



Town of Midland
And
Midland Bay Landing Development Corporation

**SHAREHOLDER DIRECTION
&
OPERATING AGREEMENT**

Effective **May XX , 2018**

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PREAMBLE

WHEREAS

- A. The Town of Midland (“Town”) is a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario;
- B. Midland Bay Landing Development Corporation (“MBLDC”) is a corporation duly incorporated under the *Business Corporations Act* (Ontario) pursuant to section 203 of *Municipal Act, 2001* and Ontario Regulation 599 /06;
- C. The Town of Midland is the sole owner of all of the issued shares of MBLDC;
- D. The Town, as the sole shareholder of MBLDC, wishes to:
 - i. set out its expectations to be met by the MBLDC;
 - ii. establish certain operating principles to guide the MBLDC;
 - iii. set out certain requirements to be met by the MBLDC; and
 - iv. inform the residents of Midland of the Town’s fundamental principles and accountability mechanisms regarding MBLDC;
- E. The primary purpose of the MBLDC, in very general terms, is to have consideration for the Council’s approved “*Unimin Waterfront Lands Master Plan*” and the town’s *Official Plan* and to work in collaboration with others to promote community economic development in relation to the Midland Bay Landing Site (“MBL site”). These efforts will entail developing active partnerships with the Town, investors and private sector partners as appropriate to maximize the value of MBL site for the benefit of the residents of Midland;
- F. The MBLDC will provide advice, inform and make recommendations to the Town, as owner, on matters and opportunities pertaining to the operations of the MBLDC and the MBL site; and
- G. Additionally the MBLDC is to create a supportive environment for long-term economic and community growth and to foster municipal innovation to help make Midland an attractive place to invest and do business. The Town and the MBLDC will strive to work together to ensure a consistent and coordinated overall economic development strategy for the MBL site to support the long-term economic and community development of the Town.

NOW THEREFORE THIS DOCUMENT WITNESSES:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Shareholder Direction, the following terms will have the meanings set out below:

“**ABCs**” means all Town agencies, boards, and commissions;

“**Annual Report**” means MBLDC's annual report to its shareholder, the Town, as more particularly described in section 6.6 of this Agreement;

“**Applicable Law**” means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws;

“**Auditor**” means the external auditor of MBLDC;

“**Authorized Town Signatory**” means the individual or individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written approvals or decisions relating to MBLDC on behalf of the Town;

“**Board**” means the board of directors of MBLDC;

“**MBLDC**” means Midland Bay Landing Development Corporation;

“**Business Day**” means a day other than a Saturday, a Sunday, Remembrance Day, or any day that is a statutory holiday in Ontario;

“**CAO**” means the Chief Administrative Officer of the Town who shall be an ex officio Member of the Board as well as the Chief Administrative Officer of MBLDC;

“**Chair**” means the chair of the Board of Directors of the MBLDC or any director acting in that capacity;

“**Town**” means the Town of Midland;

“**Town CFO**” means the Chief Financial Officer of the Town or the person acting in that capacity or their designate;

“**Town Solicitor**” means the Town's Town Solicitor or the person acting in that capacity or their designate;

“Town Staff” means a member or members of the staff of the Town of Midland;

“Council” means the Council of the Town of Midland;

“Financial Statements” means, for any particular period, audited or unaudited, comprehensive financial statements of MBLDC consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited financial statements), and such other statements, reports, notes and information as are required in accordance with any Applicable Law, all prepared in accordance with generally accepted accounting principles consistently applied;

“Governmental Authority” means a federal, provincial, or municipal government, or any entity, person, court or other body or organization exercising one or more executive, legislative, judicial or regulatory functions;

“Land” means land and any fixtures thereon;

“OBCA” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“Person” means an individual, a corporation, a body corporate or a Governmental Authority;

“Regulation” means Ontario Regulation 599/06, the Municipal Services Corporations Regulation, as it may be amended or replaced from time to time;

“Sale Agreement” means an agreement between MBLDC and the Town and/or one of its ABCs providing for a commitment to sell or otherwise dispose of Land, including a Transfer and a disposal by way of lease for a term of 21 years or more, and **“Sell”**, **“Sale”** and **“Sold”** have corresponding meanings;

“Senior Executive” means the CAO and the employee or employees that report directly to the CAO

“Transfer Agreement” means an agreement between MBLDC and the Town and/or one of its ABCs providing for the transfer of title to Land to MBLDC, and **“Transfer”** and **“Transferred”** have corresponding meanings;

“Turnover Agreement” means an agreement between MBLDC and the Town and/or one of its ABCs which may include permission for MBLDC to manage, market and initiate the development of Land, and **“Turnover”** and **“Turned Over”** have corresponding meanings. For greater certainty, Turnover Agreements may not provide for the Sale of Land to MBLDC; and

1.2 Calculation of Time

In this Shareholder Direction, a period of days will be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (EST) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period will terminate at 5:00 p.m. (EST) on the next Business Day.

1.3 Authority of Applicable Law

In the event of any conflict between any approval, direction or requirement of MBLDC under this Shareholder Direction and any Applicable Law, the Applicable Law shall govern. MBLDC may seek an order from any Governmental Authority for any matter only in accordance with Article 5 of this Shareholder Direction.

ARTICLE 2 - OBJECTIVES AND PRINCIPLES

2.1 *Purpose of this Shareholder Direction*

This Shareholder Direction:

- (a) sets out for the Board the Town's expectations of and objectives for MBLDC and MBLDC's mandate, scope of responsibility, and reporting requirements;
- (b) sets out the relationship between MBLDC and the Town; and
- (c) constitutes, where applicable, a declaration by the Town, as the sole shareholder of MBLDC, pursuant to subsection 108(3) of the OBCA.

2.2 *Town Objectives*

The objectives of the Town in relation to the MBLDC are as follows:

- (a) The Town is the owner of more than 40 acres of land (plus water lots) on the Midland waterfront. This land is currently vacant. However, the Town recognizes that there are opportunities to unlock the value of these Lands to further Town priorities. It is the Town's desire to use the MBL site to enhance the Town's economic competitiveness by attracting new commercial, institutional and residential development that creates desirable jobs, supports the local economy and to improve the liveability of Midland while confirming with the town's Official Plan.
- (b) MBLDC will play an integral role in supporting the Town to achieve the Town's objectives while operating within a business environment, by developing or working with the private, not-for-profit, or broader public sectors or other interests to develop the MBL owned by the Town in order to realize value and to attract targeted investment identified by the Town, stimulate creation of desirable employment, and regenerate the neighborhood and enhance the desirability of future investment in Midland.
- (c) MBLDC will endeavor to generate a reasonable net financial return to the Town. Financial return may include, but not be limited to, increased assessments on developed properties, reasonable revenues generated from development activities, proceeds of sale or lease of certain properties, and other benefits and dividends.
- (d) MBLDC will lead all negotiations with respect to the future development of the MBL site.

2.3 Mandate of MBLDC

MBLDC will strive to achieve the objectives set out in ss. 2.2. Specifically,

- (a) MBLDC shall implement the directions of the Town from time to time as contemplated by the Town.
- (b) MBLDC shall facilitate development of the MBL site and act as the primary economic development organization and as a catalyst in the Town for the attraction of investment to the MBL site.
- (c) MBLDC shall develop and implement strategies that support long-term economic development activities in and around the MBL site including, but not limited to, growing and developing the MBL site as a vibrant, attractive and unique waterfront community with public elements accessible to all the residents and visitors to Midland.
- (d) MBLDC shall advise the Town on the potential for development on the MBL site.
- (e) MBLDC shall work with the Town, investors or partners as appropriate to maximize the benefit and value potential of Lands that are managed by the MBLDC or the lands whose ownership may be offered by the Town to the MBLDC by virtue of a Council resolution and act as a catalyst for the development of infrastructure and sustainable services in the Town.
- (f) Market and promote the MBL site for business and investment opportunities in an effective, responsible, and efficient manner.
- (g) Identify, source and promote funding opportunities from both government and private sectors.
- (h) Liaise with Federal and Provincial development agencies, educational institutions, employment agencies, and community partners.

2.4 Donations

- (a) MBLDC shall not make donations or similar contributions to any charity or charitable organization, or to any political campaign.
- (b) Nothing in this section prohibits MBLDC from paying membership fees to join organizations that are relevant to MBLDC's activities or from engaging in sponsorship activities that promote MBLDC or its objectives.

2.5 Operating Principles

The directors and officers of all OBCA corporations have a duty to act honestly, in good faith and in the best interests of the corporation. MBLDC is wholly owned by the Town and the Town has established the objectives for MBLDC, aligned with the Town's interests. The following principles govern the operations, services and activities of MBLDC in that context:

- (a) Subject to Applicable Law, MBLDC shall conduct its affairs and govern its operations in accordance with such rules, policies and, directives or objectives as directed by Town Council from time to time.
- (b) MBLDC shall conduct its business in a socially responsible manner that respects the public nature of its shareholder and the importance of the Town's accountability to the general public;
- (c) MBLDC shall conduct its affairs:
 - (i) on a commercially prudent basis, employing efficient cost structures;
 - (ii) in a fair, equitable, and inclusive manner;
 - (iii) in a manner that supports Town goals and priorities; and
 - (iv) in accordance with industry best practices applicable to comparable activities;
- (d) MBLDC shall develop and comply with procurement policies designed with the objective of providing good value;
- (e) MBLDC shall establish and align its policies and procedures to be reasonably consistent with those established by Town Council for Town purposes;
- (f) MBLDC shall ensure ethical business practices to ensure appropriate disclosures related to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection;
- (g) MBLDC shall act in accordance with and be accountable for the financial performance and strategic objectives assigned to it by Council;
- (h) MBLDC shall act in an environmentally responsible manner and will promote environmentally sustainable development;
- (i) MBLDC shall develop protocols for community involvement as appropriate and maintain standards for architecture, design and public open space with the intent of promoting urban design innovation and excellence that is acceptable to the community; and
- (j) MBLDC shall act reasonably to mitigate financial risks to the Town;

- (k) MBLDC and Town staff shall work together to promote and facilitate the development and growth of the MBL site. MBLDC will ensure that such efforts are coordinated and not duplicative.

2.6 Fiscal Year

The fiscal year end for MBLDC shall be December 31.

2.7 Provincial Regulation

MBLDC is responsible for adhering to all Provincial legislation and regulations that pertain to MBLDC. The following highlights the sections of the Regulation that are most relevant to MBLDC, and in certain instances sets out the Town's specific direction regarding these requirements.

- (a) S. 20 of the Regulation provides that MBLDC is deemed to be an institution for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (b) S. 19 of the Regulation provides that the directors and officers of MBLDC are deemed to be members for the purposes of the *Municipal Conflict of Interest Act* which imposes certain obligations relating to declaring interests and avoiding conflicts of interest and establishes consequences for failing to comply with those obligations.

The directors and officers of MBLDC also shall comply with the conflict of interest requirements in the *Business Corporations Act* (Ontario), and any conflict of interest policies imposed by the Town. The Board shall develop and maintain a code of conduct for Board members that incorporate all of these requirements. (In the event of any conflict between the *Municipal Conflict of Interest Act* and the OBCA, the *Municipal Conflict of Interest Act* shall prevail.)

- (c) Ss. 18(2) of the Regulation provides that MBLDC may only invest in securities that on December 31, 2017, are prescribed under section 418 of the *Municipal Act 2001* and any regulation made under that section of the Act as that regulation read on December 31, 2017 applies to MBLDC.
- (d) S. 21 of the Regulation provides that MBLDC is deemed to be a local board of the Town for the purposes of ss. 270(2) of the *Municipal Act, 2001*, and for the purposes of the *Environmental Assessment Act*, the *Municipal Conflict of Interest Act*, the *Emergency Management and Civil Protection Act*, and Ss. 56.2(3) of the *Capital Investment Plan Act, 1993*.

2.8 Amendments to Regulation

Section 2.7 sets out certain obligations under the Regulation as it reads on the date of this Shareholder Direction. MBLDC shall comply with all legislation, the Regulation, and any other Provincial regulation pertaining to MBLDC as they are amended or replaced from time to time and it is the responsibility of MBLDC to monitor and comply with any changes to such legislation or regulation.

2.9 Confidentiality

MBLDC shall use its best efforts to ensure that no confidential information of the Town is disclosed or otherwise made available by MBLDC or any of its directors, officers and employees to any person, except to the extent that:

- (a) disclosure to the Town's or MBLDC's officers, employees or agents is necessary for the performance of any of their duties or obligations under this Shareholder Direction, or in their jobs at the Town or at MBLDC, or for the performance of duties by other parties receiving confidential information; or
- (b) disclosure is required in the course of any legal or regulatory proceedings or actions or pursuant to any Applicable Law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by any party); or
- (d) disclosure is made in full compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and the conflict of interest provisions in the OBCA.

ARTICLE 3 - RELATIONSHIP WITH THE TOWN

3.1 *Relationship of MBLDC and the Town*

The Town is the sole shareholder of MBLDC, and requires that MBLDC take responsibility for managing, negotiating, developing, marketing and value optimization of the MBL Site, subject to the terms and conditions of this Shareholder Direction and subject to the specific requirements set out in any Sale, Transfer or Turnover Agreements.

MBLDC will act as a contractual partner with the Town when providing and discharging services under a Turnover Agreement or a Sale Agreement that is not a Transfer Agreement, since the Town will retain title.

MBLDC acts on its own behalf for Lands Transferred to it and Lands acquired by MBLDC from other sources.

Lands Transferred from the Town through a Transfer Agreement may be Transferred with conditions, but MBLDC may use or dispose of such Lands as it sees fit in compliance with such conditions. Subject to the terms of the Transfer Agreements, MBLDC will assume responsibility for managing the property, receiving any revenues generated by the property, and paying all associated costs.

3.2 *Express Authority to act as Agent of Town*

MBLDC will have the capacity to act as an agent of the Town where the Town gives express written authorization to MBLDC to do so. MBLDC shall not conduct itself so as to create, or purport to create, an agency relationship with the Town except in accordance with such a written authorization.

3.3 *Waterfront Issues*

MBLDC has leadership responsibilities for public sector development of Lands in the MBL waterfront area. Where Land within the MBL waterfront area has been Sold, Transferred or Turned Over to MBLDC, MBLDC shall ensure that its plans are consistent, as far as possible, with *The Unimin Waterfront Lands Master Plan*, in particular:

- (a) public access to the entire waterfront will be an integral part of the development;
- (b) the waterfront multi-modal trail and “boardwalk” features will be an essential part of the development;
- (c) the amphitheater and plaza features will be considered as highly desired

- elements;
- (d) about 25% of the total land area will be used to develop Parks and Open Spaces.

3.4 Intergovernmental Relations

All relationships with other orders of government in Canada and with foreign governments will be co-ordinated by the MBLDC with the Mayor's Office and the Town CAO's Office, and MBLDC shall follow the protocols as established by those offices.

3.5 No MBLDC Employees

MBLDC shall not hire employees, without the prior consent of the Town Council. MBLDC will enter into a shared services agreement with the Town for the provision of those services required for the operation of MBLDC as set out in this Shareholder Direction, including accounting, risk management, tax, finance, record keeping, financial statement preparation and audit support; legal services; treasury functions; regulatory compliance; information systems; executive management; and corporate and other centralized services (hereinafter collectively known as the "Services").

Any direct oversight of the efforts of the MBLDC may be executed on behalf of the MBLDC through a contract with an individual or a corporation but such services shall not be constituted to be under the provisions of any employment agreement but an agreement for services.

ARTICLE 4 - BOARD OF DIRECTORS

4.1 Board Responsibilities

Subject to this Shareholder Direction and the OBCA, the Board shall supervise the management of the business and affairs of MBLDC. In particular, the Board, or where delegation is permitted and deemed appropriate by the Board, a committee of the Board, shall:

- (a) Establish such committees of the Board as the Board determines are appropriate, and delegate to the committees such authority as the Board determines is appropriate, provided that the delegation of that authority is permitted under the OBCA and complies with, and is subject to, the provisions in s. 4.8 of this Shareholder Direction;
- (b) Appoint the officers of MBLDC other than the CEO, the Chair and Vice-Chair (who are appointed by Council);
- (c) Establish policies for the management and protection of MBLDC's assets and the assets of the Town under its care, control and management.
- (d) Establish such other policies including procurement, contracting, signing authority limits that are in accordance with any Applicable Laws and this Shareholder Direction;
- (e) Adopt a financial and risk management strategy for MBLDC that is compliant with the Town's overall financial policies and is approved by the Town's CFO;
- (f) Approve and submit to the Town, as MBLDC's shareholder, such annual reports as may be required by Applicable Law and by Council;
- (g) Maintain adequate insurance coverage.

4.2 Composition of the Board

The Town has the sole authority to establish and amend the composition of the Board, subject to the provisions in MBLDC's articles of incorporation and any articles of amendment, to appoint the Chair and Vice-Chair, and to fill vacancies on the Board as they arise from time to time. All directors shall be expressly approved and appointed by Council

For further clarity, the MBLDC agrees that:

- (a) The total number of directors, including ex-officio and Town

Representatives, for the MBLDC shall not exceed 10;

- (b) The MBLDC's board of directors shall always include the Town's Mayor, and one additional Member of Council (collectively herein the "Town's Representatives").
- (c) The maximum number of Town Representatives who act as directors of the MBLDC, with voting rights, shall not exceed 2;
- (d) The Chief Administrative Officer or designate, will attend meetings as an ex-officio member of the MBLDC board without voting rights;
- (e) The Town Solicitor or designate will attend meetings as an ex-officio member of the MBLDC board without voting rights and will fill the role of Corporate Secretary; and
- (f) The CFO or designate will attend meetings as an ex-officio member of the MBLDC board without voting rights and will fill the role of Corporate Treasurer.

4.3 Term

Subject to applicable law, directors serve at the pleasure of Council for the term specified by Council at the time of their appointments or until their successors are appointed.

4.4 Contact Information

MBLDC shall keep up-to-date records of every director's contact information and promptly inform the Town of any changes to that information.

4.5 Vacancies

- (a) If a director ceases to be a director for any reason, the Board immediately shall so advise the Town CAO, and request that the Town, as the sole shareholder undertake a recruitment process (as required) to fill the vacancy and appoint another director.
- (b) The Board shall declare a vacancy in any of the following situations:
 - 4.5.1 A director is absent from three consecutive Board meetings without the approval of the Board as recorded in the minutes of the meetings;
 - 4.5.2 A municipally elected official serving on the Board is not re-elected;
 - 4.5.3 A director dies;
 - 4.5.4 A director is removed from that office by its shareholder, the Town; or
 - 4.5.5 A director resigns from the Board.

4.6 Conflict of Interest

Each director and officer of MBLDC shall inform the Board immediately when he or she has an interest in a matter to be considered by the Board or a committee of the Board, and take appropriate action in accordance with the provisions of the *Municipal Conflict of Interest Act*, and any other Applicable Laws or Town or Board policies.

4.7 Remuneration

- (a) Members of the MBLDC board will receive remuneration for their service on the Board consistent with the following provisions:
 - (i) Board Chair – annual stipend of \$ 5,000.00 plus \$350.00 per meeting;
 - (ii) Directors – annual stipend of \$4,000.00 plus \$350.00 per meeting
 - (iii) Those members who are ex-officio members of the Board will not receive any remuneration other than to be eligible to submit any reasonable expenses incurred on behalf of the MBLDC for their work on the Board
- (b) Any changes to the remuneration of the directors of MBLDC will be determined by the Town from time to time. The Board has no authority to alter the remuneration or provide any additional remuneration to directors. However, a director may elect to receive no or a reduced remuneration.
- (c) The Board shall establish an expense reimbursement policy to provide for the reimbursement of out-of-pocket expenses for Board members (including ex-officio members) while conducting Board business. Such policy shall require that the Board pre- approve the amount and reason for all major business expenses for directors.
- (d) The Board shall report to the Town the total remuneration and expenses paid for each member of the Board using the protocols established by the Town CFO as may be amended from time to time.

4.8 Meetings

- (a) Meetings of the Board and its committees shall be open to the public, except where matters may be considered in camera in accordance with s. 239 of the *Municipal Act, 2001*. Advance public notice of the agenda may be provided.
- (b) The Town Clerk as the Recording Secretary may engage the recording secretary services from a third party for the purposes of fulfilling the responsibilities of attending and recording the proceedings and decisions

of the MBLDC.

- (c) Town Staff who are appointed as ex-officio members shall be entitled to receive notice of and to attend all meetings of the Board. The Chair may, at their discretion, require any individuals who are not members of the Board, who are in attendance to leave that portion of the meeting where discussion of confidential negotiations is being considered by the Board. The Board may establish committees of the Board for any purpose and delegate decision-making to those committees as permitted by Applicable Law except:
 - (i) The Board shall not delegate to a committee or an individual any material decisions relating to disposition of Lands;
 - (ii) The Board shall not delegate decision-making to any committee unless all members of that committee are current Board members; and
 - (iii) The Board shall not delegate to a committee the power to commit MBLDC resources unless the Board has stipulated in its by-laws monetary limits on the corporate resources that may be committed by the committee.

4.9 Measurements of Success

The MBLDC board will be expected to develop and report annually on metrics relevant to the organization's mandate and goals. These may include, but are not limited to, the following:

- (a) Development and creation of partnerships to aid and support new growth and the prospect of expansion projects related to the MBL site;
- (b) Investment attraction towards the MBL site (i.e. new buildings, jobs, expanded services, land sales, new company relocations, etc.);
- (c) New business development with respect to the MBL site; (i.e. business openings, new and expanded services, partnership/JV agreements signed, building applications);
- (d) Additional assessment growth with respect to or associated with the MBL site; and
- (e) Adherence to *The Unimin Waterfront Lands Master Plan*.

ARTICLE 5 - SHAREHOLDER MATTERS

5.1 *Decisions of the Town*

Each time MBLDC wishes to seek an approval or decision from the Town, as the shareholder of MBLDC, MBLDC shall make a written request for the approval which includes all information necessary for the Town to make an informed decision. MBLDC shall submit its request and supporting information in a timely manner to the CAO.

If the decision requested requires Council approval, MBLDC shall make its request in a timely manner to the CAO to comply with deadlines for submission to committee and Council.

5.2 *Town's Responsibilities to the MBLDC*

The Town covenants and agrees that it will:

- (a) Provide core funding to the MBLDC as approved annually by Town Council through the Town's established budgeting process, the timing and requirements of which will be communicated to the MBLDC.
- (b) Provide suitable office space in a Town owned facility along with equipment, furniture, fixtures, supplies and other materials. The Town, at its sole discretion, may determine what is necessary and appropriate in the circumstances.
- (c) Appoint Town representatives as board members as required under the by-laws of the Corporation (By-law No. 1) and as permitted by this agreement.
- (d) Subject to any confidentiality or non-disclosure agreement that a proponent may require the Town to enter into, the Town's CAO or CAO's designate will share all relevant business expansion opportunities with the MBLDC chair, who will then engage the MBLDC board or appropriate members of the MBLDC board to support the efforts as required.
- (e) Procure and maintain adequate insurance coverage including Director's Liability Insurance. However, it is expected that at the appropriate time when the MBLDC is self-sustaining it shall obtain its own insurance policy.
- (f) Until such time as the MBLDC is self-sustaining the following corporate support services will be provided:
 - i. Legal;

- ii. Financial, including but not limited to payroll administration, banking, accounting, reporting for government programs, internal audit services;
- iii. Building services;
- iv. Purchasing services;
- v. Human Resources services;
- vi. Communication and Information Technology; and
- vii. Clerical/Administrative Services

In this agreement the term "self-sustaining" means that MBLDC generates enough revenue in exchange for its products and services to cover all of its expenses, from payroll, to inventory, to rent and utilities.

- (g) The Town and the MBLDC agree that during the Term of this agreement the Town's administration will support the MBLDC Board goals, mandate and initiatives as reasonably required by the MBLDC and approved by the Town in its sole discretion.
- (h) The MBLDC shall assume responsibility for its own contracted services and organizational structure, The MBLDC will be responsible for securing any required professional services for the execution of the responsibilities outlined by the Town and this Shareholder Direction and Operating Agreement.

5.3 Governance Liaison

For matters requiring Town approval or other action regarding governance matters set out in Article 4, s.5.4, ss. 5.5(e), and s. 8.2 or intergovernmental matters set out in ss.5.5 (a), the Executive Assistant to the CAO will be the liaison.

5.4 Financial Liaison

For matters set out in Articles 6 and 7, the designated Town liaison is the Town CFO, who is also the Authorized Town Signatory for matters set out in ss. 5.5 (b) to (d).

5.5 Matters Requiring Shareholder Approval under the OBCA

MBLDC shall not take any of the following actions without the approval of its

shareholder, the Town:

- (a) Amend or repeal its articles of incorporation;
- (b) Amalgamate with another corporation (other than a wholly-owned subsidiary), apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) Take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (d) Create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (e) Sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (f) Change the Auditor;
- (g) Make any changes to the number of directors comprising the Board; or
- (h) Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

The Board may make, amend, or repeal any of its by-laws and the changes take effect at such time as the Board approves. Such changes shall be submitted to the Town, as shareholder, immediately upon approval by the Board for Council consideration and approval. If Council makes any amendments, the amendments take effect when approved by Council and are not retroactive.

5.6 Other Matters Requiring Town Approval

Without the prior written approval of the Town, MBLDC shall not:

- (a) Seek financial support or any changes to legislation or regulation from any Governmental Authority other than the Town.
- (b) Make representations or promises of any financial incentives or similar inducements that are binding on the Town.
- (c) Issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from, the Town or any borrowing that, in the opinion of the Town CFO, will have a negative impact on the Town's credit rating.

ARTICLE 6 - REPORTING

6.1 *Business Plan*

Town Council shall approve a Business Plan for the MBLDC and the MBLDC shall carry on its business and operations in accordance with the Business Plan which may include, in respect of the period covered by such plan:

- (a) The MBLDC will be responsible and accountable to the Council of the Corporation of the Town of Midland.
- (b) The key objectives, priorities, and business initiatives that MBLDC will undertake.
- (c) The metrics for monitoring accomplishments and financial performance including liquidity and debt coverage;
- (d) An operating and capital budget for the next fiscal year and an operating and capital budget projection for each subsequent fiscal year covered by the Business Plan, including the resources necessary to implement the Business Plan and any financial impact on the Town;
- (e) Pro forma Financial Statements;
- (f) Any material variances in the projected ability of any business activity to meet or continue to meet MBLDC's objectives;
- (g) Any material variances from the previous Business Plan; and
- (h) Any additional information that the Town CFO may specify from time to time.

6.2 *Quarterly Reports*

Unless otherwise instructed by Council, within 45 days after the end of each fiscal quarter, the Board shall have prepared (on a consistent basis with the previous fiscal quarter) and shall submit to the Town CFO a quarterly report. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- (a) Quarterly unaudited Financial Statements;
- (b) Such explanations, notes and information as is required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan, including any

material variances in the projected ability of any business activity to meet or continue to meet MBLDC's objectives;

- (c) Information that is likely to materially affect the Town; and
- (d) Information regarding any matter, occurrence or other event which is a material breach or violation of any law.

6.3 Access to Records

The duly appointed representatives of the Town (as approved by Council from time to time) shall have unrestricted access to MBLDC's books and records during normal business hours. Such representatives shall treat all information of MBLDC with the same level of care and confidentiality as any confidential information of the Town. The Town CAO, the Town CFO and the Town Solicitor are deemed duly appointed representatives of the Town.

6.4 Audit

MBLDC's consolidated and unconsolidated Financial Statements shall be audited annually.

The Auditor may conduct periodic operational audits. Any recommendations resulting from such audits will be presented to the Board for operational matters and to the Town Council, with a copy to the Board, for any shareholder issues.

6.5 Accounting

MBLDC shall keep detailed records of its transactions and, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

6.6 Annual Report

The Board shall approve the audited Financial Statements and submit an Annual Report to the Town CFO within 120 days after the end of each fiscal year; provided however, the Board shall use reasonable efforts to provide such approval and report within 90 days after the end of each fiscal year. The Annual Report shall include:

- (a) Audited Financial Statements;
- (b) Accomplishments during the fiscal year along with explanations, notes and information as is required to explain and account for any variances

between the actual results and the Business Plan in effect for the year;

- (c) Details of the services contemplated by this agreement, performance measures for evaluation purposes, financial summaries and other sufficient information to enable the Town to give reasonable consideration of the MBLDC's performance;

6.7 Records Maintenance

- (a) The Board of MBLDC will retain all financial and non-financial records, including but not limited to all records relating to its operations operation, agendas and minutes.
- (b) The MBLDC shall keep separate financial records for all amounts incurred, claimed, paid and received, and shall retain and preserve all documents, contracts, records, claims and accounts that relate thereto for a minimum period as specified by the Town's Record Retention By-law;
- (c) In the event of termination of this agreement the MBLDC agrees that it shall transfer all records to the Town at no cost to the Town; and
- (d) The MBLDC shall, upon written request from the Town, provide the Town with any records and reports as the Town may request from time to time at no cost to the Town.

6.8 Annual Update for Town Council

In addition to the requirement of the OBCA to hold an annual general meeting, MBLDC shall provide an annual update for Town Council.

ARTICLE 7 - FINANCIAL PERFORMANCE

7.1 *Debt Financing*

MBLDC shall with the consent of the Town manage its corporate and development financing in a prudent manner, consistent with best practices within the real estate development industry, with due regard for liquidity and protection of the Town's investment.

7.2 *Dividend Policy*

The Town may specify a dividend policy. The dividend policy may be amended by the Town from time to time.

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ARTICLE 8 - GENERAL

8.1 Interpretation

Wherever there is a reference to a Town official, that reference includes any person acting in that capacity, or any successor officer appointed or designated as being responsible for the service area included in that office.

8.2 Amendments

The Town, in its sole discretion, may amend this Shareholder Direction from time to time. The Town will provide a written amendment or the amended Shareholder Direction, as the case may be, to the Board. The amendment will come into effect on a date specified by the Town.

8.3 Indemnification

The Parties shall each indemnify and save harmless the other from and against all claims, losses, damages, judgments, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted or threatened to be brought or prosecuted and are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any negligent act or omission on the part of the indemnifying party, its officers, employees, students, agents or volunteers arising out of this agreement.

8.4 Dispute Resolution

In the event that any claim, dispute or other matter (herein referred to as a "dispute") shall arise between the parties during the term of the agreement, the matter shall be resolved at the sole discretion of the Council of the Corporation of the Town of Midland.

8.5 Term

- (a) This agreement shall come into effect as of the date first above written and shall continue in effect for a period of 5 years unless terminated earlier in accordance with the terms of this agreement. The MBLDC and the Town shall have the option to renew for a further 5 year period if mutually agreeable;
- (b) Either party may terminate this Agreement at any time upon giving at least one hundred and twenty (120) days written notice to the other party without reason or cause and without liability, cost or penalty.

8.6 Notices

Where in this agreement any notice, request, direction or other communication is

required to be given by either party, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail or e-mail, addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- (a) If delivered personally, on the date of such delivery;
- (b) If by ordinary mail, on the 5th business day following the date of mailing;
- (c) If by registered mail, on the day the postal receipt is acknowledged by the other party; and
- (d) If by e-mail, when transmitted (if received before 4:30 p.m. local time at the recipient's office or failing which the next business day).

Any notices intended for the Town shall be delivered addressed to:

The Corporation of the Town of Midland
Attention: Town Clerk
E-mail:

Any notices intended for the MBLDC shall be delivered addressed to:
Midland Bay Landing Development Corporation
Attention:
E-mail:

8.7 Waiver of Breaches

In the event of a breach of any provision in this agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in such breach, except as may be specifically agreed to in writing by the party that is not in breach.

8.8 No Partnership

Nothing in this agreement shall be read or construed as creating any agency, employment relationship, partnership, principal-agent, or other joint venture between the parties.

8.9 No Assignment

The MBLDC will not assign this agreement, or any part thereof, without the prior written approval of the Town, which approval may be withheld by the Town in its sole discretion or may be given subject to such terms and conditions as the Town may impose.

8.10 Entire Agreement

This Agreement embodies the entire agreement and supersedes any other

understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution.

8.11 Interpretation

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and Federal laws of Canada as applicable.

8.12 Successors

This agreement shall inure to the benefit of and be binding upon the parties, their respective successors and permitted assigns.

8.13 Severability of Provisions

If any of the provisions of this agreement are to be found illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but the agreement shall be construed as if it did not contain the illegal or invalid provision(s), and the rights and obligations of the parties shall be construed and enforced accordingly.

8.14 No Amendment

This agreement may only be changed or amended in writing dually executed by the duly authorized representatives of both parties.

8.15 Force Majeure

- (a) Force Majeure means an event that:
 - i. is beyond the reasonable control of a party; and
 - ii. makes a party's performance of its obligations under the agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.
- (b) Force Majeure includes:
 - i. infectious diseases, war, riots and civil disorder;
 - ii. storm, flood, earthquake and other severely adverse weather conditions;
 - iii. lawful act by a public authority; and
 - iv. strikes, lockouts and other labour actions

If such events meet the test set out in section 8.15 (a)
- (c) Force Majeure shall not include:
 - i. any event that is caused by the negligence or intentional action of a party or such party's agents or employees; or
 - ii. any event that a diligent party could reasonably have been expected to:
 - A. take into account at the time of the execution of the agreement; and

- B. avoid or overcome in the carrying out of its obligations under the agreement.

8.16 Failure to Fulfill Obligations

The failure of either party to fulfill any of its obligations under the agreement shall not be considered to be a breach of, or Event of Default under, the agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the agreement.

Dated at Midland as of the **XX** day of May, 2018

TOWN OF MIDLAND

Name:
Position:

Name:
Position:
I/We have authority to bind the corporation.

THE CORPORATION OF THE TOWN OF MIDLAND

Gord McKay – Mayor

Karen Desroches – Clerk
We have authority to bind the corporation.