

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 05-182**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND ROSHAN HOLDINGS LTD. (Visitor Centre Development Agreement)**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. The Mayor and the Clerk be authorized to execute an agreement between The Corporation of the City of Peterborough and Roshan Holdings Ltd. to permit the development of a regional Tourism Visitors Centre and a new Convention and Hotel Complex at the intersection of Crawford Drive and The Parkway, in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 8<sup>th</sup> day of August, 2005

By-law read a third time and finally passed this 8<sup>th</sup> day of August, 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Leigh Doughty, Deputy Clerk

THIS AGREEMENT made in quadruplicate this 01 day of November, 2005,  
(date to be filled in by City)

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**  
(the "City")

And

**ROSHAN HOLDINGS LTD.**  
(“Roshan”)

**WHEREAS** the Corporation of the City of Peterborough (the "City") has identified the need for a high profile Visitor Information Centre (the "Visitor Centre") in the vicinity of the intersection of Crawford Drive and The Parkway;

**AND WHEREAS** the City desires to enter into an agreement with Roshan Holdings Ltd. ("Roshan") to develop certain lands within the City of Peterborough, known municipally as 540 Harper Road (individually, the "Visitor Centre Site") and 300 The Parkway (individually, the "Former MTO site") (collectively, the "Site")

**AND WHEREAS** the Visitor Centre shall be constructed in accordance with site plan, elevation, mechanical and other drawings as required and approved by the City;

**AND WHEREAS** the City intends to transfer the Site less any land retained for open space, road widening or utility purposes, to Roshan;

**AND WHEREAS** Roshan shall construct, to the satisfaction of the City, an access road for the Site, suitable for future assumption and dedication by the City. Roshan shall transfer the access road to the City, as illustrated on Schedule "B", for the sum on \$1.00 (one) dollar, upon the City notifying Roshan of its intention to extend the access road to intersect with Harper Road, and to dedicate the access road as a public highway.

**AND WHEREAS** the City and Roshan agree that the development of the Site will occur in two phases, provided that the transfer of ownership from the City to Roshan of the lands required for Phase 1 and Phase 2 shall occur forthwith following the Condition Satisfaction Date.

**AND WHEREAS** the City has re-zoned the Site to permit the orderly development of a range of hospitality and commercial uses on the Site;

**AND WHEREAS** Roshan and the City both acknowledge and accept that each is receiving valuable consideration from the other, Roshan in the form of title to the Site, and the City in the form of free rent for a period of ten years for the Visitor Centre;

**AND WHEREAS**, Roshan intends to grant to the City certain options to purchase, free of encumbrances, the Visitor Centre in accordance with the terms and conditions contained herein;

**AND WHEREAS** in consideration of the sum of TWO DOLLARS (\$2.00) now paid by the City to Roshan, the receipt and sufficiency of which is hereby acknowledged, Roshan grants to the City an option to purchase, free of encumbrances, the Visitor Centre Site and, subsequently, the Former MTO Site upon the terms and conditions contained herein:

**NOW THE PARTIES AGREE AS FOLLOWS:**

**1. Definitions**

In this Contract the following words shall have the following meanings:

**Base Rent** – means the monthly amount payable based upon \$19.00 per square foot of the Visitor Centre.

**City** – means the Corporation of the City of Peterborough, its employees, agents, officers, representatives, successors and assigns;

**Condition Satisfaction Date** – means the date at which all of the following conditions have been satisfied:

- a. The Site has been rezoned to permit the development of Phase 1 and Phase 2;
- b. Roshan has obtained Site Plan approval;
- c. Roshan has obtained all other regulatory approvals required for the development, including, if necessary, the approvals from the Otonabee Region Conservation Authority and/or the Ministry of the Environment;
- d. Roshan has satisfied itself it can obtain a building permit; and
- e. Roshan has entered into lease agreements for Phase 1.

These conditions are inserted for the benefit of Roshan, and Roshan shall be entitled to waive any one or more of the said conditions.

**Development (the)** – means the combined development of Phase 1 and Phase 2 as shown conceptually in Schedule “E”;

**Former MTO Site** – means the property known municipally as 300 The Parkway in the City of Peterborough, with Property Identifier Number 28483-0052(LT) and also identified as Block “4” in Schedule “A” to this Agreement;

**General Contractor** – means the person, business or corporation retained by Roshan to be the General Contractor for the Visitor Centre and/or Phase 1 and/or Phase 2;

**Operating Costs** – means, the amount of money the City will pay, exclusive of Base Rent, to operate and maintain the Visitor Centre as further detailed herein;

**Phase 1** – means the construction of the Visitor Centre, and subject to the completion of negotiations between Roshan and other tenants, the construction of two fast food restaurants, a gas bar service center with a convenience store, and with all required on-site access roads, sidewalks, pathways, and parking lots on the Visitor Centre Site;

**Phase 2** – means the construction of a Hotel Complex, Convention Centre and full service restaurant with all required on-site access roads, sidewalks, pathways, and parking lots on the Former MTO Site;

**Roshan** – means Roshan Holdings Ltd. its representatives, agents, officers, employees, successors, assigns and subsidiary corporations;

**Site (the)** – means an area of approximately 16 acres suitable for development composed of approximately 8 acres within the Visitor Centre Site and approximately 8 acres within the Former MTO Site.

**Substantially Completed or Substantial Completion** – means that the contract for the said development for each Phase has been “substantially performed” for the purposes of Section 2 of the *Construction Lien Act*, as amended;

**Visitor Centre** – means a building with an area of approximately 4,000 square feet, and its appurtenant lands, to be built on the Visitor Centre Site, during Phase 1, in accordance with the specifications currently contained within Schedule “A”, as those specifications will be amended and agreed up by the parties prior to the completion of the Site Plan Agreement;

**Visitor Centre and Its Appurtenant Lands** – means a parcel of land approximately two (2) acres in size and containing the Visitor Centre, amenity space and a portion of the parking lot;

**Visitor Centre Site** – means the property known municipally as 540 Harper Road in the City of Peterborough, with Property Identifier Number 28483-0021(LT) and also identified as Block “1” on Schedule “A” to this Agreement and includes the Visitor Centre and Its Appurtenant Lands;

**Year 1** – means the 12-month period commencing on the date the City takes occupancy of the Visitor Centre;

## **2. Roshan’s Services**

- 2.1 Roshan shall pay all applicable municipal fees and development charges concerning the Development, save and except for development charges concerning the Visitor Centre.
- 2.2 Roshan shall retain an architect to design the Visitor Centre. The Visitor Centre will be designed to the satisfaction of the City in accordance with Visitor Centre floor plan and the architect’s rendering, both attached in Schedule “C”.
- 2.3 Roshan shall provide, to the satisfaction of the City, the millwork in the washrooms and kitchenette and basic leaseholds, including HVAC, plumbing, carpet, paint, lighting fixtures, and wiring conduit(s) for the Visitor Centre. The City shall provide all other interior leasehold improvements.
- 2.4 Roshan shall pay all costs associated with preparing and providing the full system building drawings including, but not limited to, site plan, fire protection, and technical drawings concerning servicing, grading and drainage, architectural and elevation drawings, mechanical drawings, electrical drawings, and other drawings required by the Ontario Building Code for the Development. Roshan shall pay all the costs associated with surveying the Site, such survey to include the boundaries of Parts 1, 2, 3, 4, and 5, currently shown conceptually on Schedule “D”. The City will provide guidance concerning the alignment and dimensions of the Future Public Highway, described as Parts 1 and 2 on Schedule “D” and the re-alignment of Crawford Drive.
- 2.5 During the Site Plan approval process, the parties agree that the Site Plan will define the Visitor Centre and Its Appurtenant Lands that would be conveyed to the City, in the event the City exercises either Option One or Option Two, described herein. The Parties also agree that the Site Plan approval process may occur in three stages, firstly, for the Visitor Centre and Its Appurtenant Lands, secondly for the remainder of the Phase 1 development (Phase 1B) and thirdly for Phase 2. Subject to an appropriate written agreement, the City will permit Roshan to enter onto the Visitor Centre Site, following the execution of this agreement but prior to the transfer of those lands to Roshan, for the purpose of performing necessary site preparation work. The City acknowledges that Schedule “E”, constitutes an approved development plan, as required by City of Peterborough By-law 97-68, for Phase 1 and Phase 2. Upon Roshan obtaining the required permit under By-law 97-68, it may, following the execution of this agreement, commence clearing trees from the Visitor Centre Site and, following the transfer of the Former MTO Site to Roshan, Roshan may commence tree removal on that land.

### **Roshan’s Services and Obligations During Phase 1**

- 2.6 Roshan shall retain a General Contractor, for the construction of the Visitor Centre on Block "1" in the location shown on Schedule "A".
- 2.7 Roshan shall ensure:
- i. That the Visitor Centre is ready for occupation and use on or before 31 May 2006;
  - ii. That the landscaping, paving of the parking lot and driveways and installation of curbs and sidewalks required for the Visitor Centre and Its Appurtenant Lands is completed to the satisfaction of the City, on or before 30 June 2006; and
  - iii. That the remainder of Phase 1 is ready for occupation and use on or before 30 June 2007.
- 2.8 If Roshan satisfies the City that meeting the regulatory requirements to permit the construction of a gas bar would adversely impact the economic viability of such a use, the parties agree that Roshan shall not be responsible for developing that aspect of Phase 1.
- 2.9 Should Roshan or its General Contractor require any form of report concerning the Site, other than the reports referred to in Section 3.1 below, such reports shall be obtained at the sole expense of Roshan or its General Contractor.
- 2.10 Subsequent to obtaining Site Plan approval for the Visitor Centre and Its Appurtenant Lands and prior to, or in conjunction with, obtaining Site Plan approval for the remainder of Phase 1, Roshan shall develop a signage plan, concerning on-site traffic management for the Development. The City shall assist Roshan in applying for a minor variance, if required, for a commercial sign, to be placed on the Former MTO Site.
- 2.11 Roshan shall construct, to the satisfaction of the City, an access road (the "Future Public Highway"), as illustrated on Schedule "B", for the Site, suitable for future assumption and dedication by the City. Roshan shall transfer the Future Public Highway to the City, for the sum of \$1.00 (one) dollar, upon the City notifying Roshan of its intention to extend the Future Public Highway to intersect with Harper Road and to dedicate the Future Public Highway as a public highway. The estimated width of the road allowance within which the Future Public Highway will be built is approximately twenty-six (26) metres or eighty-six (86) feet. Roshan shall construct the entire Future Public Highway to the northern limit of its property in a manner satisfactory to the City.
- 2.12 Notwithstanding Section 2.11 above, the City may permit Roshan to construct the Future Public Highway in two stages as indicated on Schedule "D". For greater clarity, the Future Public Highway may be composed of two segments, namely, "Future Public Highway - Detailed Phase 1" ("Part 1") and "Future Public Highway - Conceptual Phase 2" ("Part 2"). The Parties agree that the construction of Part 1 is required for the development of the Visitor Centre and Its Appurtenant Lands. The onus is on Roshan to establish that the traffic generated by Phase 1 and Phase 2 can be accommodated by Part 1. In the event, the City, at the time Roshan is seeking Site Plan approval for Phase 2, is not satisfied that the traffic generated by Phase 1 and Phase 2 can be accommodated by Part 1, Roshan shall construct Part 2 of the Future Public Highway, as a precondition to occupancy, or permitting the occupancy of, any Phase 2 building.
- 2.13 The Parties agree and acknowledge that the City has expressed certain concerns about the capacity of the intersection of The Parkway and Crawford Drive (the "Intersection") and about the available space for traffic to queue on the portion of Crawford Drive north of The Parkway. In order to resolve these road capacity issues, including improvements

to the intersection of Crawford Drive with the Future Public Highway, the Parties agree and acknowledge that a portion of Crawford Drive will be realigned. City shall make a Two-Hundred and Fifty Thousand (\$250,000.00) dollar capital allocation toward realigning Crawford Drive and improving the Intersection to the satisfaction of the Ministry of Transportation. The City shall time this capital allocation to coincide with Roshan's construction of the Future Public Highway.

2.14 Roshan shall:

- i. Prior to entering into this Agreement, provide the City with a lease for the Visitor Centre, including the Visitor Centre and Its Appurtenant Lands (the "Lease"). The Lease shall be executed following the execution of this Agreement;
- ii. On or before 30 September 2006, provide the City with tenancy agreements, or such other proof satisfactory to the City that it has entered into tenancy agreements, for Phase 1 and that it intends to complete such development by 30 June 2007; and
- iii. On or before 31 July 2007, provide the City with satisfactory proof that it has entered into an agreement with a hotel operator concerning Phase 2 and that it is proceeding with the development of Phase 2 and that it intends to complete such development by 31 December 2008;

**Roshan's Services Upon the Completion of the Visitor Centre**

2.15 Roshan shall enter into a Lease with the City for a term of twenty (20) years. During the first ten (10) years the City shall not pay any Base Rent. The City shall be responsible for all taxes and utility charges (E.g.: electrical and water) for the Visitor Centre. In the event the Visitor Centre is not ready for occupation and use on or before 31 May 2006, the City shall receive an eleventh year of free rent in accordance with Section 4.14(ii).

2.16 Roshan shall be responsible for performing all exterior grounds maintenance including, but not limited to, snow and external garbage removal, grass cutting and lighting maintenance. The City will pay a discounted proportionate share of these costs. The City's discounted proportionate share shall be determined using the following formula:

$$\frac{\text{Visitor Centre Square Footage} \times 50\%}{\text{Total Square Footage Phase 1}} = \text{City's Discounted Proportional Share}$$

Upon Roshan completing the requirements of its Site Plan agreement for Phase 1B, Roshan shall no longer be responsible for maintaining the small plantings associated with the Visitor Centre.

2.17 In the event the City exercises the Option 1 or Option 2, it shall pay a proportionate share of the exterior grounds maintenance including, but not limited to, snow and external garbage removal, grass cutting and lighting maintenance. The City's proportionate share shall be determined using the following formula:

$$\frac{\text{Visitor Centre Square Footage}}{\text{Total Square Footage Phase 1}} = \text{City's Proportional Share}$$

2.18 Provided the Visitor Centre was ready for occupancy and use on or before 31 May 2006, the City shall, commencing on the first day of the first month of Year 11, pay Base Rent to Roshan at a rate of \$19.00/square foot/per annum, payable monthly in advance, plus GST if applicable. Should the City or its assigns, choose to exercise the optional right to pre-pay rent, an agreement, concerning which years such pre-paid rent is to be counted against, shall be prepared and executed by the parties. In the event the Visitor Centre

was not ready for occupancy and use on or before 31 May 2006, the City, in accordance with Section 4.14(ii), shall not commence paying Base Rent until the first day of the first month of Year 12.

- 2.19 The Lease will be renewable for ten (10) year terms thereafter, on the same terms and conditions contained in the Lease, save and except the rent, which shall be renegotiated and failing agreement concerning rent for each renewal term, rent shall be determined by Arbitration to determine "fair market rent", pursuant to the *Arbitrations Act*.
- 2.20 Upon the completion of the Visitor Centre, and for the entire term of the City's tenancy, and any renewals of that tenancy, Roshan shall, at its sole expense, maintain the exterior of the Visitor Centre, the amenity space and the parking lot in a presentable and inviting manner, including but not limited to, keeping such lands clear of all garbage, refuse, litter, snow and ice and by maintaining attractive and appropriate landscaping and by performing such other necessary services.
- 2.21 The lease may be assignable by the City, in whole or in part, on the terms and conditions contained herein, to a local board (as defined by the *Municipal Act, 2001*), an entity in which the City has a share, or another municipal corporation. Roshan acknowledges that the City and the County of Peterborough currently intend to jointly operate the Visitor Centre, but that this arrangement may change over the term of the City's tenancy.

#### **Roshan's Services During Phase 2**

- 2.22 Roshan shall retain a General Contractor for the construction of the Phase 2. Phase 2 shall be composed of:
- A hotel complex containing approximately 100 rooms;
  - A convention centre with a main meeting hall with a capacity of not fewer than 500 people; and
  - A full service restaurant.
- 2.23 Roshan shall exercise its best efforts to ensure that Phase 2 is ready for occupancy and use on or before 31 December 2008.
- 2.24 In the event that Phase 2 is not ready for occupancy and use in accordance with Section 2.23 above, Roshan shall:
- i. In the event construction has not commenced, provide evidence, satisfactory to the City, concerning the status of negotiations with hoteliers and other prospective tenants or operators, that it is proceeding with diligence and good faith to complete Phase 2; or
  - ii. In the event the construction of buildings for Phase 2 has commenced, provide evidence, satisfactory to the City, concerning the completion schedule for Phase 2.

The City shall, if it is satisfied that Roshan is diligently proceeding to, and is using all reasonable efforts to complete construction of Phase 2, negotiate an extension to the substantial completion date for Phase 2.

#### **Roshan's Ongoing Services**

- 2.25 Roshan shall, at its expense, maintain the Phase 1 and Phase 2 roadways, parking lots, sidewalks and pathways in accordance with applicable City standards and by-laws and

ensure that sidewalks and pathways are accessible to persons in wheelchairs, including the removal of snow, water and debris.

**Restrictions on Sale**

- 2.26 Notwithstanding any other section of this Agreement, prior to the Substantial Completion of Phase 1, Roshan shall not, without the City's prior written consent, sell or convey the Visitor Centre Site or any portion thereof.
- 2.27 Notwithstanding any other section of this Agreement, prior to the Substantial Completion of Phase 2, Roshan shall not, without the City's prior written consent, sell or convey the Former MTO Site or any portion thereof.

**3.0 City's Services:**

- 3.1 The City shall provide Roshan with copies of the Geotechnical Report, dated 14 August 2001, and the Environmental Site Assessment Report, dated February 2000 both prepared by Geo-Logic Inc.
- 3.2 The City shall permit access to the Visitor Centre Site to Roshan and its General Contractor in the event further testing or site inspections are required. In the event the development of Phase 1 does not proceed forthwith following such testing or site inspections, Roshan shall be responsible for returning the Visitor Centre Site to its former condition.
- 3.3 The City shall permit access to the Phase 2 Site to Roshan and its General Contractor in the event further testing or site inspections are required. In the event construction of Phase 2 does not proceed forthwith following such testing or site inspections, Roshan shall be responsible for returning the Phase 2 Site to its former condition.
- 3.4 The City will transfer ownership of the Site forthwith following the Condition Satisfaction date.
- 3.5 The City will use its best efforts to improve the sight lines to the Development by acquiring the right to reduce or remove the excess vegetation on land currently owned by the Ministry of Transportation in the area bounded by the Parkway, Harper Road and Sir Sandford Fleming Drive.
- 3.6 The City shall be responsible for the costs of any intersection and highway improvements on its own land not allocated to Roshan pursuant to this agreement.

**City's Services Upon Completion of Visitor Centre:**

- 3.7 Upon the City taking occupancy of the Visitor Centre, the City shall be solely responsible for the normal operating costs for the Visitor Centre, including the utility, communication and janitorial costs for the Visitor Centre. The City will also be responsible for the routine costs of maintaining the interior of the Visitor Centre.
- 3.8 The City shall be responsible for the cost of purchasing and installing all moveable chattels within the Visitor Centre including, but not limited to, computers, office furniture, audio visual equipment and mobile display stands.

**4.0 The City's Options to Purchase**

- 4.1 The parties agree that the City, in the event it exercises any of the options to purchase described herein, will require, and that Roshan shall grant, such easements and rights of way over the Visitor Centre Site as may be reasonably required to permit servicing (and the maintenance of such servicing), parking, access to and egress from, all the current and future public highways.

- 4.2 In the event the City exercises Option One or Option Two it shall bear the costs of producing any reference plans of survey required for the conveyance the Visitor Centre and Its Appurtenant Lands.

**Option One**

- 4.3 The City shall be entitled to exercise an option to purchase the Visitor Centre and Its Appurtenant Lands by providing notice to Roshan within 180 (one hundred and eighty) days following the City taking occupancy of the Visitor Centre ("Option One"). In the Event the City exercises Option One, the parties agree that the purchase price for the Visitor Centre and Its Appurtenant Lands, shall have reference to:

- i. The documented cost of constructing of the Visitor Centre or \$910,000.00 (\$227.50 sq. foot), which ever is lower;
- ii. The documented cost of servicing the Visitor Centre or \$45,000.00, which ever is lower;

The remainder of the documented costs of servicing the Visitor Centre Site, shall be Roshan's responsibility;

- iii. The documented design fees for the Visitor Centre, its parking lot and the servicing for the Visitor Centre or \$97,680.00, which ever is lower;
- iv. The documented cost of the initial site development including constructing the parking lot, constructing the roadway, landscaping and other related costs attributable to the Visitor Centre or \$245,205.00, which ever is lower.

- 4.4 The purchase price shall be the sum of 4.3(i) plus 4.3(ii) plus 4.3(iii) plus 4.3(iv), minus the average value of Visitor Centre Site and Former MTO Site lands retained by Roshan.

- 4.5 The parties agree that for the purposes of Option One or Option Two only, that the average value of the Visitor Centre Site land is \$40,000.00/acre and that the average value of the Former MTO Site land is Twenty Thousand (\$23,000.00) an acre.

- 4.6 The transaction of purchase and sale shall be concluded within ninety (90) days following the delivery of notice by the City to Roshan, or as otherwise mutually agreed by the parties.

- 4.7 In the event the City exercises Option One, Roshan shall forthwith produce and register discharges of any mortgages or other encumbrances which have been registered against the Visitor Centre and the Visitor Centre and Its Appurtenant Lands.

- 4.8 In the event the City exercises Option One, the parties shall negotiate a parking lot maintenance agreement and/or a parking lot lease agreement.

- 4.9 Upon the City taking occupancy of the Visitor Centre, Roshan shall be entitled to retain the remainder of the Visitor Centre Site.

**Option Two**

- 4.10 The City shall be entitled to exercise an option to purchase the Visitor Centre and Its Appurtenant Lands, subject to and together with a right of way for parking and access, at the expiration of the initial 10-year term of the lease, and thereafter on the expiration of each renewal term.

- 4.11 Option Two may be exercised by notice in writing delivered to Roshan not less than four (4) months prior to the expiration of the then current term or renewal term. The

purchase price shall be the higher of the documented costs of constructing the Visitor Centre, or the fair market value thereof as agreed to between the parties, and failing such agreement shall be the average of two AACI prepared appraisals, one to be provided by Roshan and the other to be provided by the City. The transaction of purchase and sale shall be concluded within thirty (30) days next following delivery of the second of the two appraisals, or as otherwise mutually agreed by the parties.

- 4.12 Upon the City exercising Option Two, the City shall grant Roshan an option to purchase the said lands if, at any time after the purchase by the City, the City declares the lands to be surplus to it or its assigns. Upon delivery of such notice that the City has declared the lands surplus to its requirements, Roshan shall have a period of sixty (60) days within which to exercise the option. If Roshan exercises the option to purchase, the purchase price shall be determined in the same fashion as described in preceding subsection.
- 4.13 Roshan shall prepare any and all Registered Plans for Phase 1 and Phase 2, respectively. The parties acknowledge and accept that the precise legal description and dimensions of Parts 1, 2, 3, 4, and 5 shown on Schedule "D" will be determined through the creation of the Reference Plans of Survey.

#### **Penalties in the Event of Roshan Fails to Perform**

For the purpose of Sections 4.14 to 4.18 inclusive only, Phase 1 will be described as being composed of Phase 1A (being the Visitor Centre and Its Appurtenant Lands), Phase 1B, being two fast food outlets and, unless Roshan satisfies the City in accordance with Section 2.8 above, a gas bar/convenience store.

#### **Concerning Phase 1A:**

4.14 In the event that:

- i. Roshan has not commenced construction and is not using all reasonable efforts to diligently proceed with the construction of the Visitor Centre by 1 April 2006, then it shall, upon receiving written notice from the City, forthwith and free of encumbrances convey the Visitor Centre Site and the Former MTO Site to the City without consideration; or
- ii. Roshan has commenced construction and is using all reasonable efforts to diligently proceed with the construction of the Visitor Centre by 1 April 2006 but the Visitor Centre is not ready for occupancy by the City on or before 31 May 2006, then the City shall not pay any Base Rent for a period of eleven (11) years following the commencement of Year 1. Furthermore, in the event the Visitor Centre is not ready for occupancy and use on or before 31 May 2006, but is ready for occupancy and use prior to 1 September 2006, the City shall not be required to take occupancy of the Visitor Centre until September 2006;
- iii. The Visitor Centre is not ready for occupancy and use on 1 September 2006, or such later date which the parties have agreed to in writing, then Roshan shall on or before 1 September 2006 and on or before every September 1<sup>st</sup> thereafter during which the Visitor Centre is not ready for occupancy and use, provide the City with an irrevocable letter of credit in a form satisfactory to the City, in the amount of Thirty-Six Thousand (\$36,000.00) dollars, which the City shall be entitled to draw on in the amount of Three Thousand (\$3,000.00) dollars on the first day of each month commencing on 1 September 2006. The Parties agree that the sum of Three Thousand (\$3,000.00) dollars a month accurately reflects the City's cost of leasing the existing location for its visitor information center.

- 4.15 Roshan acknowledges that the City's interest in having the Visitor Centre ready for occupancy and use by 31 May 2006 is most important aspect of this agreement. Accordingly, Roshan agrees and accepts that no portion of Phase 1B or Phase 2 shall be occupied prior to the Visitor Centre being ready for occupancy and use. Roshan accepts this restriction as a reasonable penalty which protects the City's legitimate interest in having the Visitor Centre completed in a timely manner. Furthermore, Roshan acknowledges that, notwithstanding the substantial completion of Phase 1B and/or Phase 2, that, in the event the Visitor Centre is not ready for occupancy and use prior to such substantial completion of Phase 1B and/or Phase 2, it shall pay the monthly penalty/penalties referred to in subsections 4.18(i) and/or subsection 4.20(iii). The prohibition on occupancy contained in this subsection shall cease to bind Roshan upon the Visitor Centre being ready for occupancy and use.
- 4.16 Roshan's obligation to convey under Section 4.14(i) and the penalties described under Section 4.14(ii) and 4.14(iii) shall be deemed to be terminated and of no further force and effect if the Visitor Centre is ready for occupancy and use by the City on or before 31 May 2006.

#### **Concerning Phase 1B**

- 4.17 Roshan shall provide the City with an irrevocable letter of credit in a form satisfactory to the City in the amount of One-Hundred Thousand (\$100,000.00) dollars on or before 31 May 2006. The Parties agree that purpose of the irrevocable letter of credit concerning Phase 1B is to provide the City with a source of funds it can draw on in the event it needs to collect the Phase 1B Monthly Penalty, or any portion thereof, referred to in Section 4.18 below. The Parties agree that, in the event Phase 1B, is not occupied on or before 30 June 2007, then the City shall be entitled to draw from the letter of credit, the amount of Eight Thousand Three-Hundred and Thirty-three (\$8,333.33) dollars (or such other proportionate amount that accurately reflects the City's lost tax revenue) on the first day of each month (the "Phase 1B Monthly Penalty") until Phase 1B is occupied. In the event Phase 1B is occupied after the first day of any month, the City shall release any remaining amounts from the Phase 1B letter of credit. Further detail concerning the Phase 1B Monthly Penalty is set out in Section 4.18 below.
- 4.18 In the event the Visitor Centre has been occupied by the City and Phase 1B is not occupied, by 30 June 2007, or such later date to which the parties have agreed to in writing, then:
- i. On the first day of each month, commencing on 1 July 2007, the City shall be entitled to draw on the Phase 1B letter of credit, in the amount of Eight Thousand Three Hundred and Thirty-three Dollars and Thirty-three Cents (\$8,333.33) until the balance of Phase 1B is occupied.
  - ii. The parties agree and accept that the Phase 1B Monthly Penalty represents a genuine pre-estimate of the City's lost monthly tax revenue from two fast food outlets and a gas bar/convenience store.
  - iii. In the event certain aspects of Phase 1B are occupied on or before 30 June 2007, the City shall reduce the Phase 1 B Monthly Penalty proportionately to an amount that accurately reflects the City's estimated lost tax revenue. The City acknowledges that if Roshan satisfies the City, in accordance with Section 2.8 that the regulatory requirements to permit the construction of a gas bar would adversely affect the economic viability of such a use, that the City shall reduce the Phase 1B Monthly Penalty by a proportionate amount to accurately reflect its estimated lost tax revenue from the agreed upon scope of Phase 1B.

- iv. In the event Phase 1B is occupied after 30 June 2007 but before 1 June 2008, the City shall release the letter of credit, save and except for any Phase 1B Monthly Penalty payments deducted from that sum. For example, if Phase 1B is composed of a gas bar/convenience store and two fast food outlets and if all of these aspects of Phase 1B are not occupied until 7 September 2007, the City would have drawn three Phase 1B Monthly Penalties in the amount of Twenty-Five Thousand (\$25,000.00) dollars.
- v. In the event the remainder of Phase 1B is not occupied on or before 1 June 2008, and for every June 1<sup>st</sup> thereafter during which time Phase 1B is not occupied, Roshan shall forthwith provide the City with another letter of credit in the amount of One Hundred Thousand (\$100,000.00) dollars (or such proportionate amount which accurately reflects the City's estimated lost tax revenue).

**Penalties Concerning Phase 2:**

- 4.19 Roshan shall provide the City with an irrevocable letter of credit in a form satisfactory to the City in the amount of One-Hundred and Fifty Thousand (\$150,000.00) dollars on or before 31 July 2007, or such other date that the Parties agree to in writing. The Parties agree that purpose of the irrevocable letter of credit is to provide the City with a source of funds it can draw on in the event it needs to collect the Phase 2 Monthly Penalty, or any portion thereof, referred to in Section 4.20 below. The Parties agree that, in the event Phase 2 is not occupied on or before 31 December 2008, then the City shall be entitled to draw from the letter of credit the amount, of Twelve-Thousand Five-Hundred (\$12,500.00) dollars (the "Phase 2 Monthly Penalty") on the first day of each month, commencing on 1 January 2009, until Phase 2 is occupied. In the event Phase 2 is occupied after the first day of any month, the City shall release any remaining amounts from the Phase 2 letter of credit. Further detail concerning the Phase 2 Monthly Penalty is set out in Section 4.20 below.
- 4.20 Concerning the Phase 2 Monthly Penalty, the Parties agree as follows:
  - i. Provided that the City has occupied the Visitor Centre, but in the event Roshan has not obtained Site Plan approval, a building permit and commenced construction of Phase 2 by 31 July 2007, Roshan shall, upon receiving written notice from the City, forthwith and free of encumbrances convey the Former MTO Site to the City, for Twenty Thousand (\$20,000.00) dollars per acre;
  - ii. That in the event the City exercises its option under Section 4.20(i), it shall notify Roshan on or before 1 October 2007 of its intention to purchase the Former MTO Site and such transaction shall be completed forthwith following the delivery of such notice;
  - iii. That in the event Roshan has commenced construction of Phase 2, but Phase 2 is not occupied by 31 December 2008, or such other date to which the Parties have agreed to in writing, then, on the first day of each month, commencing on 1 January 2009, the City shall be entitled to draw on the Phase 2 letter of credit in the amount of Twelve-Thousand Five-Hundred (\$12,500.00) dollars until such time as Phase 2 is occupied.
  - iv. The parties agree and accept that the Phase 2 Monthly Penalty represents a genuine pre-estimate of the City's lost monthly tax revenue from the Phase 2 development. The Parties also agree that there will be no proportionate discount to the Phase 2 Monthly Penalty.

- v. In the event Phase 2 is occupied after 31 December 2008, but before 31 December 2009, the City shall release the letter of credit, save and except any Phase 2 Monthly Penalty payments deducted from that sum. For example, if Phase 2 is occupied on 7 March 2009, the City would have deducted three Phase 2 Monthly Penalties, totaling Thirty-Seven Thousand Five-Hundred (\$37,500.00) dollars.
  - vi. In the event Phase 2 is not occupied on or before 31 December 2009, and for every December 31<sup>st</sup> thereafter during which time Phase 2 is not occupied, Roshan shall forthwith provide the City with another letter of credit in the amount of One-Hundred and Fifty-Thousand (\$150,000.00) dollars.
- 4.21 In the event Roshan is required to convey any land to the City pursuant to subsection 4.14 and/or subsection 4.20, Roshan shall not attempt to compel the City to complete this agreement, by way of an action based on specific performance or breach of contract.
- 4.22 In the event Roshan has:
- i. Commenced construction of the Visitor Centre and is diligently proceeding with, and is using all reasonable efforts to complete the Visitor Centre, then, notwithstanding any penalty referred to in Section 4, and provided the Parties have agreed in writing to an extension of the date for Substantial Completion or occupancy then the City shall not exercise any penalty in relation to the Visitor Centre until such agreed upon extension for the Substantial Completion or occupancy of Visitor Centre has expired; and/or
  - ii. Commenced construction of the remainder of Phase 1B and is diligently proceeding with, and is using all reasonable efforts to complete Phase 1B then, notwithstanding any penalty referred to in Section 4, and provided the Parties have agreed in writing to an extension of the date for Substantial Completion or occupancy then the City shall not exercise any penalty in relation to Phase 1B until such agreed upon extension for the Substantial Completion or occupancy of Phase 1B has expired; and/or
  - iii. Commenced construction of Phase 2 and is diligently proceeding with, and is using all reasonable efforts to complete Phase 2 then, notwithstanding any penalty referred to in Section 4, and provided the Parties have agreed in writing to an extension of the date for Substantial Completion or occupancy then the City shall not exercise any penalty in relation to Phase 2 until such agreed upon extension for the Substantial Completion or occupancy of Phase 2 has expired.

**Completion of Conveyances**

- 4.23 Any of the conveyances contemplated by this Agreement shall be exercised by delivery of a notice in writing, either personally, by fax or by prepaid registered mail, to Roshan at the following address:

Roshan Holdings Ltd.  
161 Chisholm Drive,  
Milton Ontario, L9T 4A6  
Attention: Shamim Bhimji

Fax: 905.878.9701

With a copy to  
Mr. John Nichols  
Howell Fleming LLP  
Barristers and Solicitors

415 Water Street  
P.O. Box 148  
Peterborough, ON K9J 6Y5

Fax: 705.745.6220

Unless otherwise specified, any conveyance contemplated by this Agreement shall be completed within sixty (60) days of receipt of written notice.

In the event that notice is given by registered mail, it shall be deemed to have been received on the sixth (6<sup>th</sup>) day following the day upon which it was mailed. Any tender of documents or money hereunder may be made upon the solicitor acting for the party upon whom tender is desired and it shall be sufficient that a negotiable certified cheque may be tendered instead of cash. Each party is to pay the cost of registration and taxes on their respective documents.

## **5.0 Requirement for Insurance Prior to Substantial Completion**

5.1 Roshan shall obtain and maintain, at its own expense, insurance policies in which the City is named as an additional insured in the amount of Two Million Dollars (\$2,000,000.00) against liability due to damage to the City's property or property of other person or persons (including Roshan) and against liability due to injury or death of any person or persons in any one instance. Such policies of insurance shall:

- a. Contain a severability of interest clause and cross liability clause between Roshan and the City;
- b. Be non-contributing with, and shall apply only as primary and excess to any other insurance available to the City;
- c. Provide that it shall not be cancelled or amended so as to reduce or restrict coverage except upon sixty (60) days prior notice (by registered mail) to the City Clerk and to Legal Services at Peterborough City Hall.

5.2 Roshan shall, upon the City's request, provide the City Clerk and the Legal Services department with evidence, satisfactory to the City, of its compliance with this Section of the Agreement.

5.3 Roshan agrees that the insurance described in this clause does not in any way limit its liability pursuant to the indemnity provisions of the Agreement.

5.4 Roshan's requirement to provide insurance under this Section shall cease upon the substantial completion of the latter of Phase 1 or Phase 2, respectively.

## **6.0 Voluntary Assumption of Risk**

6.1 Roshan voluntarily assumes any risk of injury, damage or legal action and agrees to release and forever discharge the City, from any suit, action, proceeding, claim, damage, loss, liability, or demand whatsoever in respect of injury, death, loss or damage to property caused by or arising from Roshan's services provided to the City pursuant to the Agreement.

## **7.0 Indemnity and Waiver**

7.1 Roshan agrees to indemnify, hold and save harmless the City from and against all suits, actions, proceedings, claims, damages, losses, liabilities and out-of-pocket expenses (including but not limited to legal fees) of any kind which may be incurred by, or be asserted against the City in connection with, or arising out of, Roshan's services provided to the City pursuant to the Agreement. Notwithstanding the preceding

sentence, Roshan shall not be liable, under this paragraph, for any indemnification to the City to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense resulted from the City's gross negligence or willful misconduct.

7.2 Roshan also agrees to hold and save harmless the City from any and all causes of action brought by third parties against the City arising out of the services provided to the City by Roshan pursuant to the Agreement.

## **8.0 Addresses for Service**

8.1 The addresses for service are as follows:

### **In respect of Roshan Holdings Ltd.:**

Roshan Holdings Ltd.  
161 Chisholm Drive,  
Milton Ontario L9T 4A6  
Attention: Ms. Shamim Bhimji

Fax: 905.878.9701

### **In respect of the City:**

Ms. Nancy Wright-Laking  
City Clerk  
City of Peterborough  
500 George Street North  
Peterborough, Ontario K9H 3R9

Fax: 705.742.3947

8.2 The Parties may change their respective addresses and addresses for delivery by delivering notices of such changes as provided below. Notice sent accordingly shall be deemed delivered and received:

- a. If delivered by hand, upon receipt;
- b. If delivered by facsimile, 48-hours after the time of transmission, excluding from the calculation weekends and public holidays;
- c. If delivered by overnight courier four (4) days after the couriating thereof; and
- d. If delivered by registered mail, six (6) days after the mailing thereof, provided that if there is a postal strike or lockout such notice shall be delivered by hand, courier or facsimile.

## **9.0 Acknowledgement of Public Document**

9.1 Roshan acknowledges that the Agreement is a public document and may be disclosed to any person who makes a lawful inquiry.

## **10.0 City Contact**

10.1 For the purposes of taking direction concerning the Contract, Roshan and/or the General Contractor is to contact the City's Property Asset Manager.

## **11.0 Governing Law**

11.1 The laws of Ontario will govern this Agreement.

**12.0 Counting Years**

12.1 Years shall be counted from the commencement of Year 1. Year 1 shall commence on the date the Visitor Centre is completed to the satisfaction of the City (the "Commencement Date"). Prior to taking possession of the Visitor Centre, the City will inform Roshan in writing of the Commencement Date.

**13.0 Canadian Dollars**

13.1 All dollar amounts referred to in this Agreement are in Canadian funds unless otherwise provided.

**14.0 Extended Meanings**

14.1 In this Agreement, where the context requires, the singular number includes the plural and vice versa, the masculine gender includes the feminine and neuter genders and vice versa and the word "person" is not limited to an individual but includes any entity recognized by law.

**15.0 Accounting Terms**

15.1 All accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles, consistently applied.

**16.0 Recitals**

16.1 Each of the parties acknowledges that the recitals of this Agreement, so far as they relate to such party, are true and correct in substance and in fact.

**17.0 No Partnership – No Joint Venture**

17.1 The relationship between Roshan and the City is defined by this Agreement. Nothing contained herein is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and Roshan. None of the officers, agents or employees of Roshan shall be or be deemed to be employees of the City for any purpose whatsoever.

**18.0 Permits, Licences, Taxes and Liens**

18.1 Roshan shall use reasonable and diligent efforts to procure any permits and licences required and pay all charges and fees, necessary for the development to be undertaken by it. The City shall cooperate with Roshan in applying for such permits and licences. Roshan shall deliver copies of all such permits or licences to the City. Roshan shall pay promptly all taxes, excises, licence fees, permit fees and development charges of whatever nature arising from the Development.

18.2 Roshan shall use reasonable and diligent efforts to prevent any construction or other lien from becoming attached to the Visitor Centre, or any part or parcel thereof, by reason of any work or labour performed or materials or services supplied by any contractor, material man or supplier, so long as the work, labour, material or supplies was provided at Roshan's direction and the City has supplied funds for the payment of charges therefor in accordance with this Agreement.

**19.0 Severability of Clauses**

19.1 If any provision of the Agreement is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of the Agreement, unless such invalidity or unenforceability renders the operation of the Agreement impossible.

**20.0 Force Majeure**

20.1 If Roshan is bona fides delayed or hindered in or prevented from the performance if any term, covenant or act required hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or

regulations, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not which is not the fault of Roshan, then the performance of that term, covenant or act is excused for the period of the delay and Roshan will be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of delay.

**21.0 Non-waiver**

21.1 A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants or conditions of this Agreement shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

**22.0 Entire Agreement**

22.1 The Contract and any schedules attached hereto constitute the entire agreement between the City and Roshan with respect to the matters herein and supercede any and all prior oral or written representations and agreements.

**23.0 Written Amendments**

23.1 This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.

**24.0 Headings**

24.1 All headings are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents of any Article, paragraph or section in this Agreement.

**25.0 Miscellaneous**

25.1 It is agreed between the parties that notice of this Agreement, shall be registered on title at the expense of Roshan. Roshan shall not encumber the Visitor Centre Site or the Former MTO Site until notice of this Agreement or the Agreement itself, has been registered.

25.2 Each party shall at the other's party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of the Agreement and the transactions contemplated thereby.

25.3 The Agreement may be executed in counterparts and the counterparts together shall constitute an original.

25.4 Each party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under the Agreement.

**26.0 Termination of Agreement by Roshan**

26.1 In the event that all of the conditions referenced under Condition Satisfaction Date are not satisfied or waived on or before 15 December 2005, or such other date to which the parties have agreed to in writing, Roshan may terminate the within agreement. In the event Roshan terminates the Agreement, it shall forthwith re-convey any lands, conveyed to it by the City, to the City without cost and it shall produce and register discharges of any and all mortgages and all other encumbrances which have been registered against the Visitor Centre Site or the Former MTO Site.

**27.0 Date for Initial Conveyance of the Lands**

27.1 Upon Roshan notifying the City that it has satisfied the conditions relating to the Condition Satisfaction Date, or waived the requirement for compliance with such conditions, the City shall convey the Visitor Centre Site and the Former MTO Site to Roshan within sixty (60) days of receiving such notice.



Schedule "A"  
City of Peterborough Planning Report PLO4-059 &  
RFP P-07-01

Schedule "B"  
Access Road Schematic

Schedule "C"  
Visitor Center Schematic

Schedule "D"  
Parts 1 -5 Conceptual Schematic

Schedule "E"  
Conceptual Development Plan