / Shell) + Fitout	17,203,036	7,281,256	24,484,292
Onsite Improvements/Infrastructure	0	0	0
FFE	1,600,000	50,000	1,650,000
Construction Cost Sub Total	19,296,584	7,510,960	26,807,544
CONSTRUCTION - ANCILLARY			
Insurance	0	0	0
Bonding	0	0	0
Service Connections	109,950	40,050	150,000
Testing & Inspections - Hazmat	0	0	0
Testing & Inspections - Civil/Sitework	0	0	0
Construction Ancillary Cost Sub Total	109,950	40,050	150,000
CONTINGENCY			
Hard Cost Contingency	1,929,658	751,096	2,680,754
TOTAL HARD COSTS			
Total Hard Costs	21,336,192	8,302,106	29,638,299
DESIGN CONSULTANTS			
Architecture and Interior Design	1,305,491	507,979	1,813,470
Mechanical Engineer	83,291	32,409	115,700
Electrical Engineer	73,428	28,572	102,000
IT/Communications	11,518	4,482	16,000
Security	11,518	4,482	16,000
Audio Visual	10,798	4,202	15,000
Lighting	14,398	5,602	20,000
Structural	190,770	74,230	265,000
Wind/Noise/Vibration	2,376	924	3,300
Code/Fire/Life Safety	7,343	2,857	10,200
Theatre Design	0	0	0
Building Envelope	29,515	11,485	41,000
Acoustics	17,637	6,863	24,500
Landscape	0	0	0
Vertical Transportation	1,728	672	2,400
Library Planning	38,392	14,938	53,330
Testing and Inspection	18,325	6,675	25,000
Surveying	54,975	20,025	75,000
Specifications Writer	18,717	7,283	26,000
Other Consultants	92,556	36,014	128,570
Disbursements	94,511	36,684	131,195
Design Contingency	297,144	110,722	407,866
Design and Consultants Cost Sub Total	2,374,431	917,100	3,291,531
LEGAL & ADMINISTRATIVE			
Development Management Fee	1,070,606	416,186	1,486,792
Legal	36,650	13,350	50,000
Insurance	18,325	6,675	25,000
twopointO Disbursements	10,995	4,005	15,000
Capitalized Vacant Land Tax	0	0	0
Legal & Administrative Cost Sub Total	1,136,576	440,216	1,576,792
MARKETING & LEASING			
Marketing	25,655	9,345	35,000
Commissions- Manager	0	0	0
Commissions - Listing Brokers	0	0	0
Tenant Allowances (Retail/Institutional)	0	0	0
Marketing & Leasing Cost Sub Total	25,655	9,345	35,000
HOLDBACK			
Holdback (10%)	(1,929,658)	(751,096)	(2,680,754)
Holdback Release	1,929,658	751,096	2,680,754
GROSS PROJECT BUDGET (Before Taxes)	24,872,855	9,668,767	34,541,622

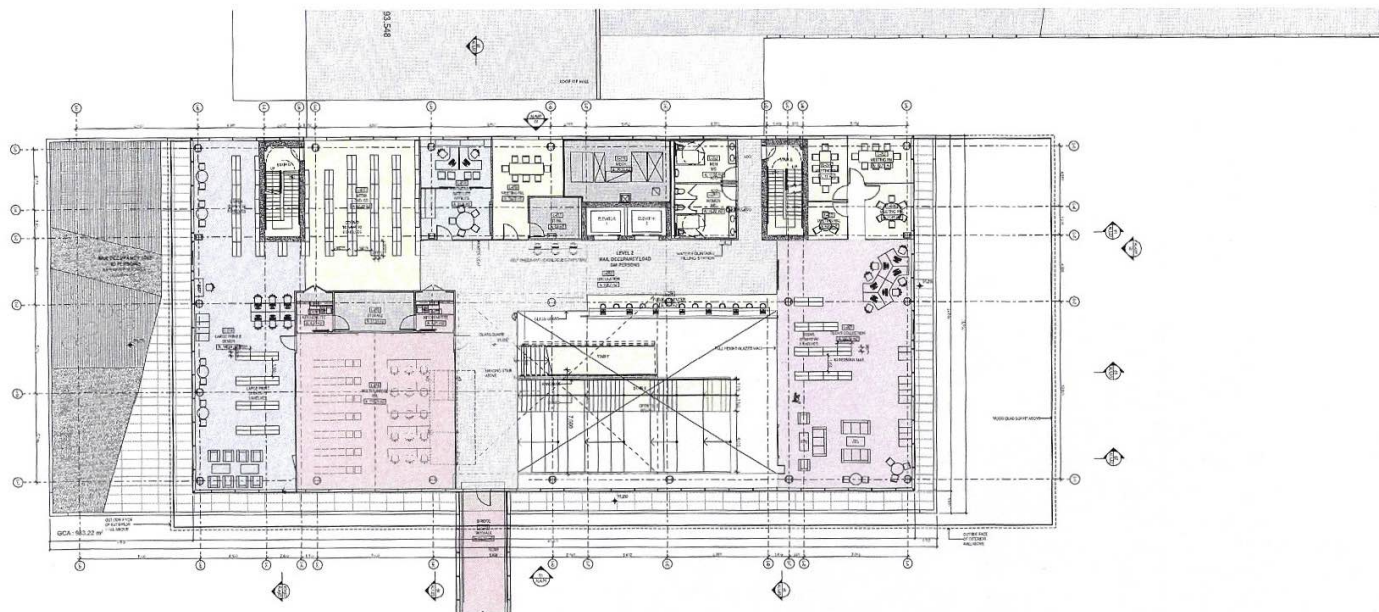
SCHEDULE C
DEVELOPMENT PLANS

The Development will consist of the following principal elements as generally shown on plans attached hereto.

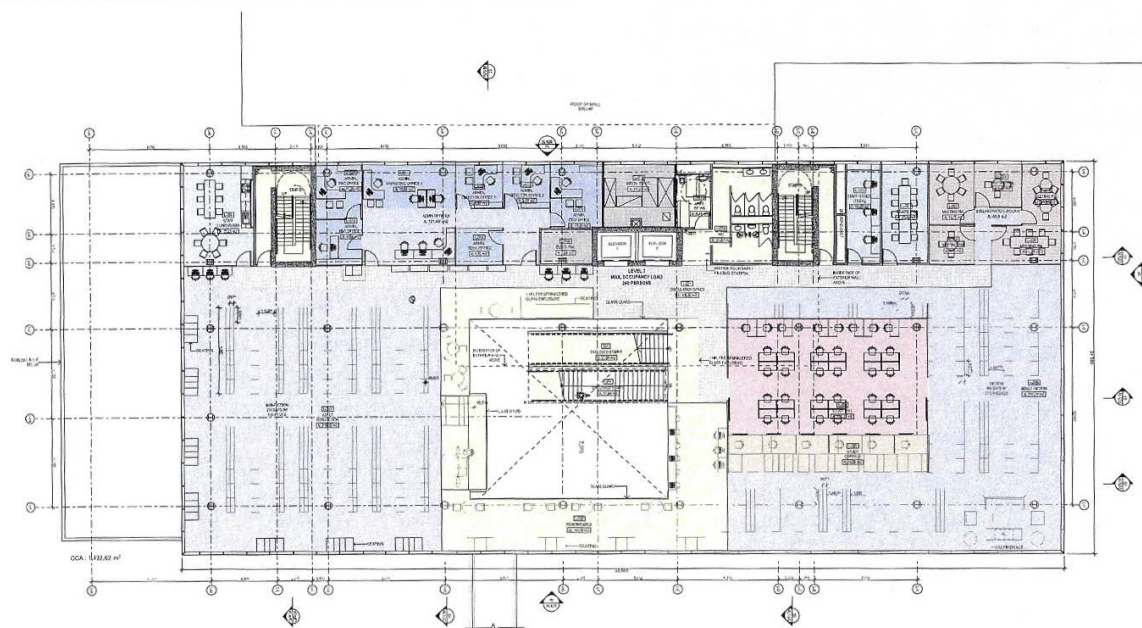


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2009-11-11

- 90 -



02 LEVEL 2
DEMISING PLAN



01 LEVEL 3
DEMISING PLAN

1. General of the drawing is intended for the building. The drawing and all associated information are subject to change without notice. The drawing is not to be used for any other purpose without the written consent of the architect.

2. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

3. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

4. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

5. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

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7. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

8. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

9. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

10. The architect is not responsible for the accuracy of the information provided by the client or any other source. The architect is not responsible for the accuracy of the information provided by the client or any other source.

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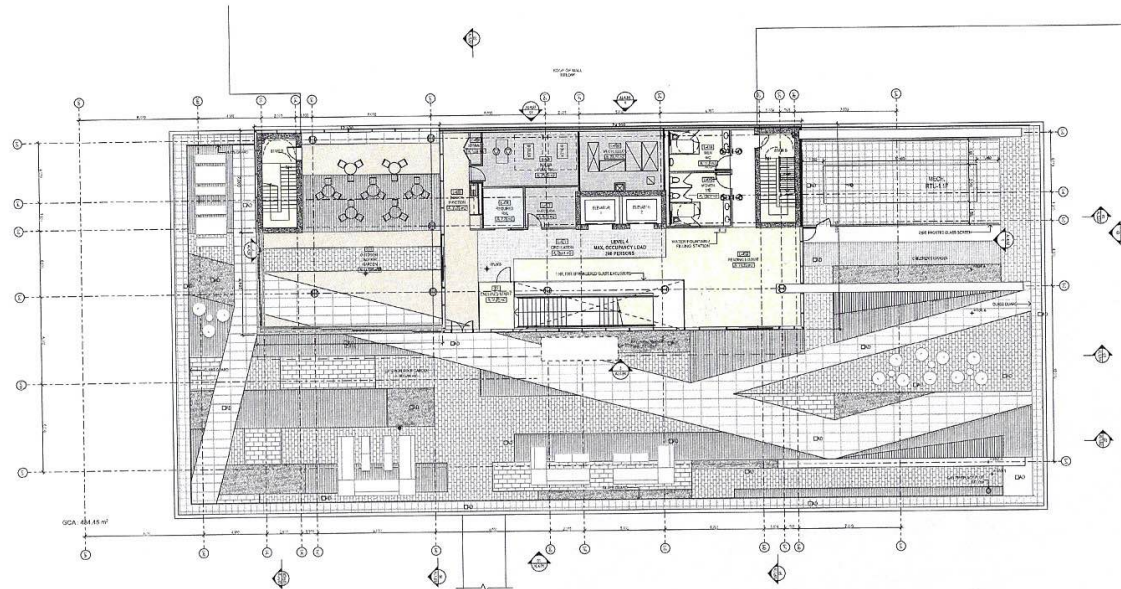
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architectural
2019-11-11
2019-11-11



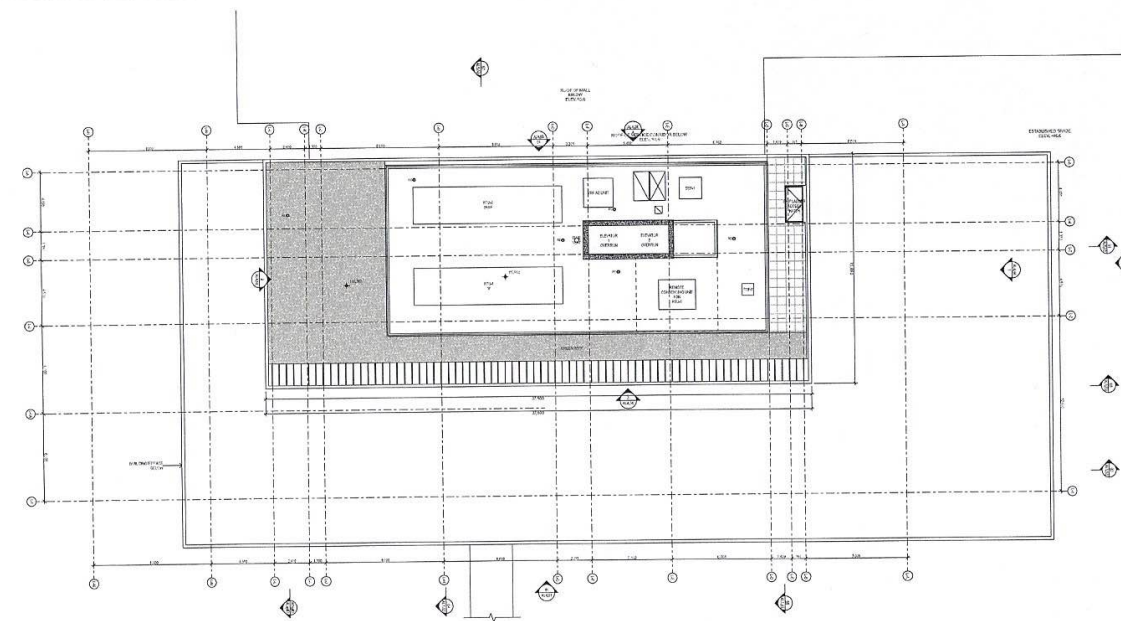
2101
Pickering City Centre
Cushman & Wakefield
161 Bay St., Suite 1600,
Toronto, ON M5J 2S1
City of Pickering
One The Esplanade
Pickering ON L1V 4G7
Level 2 And Level 3 Demising Plan

1:100
2019-11-11

AL2.03



02 Level 4 / Roof
SCALE 1/8" = 1'-0"



01 TOP OF ROOF
SCALE 1/8" = 1'-0"

1. General Notes: This drawing is a part of the project and shall be read in conjunction with the other drawings and specifications. It is the responsibility of the contractor to verify the accuracy of the information provided on this drawing and to ensure that the work is completed in accordance with the project requirements.

2. Dimensions: All dimensions are given in feet and inches. Dimensions are to be taken from the centerline of the structure unless otherwise noted.

3. Materials: All materials shall be of the highest quality and shall be approved by the architect. The contractor shall be responsible for obtaining the necessary permits and approvals for the materials used.

4. Workmanship: The work shall be completed in a professional and workmanlike manner. The contractor shall be responsible for ensuring that the work meets the project requirements and is completed in a timely manner.

5. Safety: The contractor shall be responsible for ensuring the safety of the workers and the public. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

6. Environmental: The contractor shall be responsible for ensuring that the work is completed in a manner that is environmentally friendly. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

7. Other: The contractor shall be responsible for ensuring that the work is completed in a manner that is consistent with the project requirements. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

8. Notes: The contractor shall be responsible for ensuring that the work is completed in a manner that is consistent with the project requirements. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

9. Notes: The contractor shall be responsible for ensuring that the work is completed in a manner that is consistent with the project requirements. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

10. Notes: The contractor shall be responsible for ensuring that the work is completed in a manner that is consistent with the project requirements. The contractor shall be responsible for obtaining the necessary permits and approvals for the work.

aA



2011
Pickering City Centre
Cushman & Wakefield
161 Bay St., Suite 1000
Toronto, ON M5S 2S1
City of Pickering
One The Esplanade
Pickering ON L1V 1K7
Level 4 Demising And Level 5 Roof

1:100
2018-11-11

AL2.04



**SCHEDULE D
DESCRIPTION OF THE PTC LANDS**



Execution Version

**THE CORPORATION OF THE CITY OF PICKERING
(the “Owner”)**

- and -

**Cushman & Wakefield Asset Services ULC
(the “Development Manager”)**

**PICKERING CITY CENTRE SENIORS & YOUTH CENTRE AND BRIDGE LINK
DEVELOPMENT MANAGEMENT AGREEMENT**

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THIS DEVELOPMENT MANAGEMENT AGREEMENT made as of the ■ day of ■, 2020.

BETWEEN:

THE CORPORATION OF THE CITY OF PICKERING

(the “**Owner**”)

- and -

Cushman & Wakefield Asset Services ULC

(the “**Development Manager**”)

RECITALS:

- A. The Owner is the Owner of the Property.
- B. The Owner and the Development Manager have agreed to enter into this Agreement to confirm the Development Manager as the development manager for the Development on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and the sum of \$10.00 paid by each party to the other party and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this Section 1.1:

“**Agreement**” means this Development Management Agreement, as amended, supplemented and restated from time to time.

“**Applicable Laws**” means all statutes, laws, by-laws, regulations, ordinances and orders of Authorities.

“**Architect**” means architectsAlliance – a partnership of corporations by its partners (including the sub-consultants and engineers retained by the Architect), or such other architect or firm of architects as may be retained by the Development Manager on behalf of the Owner in respect of the Development, from time to time.

“**Authorities**” means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or

entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Owner, the Development Manager, the Improvements or the Lands, including the businesses carried on therein.

“Business Day” means a day which is neither a Saturday, Sunday nor a day observed as a holiday under the laws of the Province in which the Property is located or the federal laws of Canada; and **“Business Days”** means more than one Business Day.

“Construction Cost Oversight Consultant” means Independent Project Managers together with CB Ross Partners Cost Consultants, or such other cost consultants or project manager(s) as may be retained by the Owner to provide cost oversight services in respect of the Development, from time to time.

“Consultants” means the Architect and such other architects, engineers, lawyers or other consultants (including such sub-consultants as are retained by any Consultant) as the Development Manager, subject to the approval of the Owner, may appoint from time to time on behalf of the Owner to supervise the servicing, development and construction of the Development; and **“Consultant”** means any one of the Consultants.

“Contractor” means the construction firm engaged by the Owner to act as general contractor in respect of the Development.

“Contracts” means all contracts either entered into or administered by the Development Manager in respect of the Development.

“Development” means the intended development of the Improvements including but not limited to the development and construction of a new Seniors & Youth Centre and bridge link and related rectifications, reconfiguration and completion of the common areas of the Improvements in accordance with the Development Plans.

“Development Costs” means the total of all Hard Costs and Soft Costs.

“Development Fee” means the fee for the Development Manager’s services provided for in Section 2.13.

“Development Period” means the period commencing on August 1, 2019 and ending on the later of: (a) the date on which the Development is Totally Completed; and (b) the expiry of one year after the date of Substantial Completion of the Development; provided that, solely for the purposes of Section 2.6(ff), the Development Period shall continue until the date that is two years after the date of Substantial Completion of the Development.

“Development Plans” means the conceptual plans prepared by the Architect and renderings of the Development collectively attached hereto as Schedule C, as may be amended, supplemented or otherwise changed from time to time with the approval of the Owner.

“Emergency” means a condition or circumstance occurring in or about the Property which if not remedied immediately would result, with reasonable certainty, in: (i) material

damage to the Property or material damage to other property; (ii) serious physical injury or death; or (iii) criminal or civil liability on the part of the Owner.

“Event of Default” means, in the case of the Development Manager:

- (a) the negligence or wilful misconduct of the Development Manager to perform its duties and discharge its obligations under this Agreement;
- (b) the persistent and/or material failure of the Development Manager, other than a failure which is as a result of either negligence or wilful misconduct of the Development Manager, to perform its duties and discharge its obligations under this Agreement; or
- (c) any fraudulent act of the Development Manager in respect of the Development or this Agreement or any material and deliberate misrepresentation by such Development Manager to the Owner.

“Event of Insolvency” means the occurrence of any one or more of the following events:

- (a) if the Development Manager, other than in connection with a bona fide corporate reorganization shall:
 - (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any successor legislation thereto or have its existence terminated or have any resolution passed therefor;
 - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation thereto; or
 - (iii) apply for protection or propose a compromise or arrangement under the *Companies’ Creditors Arrangement Act* (Canada) or any successor legislation thereto or shall file any petition, application or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors;
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against the Development Manager seeking any reorganization, arrangement, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally, and such order, judgment or decree remains unvacated or unstayed for an aggregate of 60 days from the date of entry thereof; or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for the Development Manager or of all or any

substantial part of its property with the consent or acquiescence of the Development Manager and such appointment remains unvacated or unstayed for an aggregate of 60 days; and

- (c) if a writ of execution or attachment or similar process is issued or levied against all the property or substantially all of the property of the Development Manager in connection with any judgment against the Development Manager and is not discharged or vacated within 60 days after it is so issued or levied.

“Final Budget Approval Date” means the date on which a resolution is duly passed by Pickering City Council approving the final Pro-Forma Budget for the Development following completion of the design and contracting phase of the Development.

“Hard Costs” means the total amount of all costs, fees, charges and expenses incurred for construction of the Development, excluding all furniture, fixtures and equipment purchased directly by the Owner and not included in the Pro-Forma Budget, but including, without limitation all expenses incurred in the actual construction of the Development including moneys paid for labour, materials and services in connection with such construction and all payments to and for the account of any contractors or suppliers engaged in the work with respect to the Development prior to and after the date of this Agreement.

“HST” means the tax imposed under Part IX of the *Excise Tax Act*, as amended or re-enacted from time to time, provided that in the event that any similar tax is introduced by any province that has jurisdiction, all references to **“HST”** shall apply, *mutatis mutandis*, with respect to such tax and its payment.

“Improvements” means a new Seniors & Youth Centre and bridge link and related facilities, any office areas and delivery facilities constructed or to be constructed on the Lands together with all connections, if any, to adjacent buildings, constructed as appurtenances to such buildings.

“Lands” means the lands and premises described in Schedule A.

“Pro-Forma Budget” means: (a) prior to the Final Budget Approval Date, the indicative pro-forma budget for the Development attached hereto as Schedule B that is consistent with the estimated cost of the Development presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020, which is subject to approval by Pickering City Council, which the parties acknowledge is preliminary in nature and shall be updated by agreement between the parties from time to time as the design and contracting phase of the Development progresses; and (b) from and after the Final Budget Approval Date, the final pro-forma budget for the Development as approved by Pickering City Council following completion of the design and contracting phase of the Development, as the same may be updated by agreement between the parties from time to time in accordance with this Agreement.

“Property” means, collectively, the Lands and the Improvements.

“PTC Lands” means the lands and premises outlined in red on Schedule D.

“PTC Ownership” means OPB Realty Inc. (the registered owner of the PTC Lands) and its asset manager, Investment Management Corporation of Ontario (IMCO).

“Reimbursable Expenses” has the meaning set forth in Section 2.18.

“Soft Costs” means any cost, disbursement or expense referable to construction of the Development which is not a Hard Cost but relates to the Development and includes without limitation:

- (i) fees and expenses incurred for architectural, engineering, land surveying, legal and other professional or consulting services in connection with the planning, development, servicing and construction of the Development;
- (ii) the cost of permits for construction of the Development and all levies, charges, taxes, assessments and levies made by any Authorities in respect of the Development and all expenses incurred otherwise relating to such construction, including those for insurance, necessary surety and other performance bonds, and other incidental expenses; and
- (iii) the cost of all agreements and materials obtained in connection with the Development.

“Substantial Completion” wherever used herein shall have the same meaning as **“substantial completion”** or **“substantial performance”** in the applicable construction lien legislation in force in the province in which the Property is situated and **“substantially completed”** wherever used herein shall have the corresponding meaning.

“Termination Fee” means an amount to be agreed upon between the Owner and the Development Manager, each acting reasonably and in good faith, which shall be calculated based on the cost of all obligations and services provided by the Development Manager pursuant to this Agreement calculated to the date of termination (recognizing that a disproportionate share of the Development Manager’s expertise and work is completed during the design and construction document phase of the Development), without duplication of any Development Fee previously paid by the Owner.

“Totally Completed” or **“Total Completion”** means total completion of the Development as certified by the Consultant, including the completion of all construction deficiencies for the Development.

“Unavoidable Delay” means any prevention, delay, stoppage or interruption in the performance of any obligation of a party hereto due to a strike, lockout, slow down, labour dispute, act of God, pandemic, inability to obtain or supply any service, equipment, utility, labour or materials, laws, statutes, ordinances, rules, regulations or orders of Authorities (including, but not limited to, federal, provincial or municipal states of emergency), inability to obtain or delay in receiving any required permit, zoning variance or other governmental or quasi-governmental approvals, enemy or hostile action, civil commotion, war or other casualty, default by the other party or any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by

the party to perform because of lack of its own funds where such funds are required to permit it to perform the obligation in question.

“**Written Order**” has the meaning set forth in Section 2.16.

ARTICLE 2 APPOINTMENT AND SERVICES

2.1 Appointment

The Owner hereby appoints and retains the Development Manager on an exclusive basis to provide all services and obligations set out in this Agreement in connection with the Development on the terms and conditions and for the remuneration provided for in this Agreement. The Development Manager shall administer and manage completion of the Development on behalf of the Owner. The Development Manager hereby accepts such appointment on the terms and conditions set out in this Agreement and agrees that it shall perform such services and carry out such obligations hereunder in a proper, competent, honest, diligent and efficient manner and in keeping with the standard of care, prudence, expertise and diligence that would be expected of an experienced development manager of comparable large commercial real estate projects and in accordance with the standard of performance set out in Section 2.3.

The Owner acknowledges and agrees that, except for Reimbursable Expenses provided for in Section 2.18 or as otherwise expressly set out in this Agreement, the Development Manager shall not, at any time, be required to use its own funds to pay any costs or expenses relating to the Development.

The parties acknowledge that, prior to the date of this Agreement, the Development Manager has submitted to the Owner, and the Owner has reviewed and approved, various invoices for reimbursement of certain Reimbursable Expenses and for a certain portion of the Development Fee payable to the Development Manager for work performed prior to the date of this Agreement, all of which will be paid by the Owner to the Development Manager promptly following the date of this Agreement. The parties further acknowledge that the Development is currently on pause until at least September 2020 by resolution of Pickering City Council and that further resolutions (the “**Restart Resolutions**”) are required in order: (i) for the Development Manager to re-commence its work hereunder; and (ii) to approve the indicative Pro-Forma Budget attached as Schedule B hereto. Consequently, the parties agree that the Development Manager shall not, unless directed to do so in writing by the Owner, carry out any further work under this Agreement until the Restart Resolution authorizing the re-commencement of the Development is duly passed by Pickering City Council.

2.2 Development Manager’s Representations and Warranties

The Development Manager hereby represents and warrants to the Owner that it has the requisite knowledge, skills and experience (including, without limitation, the knowledge and the experience to advise the Owner when Consultants need to be retained with specialized knowledge, skills and experience) to perform the services and functions provided for in this Agreement to the standards provided for in Section 2.3, provided the Owner acknowledges that the Development Manager does not provide legal services to the Owner pursuant to this Agreement.

2.3 Standard of Performance

In carrying out its duties and obligations hereunder, the Development Manager will not be responsible for matters beyond its reasonable control (including, without limitation, delay in the completion of the Development, and/or increase in the cost to complete the Development) or for matters involving the expenditure of funds which are not made available by the Owner, and it is understood that the responsibility of the Development Manager in performing the services and functions mentioned shall be limited in each case to exercising in such performance the same degree of care, skill and supervision as would be exercised by an experienced development manager of large commercial real estate projects.

During the entire Development Period, the Development Manager shall commit and dedicate to and for the Development the members of its staff (including, without limitation, contract personnel) as required to maintain the standard of performance provided for in this Section 2.3.

In performing its obligations and services pursuant to the terms of this Agreement, the Development Manager shall comply with the terms of the Contracts as they relate to the Development. In making any interpretations, decisions or findings, the Development Manager will act in the best interests of the Owner and not show partiality to the PTC Ownership, the Contractor, the Architect or any trade contractors or other counterparties to such Contracts.

2.4 Independent Contractor

The parties acknowledge that the Development Manager shall undertake its duties hereunder as an independent contractor and not as agent or in any other way representative of the Owner except as herein expressly provided. It is further acknowledged that nothing in this Agreement nor in any acts of the parties hereto shall be deemed to create a partnership relationship among any of the Development Manager and the Owner.

2.5 Confidentiality

The information received by the Development Manager, as a result of or pursuant to this Agreement, shall not be disclosed by the Development Manager to any person other than as a necessary part of discharging its duties or enforcing its rights hereunder or used either to the detriment of the Development or for the benefit of a competitive project, except with the written consent of the Owner or unless required by law to be disclosed in connection with legal proceedings.

2.6 Obligations and Services of the Development Manager

The Development Manager shall, in a skilful and expeditious manner and in accordance with any agreements made by the Owner relating to the Development and of which the Development Manager has knowledge:

- (a) with the direction and instruction of the Owner, formulate, present and finalize development concepts for the Development and the Pro-Forma Budget;

- (b) apply on behalf of the Owner in the name of the Owner, as agent for the Owner and without personal liability, to Authorities for, and obtain, and supervise the Consultants and trade and supply contractors in connection with the acquisition of, all land use classification amendments, applications, licences, permits and approvals necessary or required for the Development (including demolition, excavation, site plan and building permits and their related agreements);
- (c) select, and propose to and obtain approval of the Owner for, contractors, Consultants, suppliers and others for the Development; and co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;
- (d) review contractor's notices and requests for contractor's contingency expenditures and to obtain the prior written approval of the Owner to authorize any such expenditures where the anticipated cost provided for in the contractor's contract exceeds \$25,000.00, whether as a credit or an expense, and to authorize, on behalf of the Owner, contingency expenditures which have been approved by the Owner or which are not required to be approved by the Owner but which, based on the experience of the Development Manager, are justifiable. For certainty, the provisions of this Section 2.6(d) shall apply to contractor's contingency payments to the Owner's general contractor in accordance with the terms and conditions of the construction contract between the Owner and such general contractor;
- (e) execute Contracts with contractors in the name of and on behalf of the Owner, without personal liability of the Development Manager under such Contracts, for work and/or services for the Owner and relating to the Development where the anticipated cost provided for in the contract does not exceed \$25,000.00;
- (f) co-ordinate the layout, design and engineering for the Development including, without limitation, the preparation of all drawings and specifications, and obtain the approval by the Owner of any material changes thereto;
- (g) co-ordinate and direct to completion in accordance with the plans and specifications approved in writing by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12 of this Agreement, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf and the Development Manager shall review and authorize on behalf of the Owner change orders with respect to the construction of the Development provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;
- (h) co-ordinate, in conjunction with the Consultants, the preparation by the general contractor and distribution to the Owner of critical path schedules for the development of the Development and obtain from contractors and distribute to the

Owner critical path schedules for the construction of the Development, and periodic updates thereto as necessary to reflect any material changes to such schedules;

- (i) arrange for and monitor the conduct of all such things as are necessary to ensure compliance by the Owner with all terms and conditions of all Contracts entered into, assumed by or binding upon the Owner in connection with the Development of which the Development Manager has knowledge;
- (j) co-ordinate the planning and construction of tenant improvements, if any, in the Development;
- (k) co-ordinate and direct the moves of tenants, if any, into the Development and the opening of the Development to the public for business;
- (l) submit to the Owner monthly:
 - (i) a cost and financial pro-forma analysis for the Development, in a format acceptable to the Owner, and a consolidated report showing projected capital costs and costs incurred to date and projected variances to the Pro-Forma Budget which the Owner shall approve or reject prior to the next monthly report;
 - (ii) reports on construction, contractual and legal matters and any significant developments affecting or relating to the Development;
 - (iii) an updated timetable for the development, construction and completion of the Development; and
 - (iv) upon the request of the Owner, such other reports and information as the Owner may reasonably require;
- (m) provide to the Owner, on an ongoing basis, access to reports on:
 - (i) change orders and change directives;
 - (ii) project schedules (in accordance with subparagraph (w)); and
 - (iii) cash allowances,and ensure all such reports are maintained in an accurate, prudent and responsible manner and are provided in a format which is readily and easily accessible to the Owner;
- (n) submit to the Owner all accounting and financial information and supporting documents for the Development as may be necessary or desirable for the purposes of preparing financial statements of the Owner in accordance with public sector accounting principles, and for such purposes, the Development Manager shall give

full cooperation and promptly provide to the Owner all such information it may reasonably request from time to time;

- (o) provide full accounting and bookkeeping services (but not audit services) for the Development including, without limitation, collection of accounts receivable and payment of accounts payable which are provided for in the Pro-Forma Budget, management of cash balances and investment and reinvestment of excess funds (which accounting and bookkeeping shall be subject to audit at the Owner's expense whenever the Owner so requests in writing);
- (p) the Owner shall be responsible to prepare and file all HST returns pertaining to the Owner (as applicable in the province in which the Property is situated) relating to the Development and to remit with such returns any net tax (as determined in accordance with the *Excise Tax Act*, as amended or re-enacted from time to time) owing by the Owner on such returns. The Development Manager shall provide for the Owner such information as the Owner may reasonably require, and which is in the possession or reasonable control of the Development Manager, in order to permit the recovery of all tax rebates, where applicable, and to assist the Owner in complying with its obligations relating to income and excise taxes, including the calculation of HST;
- (q) manage the draw requests for the Development including but not limited to:
 - (i) coordinate and send copies of all draw requests to the Owner;
 - (ii) promptly respond to any queries on the draw requests from the Owner;
 - (iii) coordinate construction or builders' lien (as applicable in the province in which the Property is situated) searches and advise the Owner of any registered builders' liens prior to release of any payment of the draw requests;
 - (iv) in the event of any construction or builders' liens (as applicable in the province in which the Property is situated) registered against the Property, not to release any payment of the draw requests until such release has been approved in writing by the Owner and is in accordance with the applicable construction lien legislation in force in the province in which the Property is situated (the "**Act**");
 - (v) through consultation with Consultants where, in the reasonable opinion of the Development Manager such consultation is appropriate, ensure that all payments of draw requests are in accordance with the obligations of the Owner under the Act including, without limitation, calculating all required holdback amounts and releasing such holdback amounts in accordance with the Act; and

- (vi) review and deliver to the Owner for its approval and payment all invoices, payment and draw requests from the Contractor, the Development Manager and other contractors, suppliers and other third parties;
- (r) notify the Owner promptly after becoming aware of:
 - (i) any material changes or developments affecting the Development including if it appears that the construction cost estimate may exceed the Pro-Forma Budget, and any other material changes to the Pro-Forma Budget, and make recommendations for corrective action;
 - (ii) any material defects or deficiencies in any work that come to the attention of the Development Manager or as may be identified by the Architect, the Consultants or the Contractor, rectification of which cannot reasonably be anticipated to be completed within the Pro-Forma Budget or approved project schedule;
 - (iii) any material error, omission or deficiency in approved plans and specifications that come to the attention of the Development Manager or as may be as identified by the Architect, the Consultants or the Contractor;
 - (iv) the discovery of any toxic or hazardous substances or materials on, in or at the Property other than in accordance with Applicable Laws; and
 - (v) any lien, legal action or insurance claim initiated by a third party against the Owner or the Contractor (to the extent that it could have any impact on the Owner) with respect to the Development;
- (s) with the prior written approval of the Owner, in the name and at the expense of the Owner, institute, prosecute and defend legal actions affecting the Development (including those involving builders' liens) and to issue notices and participate in adjudications under the Act;
- (t) deliver to the Owner or its designees upon request, copies of all records, documents and materials in the possession or control of the Development Manager which relate to the Development as soon as practicable after the Development Period;
- (u) arrange for and coordinate regular meetings among the Owner, the Architect and, if necessary, the Consultants, and the Development Manager at such times and places as agreed between the Development Manager and the Owner, or as either may reasonably require, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;
- (v) arrange for and coordinate periodic meetings among the Owner, the Development Manager, the required Consultants and PTC Ownership and their development managers and consultants to ensure a coordinated effort with respect to construction by the Owner and PTC Ownership of their respective improvements on the PTC Lands, and with a view to minimizing the potential for interference and delay in the

execution of each such parties respective works, and ensure that minutes of all such meetings are taken and that copies thereof are provided to the Owner;

- (w) direct the Contractor to prepare for the Owner's review, in consultation with the Consultants and the Owner, a preliminary overall project schedule, including the determination of the anticipated date for Substantial Completion and occupancy of the Development, and cause the same to be reviewed and updated following completion of each of the design development phase, the construction documents phase and construction procurement phase, in each case with appropriate details; such project schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated occupancy date for the Development;
- (x) provide regular monitoring of the project schedule as construction progresses; identify potential variances to planned completion dates; review the project schedule for work not started or incomplete; recommend to the Owner and, as necessary, the Contractor, adjustments in the project schedule to achieve Substantial Completion, and provide summary reports of each monitoring and document all changes in the project schedule;
- (y) make recommendations to the Owner regarding any equipment or materials which should be pre-ordered to meet the project schedule and Development objectives;
- (z) identify infrastructure needs for the Development and negotiate agreements for the provision thereof, the costs of which are to be borne by the Owner;
- (aa) provide such administration as may be necessary or as described in the relevant Contracts with trade and supply contractors including, without limitation:
 - (i) ensuring that all performance security/bonding (if applicable) is provided in accordance with the terms of the relevant Contracts and Applicable Law, and act as the Owner's representative in administering same; and
 - (ii) review, negotiate and authorize on behalf of the Owner change orders and change directives, including written descriptions of proposed changes, (in consultation with the Architect when such changes relate to the specifications and drawings), provided that the Development Manager shall obtain the prior written approval of the Owner for any change order where the anticipated cost of same exceeds \$25,000.00;
- (bb) co-ordinate and supervise to completion in accordance with the plans and specifications approved by the Owner, the requirements of all project agreements and in accordance with Applicable Laws, the construction of the Development including, without limitation, demolition, if any, site preparation, time schedules and, subject to Section 2.12, insurance coverage, except such policies of insurance or bonds as the Owner elects to negotiate for and procure on its own behalf;

- (cc) provide the Owner with all documentation and information necessary for the purposes of any governmental filings (other than taxes) which is in the possession or reasonable control of the Development Manager;
- (dd) review and approve (for the subsequent approval and payment by the Owner) of all Development Costs to be paid to the Contractor, Consultants and other suppliers retained in connection with the Development. The Development Manager shall forthwith deliver to the Owner, all cash, cheques and other negotiable instruments received by the Development Manager pursuant to this Agreement. The Development Manager shall deal with such cash, cheques and negotiable instruments in accordance with sound cash management practices so that the Owner is adequately protected;
- (ee) provide oversight on the Owner's behalf of the issuance by the Architect of all necessary certificates respecting Substantial Completion of the Development and distribute same or final certificates for payment as may be necessary to the Contractor;
- (ff) provide oversight and supervision in connection with any required post completion services and management of any warranty claims and rectifications up to two years after the date of Substantial Completion of the Development; and
- (gg) carry out such other duties as are normally carried out by a development manager of a development similar in size, nature, complexity and location to the Development.

2.7 Staff

The Development Manager represents and warrants to, and agrees with, the Owner that it has, and throughout the term, at its own expense, shall employ and shall provide, the personnel and expertise to perform the obligations and services to be performed by it under this Agreement. Without limiting the generality of the foregoing, the Development Manager shall provide qualified staff to perform its obligations under this Agreement (including without limitation, all financial, accounting and reporting obligations) and shall be responsible, at its own expense, for the payment of the employment and related costs of such staff, including, without limitation, staff that oversees the Contractor and the Consultants, whether or not such staff work at the site or at the offices of the Development Manager.

2.8 Ownership of Plans

The Development Manager acknowledges that, subject to the agreements between the Owner or the Development Manager (on behalf of the Owner, as agent for the Owner and without personal liability) and the Consultants, all plans and specifications and all copies thereof and all models with respect to the Development are the property of the Owner. The Development Manager shall not use the same with respect to any other work and the same shall be delivered to the Owner upon termination of this Agreement. The Owner acknowledges and confirms that the Development Manager may utilize photographs of the Development and the construction thereof for the purposes

of marketing and promotion of the services offered by the Development Manager to the public from time to time.

2.9 Inspection

The Owner and its representatives shall at all times have access at their own risk to the Development during the construction of the Development and the Development Manager shall provide facilities for such access.

2.10 Safety Measures

The Development Manager shall use commercially reasonable efforts to cause all the Contractor and all other contractors employed on the Development to be responsible for the safety of all workers and equipment on the Development in accordance with all Applicable Laws governing construction safety.

2.11 Discharge Liens

The Development Manager, throughout the Development Period, shall use commercially reasonable efforts to ensure all contractors employed in respect of the Development will cause any and all construction liens, builders' liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Owner, the Development Manager, any subcontractor or any of them or on their or its behalf in respect of the Development which may be registered against or otherwise affect the Lands to be discharged and/or vacated forthwith by all appropriate means, including payment of funds into court, if necessary. All legal expenses incurred in connection with checking title to the Property and vacating or discharging liens shall be for the Owner's account.

2.12 Insurance

The Development Manager:

- (a) shall at the request of the Owner collaborate with the Owner on (i) the establishment of insurance coverage and/or bonding requirements applicable to the general contractor and other contractors employed in respect of the Development; or (ii) the placement of such insurance policies in the name of Owner and at Owner's expense, as the Owner considers necessary or desirable to protect the Owner, the Development Manager and their property and interests from liability, damage or loss in respect of the Development, including builders' all risk insurance, commercial general liability insurance, wrap-up liability insurance, property insurance, automobile liability insurance, umbrella liability insurance and worker's compensation insurance, with such limits as reasonably determined by Owner having regard to the size, scope and cost of the Development. The Development Manager shall not be responsible for the adequacy of the insurance contracts or the coverage thereunder, settling the insurance contracts administering monitoring or renewing existing insurance coverage, provided however, the Development Manager shall be responsible (in collaboration with and subject to direction and instructions from the Owner and its insurance advisors) for responding to enquiries,

filing claims and liaising with insurance adjusters. All policies of insurance referred to in this Section 2.12(a) shall be maintained by the Owner or the general contractor until Total Completion of the Development, will be primary (vis-a-vis any insurance carried by the Development Manager), provide the Development Manager with at least thirty (30) days advance written notice of cancellation, non-renewal or reduction in coverage and shall include the Development Manager as an additional insured and/or loss payee (as applicable) and shall contain a waiver of subrogation as against the Development Manager. Upon request, the Owner shall provide the Development Manager with certificate(s) of insurance outlining evidence of the Owner's or general contractors insurance (as the case may be) and the terms thereof; and

- (b) commencing not later than the date of the execution of this Agreement, at the Development Manager's sole cost and expense, shall place and maintain during the Development Period:
 - (i) professional liability insurance for all claims arising out of errors or omissions of the Development Manager in the performance of its obligations pursuant to this Agreement with an inclusive limit of \$5,000,000.00 on an aggregate basis but not on a project specific basis; and
 - (ii) commercial general liability insurance for bodily injury (including death) and property damage with an inclusive limit of \$5,000,000.00 on an aggregate basis, but not on a project specific basis; such coverage shall add the Owner as additional insured and/or loss payee (as applicable); and
 - (iii) crime coverage insurance in an amount of \$2,000,000.00, on an aggregate basis.

Each of the policies of insurance referred to in Section 2.12(b) shall not be modified materially nor cancelled on less than thirty (30) days written notice to the Owner and shall otherwise be on terms and conditions acceptable to the Owner, acting reasonably. The Development Manager shall provide the Owner certified certificates of such insurance from time to time at the request of the Owner.

2.13 Development Fee

The Owner shall pay to the Development Manager for its services under this Agreement, the Development Fee in an amount equal to four percent (4.0%) of the Hard Costs and Soft Costs, calculated without duplication and in accordance with the provisions of Section 2.15 of this Agreement.

Notwithstanding anything contained herein to the contrary, for the purpose of calculating the Development Fee, there shall be excluded from Hard Costs and Soft Costs the following:

- (a) all land costs, including land lease payments;

- (b) all amounts, fees and expenses reimbursed to the Development Manager under the provisions of this Agreement;
- (c) all development charges;
- (d) all financing and interest costs;
- (e) all taxes, save and except for harmonized sales taxes applicable to the Development Fee;
- (f) all opening and promotion costs; and
- (g) all amounts paid or payable to the Construction Cost Oversight Consultant.

Notwithstanding the foregoing or anything else contained herein, the Development Manager and the Owner acknowledge and agree that in no event shall the total Development Fee payable to the Development Manager exceed the amount equal to four percent (4.0%) of all Hard Costs and Soft Costs which, for greater certainty, shall not exceed the estimated cost presented by the Director, Finance & Treasurer under Report Number FIN 02-20 to Pickering City Council on February 24, 2020.

2.14 Leasing Fees

Intentionally Deleted

2.15 Payment of Development Fee and Reimbursable Expenses

- (a) Subject the last sentence of this Section 2.15(a), the Owner shall pay to the Development Manager the Development Fee (determined in accordance with the provisions of Section 2.13 herein) in equal monthly instalments, such instalments to be due and payable on the first day of each and every month during the period commencing on the first day of the Development Period and ending on the projected date of Substantial Completion of the Development, as set out in the Pro-Forma Budget for the Development, in each case without the necessity of further documentation. If at any time the Pro-Forma Budget and/or project schedule is amended to revise the estimated Development Costs or the number of months in the project schedule, the amount of the subsequent monthly instalments after such amendment will be adjusted so that the full amount of the Development Fees, calculated based on the then current estimated Development Costs, will be paid over the then project schedule. Notwithstanding the foregoing, but subject always to Section 5.2(e), in the event the Owner, in its sole and unfettered discretion, elects to suspend or cease design and/or construction activity with respect to the Development, no instalments of the Development Fee shall be payable to the Development Manager during such period suspension or cessation of design and/or construction activity; provided that: (i) the Owner shall pay all amounts owing to the Development Manager up to the date of the suspension or cessation; and (ii) the Development Manager shall be relieved of all of its obligations under this

Agreement (other than its obligations under Section 2.6(r)) during any period in which the Development Fee is not being paid.

- (b) The Development Fee shall be finally determined at the end of Development Period and approved in writing by Owner in accordance with generally accepted accounting principles. If the Development Fee is less or more than the sum of the previous payments made by Owner to the Development Manager on account thereof during the term the amount of any deficiency or excess, as the case may be, shall be paid by the Owner to the Development Manager or by the Development Manager to the Owner, respectively, within 30 days of the final determination of the Development Fee.
- (c) The parties acknowledge that the Development Fee set out in this Section 2.15 and in Section 2.13 of this Agreement, are based on the preliminary budgeted Hard Costs and Soft Costs as set out in the Pro-Forma Budget and shall be adjusted annually during the term of this Agreement based on projected costs and upon Total Completion of the Development, the Development Fees shall be reconciled based on final Hard Costs and Soft Costs for the Development.
- (d) In addition to Development Fees, the Owner shall pay to the Development Manager, as part of the Written Order referred to in Section 2.16, Reimbursable Expenses in accordance with Section 2.18.

2.16 Payment of Development Costs

The Development Manager shall be entitled to apply to the Owner at any time for payment of Development Costs and other amounts set forth in the Pro-Forma Budget or as otherwise approved in writing by the Owner from time to time, by delivering to the Owner a written order (herein referred to as a “**Written Order**”) for payment thereof. Each Written Order shall:

- (a) state the aggregate of the amounts set forth in the Pro-Forma Budget previously paid to or as directed by the Development Manager under this Section 2.16;
- (b) state the costs paid or payable by the Development Manager on behalf of Owner at the date of the Written Order in addition to the amounts referred to in Section 2.16(a) (being the costs requested for payment in the Written Order), indicating which costs have been paid and those which are immediately payable but not yet paid;
- (c) state that all costs included in such Written Order are costs contemplated by the Pro-Forma Budget as amended from time to time, and describing the items constituting such costs in reasonable detail; and
- (d) include copies of appropriate supporting invoices and back up (in reasonable detail) for the costs included in such Written Order including, without limitation, for Reimbursable Expenses.

Each Written Order shall be delivered to Owner as aforesaid, shall be signed by an officer of the Development Manager and shall state that all costs set forth in such Written Order, payment or reimbursement of which is requested in such Written Order, are costs contemplated by the Pro-Forma Budget as amended from time to time, and incurred in connection with the development and construction of the Development in accordance with the Agreement.

Within 15 Business Days after the receipt of such Written Order together with such supporting documentation, the Owner shall pay to or as directed by the Development Manager, the amount of the costs set forth in such Written Order and in respect of which payment is requested by the Development Manager. Where the Owner directly pays any such amount under a Written Order to a Person other than the Development Manager, confirmation in writing of such payment shall be provided by the Owner to the Development Manager promptly following such payment being made.

2.17 [Intentionally Deleted]

2.18 Reimbursement of Expenses

In addition to the Development Fee, the Owner shall reimburse the Development Manager for all “out-of-pocket” expenses (collectively, the “**Reimbursable Expenses**”) which the Development Manager properly and reasonably incurs pursuant to this Agreement in connection with the performance of its obligations under this Agreement, provided such expenses are itemized within the Pro-Forma Budget or are otherwise submitted on an itemized basis and approved in writing by the Owner. The Reimbursable Expenses shall be in addition to the Development Fee and shall include, without limiting the generality of the foregoing, the following:

- (a) all reasonable travel expenses for those members of the staff (including, without limitation, contract personnel) of the Development Manager who have been pre-approved in writing by the Owner in connection with necessary attendances away from head office relating to the development and construction of the Development or to the site of the Development as reasonably required to perform its duties under this Agreement or as required by the Owner, long distance telephone, other telecommunication charges and fax charges and courier costs as incurred by the Development; and
- (b) professional fees payable to the arm’s length architects, engineers, accountants, lawyers and other consultants who are approved in writing by the Owner and engaged or retained in connection with the servicing, development and construction of the Development pursuant to the provisions of this Agreement.

2.19 No Other Fees

Notwithstanding any other provisions of this Agreement, the Development Manager shall not be entitled to any fees or other compensation for its services under this Agreement other than the Development Fee contemplated herein (and such recoveries specifically provided in this Agreement); without limiting the generality of the foregoing, the Development Manager shall not be entitled to any additional fees for construction management or project management services, or post completion services and management of warranty claims and rectifications.

2.20 Information

In addition to its other reporting obligations pursuant to this Agreement, the Development Manager will at all reasonable times and intervals furnish to the Owner, upon receipt of a specific written request to do so, such information relating to the Development as it requested by the Owner, provided that such information is in the possession or control of the Development Manager.

2.21 Compliance with Applicable Laws

In performing its obligations under this Agreement, the Development Manager shall at all times comply with all Applicable Laws.

2.22 Maintenance of Records

The Development Manager shall maintain complete and accurate records in connection with the Development and the provision of its services under this Agreement.

ARTICLE 3 AUTHORITY

3.1 Authority

The Owner confirms and agrees that the Development Manager has the authority to perform all actions and make all expenditures contemplated by the Pro-Forma Budget as updated from time to time, subject to the terms of this Agreement.

For clarity, the Owner confirms and agrees that the Development Manager has the authority to review contractor's notices and requests for contractor's contingency expenditures with any one contractor not in excess of \$25,000.00 and to authorize, on behalf of the Owner, such contingency expenditures if the expenditures are not in excess of \$25,000.00 or if they have been approved in writing by the Owner.

Notwithstanding any provision in this Agreement to the contrary, the Development Manager on behalf of the Owner shall take such action and incur such reasonably necessary and appropriate expenses and liabilities acting in the best interest of the Owner, without the need of first obtaining the written consent of the Owner, as may be reasonably necessary and appropriate in the reasonable opinion of the Development Manager, to deal with any Emergency arising from time to time. The Development Manager shall immediately inform the Owner of any such Emergency and the action taken.

All Contracts and commitments with third parties necessary for the Development shall be entered into directly by the Owner unless otherwise provided in this Agreement or the Owner otherwise authorizes or directs in writing the Development Manager to enter into such Contracts and commitments on behalf of the Owner, as agent for the Owner and without personal liability.

ARTICLE 4 OBLIGATIONS OF THE OWNER

4.1 Obligations of the Owner

The Owner covenants with the Development Manager that it shall, at its own expense:

- (a) to the extent necessary to permit the Development Manager to complete its obligations hereunder and subject to the rights of tenants, provide free ingress and egress to and from the Lands to and from the neighbouring streets and highways;
- (b) promptly make all decisions required under this Agreement and respond to all requests for approvals, authorizations and directions made hereunder; and
- (c) promptly execute and deliver such evidence of the Development Manager's authority as may be required by third parties, acting reasonably.

Except where the same are being disputed in good faith, the Owner covenants with the Development Manager that it shall, at its own expense, promptly make all payments and incur all expenditures required in connection with the Development in accordance with this Agreement.

ARTICLE 5 TERM

5.1 Term

This Agreement shall commence on the date first above written and, unless otherwise terminated in accordance with the provisions herein, shall continue in full force and effect until the end of the Development Period.

5.2 Termination by Owner

- (a) Default by Development Manager: If an Event of Default occurs, the Owner may give notice (a "**Notice of Complaint**") to the Development Manager specifying in reasonable detail the Event of Default and if, within 30 days of receipt of any Notice of Complaint, the Development Manager fails to cure the Event of Default in a reasonable manner, or if more than 30 days are required to cure the Event of Default, the Development Manager fails to commence and continue diligently to cure within a reasonable period of time, the Owner shall have the right to immediately terminate this Agreement by notice (a "**Notice of Termination**") to the Development Manager stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as of the date of receipt by the Development Manager of the Notice of Termination. Such termination shall be without prejudice to any rights and remedies which the Owner may have by reason of such Event of Default.
- (b) Loss of Key Individual: [Intentionally Deleted]

- (c) Event of Insolvency: The Owner shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by Notice of Termination upon the occurrence of an Event of Insolvency in respect of the Development Manager.
- (d) Additional Development Management Agreement: [Intentionally Deleted]
- (e) Abandonment: The Owner shall have the right to terminate this Agreement by Notice of Termination to the Development Manager if the Owner intends to Abandon the Development. For the purposes of this subsection “**Abandon**” shall mean that the Owner intends to cease all design and/or construction activity with respect to the Development. If such Notice of Termination by the Development Manager is received during the construction phase of the Development, the Development Manager shall coordinate and assist the Contractor in shutting down construction and securing the Development in accordance with good construction practice and will be paid the portion of the Development Fee and Reimbursable Expenses due up to the date the shut down and securing of the Development is substantially completed (the “**Development Shut Down**”) plus the Termination Fee, in accordance with the terms of this Agreement.
- (f) Termination for Convenience: The Owner shall have the right to terminate this Agreement for convenience, at any time, exercisable in its sole and absolute discretion, by Notice of Termination to the Development Manager, in which case this Agreement shall terminate effective as of the date of delivery of such Notice of Termination, and the Owner shall pay to the Development Manager the portion of the Development Fee and Reimbursable Expenses due up to the date of delivery of such Notice of Termination plus the Termination Fee, which amounts shall be payable forthwith following the date of delivery of such Notice of Termination. For clarity, this Section 5.2(f) shall not apply if the Owner intends to Abandon the Development, it being agreed that Section 5.2(e) applies thereto.

5.3 Default by Owner

If, at any time, the Owner fails to make any payment which it is obliged to make under this Agreement or to give such directions, authorizations or approvals or shall have failed to take such other actions as were properly required by the Development Manager for the performance of its obligations under this Agreement, the Development Manager may deliver a Notice of Complaint to the Owner specifying in reasonable detail the matter complained of and if, within 30 days of receipt of any Notice of Complaint, the Owner fails to cure the matter complained of in a reasonable manner, or if more than 30 days are required to cure such matter, the Owner fails to commence and continue diligently to cure within a reasonable period of time, the Development Manager may deliver a Notice of Termination to the Owner stating that this Agreement is terminated. Such termination shall be effective as of the date of receipt by the Owner of the Notice of Termination and the Development Manager shall be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after effective date of such termination. Such termination shall be without prejudice to any rights or remedies which the Development Manager may have by reason of such default by the Owner.

5.4 Indemnity by Owner

During the Development Period and after the termination or expiry of this Agreement, the Owner shall indemnify and save the Development Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity, in connection with the performance by the Development Manager of any and all of its obligations under this Agreement or pursuant to the policies, limitations, instructions and procedures of the Owner and all obligations incurred by the Development Manager in connection with the Development pursuant to this Agreement, including, without limitation, any liability in respect of hazardous substances, any damage or injury whatsoever to any employee or other person or property arising out of the use, administration or control of the Development or any other assets of the Owner relating to the Development, but the indemnity provided under this section shall not extend to:

- (a) any material breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement;
- (b) any fraud, negligence or wilful misconduct of the Development Manager or of its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid by the insurance maintained or required to be maintained by the Owner relating to the Property or the Development); or
- (c) any action taken by the Development Manager in contravention of the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement.

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner in accordance with the terms of this Agreement, the Development Manager shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Owner in this Section 5.4 in favour of the Development Manager shall apply) save and except to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.5 Indemnity by Development Manager

Subject to Section 5.8 herein, during and after the termination or expiry of this Agreement, the Development Manager shall indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, arising:

- (a) by way of any breach by the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner;

- (b) by reason of any fraud, negligence or wilful misconduct of the Development Manager, its officers, directors, employees, servants, agents, subcontractors or other persons for whom it is legally responsible (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property) which results in a material adverse impact on the Owner; or
- (c) by reason of any action taken by the Development Manager outside the terms and provisions of this Agreement or contrary to the written direction of the Owner pursuant to this Agreement (except to the extent covered and paid (to the extent insurance was maintained) by the insurance maintained or required to be maintained or self-insured by the Owner relating to the Property).

With respect to contracts or commitments necessary for the Development that are entered into with third parties by the Development Manager on behalf of the Owner, the Owner shall have no liability to such third parties under such contracts or commitments (and the indemnity of the Development Manager in this Section 5.5 in favour of the Owner shall apply) solely to the extent that such liability arises from the gross negligence, fraud or wilful misconduct of the Development Manager.

5.6 Duties Flowing from Termination

Upon the termination of this Agreement:

- (a) the Development Manager shall use all commercially reasonable efforts to terminate the Contracts, at the expense of the Owner, if required to do so by the Owner;
- (b) to the extent that Contracts have not been terminated, the Owner shall directly assume the Contracts entered into by the Development Manager on behalf of the Owner provided that such Contracts have been entered into in accordance with the terms and provisions of this Agreement and the Owner shall indemnify and save the Development Manager harmless against any liability by reason of anything done or required to be done under any such Contract after the effective date of termination of this Agreement, provided that if any Contract covers any improvement in addition to the Development, then the Owner shall have the option to elect either to terminate any such Contract or to retain it provided that the third party to such Contract acknowledges that it relates only to the Development and any fees and expenses provided for therein are appropriately adjusted on a prorated basis; and
- (c) the Owner shall pay for and indemnify and save the Development Manager harmless against the costs of all services, materials and supplies if any, which may have been contracted for by the Development Manager in accordance with this Agreement in connection with or pursuant to its obligations under this Agreement.

5.7 Delivery of Records to Owner

If this Agreement is terminated, the Development Manager shall, notwithstanding such termination, forthwith upon termination from time to time thereafter deliver to the Owner all records and documents, including, without limitation, the following:

- (a) development plans;
- (b) project budgets;
- (c) all Contracts;
- (d) all operating records;
- (e) books of account; and
- (f) all ancillary documents maintained with respect to the Development (whether on or off-site),

which are in the possession or control of the Development Manager, provided that the Development Manager may elect to retain copies of such records, books of account and documents and notwithstanding such termination or expiry the Owner shall thereafter and from time to time for a reasonable period of time produce at their offices the originals of such items whenever the Development Manager reasonably requires them for its purposes in connection with its obligations under this Agreement or for the purpose of dealings with any Authority or any legal proceeding involving the Development Manager. The Development Manager shall keep all such information confidential unless required to disclose by law or in connection with any legal proceeding involving the Development Manager.

5.8 Limits of Liability

- (a) Notwithstanding anything in this Agreement to the contrary, Development Manager's liability for damages (whether a claim therefore is based on warranty, contract, tort (including negligence or strict liability), statute or otherwise) and claims arising in relation to any performance or non-performance of services under this Agreement (including without limitation reasonable legal fees and expenses) shall in no event exceed an aggregate amount equal to the Development Fee, provided, however, that the foregoing limitation on Development Manager's liability shall not be applicable to any claim resulting from and to the extent of the gross negligence, fraud or willful misconduct of the Development Manager or any liability unable to be excluded by law. In no event shall the Owner make any claim against the Development Manager's partners or affiliates, or their shareholders, officers, directors or employees, on account of any act or omission of the Development Manager or any of the foregoing. The Owner may assert claims only against the Development Manager (or its assignees) and under no circumstances shall any partner or affiliate of the Development Manager or any shareholder, officer, director, employee or agent of the Development Manager, be personally

liable for any of the obligations, acts or omissions of the Development Manager under this Agreement. All permitted assignees of the Development Manager's rights under this Agreement shall have the benefit of this Section 5.8(a) and this Section 5.8(a) shall survive the expiration or termination of this Agreement; and

- (b) in no event shall the Development Manager make any claim against the shareholders, officers, directors and employees of the Owner on account of any act or omission of the Owner and neither party shall be liable to the other for any consequential or indirect loss, injury or damage of any nature whatsoever including, without limitation, claims for loss of profit, revenue or capital, loss of use of utilities, equipment or facilities, down time cost, service interruption, or cost of money.

5.9 Rights on Termination

Any termination of this Agreement shall terminate all rights and obligations under this Agreement from and after the date of such termination except rights and obligations with respect to matters to be performed to such date and all legal remedies available at such date for any breach of this Agreement. In addition, Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 shall survive any termination of this Agreement and shall remain in full force and effect thereafter.

ARTICLE 6 UNAVOIDABLE DELAY

6.1 Unavoidable Delay

Whenever in this Agreement it is provided that anything is to be done or performed and the doing or performance thereof is impossible or delayed due to Unavoidable Delay, neither the Owner nor the Development Manager shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other in writing of the commencement, duration and consequences (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder and shall use all commercially reasonable efforts to minimize the effect of the same. In the event of such Unavoidable Delay or non-performance by either party, then such obligated party, so long as any such impediment exists, shall be relieved from its duties in respect thereto and the other party shall not be entitled to compensation for any damages, inconveniences, nuisance or discomfort thereby occasioned or be entitled to terminate this Agreement as a result thereof.

ARTICLE 7 NOTICES

7.1 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request, response, delivery or other communication (hereinafter referred to as a "**Notice**") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, courier or by fax which results in a written or printed notice being given, addressed or by email or sent as

set out below or to such other address or electronic number as may from time to time be the subject of a Notice (provided that no Notice pursuant to Sections 5.2 or 5.3 shall be delivered by email only):

- (a) in the case of the Development Manager:

Cushman & Wakefield Asset Services ULC
c/o Cushman & Wakefield ULC
161 Bay Street, Suite 1500
Toronto, Ontario M5J 2S1

Attention: Bruno Bartel
Email: Bruno.Bartel@cushwake.com

With a copy to:

Cushman & Wakefield Asset Services ULC
c/o Cushman & Wakefield ULC
One Queen Street East
Toronto, Ontario M4E 1H7

Attention: Molly Westbrook
Email: Molly.Westbrook@cushwake.com

- (b) in the case of the Owner:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: City Administrative Officer
Email: mcarpino@pickering.ca

With a copy to:

The Corporation of the City of Pickering
One The Esplanade
Pickering, Ontario L1V 6K7

Attention: Director, Corporate Services & City Solicitor
Email: pbigioni@pickering.ca

Any Notice, if delivered personally or by courier, shall be deemed to have been validly and effectively given and received on the date of delivery and if sent by telecopier or other electronic communication, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received. Any Notice given by any party under or in connection with this Agreement, if addressed to less than all of the parties to this Agreement, shall

also be concurrently copied and given to the parties to this Agreement to whom the Notice is not addressed.

Any party may at any time and from time to time, change its address for delivery for the purposes of this section by giving at least seven (7) days' Notice to the other parties.

ARTICLE 8 ASSIGNMENTS

8.1 Assignment by Development Manager

The Development Manager shall not assign this Agreement without the prior consent of the Owner, which consent may be withheld in the sole and unfettered discretion of the Owner.

8.2 Assignment by Owner

The Owner shall have the right to assign its interest in this Agreement so long as, and only if such assignment is made pursuant to a sale of the Owner's interest in the Property to the assignee, the assignee enters into an agreement with the remaining parties hereto whereby the assignee shall be bound by and entitled to the benefit of this Agreement and the assigning party shall thereupon be released and discharged of obligations and liabilities under this Agreement which were to be performed and satisfied from and after the effective date of such assignment.

ARTICLE 9 GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions, Table of Contents and Legislation

The captions and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation. Any reference in this Agreement to any act or statute or any section thereof shall be deemed to be a reference to such act or statute, or section thereof as amended or re-enacted from time to time.

9.3 Obligations as Covenants

Each obligation of a party hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the province in which the Property is situated and the laws of Canada applicable therein.

9.5 Invalidity

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

9.6 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby.

9.7 Successors and Assigns

All of the provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and the successors and assigns of any party hereto only to the extent that they are permitted successors and assigns pursuant to this Agreement.

9.8 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to in this Agreement shall be made in accordance with generally accepted accounting principles and practices applicable to the public real estate industry in Canada and applied on a consistent basis.

9.9 HST

The parties acknowledge that all fees and other amounts payable under this Agreement are taxable supplies under the *Excise Tax Act* (Canada) and shall bear HST as applicable in the province in which the Property is situated and each party to this Agreement covenants to remit to the party making the supply any HST, as applicable, owing on such supply when the consideration for such supply is paid. In particular and without limiting the foregoing, all fees payable under this Agreement shall bear HST, as applicable, and such HST, as applicable, shall be payable at the time such fees are payable.

9.10 Schedules

The Schedules attached hereto form part of this Agreement.

9.11 Time

Except as specifically provided otherwise in this Agreement, time shall be of the essence of this Agreement. When any period of time provided for herein expires on a day other than a Business Day, such period of time shall automatically be extended to the next following Business Day and, when any action or requirement provided for herein is to occur on a day other than a Business Day,

the time for such action or requirement shall automatically be extended to the next following Business Day.

9.12 Non-Waiver

No consent to or waiver of any breach or Event of Default by any party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party hereto of the same or any other obligations of such party hereto hereunder. Failure on the part of any party hereto to complain of any act or failure to act of any other party hereto or to declare any other party hereto in breach or default, irrespective of how long such failure continues, shall not constitute a waiver by such party hereto of its rights hereunder.

9.13 Rights of Parties Independent

The rights available to each party hereto under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party hereto from time to time and no such exercise shall exhaust the rights or preclude such party hereto from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

9.14 Status Reports

Each party hereto agrees, upon the reasonable request of any other party hereto, made from time to time, to furnish promptly a written statement on the status of any matter pertaining to the requesting party hereto to the best of the knowledge and belief of such other party hereto at the cost of the requesting party hereto.

9.15 No Representations

Except as specifically set forth herein, the parties agree that there are no representations and warranties by any of them with respect to this Agreement.

9.16 Further Assurances

Each of the parties hereto shall, from time to time and upon every reasonable written request of any other party hereto, give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

9.17 Rights of Examination by the Owner

Upon a written request of the Owner, the Development Manager will, at the expense of the Owner, at any and all times during normal business hours and on reasonable written notice, permit the Owner or its agents and representatives to examine all books of account, reports and other records of the Development Manager relating to the services performed for the Owner by the Development Manager under this Agreement, to make copies thereof or extracts therefrom or to have the same audited by an auditor appointed by, and at the expense of, the Owner.

9.18 Entire Agreement

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, of the parties hereto with respect thereto.

9.19 Canadian Dollars

All monetary references in this Agreement are to Canadian dollars.

9.20 Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

9.21 Language

The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.

[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement effective as of the date hereof.

**THE CORPORATION OF THE CITY
OF PICKERING**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

**Cushman & Wakefield Asset Services
ULC**

Per: _____
Name:
Title:

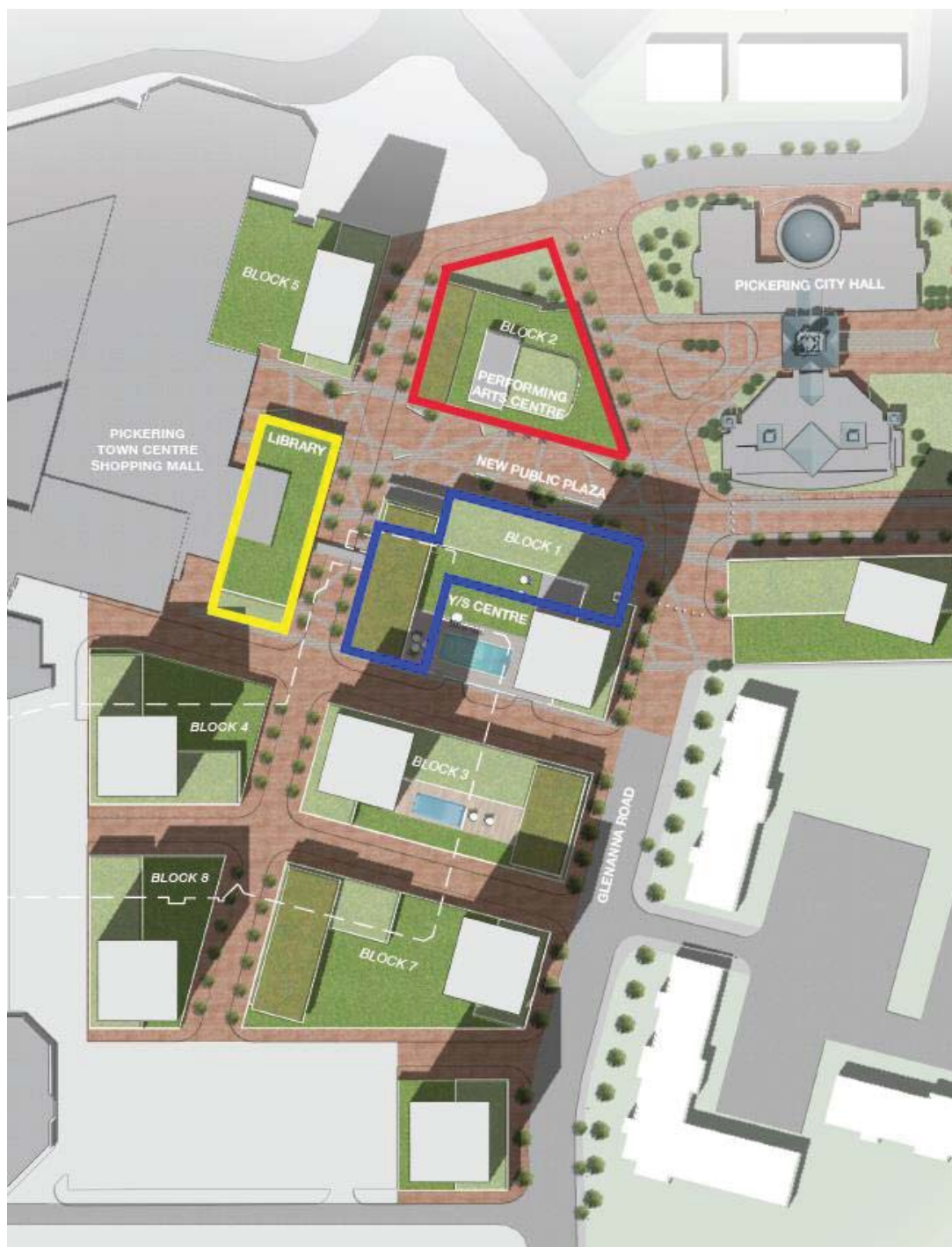
Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

SCHEDULE A


DESCRIPTION OF THE LANDS AND PREMISES

A new two level Seniors and Youth Recreation Facility located on a strata title parcel to be created on the area approximately outlined in blue.



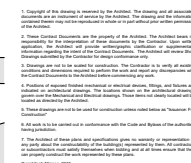
SCHEDULE B

PRO-FORMA BUDGET

Pickering City Centre Pickering, Ontario Seniors & Youth Centre 10/8/2019			
			
S & Y Centre and Bridge Link			
Item	S & Y Centre	Bridge Link	Total
CONSTRUCTION			
Loading	0	0	0
Building (New: Substructure - Foundation / Parking)	0	0	0
Building (New: Superstructure - Core / Shell) + Fitout	28,457,496	4,500,000	32,957,496
Onsite Improvements/Infrastructure	0	0	0
FFE	600,000	0	600,000
Construction Cost Sub Total	29,057,496	4,500,000	33,557,496
CONSTRUCTION - ANCILLARY			
Insurance	0	0	0
Bonding	0	0	0
Service Connections	150,000	0	150,000
Testing & Inspections - Hazmat	0	0	0
Testing & Inspections - Civil/Sitework	0	0	0
Construction Ancillary Cost Sub Total	150,000	0	150,000
CONTINGENCY			
Hard Cost Contingency	2,905,750	450,000	3,355,750
TOTAL HARD COSTS			
Total Hard Costs	32,113,245	4,950,000	37,063,245
DESIGN CONSULTANTS			
Architecture and Interior Design	930,953	35,000	965,953
Mechanical Engineer	211,600	0	211,600
Electrical Engineer	118,800	0	118,800
IT/Communications	13,860	0	13,860
Security	14,190	0	14,190
Audio Visual	10,560	0	10,560
Lighting	14,190	0	14,190
Structural	165,000	0	165,000
Wind/Noise/Vibration	1,090	0	1,090
Code/Fire/Life Safety	6,800	0	6,800
Theatre Design	0	0	0
Building Envelope	0	0	0
Acoustics	7,700	0	7,700
Landscape	0	0	0
Vertical Transportation	2,400	0	2,400
Library Planning	0	0	0
Testing and Inspection	25,000	25,000	50,000
Surveying	75,000	0	75,000
Specifications Writer	18,500	0	18,500
Other Consultants	30,834	0	30,834
Disbursements	80,782	3,000	83,782
Design Contingency	350,047	19,466	369,513
Design and Consultants Cost Sub Total	2,077,306	82,466	2,159,772
LEGAL & ADMINISTRATIVE			
Development Management Fee	1,543,525	227,361	1,770,886
Legal	50,000	10,000	60,000
Insurance	25,000	10,000	35,000
C&W Disbursements	15,000	2,500	17,500
Capitalized Vacant Land Tax	0	0	0
Legal & Administrative Cost Sub Total	1,633,525	249,861	1,883,386
MARKETING & LEASING			
Marketing	35,000	0	35,000
Commissions- Manager	0	0	0
Commissions - Listing Brokers	0	0	0
Tenant Allowances (Retail/Institutional)	0	0	0
Marketing & Leasing Cost Sub Total	35,000	0	35,000
HOLDBACK			
Holdback (10%)	(2,905,750)	(450,000)	(3,355,750)
Holdback Release	2,905,750	450,000	3,355,750
GROSS PROJECT BUDGET (Before Taxes)	35,859,077	5,282,327	41,141,403

SCHEDULE C
DEVELOPMENT PLANS

The Development will consist of the following principal elements as generally shown on plans attached hereto.

NO. 15580

NOTES:

1 REFER TO CBC 3.8.3.3. (2)
In ALL suites of residential occupancies, the door to the bathroom and to each bedroom shall have a clear width of not less than:

- (a) 760 mm where the door is not less than 1060 mm
- (b) 810 mm where the door is less than 1060 mm

2019-11-06

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[illegible]

aA

architectsAlliance

205 • 317 Ardmore Street West
Toronto, ON M5V 3P9 Canada
1 416 593 4500
1 416 593 4511
info@architectsalliance.com
www.architectsalliance.com





**SCHEDULE D
DESCRIPTION OF THE PTC LANDS**



City Centre Meetings

Date	Meeting Name	Attendees
September 26, 2018	Downtown City Centre	Mayor Ryan Directors Cathy Grant Tanya Sinclair Catherine Rose Mark Guinto Shauna Muir Bruno Bartel Peter Clewes amauro@chamberlainipd.com
February 26, 2019	Civic Centre Project	Tony Prevedel Stan Karwowski Marisa Carpino Kyle Bentley Paul Bigioni George Buckles
March 4, 2019	Youth and Seniors Centre	Marisa Carpino Kim Bradley Sharon Milton Brian Duffield Vince Plouffe Tony Prevedel Peter Clewes Sanja Janjanin Athos Zaghi Bruno Bartel George Buckles
April 17, 2019	Monthly Arts Centre & Seniors/Youth Centre Meeting	Alisa Bickova Marisa Carpino Tony Prevedel George Buckles Bruno Bartel Sanja Janjanin Peter Clewes R Cadeau Athos Zaghi
May 15, 2019	City Centre Meeting	Marisa Carpino George Buckles Bruno Bartel Stan Karwowski Vince Plouffe

Date	Meeting Name	Attendees
July 7, 2019	City Centre Meeting	Tony Prevedel Stan Karwowski Paul Bigioni Kyle Bentley Marisa Carpino Richard Holborn Fiaz Jadoon George Buckles Bruno Bartel
August 13, 2019	Arts Centre – DWAC Foundation	Marisa Carpino George Buckles Bruno Bartel Gary Strange David Stone Tony Prevedel
August 14, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel
August 14, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird
September 4, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi

Date	Meeting Name	Attendees
		George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
September 4, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
September 4, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
September 18, 2019	City Centre – Detail Construction Schedule Meeting	Fiaz Jadoon George Buckles Bruno Bartel Richard Sabourin Dale Quaife Krista Boyce John Bourrie Adam Zahorchak Tony Prevedel

Date	Meeting Name	Attendees
		Stan Karwowski James Halsall Richard Holborn Marisa Carpino Brian Duffield Vince Plouffe Elaine Bird Kathy Williams Tyler Barnett Nilesh Surti Kyle Bentley Catherine Rose Tanya Ryce Stephen Boyd Marilee Gadzovski Robert Burlie Sharon Milton Jody Morris Rob Cadeau John Hagg
October 2, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
October 2, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel

Date	Meeting Name	Attendees
		Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
October 2, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
October 9, 2019	Civic Centre Costing Information	Stan Karwowski Fiaz Jadoon Paul Bigioni Richard Holborn Marisa Carpino Vince Plouffe Brian Duffield George Buckles Kyle Bentley James Halsall Caryn Kong Bruno Bartel
October 16, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George

Date	Meeting Name	Attendees
October 16, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
October 16, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
October 30, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
October 30, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe

Date	Meeting Name	Attendees
		Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
October 30, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
November 6, 2019	IT, AV, Security Meeting	Marisa Carpino Brian Duffield Michael Cain Elaine Bird Kathy Williams Dale Quaife Sharon Milton Kim Bradley Muhammad Rafeh Usha Siva Sanja Janjanin Rob Cadeau Oliver Laumeyer Peter Van Rooy Suzanne Moore Bruno Bartel George Buckles Thelma Sakamoto Vince Plouffe Jody Morris

Date	Meeting Name	Attendees
November 13, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
November 13, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
November 13, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
November 15, 2019	Sites Visits – Piazza Design Burlington	Pickering staff Cushman & Wakefield Aa architects

Date	Meeting Name	Attendees
November 19, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
November 19, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
November 19, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
November 27, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe

Date	Meeting Name	Attendees
		Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
November 27, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
November 27, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
November 27, 2019	City Centre Project – Landscaping, Piazza and Parking	Marisa Carpino George Buckles Thelma Sakamoto Bruno Bartel Sanja Sanjanin Rob Cadeau

Date	Meeting Name	Attendees
		Fiaz Jadoon Paul Bigioni Stan Karwowski Rod Marshall Rob Gagen Robert Burlie Brian Duffield Vince Plouffe Kathy Williams Elaine Bird Jody Morris Tanya Ryce Sharon Milton Tony Prevedel Arnold Mostert Richard Holborn Nathan Emery Kyle Bentley Catherine Rose Nilesch Surti Scott Booker Richard Sabourin John Bourrie Krista Boyce Tyler Barnett Elizabeth George
December 6 & 9, 2019	Savings by Design Workshop	City of Pickering staff, Cushman & Wakefield, Aa architects, Enbridge Gas
December 11, 2019	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George

Date	Meeting Name	Attendees
December 11, 2019	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
December 11, 2019	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife
December 18, 2019	Tour of Koerner Hall (Arts Centre in Toronto)	Marisa Carpino Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin
December 19, 2019	Construction and Staging – City Centre	Fiaz Jadoon Richard Sabourin Krista Boyce Tony Prevedel John Bourrie Marisa Carpino George Buckles Bruno Bartel Kyle Bentley Nilesh Surti

Date	Meeting Name	Attendees
		Stan Karwowski Paul Bigioni Richard Holborn Kevin Cahill
January 22, 2020	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Allen Gillespie Dale Quaife Elizabeth George
January 22, 2020	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
January 22, 2020	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton

Date	Meeting Name	Attendees
		Dale Quaife
January 22, 2020	City Centre Project – Landscaping, Piazza and Parking	Marisa Carpino George Buckles Thelma Sakamoto Bruno Bartel Sanja Sanjanin Rob Cadeau Fiaz Jadoon Paul Bigioni Stan Karwowski Rod Marshall Rob Gagen Robert Burlie Brian Duffield Vince Plouffe Kathy Williams Elaine Bird Jody Morris Tanya Ryce Sharon Milton Tony Prevedel Arnold Mostert Richard Holborn Nathan Emery Kyle Bentley Catherine Rose Nilesh Surti Scott Booker Richard Sabourin John Bourrie Krista Boyce Tyler Barnett Elizabeth George
February 5, 2020	Arts Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau Athos Zaghi George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel

Date	Meeting Name	Attendees
		Allen Gillespie Dale Quaife Elizabeth George
February 5, 2020	Library – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kathy Williams Elaine Bird Dale Quaife Peter Van Rooy
February 5, 2020	Youth & Seniors Centre – Design Review Meeting	Marisa Carpino Brian Duffield Vince Plouffe Peter Clewes Rob Cadeau George Buckles Bruno Bartel Alisa Bickova Sanja Janjanin Tony Prevedel Kim Bradley Sharon Milton Dale Quaife

The CORE

Calgary, Alberta



CLIENT

Alberta Investment Management
Corporation (AIMCo)
Ivanhoe Cambridge

PROJECT BUDGET

\$282M

PROJECT AREA

Office	1,700,000 SF
Retail	460,000 SF
Devonian Gardens	109,000 SF

PROJECT STATUS

Completed (2017)

PROJECT ARCHITECT

MMC International

GENERAL CONTRACTOR

EllisDon Construction

SERVICES

Master Planning
Securing Entitlements
Negotiations with the City
Development Management

Project Overview

“A great building on a great street beside a beautiful park, all integrated and adding to one another makes for a great urban environment – a great city”. Quote from Calgary City Centre Plan 2007

In the summer of 2007 20 VIC (now Cushman & Wakefield), responded to the City of Calgary’s vision for their ‘Centre City Plan’. In a presentation to then Mayor David Bronconnier the ambitious plan was to create an internal street spanning three city blocks. The internal street would sit under a continuous 90-foot-wide, 656-foot-long suspended glass skylight (the largest point-supported structural glass skylight in the world). George Buckles recounts “the toughest part of the presentation to the Mayor was the need to cut the city’s Devonian Gardens (2.5 acre indoor park) in two in order to create the street.” The conversation with the Mayor created an even bigger and better plan. The City had been looking to reinvent the park so the discussion evolved to including a new Devonian Garden into the program.

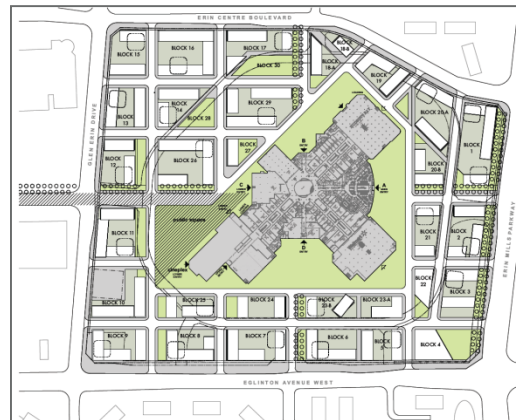
The first phase of the project was the creation of the retail indoor street. Construction started in 2009 and took three years to complete. The \$201M project included the construction of the outdoor streetscape, incorporating two-storey retail facades with exterior-grade materials. The site was located at hub of downtown Calgary’s +15 skywalk system and the base of three office tower with over 1.7M SF of fully occupied space in addition to the retail complex. The challenge was to construct the project while allowing the pedestrian traffic and office building access through the site. Good planning and communication with the community ensured access was maintained, the project was delivered on time and on schedule.

The second phase of the project was the construction of the new park. The Devonian Gardens, an indoor public botanical garden is owned by the City and operated by Calgary Parks. The existing park was closed for four years to allow the construction and reopened in the summer of 2012. The new \$39M state of the art park was created with pathways, Koi ponds, children’s play areas, and gathering spaces. Exotic vegetation was imported from Hawaii, California and Florida, with over 550 trees making it a truly unique destination in a northern climate.

Simons department store was the third and final phase of the project. The project involved the transformation of the historically designated Lancaster Building (an Edwardian Commercial style building which was Calgary’s tallest building at 10 storeys when it opened in 1918) into a new age department store. This is a fabulous example of integrating modern design with a historic building. The \$42M Simons store which occupies five floors of the ten-level Lancaster Building opened for business in the spring of 2017. The project was completed on budget and on time.

ERIN MILLS TOWN CENTRE – MIXED USE DEVELOPMENT

Mississauga, Ontario



CLIENT

Investment Management
Corporation of Ontario (IMCO)

PROJECT BUDGET

Renovation	\$92M
Master Plan	\$1M

PROJECT AREA

Retail	942,000 SF
Land	1.6M SF

PROJECT STATUS

In-progress (currently in pre-development phases)

PROJECT ARCHITECT

architectsAlliance
MMC International

SERVICES

Master Planning
Securing Entitlements
Development Manager

Project Overview

Erin Mills Town Centre has over 35 acres of peripheral land surrounding the shopping centre. The development team is working actively to intensify the site with a mixed-use development. Located in an urban centre with a good growth profile, the site has the potential to support the development of over 4,000 residential units across 30 development blocks.

The Team is currently working with the City of Mississauga in order to develop a master plan and secure the necessary entitlements for the residential project. The development team is committed to optimizing the achievable density on the site, and securing approvals in a timely order.

This project follows on the heels of a recent major renovation to the dated shopping centre. The renovation included: new tiles, ceilings, lighting, the addition of new retail space, and the creation of a feature centre court with infinity pool and glass globe skylight, which improved sightlines and natural light. The mall also received a new food court in a two-storey atrium flanked by two full-service restaurants. The project was completed on time and under budget.

MIDTOWN – City Centre Redevelopment

Saskatoon, Saskatchewan



CLIENT

KingSett Capital
Investment Management
Corporation of Ontario (IMCO)

PROJECT BUDGET

\$84M

PROJECT AREA

Retail	600,000 SF
Office	91,000 SF

PROJECT STATUS

In-progress. On budget and on schedule, completion scheduled for the summer of 2020

PROJECT ARCHITECT

MMC International

GENERAL CONTRACTOR

PCL Construction

SERVICES

Master Planning
Entitlements
Agreements with the City
Major Lease Agreements
Development Management

Project Overview

In 2014 Midtown presented to Saskatoon City Council a bold new vision for City Centre. The plans included a new convention centre, an expanded Performing Arts Centre, new hotel as well as a renovation and revitalization of the retail/office complex. Due to budget constraints the City decided to put their component of the plan on hold.

Midtown is the largest and most dominant retail centre in Saskatoon. The strategy in the original vision for the City Centre was to renovate and expand the retail/office component to be the preeminent complex in the province. The City worked with Midtown providing tax incentives to assist in turning the exciting new plans into reality. In the summer of 2016 Midtown commenced construction on the \$84M project. The first phase was a complete renovation and remodelling of the existing retail complex and office building lobby. In the second phase an old Sears store was redeveloped into a modern food hall and additional new retail stores.

The project, spanning over 4 years is in the final stages of construction. The project is being completed on schedule and on budget.

Discussions have recently recommenced with the City who are reconsidering their plans for a new convention centre. The City's plans also potentially include a new hockey stadium.

From: Paul Bigioni
Director, Corporate Services & City Solicitor

Subject: Broadband Service for Whitevale and Green River - ICON Grant Funding
- File: A-3700

Recommendation:

1. That the broadband network proposed in this report to service the areas of Whitevale and Green River be endorsed;
 2. That staff be directed to continue working with Vianet Inc. to complete an application under the “Improving Connectivity for Ontario” Program for Provincial funding support for the said broadband network; and
 3. That appropriate City of Pickering officials be authorized to take the actions necessary to implement the recommendations in this report.
-

Executive Summary: City staff have worked with Vianet Inc. (“Vianet”) to develop a proposal to extend broadband service to the residents and businesses of Whitevale and Green River. While the bulk of the project costs would be borne by Vianet, and Provincial grant funding is being sought, a contribution of \$150,000 by the City is needed for the project to proceed. The project would replace the poor and costly internet service currently tolerated by the residents of Whitevale and Green River, and would make it easier to extend service directly into the Seaton Employment Lands.

Financial Implications: The total project cost is \$1,000,000.00. Vianet will contribute \$600,000.00 toward the project cost. Provincial funding covers up to 25% of project costs (\$250,000.00), and the City will be obligated to contribute the remaining \$150,000.00. It must be noted that at Stage 1 of the grant funding process, the project costs are estimates. As the City and Vianet proceed to Stage 2 of the Provincial funding process, the design work will be completed and the project cost figures will be finalized. The City will only commit funds to the project after the Provincial funding has been secured and or awarded. If the City is not successful in obtaining the Provincial grant, then no City funds will be expended without further Council approval.

Subject to Provincial grant funding approval, a subsequent report will be presented Council with finalized cost figures and seeking Council approval to fund the project.

When the City constructs a local road, there is a benefit to the homeowner who lives on the street but also, to a certain degree, to the community at large. If this project is successful, residents in Whitevale and Green River will enjoy 100% of a benefit (enhanced internet connectivity) that is

partially funded by all City taxpayers. Taxation staff will explore the use of the special area tax rate to determine if this taxation tool is available to be used as a funding strategy to help offset the City's cost. If this taxation tool is available, Council will have the final decision as to whether or not to use it.

Discussion: Over the last few months, City staff have been in discussion Vianet Inc. ("Vianet") to determine if Vianet and the City can collaborate to address gaps in broadband Internet connectivity in Pickering. Vianet is registered with the CRTC as a non-dominant telecom service provider ("TSP"), currently providing Internet, TV, phone, and hosted services in Sudbury, York Region and beyond. Vianet has been in business since 1988, and has provided internet services since 1995. Vianet has a long track-record of providing open-access broadband services in rural areas of northern and central Ontario.

Recently, the Government of Ontario announced their "Improving Connectivity for Ontario" Program ("ICON"), administered by Infrastructure Ontario. Recognizing that connection to the internet has become essential for homeowners and businesses, the Province has introduced ICON to provide funding for municipalities and their TSP partners for broadband infrastructure to provide a minimum of 50/10 Mbps Internet service to rural areas that do not currently have it. ICON provides up to 25% of the funding, and this funding may be "stacked" with funding from other sources, including TSPs and other levels of government. The deadline for funding applications for Stage 1 of ICON is 5:00 pm, August 21, 2020.

It has long been recognized that northern areas of the City lack adequate internet access. Access is non-existent in some places. In others, it is too slow and/or too expensive. In recent years, residents of the Hamlet of Whitevale have been understandably vocal in advocating for more and better internet access. The large telecom providers, Bell and Rogers, have expanded their service in some areas of Pickering, but they have not extended their internet service into Pickering's rural, northern areas to any significant extent. They seem unable to make a business case to justify the capital investment necessary to extend service to the small number of residents spread over Pickering's northern areas. By contrast, Vianet, a smaller company based in Sudbury, has a history of connecting smaller and more remote communities. After meetings with the Director, Corporate Services & City Solicitor and the Division Head, IT, Vianet has come up with a proposal to provide internet service to residents and businesses in Whitevale and Green River.

Vianet's network proposal is Attachment No. 1 to this report. Vianet is able to connect Whitevale and Green River because it has access to a nearby point of presence ("POP") a short distance west of the York-Durham Line. Connecting to conduit owned by Yorknet, Vianet will build 11.5 kilometers of underground optical fibre that will connect 123 homes and businesses in Whitevale and Green River to the internet. The network will consist of "backbone" along Highway 7, North Road and Whitevale Road, together with fibre to the premises ("FTTP") for all residents who choose to sign up with Vianet for internet, television or phone service. All conduit and fibre in the network will be buried, so there will be no negative aesthetic impact on the Heritage District.

Decent internet service will be a welcome change for the residents of Whitevale and Green River. They are both eligible for ICON funding because they currently access Internet service only via dial-up or cellular networks. Cellular networks are relatively slow and very expensive to use. Moreover, ICON's "Improving-connectivity-ontario-map-tool," shows that the available Internet

bandwidth in Whitevale and Green River is “zero (0) Mbps”. In other words, they are badly in need of affordable, openly-accessible FTTP connectivity in order to receive reliable, scalable, and affordable Internet access to healthcare, education, government services, public safety resources and commerce. Such Internet access is critical to Pickering residents’ and businesses’ economic vitality and social well-being.

ICON funding eligibility is contingent on the network being open access. This complements City staff’s strong preference for open access networks which ensure that all TSPs are free to compete with each other in an open system. This provides consumers with more choices, better services, and lower rates.

Whitevale and Green River are adjacent to the Innovation Corridor and the entire Seaton Development Area. Seaton requires FTTP for businesses and residents. Internet access is available for the new homes in the south end of Seaton (along Taunton Road), but that service will extend north only slowly, with the pace of residential development. Vianet’s fibre in Whitevale will position it perfectly to extend service directly into the Innovation Corridor. This will enhance the value and utility of the employment lands located along the Highway 7/407 corridor, including lands purchased by the City. Vianet has a history of incrementally extending its existing infrastructure to reach more underserved areas, and it has expressed keen interest in the future extension of its Whitevale/Green River fibre into the Innovation Corridor.

Currently, for many of Pickering’s rural residents and businesses, FTTP Internet connectivity is not available at any price, and may never be available without interventions such as the Vianet proposal. The longstanding need for broadband in the north, and the availability of ICON funding make it the right time to proceed with the construction of a network for Whitevale and Green River. The total project cost is \$1,000,000. Vianet is willing contribute \$600,000. ICON funding covers up to 25% of project costs (\$250,000). In order to proceed, it will be necessary for the City to contribute \$150,000 toward the total project cost. Staff recommend that the City pay \$150,000 toward project costs. This amount is available for “broadband initiatives” in the IT Capital Budget. It is a reasonable price to pay for providing service to our residents in Whitevale and Green River. Furthermore, a tangible municipal contribution toward the project will position Pickering more favourably to get ICON funding.

To ensure that Pickering is getting full value for its financial contribution to this project, City staff have negotiated the agreement of Vianet to give the City access to 12 strands of optical fibre within the network for City uses. Known in the telecom industry as an “indefeasible right of use”, this agreement will grant use of the strands to Pickering for a 30 year term. The strands can then be used by Pickering to connect remote facilities and infrastructure in and around Whitevale and Seaton, and could even be used, on reasonable terms, as part of a future Regional broadband network.

Staff recommend that Council endorse the Vianet broadband proposal. Council’s support is required as a condition of eligibility for ICON funding. A further report to Council will be presented once the network design is completed and any necessary project agreements will be presented for Council approval at that time.

Providing fast and affordable internet access to Whitevale and Green River would be a significant accomplishment for Pickering. It would provide much-needed service to 123 homes and

businesses, while setting the stage for service to the Innovation Corridor. Finally, this FTTP model can serve as a template for permanently bridging gaps in other unserved and underserved areas of Pickering and across Durham.

Attachments:

1. Presentation of Vianet Inc. for a network to service Whitevale and Green River.
-

Prepared By:

Original Signed By:

Paul Bigioni
Director, Corporate Services & City Solicitor

PB:ks

Recommended for the consideration
of Pickering City Council

Original Signed By:

Marisa Carpino, M.A.
Interim Chief Administrative Officer

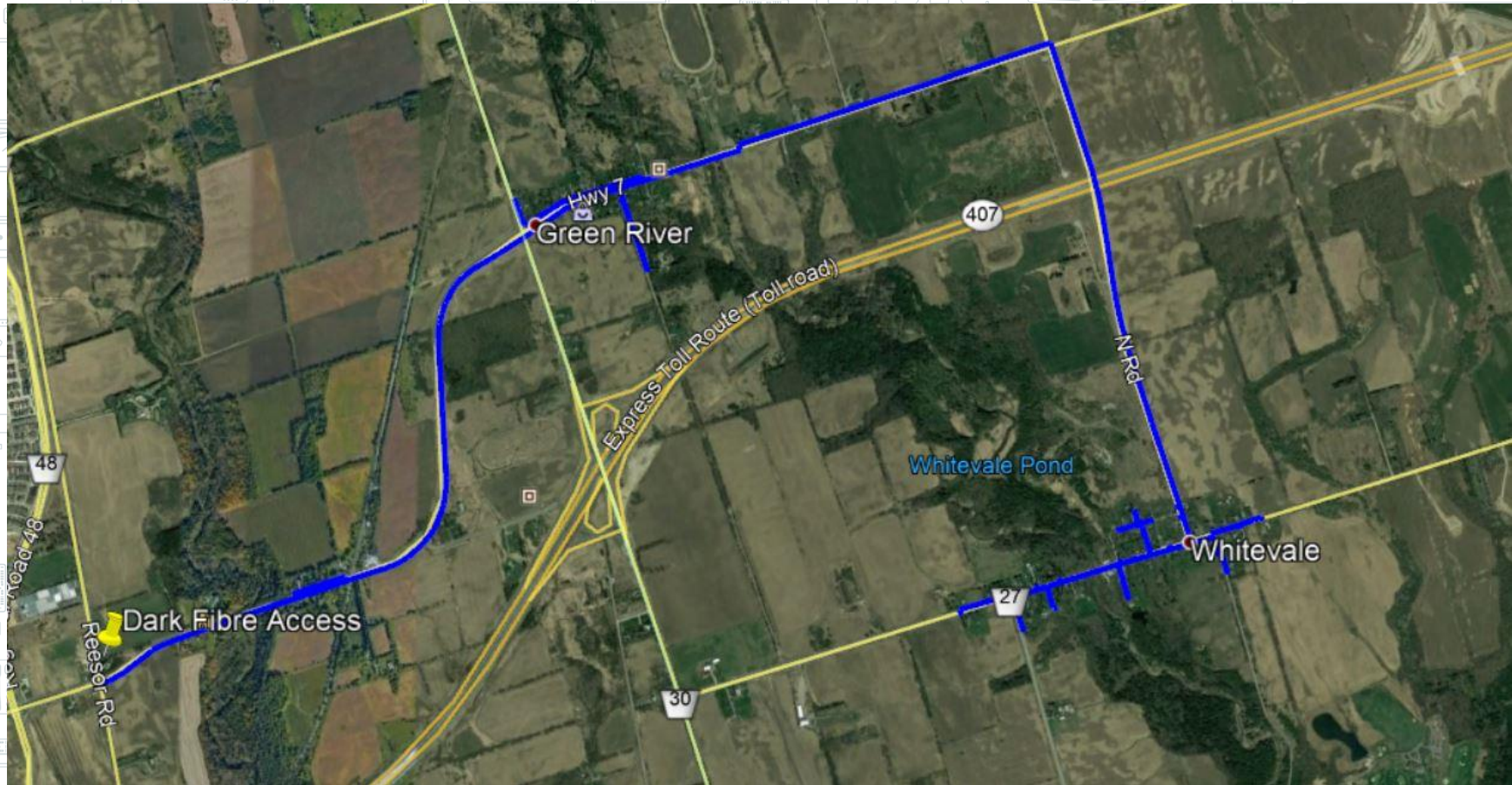
vianet

Building Connections



Whitevale and Green River FTTH

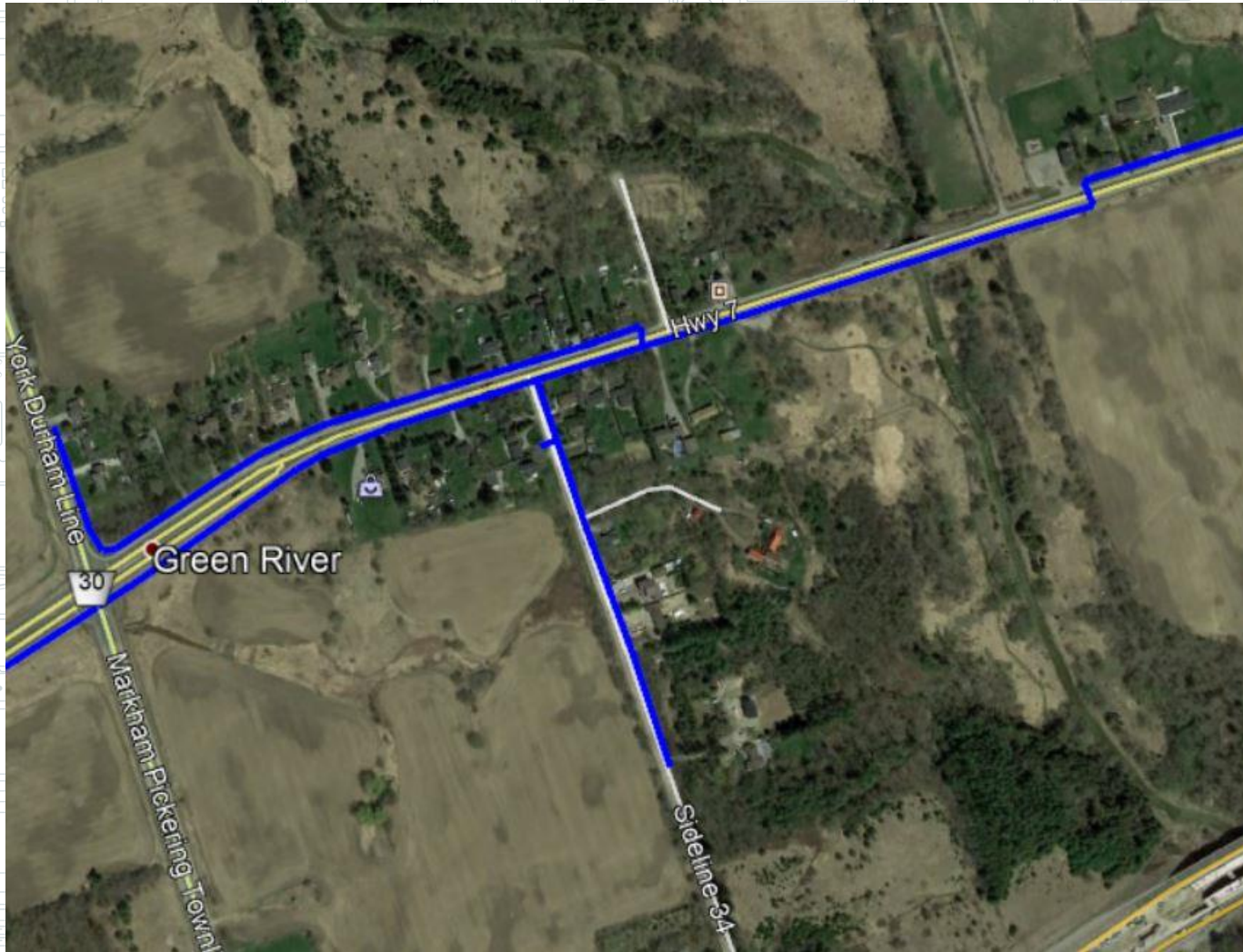
Project Overview



- Leverages Vianet access to Dark Fibre near Markham/Pickering border
- Establishes new FTTH and transport POP to service rural Pickering
- Total Project budget \$1M, \$100,000 for POP site and \$900,000 for approx. 11.5 km new fibre build serving 146 under-served homes/businesses
- Provides high capacity Fibre access to Western section of Industrial lands

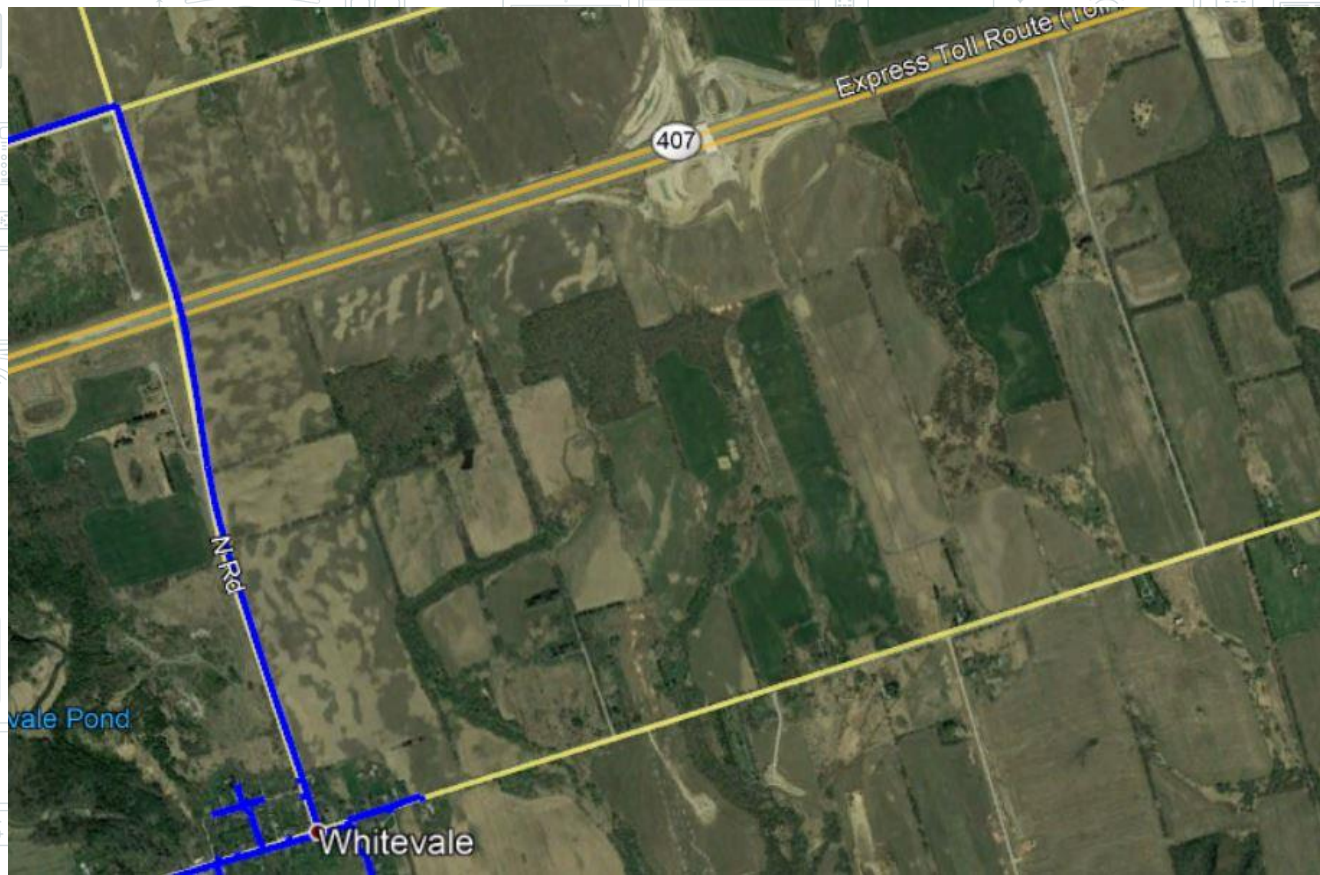
Green River Serving Area

vianet



- 44 dwellings passed

- 160 -



- Creates Fibre access points at corner North Road and both Highway 7 and Whitevale Rd for future servicing of Industrial Lands
- 1, 10 and 100 Gbps transport capacity to 151 Front St suitable for large tech dependent businesses, wholesale agreements to major national carriers

Whitevale Serving Area

vianet



- 82 dwellings passed

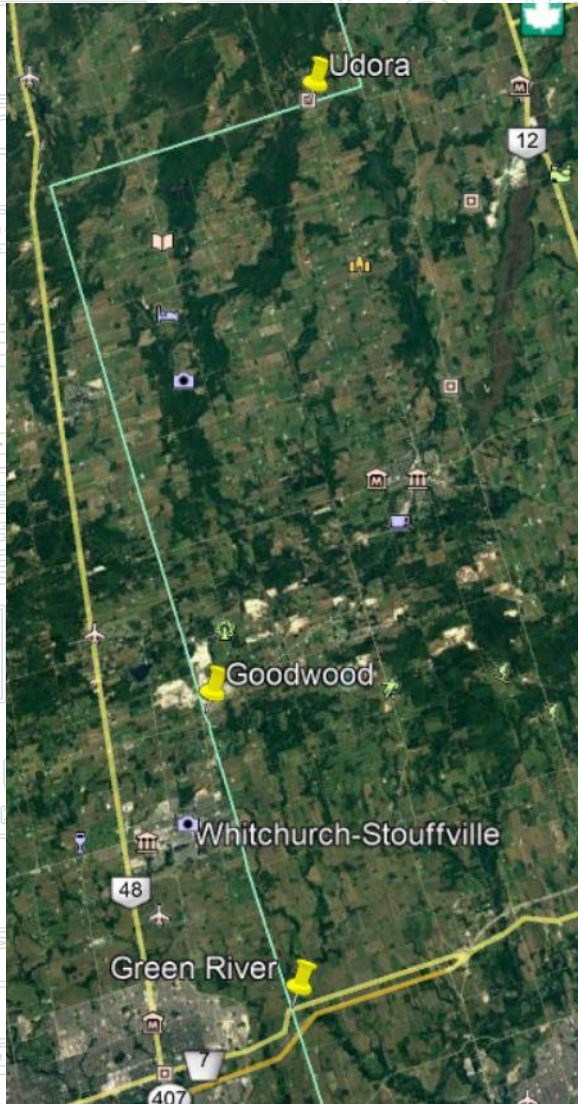
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Funding Requirements

- \$1,000,000 preliminary budget, Vianet to invest \$600,000
- Town of Pickering and/or higher levels of government to contribute remaining \$400,000
- Opportunity to install conduit for Town of Pickering during Vianet conduit installation (depending on conduit specifications)
- Potential for reducing overall budget requirements by following Vianet's Rural Fibre Optic Installation Guidelines

- Pared down permit drawings for rural areas with limited future development planned
- Express turnaround on permits
- Flexible running lines to minimize disturbance of natural environment

Additional Durham Region Opportunities *vianet*



- By Oct 2020 Vianet will have high capacity fibre transport available at 3 rural locations bordering Durham Region and York Region
- Green River, Goodwood and Udora
- Interconnect available between sites and to 151 Front St
- Up to 100 Gbps transport service will be available
- Possible partnership to build fibre through Durham Region to directly interconnect these locations

The background of the slide is a solid blue color with a repeating pattern of white line-art icons. These icons represent various computer-related items: desktop monitors, laptops, keyboards, mice, and server racks. The icons are arranged in a grid-like fashion, creating a dense, textured background.

Thank You

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vianet