

APPENDIX D

**INTERIM SHAREHOLDER DIRECTION
AND
UNANIMOUS SHAREHOLDER DECLARATION**

xxx, 2016

WHEREAS:

- A. Oakville Municipal Development Corporation (the "Corporation") was incorporated on [insert date] under the *Business Corporations Act* (Ontario);
- B. The Corporation of the Town of Oakville is the owner of all of the issued and outstanding shares of the Corporation;
- C. In very general terms, the Corporation is to provide development services to the Town of Oakville to unlock the value of under-utilized real estate holdings with a view to enhancing the economic competitiveness of Oakville and of furthering the Town's policy objectives;
- D. The Corporation of the Town of Oakville, as sole shareholder of the Corporation, wishes to set out its expectations, establish certain operating principles, set out certain requirements to be met by the Corporation, and inform the residents of Oakville of the Town's fundamental principles and accountability mechanisms regarding the Corporation during the period between incorporation and commencement of real estate activities (the "Interim Period"); and
- E. When the Corporation reports back to Council seeking authorization to commence real estate activities at the end of the Interim Period, a final revised version of this Shareholder Direction and Unanimous Shareholder Declaration will be provided to Council for its approval.

NOW THEREFORE THIS DIRECTION WITNESSES:

SHAREHOLDER DIRECTION

1. *Purpose*

This Interim Shareholder Direction outlines the expectations of The Corporation of the Town of Oakville (the "Shareholder") relating to the principles of governance and other fundamental principles and policies of the Corporation (the "Corporation"). Except as provided in Section 10, this Shareholder Direction is not intended to constitute a unanimous shareholder declaration under the *Business Corporations Act* (Ontario) (the "OBCA") or to formally restrict the exercise of the powers of the Board of Directors of the Corporation (the "Board").

2. *Corporate Governance*

The Board shall supervise the management of the business and affairs of the Corporation and, in doing so, shall act honestly and in good faith with a view to the best interests of the Corporation and each director shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in

comparable circumstances. The Shareholder expects that the Board will adopt appropriate policies to address the following governance issues:

- (a) Stewardship – the Board will assume responsibility for the stewardship of the Corporation including:
 - (i) adoption of a strategic planning process;
 - (ii) identification of the principal risks of the Corporation’s business and ensuring the implementation of appropriate systems to manage these risks;
 - (iii) implementation of succession planning, including appointing, training and monitoring senior management;
 - (iv) implementation of a communication policy for the Corporation; and
 - (v) integration of the Corporation’s internal control and management information systems;
- (b) Board training – the Board will adopt and provide an appropriate orientation and education program for new Board members;
- (c) Position descriptions – the Board will develop position descriptions for the Board, its committees and the CEO, including the definition of limits to management’s responsibilities and corporate objectives for which the CEO is responsible for meeting;
- (d) Relationship with Town – During the Interim Period, the Board will review all relationships between the Shareholder and the Corporation, including, without limitation, relationships with staff, services to be provided by the Shareholder, and relationships with the Town of Oakville as a municipal planning authority. The Final Shareholder Direction and Unanimous Shareholder Declaration shall outline the governance framework with respect to such relationships.

3. *Permitted Business Activities*

Subject to the restrictions in Section 10 of this Shareholder Direction, the Corporation and its Affiliates (as defined in the OBCA) may engage in the business activities which are permitted by any laws applicable to the Corporation and its Affiliates from time to time, and as the Board of Directors may authorize.

4. *Decisions of the Shareholder*

Approvals or decisions of the Shareholder required pursuant to this Shareholder Direction or the OBCA shall require a resolution or by-law of the Town Council of the Shareholder which shall be passed at a meeting of Council and shall be given in writing to the Corporation and signed by the Shareholder Representative.

5. *Board of Directors*

- (1) During the Interim Period, the Corporation shall be managed by the Board which shall consist of 3 directors to be elected by the Shareholder. One of the three directors of the Board shall be the Mayor or an alternative representative of Council, appointed annually. Additional members of Council and staff of the Town of Oakville may also be elected at the Shareholder's discretion. At the end of the Interim Period, the Corporation will make a recommendation to the Shareholder as to the appropriate size and composition of the Board.
- (2) After the Interim Period, if the Corporation wishes to increase or decrease the number of directors to be elected annually, then the Corporation must obtain approval from the Shareholder at least six months prior to the date upon which such a change is to take effect. In selecting directors, the Shareholder shall consider candidates nominated by the nominating committee of the Board (the "Nominating Committee"), but shall not be obliged to select such candidates. It is expected that the Nominating Committee will develop a process to identify and evaluate potential Board candidates in order to recommend a slate of candidates acceptable to the Shareholder.
 - (a) The Nominating Committee shall annually review and update its list of citizens who have expressed interest in serving on the Board or the boards of its Affiliates.
 - (b) The Nominating Committee shall annually recommend to the Shareholder the directors to be elected as the directors of the Corporation recognizing the Shareholder's right to accept, reject or modify such recommendations in the sole discretion of the Shareholder.
- (3) In addition to independence of judgment and integrity and the requirements of the OBCA, the qualifications of candidates for the Board may include:
 - (a) business experience;
 - (b) experience on boards of significant corporations;
 - (c) financial, legal, accounting and/or marketing experience;
 - (d) industry knowledge;
 - (e) knowledge of public policy and government regulation issues relating to the Corporation and the electricity industry;

- (f) knowledge and experience with risk management strategy and corporate governance; and
 - (g) knowledge and experience concerning environmental matters, labour relations and occupational health and safety.
- (4) Preference shall be given to qualified candidates for the Board who are residents of Oakville.
- (5) After the Interim Period, the President and Chief Executive Officer of the Corporation may not be a director of the Corporation, but may be a director of an Affiliate.
- (6) The term of office for each director shall be one (1) year and directors shall be elected annually.
- (7) The Chair of the Board shall be selected by the Shareholder and shall preside at each meeting of the Board if present.
- (8) The Board may establish committees of the Board in the Board's discretion. It is anticipated that the Board will establish the following committees:
 - (a) Audit and Finance Committee to review financial results;
 - (b) Compensation Committee to determine senior management and directors' compensation; and
 - (c) Nominating Committee to identify, evaluate and recommend Board candidates to the Shareholder.
- (9) The Board shall recommend annually to the Shareholder for approval compensation for directors in an amount sufficient to attract directors with necessary qualifications, recognizing Shareholder guidelines, if any. Members of the Council of the Town of Oakville or Town of Oakville staff who are serving as directors of the Corporation or any of its Affiliates shall do so without compensation from the Corporation and its Affiliates.
- (10) The directors and officers of the Corporation and the Affiliates will strictly abide by the conflict of interest requirements of the OBCA and the conflict of interest rules set forth in the by-laws or any policy of the Corporation and the Affiliates, including requirements in respect of disclosure and abstention from voting, with the exception that Members of Council or

Town employees who are Board members shall not be deemed to be in a conflict of interest where the Board is considering matters in relation to the Shareholder.

6. *Shareholder Expectations*

The Shareholder expects that the Board will establish policies and practices to:

- (1) develop and maintain a prudent financial and capitalization structure for the Corporation and sound financial principles and established on the basis that the Corporation and its Affiliates are intended to be self-financing entities;
- (2) provide the Shareholder with a reasonable return;
- (3) consult with the Treasurer of the Shareholder by September 30 of each year to provide forecasts of the dividends to be declared by the Board of Directors with respect to the Corporation's then current fiscal year to allow for the Shareholder to proceed with its own budgetary processes;
- (4) manage all risks related to the business conducted by the Corporation and its Affiliates, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms; and
- (5) develop a long range strategic plan for the Corporation and its Affiliates which is consistent with the maintenance of a viable, competitive business and preserves the value of the business.

7. *Annual Meeting*

- (1) Within 6 months after the end of each fiscal year, the Board shall report to a public meeting of Town Council and provide such information concerning the Corporation and its Affiliates as the Board considers appropriate.
- (2) The Shareholder shall annually, at an in camera meeting of Council, consider candidates for the Board as proposed by the Nominating Committee.
- (3) The Shareholder shall annually, at a public meeting of Council, consider the appointment of the auditors of the Corporation and receive the audited financial statements of the Corporation for the last completed fiscal year.
- (4) Within 6 months after the end of each fiscal year, the Shareholder by resolution in writing signed by the Shareholder Representatives in accordance with Section 4, shall elect the members of the Board and

appoint the auditors for the Corporation and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

8. *Reporting on Major Developments*

- (1) In addition to the annual meeting described in Section 7, the Board shall report to Town Council on major business developments or materially adverse results as the Board, in its discretion, considers appropriate and such reports received may be considered by the Shareholder at an in camera meeting of Council.
- (2) Town Council may, from time to time, request that a senior member of the Corporation's management and/or a member of the Board attend at a public meeting of Council and respond to questions raised by Council or the general public concerning the Corporation and/or its Affiliates.

9. *Shareholder Representative*

The Shareholder hereby designates the Mayor or the individual designated by the Mayor from time to time as the legal representative of the Shareholder (the "Shareholder Representative") for purposes of providing, pursuant to Section 4, any consent or approval required by this Shareholder Direction or by the OBCA.

10. *Matters Requiring Shareholder Approval*

Without Shareholder approval given in accordance with Section 4 of this Shareholder Direction, the Corporation shall not:

- (1) during the Interim Period, acquire or dispose of any lands or engage in any real estate development transactions;
- (2) change the name of the Corporation or an Affiliate; add, change or remove any restriction on the business of the Corporation or an Affiliate; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law of the Corporation or an Affiliate;
- (3) except when in the normal course of business, sell assets of the Corporation or of an Affiliate or purchase assets of any business, enterprise or undertaking;
- (4) amalgamate with any other corporation(s) other than wholly-owned subsidiaries or Affiliates which amalgamations may, under the OBCA, be approved by a resolution of directors;

- (5) take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation;
- (6) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or any of its Affiliates;
- (7) establish any requirement for capital contributions to the Corporation by the Shareholder;
- (8) take on or assume any financial obligation which would increase the debt/equity ratio of the Corporation and its Affiliates on a consolidated basis above the ratio of 60:40;
- (9) redeem or purchase any of its outstanding shares;
- (10) apply to continue as a corporation under the laws of another jurisdiction;
- (11) make any decision that would materially adversely affect the tax or regulatory status of the Corporation or any of its Affiliates;
- (12) materially alter the nature of or geographic extent of the business of the Corporation or any of its Affiliates;
- (13) enter into any joint venture, partnership, strategic alliance or other venture, including ventures in respect of the generation or co-generation of electricity; and
- (14) make any donations of cash and/or goods and services, including purchasing tickets to political events, to any political party, constituency association, candidate or for any other partisan political purpose whatsoever at any level of government, including federal, provincial, municipal or school board.

11. *Paramountcy*

In the event of any inconsistency between the terms of this Shareholder Direction and the terms of the by-laws of the Corporation or any of its Affiliates, the terms of this Shareholder Direction shall prevail to the extent of the conflict.

12. *Revisions to this Direction*

The Shareholder acknowledges that this Shareholder Direction may be revised from time to time as circumstances may require and that the Shareholder shall promptly provide the Board of Directors with copies of such revisions.

DATED at Oakville, Ontario as of the xx day of xxxxx, 2016.

THE CORPORATION OF THE TOWN OAKVILLE

By: _____
CAO

By: _____
Clerk